

(1994) 07 AHC CK 0021

In the Allahabad High Court

Case No : Habeas Corpus Petitions No's. 25142, 25083 of 1990, 36098, 36097 of 1992, 7456 and 12376 of 1993

Kalyan Singh M.L.A. and Others etc.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-07-1994

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 107
National Security Act, 1980 — Section 16

Citation : (1995) CriLJ 1191

Hon'ble Judges : S.K. Phaujdar, J;Girdhar Malaviya, J

Bench : Division Bench

Advocate : Ajay Kumar Dwivedi, for the Appellant; Standing Counsels, for the Respondent

Final Decision : Dismissed

Judgement

Girdhar Malviya, J.—In all these writ petitions it is not disputed by the learned counsel for the petitioner and the learned Additional Government Advocate that the petitioners have since been released. As a matter of fact a plea has been taken by the respondents in all the counter affidavits, as also through their counsel Shri Jagdish Tiwari, learned Additional Government Advocate, that since in all these petitions the petitioners have been released the writ petitions have become infructuous.

2. However, learned counsel for the petitioners have time and again submitted that they want to argue these writ petitions on the point of relief for grant of compensation. This Bench made it clear to the learned counsel for the petitioners that since the writ petitions at this stage were not being contested by the respondents, this Bench was not at all inclined to the writ petitions on the question whether the petitioners were entitled to compensation or not, more so as the petitioners could always approach the Civil Court for compensation on the

ground of illegal detention if they could make out a case in that regard. Arguing the case of Shri Vinay Katiyar. Shri Daya Shankar Misra, contended that the detention of the petitioner was illegal. However, he was told that since the respondents were not contesting the petition and did not propose to justify the detention of the petitioner, consequently, it was not necessary to examine whether the detention at any point of time earlier was legal or not. Shri Daya Shankar Misra, learned counsel for the petitioners insisted that he still wanted to establish that the petitioners had been illegally detained so that it could be argued that the petitioners were entitled to get adequate compensation.

3. Normally in petitions of Habeas Corpus what the Court has to examine is whether the petitioners on the date of hearing are under detention without any authority of law. Once it is found that the petitioners are no longer under detention, it remains no longer necessary for the Court to exercise its jurisdiction to examine whether the detention of the petitioners at any point of time earlier was valid or not, merely to decide thereafter whether the petitioners could also be awarded compensation for any such illegal detention. Except in Habeas Corpus Petition No. 254142 of 1990, wherein order u/s 107 Cr. PC has been challenged, the petitioners in these writ petitions have been detained under same law of preventive detention. In this connection it is now well known that the power to detain under the National Security Act etc is a power which has to be exercised on suspicion in order to prevent recurrence of such activity by any such person which may affect the maintenance of public order. It is for one of these objects that an order under a preventive detention act is passed. Section 16 of the National Security. Act, 1980, provides as follows:--

No suit or other legal proceeding shall lie against the Central Government or a State Government and no suit, prosecution or other legal proceeding shall lie against any person, for any thing in good faith done or intended to be done in pursuance of this Act.

Consequently, we are not inclined to hear learned counsel for the petitioners on the question of validity of petitioner's detention which is no longer continuing. The preventive detention orders were passed during the regime of a different government. The argument in this case for the sole purpose to consider the question of compensation to the petitioners by the present State Government, which is no longer contesting the petition makes no sense.

4. Shri. Daya Shankar Misra, learned counsel for the petitioners, relied on a case of the Supreme Court "Arvinder Singh Bagga v. State of U. P., reported in 1993 (3) Crimes 1062 : AIR 1994 SC 4148. He has pointed out that in that case a Habeas Corpus petition was filed for production of one Nidhi Bagga alias Nidhi Khandalwal. When the case was taken up on 3-8-1993, the following order was passed by the Supreme Court vide paragraph No. 3 of that case:--

We have heard learned counsel on both sides. At the time the petition was moved, the girl was in police custody. She has since been released. But, we are

afraid, this cannot be the end of the matter. The writ petition shall continue as one for qualified Habeas Corpus for examining the legality of the detention for determining whether the petitioner is entitled to be compensated for the illegal detention as a public law remedy for violation of her Fundamental Rights under Article 21 of the Constitution, quite apart from criminal or civil liability which may be pursued in the ordinary course.

The respondents are directed to file a counter-affidavit within two weeks.

At the request of Mr. R. S. Sodhi, learned counsel for the petitioner, notice against respondent No. 3 is discharged.

5. On the strength of this case. Shri Daya Shankar Misra, requested us to decide in these cases whether there was some criminal liability which could be fastened upon any of the respondents to compensate the petitioners for their illegal detention, if any.

6. The case of Arvinder Singh Bagga AIR 1994 SCW 4148 is clearly distinguishable there it was not an action under any preventive detention law against which the writ petition had been filed as is the fact in the present case. Section 16 of the National Security Act envisages that the order of prevention of the District Magistrate is an action taken in good faith. Hence these orders cannot be equated with the action taken in the case of Arvinder Singh Bagga, (supra) for determining whether the petitioners are entitled to compensation or not.

7. Learned counsel for the petitioners also relied upon the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, Relying on paragraphs 33 and 34 of this said judgment learned counsel for the petitioners again contended that the petitioners are entitled to compensation in this proceeding under Article 226 of the Constitution.

8. It is not disputed that this Court in a proper case has jurisdiction to award compensation in a Habeas Corpus Petition. However, a distinction may be drawn in the cases of illegal or mala fide actions in which the Court awards compensation such as the case of Neelbati son of Sumen Bahra who died while in custody, as also in the case of Nidhi Bagga, and the cases which are now before us, where an officer bona fide believing that an order of preventive detention is necessary makes an order to that effect. Such cases do not cover the fact of the cases which have been relied upon by learned counsel for the petitioners. We are conscious that there have been some cases where the Supreme Court, after a full contest of the matter, finding the detention of the petitioners to be illegal, did grant compensation to the petitioners. But as stated earlier in this case the State Government has not chosen to contest these writ petitions any more. Hence we do not find any good reason to hear this matter only to decide whether the detention of the petitioners at any point of time was illegal or not and whether petitioners should be awarded any compensation for such illegal detention.

9. Learned counsel for the petitioners also relied on the following cases: Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, , Bhuwneshwar Singh Vs. Union of India (UOI) and Others, and Talib Hussain Vs. State of Jammu and Kashmir, .

10. We do not consider it necessary to record facts and details of each of these cases. As we have already observed since the State is not contesting this writ petition on merit, we are not inclined to hear these Habeas Corpus petitions.

11. We agree with the contention of the learned Additional Government Advocate that since the petitioners are no longer under detention, these writ petitions have become infructuous.

12. The writ petitions are accordingly dismissed.