
(2000) 09 AHC CK 0009

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 8521 C/W 14203 and 18748 of 2000

Jagdish Prasad Kasana alias Jaggi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 307, 353, 363, 364A, 386

Citation : (2001) CriLJ 372 : (2001) 3 RCR(Criminal) 157

Hon'ble Judges : U.S. Tripathi, J;J.C. Gupta, J

Bench : Division Bench

Advocate : Prabhat Kumar Srivastava and D.S. Mishra, for the Appellant; S.C., A.G.A. and S.N. Srivastava, K.N. Pandey and Mahendra Pratap, for the Respondent

Final Decision : Allowed

Judgement

U.S. Tripathi, J.—By means of above writ petitions, the petitioners have questioned the legality of the order dated 17-12-1999 passed by District Magistrate, Meerut u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act), under which the petitioners have been detained.

2. Common question of facts and law are involved in the above writ petitions and therefore, all the three writ petitions are taken up together for disposal and for which the learned counsel for the parties have no objection.

3. Along with the impugned order of detention, the petitioners were also served the grounds on the basis of which the detaining authority formed his satisfaction for detaining the petitioners under the Act. There are eight grounds, which show that the petitioners were involved in criminal activities. It appears that on 11-7-1999 Arun Kumar Jain called Swatantra Rastogi from his house 10, Shivaji Road, P.S. Civil Lines, Meerut and was taking him to his factory. "Electra India

Ltd." in Maruti Esteem Car No. UP-15 J-5317 through Roorkee-Delhi bye-pass. Haji Rais Ahmad was also sitting in the said Car. At about 12 noon another white Maruti Car No. DL 3 CP 7850 came from Meerut side and by overtaking the car in which Swatantra Rastogi was sitting got stopped. Swatantra Rastogi was dragged from the car and was got seated in the white Maruti Car by causing injury by butt of fire-arm and he was taken towards Delhi. Report regarding above incident was lodged on 11-7-1999 at 12.30, at. P.S. Partapur, District Meerut. A case at crime No. 201 of 1999 u/s 363, I.P.C. was registered. That the news about above sensational incident was published in various newspapers like Statesman, Times of India, Hindustan Times, Punjab Keshari, Nav Bharat Times, Amar Ujala etc. The above incident caused sense of terror and insecurity in the mind of traders and industrialists. They came on road to raise protest and launched agitation. The President of Sanyukta Vyapar Sangh, Meerut submitted a memorandum of demands before the Superintendent of Police regarding their fear and insecurity and requested to get Sri Swatantra Rastogi set free. During investigation of the said case, the Inspector of P.S. Chanakyapuri, New Delhi took into custody co-accused Madan Bhaiya, Ajad Singh and others on 23-7-1999 at 3.15 p.m. at Delhi and these persons admitted their participation in the kidnapping of Swatantra Rastogi and demand of ransom. Swatantra Rastogi was released at 5.30 p.m. on 25-7-1999 and after a week of arrest of Madan Bhaiya, Pratap Singh, Ram Pratap and others. His evidence was recorded wherein he named Vikram Khan and other petitioners. It further came into evidence that the petitioners along with other accused persons abducted Swatantra Rastogi for the purpose of ransom of 5 crores. The case was, accordingly, altered u/s 364A, I.P.C. on 23-7-1999. It also came to the notice of Inspector In-charge of P. S. Partapur that all accused of said incident, Vikram Khan, Arun Kumar Gujjar along with others were apprehended by Delhi Police in an encounter in Ashoka Hotel premises in case crime No. 270 of 1999 under Sections 386, 353, 307, I.P.C. and 25/59 Arms Act. On account of above incident of kidnapping of Swatantra Rastogi a leading industrialist and demand of ransom of Rs. 5 crores, atmosphere of terror prevailed in the entire district and the industrialist community was feared and disturbed, which was prejudicial to the public order. The petitioners were ordered to be released on bail by the High Court and the detaining authority found that in case they were released on bail, they would indulge in similar activities prejudicial to the maintenance of public order. On the aforesaid grounds the detaining authority recorded his satisfaction that in order to prevent the petitioners from acting in any manner prejudicial to maintenance of public order it is necessary that they may be detained under the Act.

