
(2003) 02 AHC CK 0147

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 565 (HC) of 2002

Kaleem

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3, 3(2)

Citation : (2003) CriLJ 2685 : (2003) 3 RCR(Criminal) 131

Hon'ble Judges : Vishnu Sahai, J;R.C. Pandey, J

Bench : Division Bench

Advocate : Avinash Srivastava, for the Appellant; Brij Bahadur Saxena, Senior Standing Counsel for No. 1 and S.K. Singh, APP for Nos. 2, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—Through this writ petition preferred under Article 226 of the Constitution of India the petitioner-detenu Kaleem has impugned the order dated 31-7-2002 passed by the third opposite party Mr. Alok Kumar, District Magistrate, Faizabad detaining him u/s 3(2) of the National Security Act.

The detention order along with the grounds of detention, which are also dated 31-7-2002, was served on the petitioner-detenu on 31-7-2002 itself and their true copies have been filed as Annexures 1 and 3 respectively to the writ petition.

2. The prejudicial activities of the petitioner-detenu prompting the third opposite party to issue impugned detention order against him are contained in Annexure-3 (grounds of detention), A perusal of Annexure-3 would show that the impugned order is founded on a solitary C. R., namely, C.R. No. 320 of 2002, under Sections 147, 323. 342, 452, 376, 504, 506 IPC and 3 (1) of the U.P. Gangster Act of police station Cantt. District Faizabad, registered on the basis of a complaint dated 12-6-2002 lodged by Smt. Vimlesh Pal at the said police station. The details pertaining to the said C.R., as contained in the grounds of

detention, are as under;

On 12-6-2002 at about 10.30 p.m. the detenu along with his associates Raju, Ranu and Shanker to fulfil their lust entered inside house No. 1308, Begumganj Garhiya within the limits of police station Cantt. District Faizabad, wherein Smt. Vimlesh Pal, a widow, was residing along with her children. Sensing the evil designs of the detenu and his associates, Smt. Vimlesh Pal tried to make a telephonic call. Thereupon detenu and his associates threatened her and did not let her make it. Thereafter the detenu and his associates, in order to satisfy their lust took her away to a secluded corner of the house. Seeing this, neighbours tried to save her. Thereupon the detenu and his associates showed a bomb and threatened to kill them. As a result of the same, they hid inside their houses. The said news spread like lightening in the adjoining localities and a fear psychosis was created in the minds of those residing there. Thereafter the detenu and his associates raped Smt. Vimlesh Pal.

On the basis of said facts, the detaining authority was implicitly satisfied that in order, to prevent the detenu from committing such acts in future, it was imperative to detain him under the National Security Act.

3. We have heard learned counsel for the parties.

Although in this writ petition Mr. Avinash Srivastava, learned counsel for the petitioner-detenu has raised a number of grounds, but he pressed before us only three grounds, namely :--

(i) There was inordinate delay on the part of opposite party No. 1 (Union of India) in disposing of petitioner-detenu's representation dated 18th August 2002;

(ii) Although the petitioner-detenu made a representation to the opposite party No. 1 (the detaining authority), there was no material for the detaining authority to record his subjective satisfaction to detain the petitioner-detenu vide the impugned order;

(iii) Even if prejudicial act attributed to the petitioner-detenu in the grounds of detention is accepted to be correct, it only discloses breach of law and order and not public order.

4. We have considered the said grounds and find them to be devoid of merit.

We begin with the first ground, namely, that although on 18th August 2002 the petitioner-detenu made a representation to the Union of India, the same was disposed of by it on 2nd September 2002. A perusal of paragraph 8 of the petition would show that the said representation was handed over by the petitioner-detenu to opposite party No. 4 (Superintendent of District Jail, Faizabad) on 19th August 2002.

A perusal of Paragraph 7 of the return of the detaining authority would show that he received the petitioner-detenu's representation on 19th August 2002, called for comments on it on 20th August 2002; and the Senior Superintendent of

Police, Faizabad sent his comments the same day. Thereafter, the detaining authority sent the representation to the State Government along with para-wise comments the same day and a copy thereof to the Central Government.

