

(2012) 11 AHC CK 0031

In the Allahabad High Court

Case No : Criminal Habeas Corpus Writ Petition No. 17098 of 2012

Jang Bahadur Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Arms Act, 1959 — Section 25

National Security Act, 1980 — Section 3(2), 3(3)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 325

Citation : (2012) 11 ADJ 667 : (2013) 2 ALJ 560 : (2013) CriLJ 1441

Hon'ble Judges : Ravindra Singh, J; Anil Kumar Agarwal, J

Bench : Division Bench

Advocate : O.P. Singh, for the Appellant; Jitendra Nayak and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri O.P. Singh learned counsel for the petitioner, learned A.G.A. for the State of U.P. and Sri Jitendra Nayak appearing on behalf of the Union of India.

This petition has been filed by the petitioner Jang Bahadur Yadav with a prayer

1. to issue a writ, order or direction in the nature of certiorari by quashing the impugned order detention dated 4.11.2011 passed by respondent No. 2 i.e. District Magistrate, District Allahabad vide order No. 9/2011 N.S.A./11 u/s 3(2) of N.S.A. Act as well as approval of detention passed by the Registrar Advisory Board U.P. Lucknow dated 28.12.2011 as well as approval of Central Government dated 1.12.2011.

2. to issue a writ Habeas Corpus in the nature of mandamus commanding and directing to the respondent No. 3 to release the petitioner from Jail forthwith.

3. to issue a writ, order or direction, which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case and to which petitioner is entitled in law.

4. to award costs to the petitioner.

The facts in brief of this case are that the F.I.R. has been lodged against the petitioner and the co-accused Madan Halwai, Subhash Yadav, Ram Narain Yadav, Shiv Bahadur, Rakesh Yadav, Neelam and Beenu, Santosh Patel and 40-50 other villagers in case crime No. 335 of 2011 under Sections 147, 148, 149, 307, 325, 504, 506 and 427 I.P.C. and 7th Criminal Law Amendment Act P.S. Mau Aima district Allahabad, on the basis of this F.I.R. the impugned order of detention has been passed by the District Magistrate, Allahabad on 4.11.2011. The order dated 4.11.2011 was approved by the State Government on 14.11.2011. The case of the petitioner was referred to the Advisory Board as well as to the Central Government. The petitioner appeared before the Advisory Board in due process, prior to that the petitioner has sent his representation dated 14.11.2011 which was rejected by the District Magistrate, Allahabad. The representation alongwith the comments was sent by the District Magistrate, Allahabad to the State Government by letter dated 16.11.2011, the same was received on 18.11.2011. A copy of the representation and para-wise comments were sent to the Advisory Board as well as to the Central Government by the State of U.P. vide letter dated 21.11.2011, after due consideration the representation was finally rejected on 23.11.2011. The report of Advisory Board through its Registrar vide letter dated 21.12.2011 was received by the State Government on 21.12.2011, on receipt of the report of the Advisory Board the State Government once again examined a fresh the entire case of the petitioner alongwith the opinion of the Advisory Board and took a decision confirming the detention order on 29.12.2011 to keep the petitioner under detention for a period of 12 months from the date of his actual detention under the Act, it was communicated to the petitioner also. The Central Government proceeded with the representation alongwith the para-wise comments on 24.11.2011 and 25.11.2011, the representation was put up for consideration and rejected the representation on 30.11.2011 and the same was communicated to the petitioner also.

2. The order of detention dated 4.11.2011 passed by the District Magistrate, Allahabad in exercise of the power conferred u/s 3(3) of the National Security Act by which the petitioner has been detained as a criminal person in Central Jail Naini, Allahabad u/s 3(2) of the N.S.A., has been challenged on the following grounds.

(a) Because petitioner is law abiding citizen of India and never committed any offence throughout his life and he has been falsely implicated under the political pressure and he is also not previous convict.

(b) Because the ground of detention of detenu is against sole case as registered against the detenu and ground taken are not sustainable in the eyes of law.

(c) Because there is no material in grounds of detention order for subjective satisfaction of the authority which makes the detention order liable to be quashed.

(d) Because detention order is discriminatory in the sense that out of several persons alleged to be involved in the aforesaid solitary offence only one i.e. detenu has been selected to be detained under the N.S.A.

(e) Because the solitary act detenu has not been alleged to have taken place on a public place so question affecting the public order does not arise, rather it would be problem of law and order.

(f) Because concerned respondent authority i.e. District Magistrate, District Allahabad passed impugned order against the norms and decision of this Hon''ble Court as well as Apex Court and detention order is liable to be quashed.

(g) Because there is no material on record that it was necessary for District Magistrate to pass an order of detention for maintaining public law and order.

(h) Because the ground mentioned for detention are vague, indefinite absurd and no effective reply can be given again the same has been irrelevant and baseless.

(i) Because the detenu belonging to Samajvadi party and victim side belong to B.S.P. and due to which the detention order has been passed under the political pressure.

3. The learned counsel for the petitioner challenges the impugned order by submitting that the impugned order has been passed by the District Magistrate, Allahabad under the pressure of Ram Shiromani Shukla, who was a sitting M.L.A. from Bahujan Samaj Party, which was in power in the State of U.P. on the day of the passing of the impugned order. The detaining authority's satisfaction was not subjective even the offence in which the petitioner was involved was not affecting the public order, it was a case of law and order, on the basis of the only incident, which was punishable under the Indian Penal Code, the impugned order was passed, which was not sufficient to make out any case for issuance of the impugned order under the National Security Act. In support of his submission a case of Yumman Ongbi Lembi Leima Vs. State of Manipur and Others, has been cited and it was submitted by the learned counsel for the petitioner that the impugned order is illegal, the same may be set aside and the petitioner may be released forthwith from the Jail.