4. Counter-affidavit and rejoinder-affidavits have been exchanged between the parties. We have heard Sri D. S. Mishra, learned counsel for the petitioners, Sri K. N. Pandey for the Union of India and Sri Mahendra Pratap for the other respondents.

5. The learned counsel for the petitioners has challenged the impugned order of detention on the following grounds:-

1. Co-accused Arun Kumar Jain, who was also detained u/s 3(2) of the Act, vide order dated 13-9-1999 made a representation to the Advisory Board, State of U. P., Lucknow and after receiving the advice from the Advisory Board, the State of U. P. revoked his detention order, vide order dated 28-10-1999, before the detention of the petitioners under the Act, but the above order was not placed before the detaining authority. Co-accused Arun Kumar Jain was detained in the same case and incident on which the present petitioners have been detained. Therefore, it was an identical fact involving common ground and was relevant and important piece of material which the detaining authority failed to consider and therefore vitiated the detention order.
2. The bail applications of the petitioners as well as that of co-accused Arun Kumar Jain were also not placed before the detaining authority and therefore, the detaining authority failed to consider relevant and material document.
3. The petitioners made representation on 3-1-2000 which was received by the State Government on 5-1-2000, but it was rejected on 13-1-2000. The above delay in disposal of the representation of the petitioners was not satisfactorily explained and therefore, detention of the petitioners was against the provisions of Article 22(5) of the Constitution of India.
4. The incident in which the petitioners were allegedly involved had not affected the public order, but it was related to law and order and therefore on the basis of it the petitioners could not be detained under the Act.
5. The occurrence of kidnapping took place on 11-7-1999 and detention order was passed on 17-12-1999. There was no live link between the incident and the detention order and no proximity in time to provide a rational nexus between incident and satisfaction arrived at.
6. The learned A.G.A. on the other hand submitted that the order of revocation of detention of co-accused Arun Kumar Jain was a confidential document and could not be available to the detaining authority and therefore, he was not in a position to consider the same at the time of passing of the detention order. Moreover, the above order of revocation of co-accused was not relevant and material. He further contended that the role of co-accused Arun Kumar Jain in the incident in question was different from that of the petitioners and the revocation of the detention did not affect the detention of the petitioners. He further contended that the bail application of the petitioners and other co-accused was not within the knowledge of detaining authority. Again he contended that incident on the basis of which the petitioners were detained affected the public order, there was no delay in disposal of the representations of the petitioners and if there was any delay, it has been explained and that the points raised by the learned counsel for the petitioners have not been specifically pleaded and therefore, the detaining authority could not explain in his counter-affidavit and that delay in passing detention order alone is not sufficient.
7. Both the learned counsel have cited number of authorities in support of their

submissions, which shall be mentioned at the relevant places.

8. We have carefully considered the submissions of the learned counsel for the parties.

9. The learned counsel for the petitioners seriously challenged the detention order on the ground that revocation order of co-accused Arun Kumar Jain was not placed before the detaining authority. The detention of co-accused Arun Kumar Jain related to the same incident and was on identical facts and therefore, it was relevant and important piece of material and if the detaining authority in the instant case was apprised that the Advisory Board had reported on examining, inter alia an identical ground that there was no sufficient cause for detention of another person. Involved in the same transaction, it may not have passed the order of detention against the petitioners, which is based on similar facts. It is not disputed that the detaining authority has not considered the revocation order of coaccused Arun Kumar Jain while passing the detention order. The learned counsel for the petitioners placed reliance on the Apex Court decision in Mohd. Shakeel Wahid Ahmed Vs. State of Maharashtra and Others, on the above point. In the said case the petitioner was detained under an order dated November 7, 1981. Prior to that, one Shamsi was detained under an order dated August 19, 1981 passed by the same Government, the Government of Maharashtra. After considering the reference and the materials placed before it in Shamsi's case, the Advisory Board reported to the State Government on October 19, 1981 that there was in its opinion no sufficient cause for Shamsi's detention. Shamsi was released, as he had to be, in pursuance of the Advisory Board's opinion. It was urged that the fact that the Advisory Board had reported that there was no sufficient cause for Shamsi's detention ought to have been placed before the detaining authority which passed the order of detention against the petitioner. The failure of State Government to place highly relevant and important piece of material before the detaining authority vitiates the order of detention. If the detaining authority in the instant case were apprised that the Advisory Board had reported on examining, inter alia, an identical ground that there was no sufficient cause for detention of another person involved in the same transaction, it may not have passed the order of detention against the petitioner, which is based on similar facts. On considering the above submissions the Apex Court held as below (Paras 6 and 7) :-