A perusal of Paragraph 6 of the return of Mr. Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi would show as under :-- the petitioner-detenu's representation dated 19th August 2002 along with para-wise comments of the detaining authority was received by the Central Government in the Ministry of Home Affairs on 26th August 2002 and in the concerned desk of Ministry of Home Affairs on 27th August 2002. It was immediately processed and put up before the Director, Ministry of Home Affairs on 29th August 2002 who on the said date after considering the same forwarded it to the Joint Secretary, Ministry of Home Affairs who on 2nd September 2002 forwarded it to the Union Home Secretary who had been delegated powers by the Union Home Minister to decide such cases and who on the said date itself rejected it,

5. Learned counsel for the petitioner-detenu strenuously urged that delay between 20th August, 2002 and 26th August, 2002 has not been satisfactorily explained. He contended that return of detaining authority shows that the copy of representation was forwarded to the Union of India on 20th August, 2002 and the return of Mr. Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India shows that it was received on 26th August, 2002. He contended that thus there was an unexplained delay of six days. We regret we do not find any merit in this contention. There is no rule which says that when such matters are decided, commonsense should be put in cold storage. On basis of commonsense, it can be safely presumed that time between 20th August, 2002 and 26th August, 2002 must have been consumed in the transit of the representation by the detaining authority to the Union of India. It is common knowledge that such representations are sent by post and again it is common knowledge that a letter sent through post office from Faizabad to New Delhi would normally take a time of about six days. At any rate, in our view, the delay is not so inordinate which would vitiate the continued detention of petitioner-detenu.

6. For the said reasons, in our view, the first ground is without merit.

7. We now come to the second ground, namely, that there was no material before the detaining authority to have recorded his subjective satisfaction to detain the petitioner-detenu vide the impugned order. In our view, there was sufficient material before the detaining authority in the form of material pertaining to C.R. No. 320 of 2002 of police station Cantt. District Faizabad which is the basis of the detention of the petitioner-detenu vide the impugned order. It is significant to point out that the documents pertaining to said C. R. including the F.I.R. were placed by the sponsoring authority before the detaining authority and on their basis the detaining authority concluded that in Order to prevent the detenu from committing similar prejudicial acts in future it was imperative to

detain him. We make no bones in observing that nature of the details pertaining to said C.R. set out in the grounds of detention, warrant that detaining authority should have concluded that in case the petitioner-detenu was not detained vide the impugned order, he would commit such acts in future.

Consequently, this submission also fails.

8. We now come to the third ground, namely, that even if the prejudicial act attributed to the petitioner-detenu is accepted as gospel truth, it discloses only violation of law and order simplicitor and not breach of public order. Way back in the year 1970 in the oft quoted case of Arun Ghosh Vs. State of West Bengal, Hidayatullah, C.J. while drawing distinction between "breach of law and order" and "public order," in para 3 laid down that if the impact of the act was restricted to individuals, it would amount to violation of "law and order" but if on the converse it affected the even tempo of life of the community as a whole or a segment of the community, it would constitute violation of "public order." Bearing in mind the said litmus test, when we examine the averments in the grounds of detention, we find that they disclose breach of public order. In the grounds of detention it has been averred that as a consequence of the act committed by the detenu and his associates, a fear psychosis was created in the adjoining localities. People hid in their houses. In our view by the prejudicial act committed by the detenu and his associates, the even tempo of life of people who resided in the neighbouring localities of Smt. Vimlesh Pal was affected. In this view of the matter, this is a clear case wherein public order has been breached by the petitioner-detenu and not law and order simpliciter. In our view, if this case would not be a case of violation of public order then probably there would be no case wherein it can be said that public order has been breached.

For the said reasons, this submission of the learned counsel for the petitioner also fails.

9. No other ground has been pressed before us by the learned counsel for the petitioner.

10. In the result, we confirm the impugned detention order and dismiss the writ petition.