4. It is also submitted by the learned counsel for the petitioner that the F.I.R. in which the petitioner as well as other persons were also named, but the N.S.A. was not imposed upon them. The impugned order has been passed against the petitioner only because the petitioner had recorded his statement in an inquiry conducted by Sri Wrigjiyan, Sample, I.A.S. District Magistrate, Pratapgarh against Sri Ram Shiromani Shukla, M.L.A. from the B.S.P. party, the video recording of the statement of the petitioner and other was done, in the enquiry report dated 26.8.2009 Sri Ram Shiromani Shukla M.L.A. was found guilty. The allegations made against them for acquiring the land illegally of the landholder and tenure holder was found correct. In the statement recorded by the District Magistrate, Pratapgarh, the petitioner stated that his land was adjoining to the

Degree College of Sri Ram Shiromani Shukla, M.L.A. who wanted to get sale deed executed by putting the petitioner under threat. He was threatening the petitioner that he would be involved in some other cases in case, the sale deed is not executed by him. The petitioner did not execute the sale-deed then the threat was extended by the police force as well as some other persons of the M.L.A., On 21.7.2009 at 11.30 p.m. his house was set on fire by the police.

5. In reply to the above contention it is submitted by the learned A.G.A. that the District Magistrate has applied his mind and after perusing all the connected papers report was submitted by the sponsoring authority. In the ground of detention, there was no reference of Sri Ram Shiromani Shukla, M.L.A. The petitioner was having no good relationship with Sri Ram Shiromani Shukla, M.L.A., the District Magistrate, Allahabad was not under any pressure to pass the impugned order and the offence committed the petitioner is effecting the public order. The impugned order is not suffering from any illegality or irregularity. The present petition is devoid of merits, the same may be dismissed.

6. Considering the submission made by the learned counsel for the petitioner and the learned A.G.A. for the State of U.P. and from the perusal of the record it appears that the impugned order dated 4.11.2011 has been passed by the District Magistrate, Allahabad on the basis of F.I.R. in case crime No. 335 of 2011 under Sections 147, 148, 149, 307, 325, 552, 504 and 427 I.P.C. and 7th Criminal Law Amendment Act in which the injured Samiullah died subsequently on 30.8.2011 in Jeevan Jyoti Hospital, Allahabad, in that case the petitioner surrendered on 12.9.2011 when the petitioner was taken on police remand, at his pointing out one country made pistol was recovered for which a case crime No. 385 of 2011 u/s 25 Arms Act was registered against the petitioner. It is alleged that the petitioner and his associates discharged the shots by country made pistol towards Majeed-un-nisa and Nafees and his house was also damaged. Samiullah and Ashfaq were also badly beaten consequently, Samiullah died on account of the above mentioned incident in village Dadupur, which is a adjoining village, an atmosphere of fear and terror was created and the public order was disturbed that is why the force of different police station including the P.A.C. was called and deputed there. In the above mentioned F.I.R. 12 persons including the petitioner were named, 40-50 persons were engaged but the main allegation was made against the co-accused Madan Halwai because on account of the dispute over gambling between Mohd. Nafees and the co-accused Madan Halwai, the alleged occurrence has taken place. According to the F.I.R. itself the petitioner and Madan Halwai were armed with country made pistol, they discharged the shots but nobody sustained any injury, the other co-accused were also armed with lathi and danda, accused persons entered into the house and damaged the house, thereafter, caused injuries on the person of Samiullah by using lathi and danda blow. In the present case, all the 12 accused persons including the petitioner named in the F.I.R., have been released on bail. It is surprising that the proceedings under N.S.A. were not initiated against any co-accused persons including Madan Halwai. According to the prosecution itself, the

deceased amiullah had sustained injuries caused by lathi and danda. The petitioner allegedly armed with pistol, nobody had sustained any injury caused by the firearm but the proceedings under the N.S.A. was sponsored only against the petitioner whereas the case of the petitioner was not distinguishable with other co-accused persons. The inquiry report submitted by the District Magistrate, Pratapgarh against Sri Ram Shromani Shukla, M.L.A. of B.S.P. Party, which was in power on the date incident, the inquiry report shows that the statement of the petitioner was also recorded during inquiry, its video recording was also done in which the allegation was made against the sitting M.L.A. which gives the impression that due to this reason, the petitioner was chosen from the set of the persons in case crime No. 335 of 2011 P.S. Mau Aima, Allahabad to get the petitioner under detention in exercise of the power conferred under the N.S.A. In such circumstances, the detaining authority did not apply his mind interdependently and impartially passed the impugned order. The impugned order may not be said to have been passed without any political influence by initiating the proceedings against the petitioner only by leaving some other persons, who was also accused alongwith the petitioner in the above mentioned case, therefore, the impugned order dated 4.11.2011 is illegal and the same is hereby set aside and it is directed that the petitioner detained in pursuance of the order dated 4.11.2011 passed by the District Magistrate, Allahabad, be released forthwith from the Central Jail, Naini, Allahabad.

Accordingly this petition is allowed.