This submission is well-founded and must be accepted. It is clear that Shamsi was detained for engaging in a smuggling activity arising out of the same incident and transaction which forms the subject-matter of ground, in the instant case. The opinion of the Advisory Board that there was no sufficient cause for Shamsi's detention may not have been binding on the detaining authority which ordered the detention of the petitioner but, it cannot be gainsaid that the fact that the Advisory Board had recorded such an opinion on identical facts involving a common ground was at least a relevant circumstances which ought to have been placed before the detaining authority in this case.... That the ground is

similar to one of the grounds on which Shamsi was detained, the transaction being one and the same, as also the incident on which the two orders of detention are based. That is why the opinion of the Advisory Board in Shamsi's case becomes relevant in the petitioner's case. The failure of the State Government to place before the detaining authority in the instant case, the opinion which the Advisory Board had recorded in favour of a detenu who was detained partly on a ground relating to the same incident deprived the detaining authority of an opportunity to apply its mind to a piece of evidence which was relevant, if not binding.... The question is whether the order of detention was passed in this case after applying the mind to the relevant facts which bear upon the detention of the petitioner. It seems to us plain that the opinion of the Advisory Board in Shamsi's case was, at any rate, an important consideration which would and ought to have been taken into account by the detaining authority in the instant case. That opportunity was denied to it.

10. Relying on the above decision of Mohd. Shakeel Wahid Ahmad's case (supra) the Apex Court in the Ahamed Nassar Vs. The State of Tamil Nadu and Others, held as below (Para 20) :-

A man is to be detained in the prison based on subjective satisfaction of the detaining authority. Every conceivable material which is relevant and vital which may have bearing on the issue should be placed before the detaining authority. Sponsoring authority should not keep it back based on his interpretation that it would not be of any help to a prospective detenu. Decision is not to be made by the sponsoring authority. The law on this subject is well settled a detention order vitiates if any relevant document is not placed before the detaining authority which reasonably could affect his decision.

11. It is not disputed that co-accused Arun Kumar Jain was also detained u/s 3 of the Act, but his detention order was revoked by the State Government on the advice of Advisory Board. It is clear from the affidavit of Sri A.K. Awasthi, District Magistrate, Meerut dated 24-4-2000 that the order of revocation was well within his knowledge, but it was not considered before passing detention order of the petitioners. Sri Mahendra Pratap, learned A.G.A. contemplated that the revocation order was confidential document and was not available to the detaining authority and he had no access to it, therefore, it was not taken into consideration. Relying on Full Bench decision of this Court in the case of Chandresh Paswan v. State of U. P. (1999) cri lj 721 : (1999 All LJ 1167) he contended that if the detaining authority was not possessed of the document, there was no question for consideration by him and there was sufficient material for forming the subjective satisfaction for passing an order of preventive detention against the petitioner and non-consideration of the revocation order would not vitiate the order.

12. Assuming that the revocation order of co-accused Arun Kumar Jain was confidential and its copy was not made available to the detaining authority, it was not confidential for the State, which also becomes detaining authority after

submission of the detention order to the State Government for approval. As held above it was relevant and important material which the detaining authority failed to consider.

13. It was further contended by Sri Mahendra Pratap, learned A.G.A. that the fact about non-consideration of revocation order was not specifically pleaded and therefore, the detaining authority was not in a position to explain the same.

