

(2009) 02 AHC CK 0002
In the Allahabad High Court
Case No : H.C.W.P. No. 43478 of 2008

Jafar Husain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 489B, 489C

Citation : (2009) 1 ACR 966

Hon'ble Judges : R.K. Rastogi, J; A.K. Roopanwal, J

Bench : Division Bench

Advocate : Sanjay Kumar, for the Appellant; Narendra Bahadur Singh, J.K. Sisodia, N.B. Singh and D.R. Choudhary and Sudhir Mehrotra, A.G.A. and Addl. S.G.I., for the Respondent

Judgement

A.K. Roopanwal, J.—We have heard Mr. Sanjay Kumar, learned Counsel for the Petitioner, Mr. J. K. Sisodia, learned A.G.A. for the State, Mr. N. B. Singh, learned Counsel for the Union of India and perused the record.

2. In this habeas corpus writ petition filed under Article 226 of the Constitution of India the Petitioner-Jafar Husain has challenged the validity of the detention order dated 19.5.2008, passed by the District Magistrate, Bijnor, in exercise of the powers u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act). This detention order was passed on a solitary incident giving rise to Crime No. 90 of 2008, under Sections 489B and 489C, I.P.C., Police Station, Nahtaur, district Bijnor.

3. According to the F.I.R. of the case, on 1.2.2008, Mr. Shyamveer Singh, Station Officer, Police Station Nahtaur, district Bijnor, got an information that two persons on a Hero Honda Splendor motorcycle are present in the town of Nahtaur and trying to use as genuine forged or counterfeit currency notes. On this information the S.O. tried to procure public witnesses but none became ready. The police

party came at Jhalu chauraha where the informer pointed out the above two persons to the police. After some time these persons went to a liquor shop and demanded two quarters of liquor. The salesman supplied the same. These persons took out bundles of currency notes from their pockets and each of them tried to give a currency note of Rs. 500 to the salesman on which the police party apprehended them. It was 6.10 p.m. One of them disclosed his name as Mahmood and the other was the present Petitioner. The memo of the recovered notes was prepared at the spot.

4. As the act of the Petitioner was prejudicial to the maintenance of supplies and services of the Indian currency, hence the Station Officer, Police Station Nahtaur, district Bijnor, sent a report to the Superintendent of Police, Bijnor, for detaining the Petitioner under the provisions of the Act. The Superintendent of Police, Bijnor being satisfied with the report of the Station Officer, Police Station Nahtaur, and the recommendation of the Circle Officer Police, Police Station, Dhampur, Bijnor and the Superintendent of Police (Rural), Bijnor, thereon recommended the case to the District Magistrate, Bijnor, for detaining the Petitioner under the Act. The District Magistrate went through all the materials supplied by the sponsoring authority and finding it a fit case for detaining the Petitioner under the Act, detained him under the Act vide order dated 19.5.2008. The order was served upon the Petitioner, who made representations before the State of U.P. and the Central Government. The State Government approved the detention order on 27.5.2008 and this approval was communicated to the Petitioner through the District Authorities of the State Government through Radiogram and a letter dated 27.5.2008. A copy of the detention order, the grounds of detention and all other connected papers received from the District Magistrate, Bijnor were also sent to the Central Government by Speed Post on 28.5.2008. The case of the Petitioner was also referred to the Advisory Board by the State Government and the Advisory Board after giving personal hearing to the Petitioner found that the Petitioner was detained on sufficient grounds. Thereafter the State Government confirmed the detention order and directed that the Petitioner shall be detained for twelve months from the date of the order passed by the District Magistrate, Bijnor.

5. Learned Counsel for the Petitioner challenged the detention order on the ground that there was no cogent material before the detaining authority on the basis of which he could reach the requisite satisfaction that the Petitioner could repeat the alleged prejudicial activity in future. According to him, the solitary act complained of against the Petitioner was not sufficient to indicate in absence of any other cogent material that there was a likelihood of the Petitioner repeating the same incident in future.

6. To the above, it was replied by the learned Counsel for the Respondents that the satisfaction recorded by the detaining authority to the effect that there was likelihood that the Petitioner could repeat the prejudicial act in future was based on cogent material namely the report submitted by the Superintendent of Police,

Bijnor and therefore, it cannot be said that the satisfaction recorded by the District Magistrate was without any basis. It was also argued that the nature of the incident, which was the basis for passing the detention order was such, as itself indicated that there could be every likelihood of the Petitioner involving himself in the same activity in future. They also refuted the argument of the Petitioner's counsel that a single case cannot be the basis for passing the valid detention order.

7. The question as to whether and in what circumstances an order for preventive detention can be passed against a person, who is in custody, came for consideration before a three Judges' Bench of the Hon'ble Supreme Court in the case of Dharmendra Suganchand Chelawat and another Vs. Union of India and others, wherein after considering all the earlier relevant decisions, the Apex Court answered the question in the following words:

The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that: (i) the detaining authority was aware of the fact that the detenu is already in detention ; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implied that there must be cogent material before the detaining authority on the basis of which it may be satisfied that: (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

8. In view of the above decision of the Supreme Court the criteria for judging the validity of a detention order would not be the number of activities complained of but the principles stated in the aforesaid ruling. Even a single case may be sufficient to pass a valid detention order and such view was approved by the Apex Court in the decision in Abdul Sathar Ibrahim Manik Vs. Union of India and others, and by this Court in the decision in Vijai Pal alias Pappu v. Union of India and others, 1996 (33) ACC 741.

9. When applying the principles laid down in the case of Dharmendra Suganchand Chelawat v. Union of India, on the facts of the present case there could be no escape from the conclusion that the impugned order of detention was validly passed and there was cogent material before the detaining authority to pass this order.

10. The grounds of detention indicate the detaining authority's awareness of the fact that the detenu was in judicial custody at the time of making the detention order. He had also mentioned the cogent material in the detention order, i.e., the details of the offending activity, investigation by the police, the effect which the

activity had on the public, which was necessary for arriving at the satisfaction that the further detention was necessary under the circumstances of the case. The facts of solitary case, which was the basis of the detention order, show that the Petitioner was not doing the trade of fake currency notes all alone, but he was doing the prejudicial activity in association with other persons. The activity complained of against the Petitioner was sufficient to indicate that he was actively engaged in the trading of fake currency notes as the huge amount of fake currency notes was recovered from his possession and this act of him was definitely prejudicial to the maintenance of supplies and services of the Indian currency essential to the community. In such factual matrix the District Magistrate was perfectly justified in reaching to the subjective satisfaction that the detention of the Petitioner was necessary for the maintenance of supplies and services of Indian currency essential to the community at large.

11. We, in view of the above discussion, do not find any material on the record to find any fault in the order impugned in this petition. Accordingly, this petition has no merits and is liable to be dismissed.

The petition is dismissed.