
(2007) 04 RAJ CK 0050
In the Rajasthan High Court

Kamlesh Pahadia

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 107, 109, 116, 151
National Security Act, 1980 — Section 10, 12, 3

Citation : (2007) 4 RLW 2703

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Guman Singh, J.—This civil writ petition (habeas corpus) has been filed by petitioner Kamlesh Palladia under Article 226, 19 and 21 of the Constitution of India challenging the detention order dated 6.7.2006 passed by the District Magistrate, Kota as well as the order dated 14/15th of August, 2006 passed by the Secretary, Home Department, Government of Rajasthan.

2. Brief facts giving rise to this petitioner are that the District Magistrate Kota passed the impugned order dated 6.7.06 u/s 3(2) of the National Security Act, 1980 (for short "the Act") for detention of the petitioner in the interest of maintenance of public order and public safety. The detention order has been challenged on the ground that the District Magistrate, Kota did not supply the sufficient material to the petitioner/detenu to enable to make effective representation to the State of Rajasthan. The material disclosed by the Detaining Authority did not contain sufficient ground to pass the order against the petitioner under the Act. It was averred that the petitioner was not produced before the Advisory Board within three weeks of the detention as per the mandatory provisions u/s 10 of the Act. It was further averred that the petitioner was informed to appear before the Advisory Board on 18.8.2006 but the date was changed and he was directed to appear before the Advisory Board on

11.8.2006 vide order dated 7.8.2006 which was received by the petitioner on 10.8.2006 at Central Jail, Kota and as such he was not accorded reasonable time to make representation to defend himself before the Advisory Board. It has also been made a ground that he was not produced before the Advisory Board within three weeks of his detention and as such the detention order is liable to be quashed.

3. Reply has been filed on behalf of the respondents No. 1 and 2, State of Rajasthan and the District Collector, Kota wherein it has been averred that the detenu Kamlesh Pahadia was detained by the order dated 6.7.2006 passed by the learned District Magistrate, Kota and the same was approved by the State Government vide order dated 13.7.2006. Thereafter, the same was placed before the Advisory Board for consideration and approval u/s 10 of the Act. The Advisory Board vide its order dated 11.8.2006 confirmed the detention order after personal hearing to the petitioner. It was further averred that the petitioner has not challenged the order of the Advisory Board and as such the present petitioner is misconceived and is liable to be dismissed on this ground alone.

4. In the reply to the grounds of challenge, it was averred that the detenu Kamlesh Pahadia is an old history sheeter since 1995 and as many as 33 criminal cases have been registered against him from 1992 to June 2006. Preventive measures under Sections 107, 116(3), 109 and 151 Cr.P.C. were also taken against the detenu from time to time. On the report of the Superintendent of Police, Kota submitted to the District Magistrate, Kota regarding day to day criminal activities of the detenu disturbing the public order, he was required to be detained under the Act. On the basis of the relevant record, the detention order dated 6.7.2006 was passed by the District Magistrate, Kota and same was approved by the State Government as stated above. It was denied that the detenu was not presented before the Advisory Board within three weeks from his detention. It was also averred that the detenu was informed about the change of date for appearing before the Advisory Board and the Board had approved the order of detention vide order dated 11.8.2006 after going through the record and according to a personal hearing to the petitioner. Therefore, it was averred that in the absence of challenge to the order of the Board dated 11.8.2006, the petition is liable to be dismissed in view of the decision of this Court in Adil v. State of Rajasthan, D.B. Habeas Corpus Petition No. 43/2005.

5. We have heard the learned Counsel for the parties and have also gone through the material on record.

6. The learned Counsel for the petitioner has fairly conceded at the very outset that as per the record the material containing the grounds on which the order was passed was produced before the Advisory Board within three weeks of the detention. We have also verified from the record called from the State Government that the reference to the Advisory Board was made on 15.7.2006 by placing the material containing ground on which the order of detention was made along with representation of the detenu, if any, in accordance with the provisions

of Section 10 of the Act.

7. The learned Counsel for the petitioner has mainly assailed the detention of the petitioner on the ground that the detenu was not accorded sufficient opportunity to make representation as the date of his appearance before the Advisory Board was changed from 18.8.2006 to 11.8.2006 which was communicated to him on 10.8.2006 at 4.15 PM at Central Jail, Kota. In this regard, we have gone through the order of the Advisory Board dated 11.8.2006. From the order, it is revealed that though no representation was made by the detenu before the State Government but one representation was submitted by him before the Board at the time of hearing and that the detenu was given opportunity of personal hearing. The learned Counsel for the petitioner has argued that the detenu could not produce evidence in support of his representation as he was not accorded reasonable opportunity to produce his defence. In this regard, the learned Counsel has relied in State of Maharashtra and Others Vs. Shri Ramchandra Rammilan Mishra @ Pandey, wherein it was held that the detenu was free to produce witnesses before the Advisory Board in order to rebut the allegations levelled. The learned Counsel for the respondent has argued that the detenu was free to produce any witness to rebut the allegation before the Advisory Board but he did not express any such desire and it was not essential for the Advisory Board to take initiative on behalf of the petitioner. On perusal of the order of the Advisory Boards, we find that the detenu was given opportunity for personal hearing and he had filed representation before the Board for consideration but he had made no request for producing witness in order to rebut the allegation against him. Thus, there is no material on record to arrive at the conclusion that no sufficient opportunity was accorded to the detenu.

8. The learned Counsel for the petitioner has argued that the copies of the material supplied to the detenu were not legible and as such he could not put up any appropriate defence. This argument of the learned Counsel does not find support from the grounds of challenge taken in the petition. We also do not find any mention of such any objection before the Advisory Board and we find that this ground is no more convincing to take us to the conclusion that the detenu has been deprived of his right of making appropriate defence before the Advisory Board.

9. Learned Counsel for petitioner has argued that there being no sufficient ground for detention on the record, the order of detention could not be confirmed by the State Government on the recommendation of the Advisory Board. The learned Counsel for the respondents has argued that there being no challenge to the order of the Advisory Board, no such argument or plea is sustainable in law.

10. In view of the contention on the point, Section 12 of the Act is relevant which is reproduced as under:

12. Action upon the report of the Advisory Board- (1) In any case, where the Advisory Board has reported that there is, in its opinion, sufficient cause for the

detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith.

11. In view of the aforesaid position of law, it is clear that where the Advisory Board has reported that there is, in its opinion, sufficient cause for detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit. But on being found no sufficient cause the Government is under duty bound to revoke the detention. We find that the order of the Advisory Board has not been challenged as such and the Advisory Board vide its order dated 11.8.2006 has taken into consideration the criminal back ground of the detenu and the fact that there were as many as 33 criminal cases registered against him for the period commencing from 1992 to June 2006 and that he was consistently involved in the incidents of theft, assault, attempt to murder, rape and extortion. The Advisory Board has also considered the fact that there were allegations against him not only tampering with the judicial process in the court itself but the detenu was also charged for disturbing the communal harmony. The defence led by the detenu that he was a victim of political interference, was also taken care of by going through the material on record before according the approval of the Board for detention. In view of the matter was considered by the Advisory Board and there being no specific challenge to the order for approval of detention by the Advisory Board, we do not find any sufficient material record to quash the impugned order for detention of the petitioner.

12. Consequently, the petition of the petitioner (detenu) deserves to be dismissed. Hence, the same is dismissed accordingly.