14. Learned counsel for the petitioners contended that strict rule of pleading is not applicable in Habeas Corpus Petition and even if this fact was subsequently brought to the notice of the detaining authority, he was under duty to explain the same. He placed reliance on Apex Court's decision in the case of Sri-La-Sri Subramania Desika Gnanasambanda Pandarasannadhi Vs. State of Madras and Another, in which it was held that the High Court thought that the plea in question had not been raised by the appellant in his writ petition. This reason is no doubt, technically right in the sense that this plea was not mentioned in the first affidavit but in the affidavit-in-rejoinder filed by the appellant this plea has been expressly taken. This is not disputed by Mr. Chetty, and so, when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant challenged the validity of the impugned order was that he had not been given a chance to show cause why the said notification should not be issued. We are, therefore, satisfied that the ground in question had not been taken at any stage by the appellant before the matter was argued before the High Court. Therefore, non-pleading of this ground in the writ petition will have no effect. As such absence of pleading regarding above ground in writ petition will not affect.

15. Sri Mahendra Pratap further contended that the role of Arun Kumar Jain coaccused, whose detention order was revoked was different from that of present petitioners as it was found that he was only a conspirator and had not actually participated in the kidnapping and therefore, his above revocation has no bearing on the case of petitioners. We are of the view that this contention cannot be accepted because it was a particular incident, which created sense of insecurity in the mind of industrialist in particular and general public at large and not the individual role of the each accused. It is the incident in locality which affected the public order. It was also held by the Division Bench of this Court in Kishor v. State of U.P. (1998) All Cri 601 : (1998 A I J 95 that it is not the particular act which is relevant for determination whether it was one causing disturbance to law and order or public order. It is really the impact of the act on the society and when we look to this aspect the impact is created by the total incident and participation of the accused at different stages in different roles loses its importance so far the effect is concerned. Therefore, the incident in question which took place on 11-7-1999 must therefore be described as one, which affected the maintenance of public order and not the individual role of co-accused Arun Kumar Jain or present petitioners.

16. The next contention of the learned counsel for the petitioners was that the

petitioners made representation to the State Government on 3-1-2000 and it was received by the State Government on 5-1-2000, but it was ultimately decided on 13-1-2000 and there was no explanation for the delay in disposal of representation and therefore, it rendered the continued detention of the petitioners illegal. Sri Mahendra Pratap contended that there was no delay in disposal of the representation as it is clear from the counter-affidavit. It was mentioned in the counter-affidavit of Sri R.A. Khan, Undersecretary, Home and Confidential Department, U.P. Secretariat, Lucknow dated 17- 4-2000 that the representation of the petitioner dated 3-1-2000 forwarded by the District Magistrate, Meerut was received by the State Government on 5-1-2000. The State Government examined representation and submitted a detailed note on 7-1-2000. The Joint Secretary examined it on 7-1-2000 and thereafter submitted it to the Secretary, Home and Confidential who examined it on 10-1-2000 and submitted it to the Higher Authority for final orders of the State Government. 8-1-2000 and 9-1-2000 were holidays on account of Second Saturday and Sunday. After due consideration, the said representation was finally rejected by the State Government on 13-1-2000.

17. In this way, there is no explanation for the delay from 4-1-2000 to 6-1-2000 and 11-1-2000 to 12-1-2000. It was held by the Apex Court in the case of *Rajammal Vs. State of Tamil Nadu and Another*, as below (Para 9) :-

The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

18. As we have pointed out that there is no explanation for the delay from 4-1-2000 to 6-1-2000 and 11-1-2000 and 12-1-2000, therefore, unexplained delay adversely affected the continued detention of the petitioners.

19. Since we have found that the relevant and important material i.e. revocation of order of co-accused Arun Kumar Jain was not considered by the detaining authority while passing the detention order of the petitioners and there was also unexplained delay in disposal of representation of the petitioners, which vitiated the detention order and rendered continued detention of the petitioners illegal, we need not discuss the other points raised by the learned counsel for the petitioners and writ petitions are liable to be allowed on the above grounds.

20. We, accordingly, allow the Habeas Corpus writ petitions Nos. 8521 of 2000, 14203 of 2000 and 18748 of 2000 and since the continued detention of the petitioners had been rendered illegal, we direct the respondents to set the petitioners at liberty forthwith, if their detention is not required in any other case.