
(1991) 05 AHC CK 0048
In the Allahabad High Court
Case No : Writ Petition No, 9 (H/C) of 1991

Karam Raj

APPELLANT

Vs

District Magistrate, Faizabad & Others

RESPONDENT

Date of Decision : 29-05-1991

Acts Referred:

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

Citation : (1991) 05 AHC CK 0048

Hon'ble Judges : S.K.Mookerji, J and J.K.Mathur, J

Final Decision : Allowed

Judgement

J.K. Mathur, J.—This petition for a writ of habeas corpus challenges the order of detention passed against the petitioner under section 3 of the National Security Act. The petitioner was served with the grounds according to which his detention was justified on two incidents. On 341990 at about 11 A.M. according to it, the petitioner collected the Hindus of Mohalla Hasnu Katra and with the object of taking revenge from Muslims he aroused communal feelings in them and took them to mohalla Naya Purwa where he set fire to the houses of the muslims. House of Riyasat Ali son of Safiullah & his goods were burnt. The houses of other muslims were also set on fire, but as the police and the firebrigade reached there, the fire was controlled. By this act the communal tension developed in the city of Faizabad and there arose tension between the citizens of the two communities. The muslims of the locality left their houses for other safer places. A case in this regard was registered at no. 132 of 1990 under sections 147, 436 and 504 IPC and chargesheet was submitted.

2. The other incident is alleged to have taken place on 2651990 at about 10 P.M. when the petitioner along with some other persons, armed with Knife pistol, ironrods and sticks attacked police constable Harish Chandra Misra and caused him serious injuries. In respect of this offence also a case under section 147, 148 and 307 IPC was registered. The order of detention was passed on 1961990.

3. The order of detention has been challenged firstly and mainly on the ground that the same has been based upon extraneous material for which there was no material made available, mentioned in reports sent to the detaining authority just to mislead the detaining authority. Such absence of material also resulted in the petitioner being deprived of making an effective representation. The other grounds taken by the petitioner were that the order of detention was substantially delayed and that there was no danger to public order which could reasonably be apprehend.

4. The substance of the detention order has been given above.

5. The documents furnished with the order of detention of the petitioner included the report of the Superintendent of Police dated 1661990, the report of the S.H.O. dated 1861990 in addition to the first information report, entries in the general diary, statement of Riyasat u/s 161 CrP.C. Medical report, application for bail and a chargesheet .

6. The basis for the incident dated 341990 is available in the first information report lodged at P.S. Cantt, Faizabad at 11.45 P.M. on that date. According to this report, lodged by Riyasat Ali, resident of mohalla Naya Purwa, Faizabad, there was a quarrel between the residents of Naya Purwa and Ratiya. Because of that at about 11 P.M. Karamraj, Rajdeo and a number of other persons came to his house and abused him. They burnt his house. They also went to the house of another person but because the fire brigade reached, the fire was extinguished. He identified only two persons. On his shouting, persons from the village had also come.

7. The statement of Riyasat was recorded under section 161 Cr.P.C. and was also relied upon in passing of the aforesaid order. According to this statement, at about 11 P.M. some persons of Ratiya came shouting slogans and attacked the house of Shabbir Ahmad. The police came there and the miscreants ran away. He also heard the shouts from the neighboring houses. About 15 to 20 persons including Karamraj and Rajdeo came there with tins of keroseneoil and set his house on fire. Within seconds the fire in his house spread. The other persons came on his shouting but were hiding themselves. These incidents created terror in the locality and Hindus and Muslims of the locality ran from their places.

8. These two documents constitute the basic material on which the entire set of grounds in respect of first incident was structured.

9. However, the report of the S.H.O made on 1861990 recited that the petitioner was a man of criminal disposition and had spread terror in the adjoining areas. He is connected with Hindu fundamentalist groups. It also went on to say that the city of Faizabad is communally sensitive and any small incident can disturb the public order.

10. While reciting the incident itself the S.H.O. added certain facts which did not find place in the first information report or the statement of Riyasat Ali, by saying

that the petitioner had collected the Hindus to take revenge against the Muslims residing in mohalla Hasnu Katra and incited them to take revenge. He also went on to say that the petitioner set fire to the houses of muslims and that the muslim residents had left their houses in that locality.

11. These facts were also repeated by the Senior Superintendent of Police, Faizabad in his report to the District Magistrate.

12. The facts that the petitioner collected Hindus with a view to take revenge against the muslims and that he incited communal feelings in them were also repeated in the grounds of detention. It was also asserted that the houses of Muslims were set on fire and that some Muslims of the locality had left their houses.

13. On behalf of the petitioners it has been urged that the incident it was recorded in the first information report and about which the statement of Riyasat referred to above, was given a totally different colour by adding certain facts which were not available in either of the two documents, to show that it was a communal incident and certain facts relating to the character of the petitioner also added with the sole view of misleading the detaining authority to believe that the petitioner was likely to repeat similar offences, to persuade him to pass an order of detention.

14. On behalf of opposite party it was urged that the facts relating to the character of the petitioner were in the nature of a prelude to all the facts and were not intended to or capable of affecting the opinion of the detaining authority. According to him such facts could be validly stated and the detention order cannot be challenged merely on the ground that the inference which could legitimately be drawn from the facts narrated later was also mentioned in the beginning of the report.

15. It is needless to enter into the question of identification of these facts either as a ground or as a prelude as the categorisation is not material. If a fact is likely to affect the process of arriving at a conclusion about the desirability of the person concerned being detained, it would necessitate availability of some material to support it and such material should also be made available to the detenu to afford him an opportunity of making an effective representation as is required under Article 22(5) of the Constitution.

16. The order of detention basically rests upon the conclusion arrived at by the detaining authority that the petitioner has a criminal and communal disposition and a probability to commit offences against the members of the other community. For this the material available with the detaining authority was the bald incident as disclosed in the first information report that the petitioner along with some other persons set fire to the house of a specific individual and tried to set fire to the house of an other. This incident was the result of an earlier incident which had happened that morning.

17. The facts added were that the petitioner had criminal disposition and had connections with Hindu fundamentalist organizations. It was also asserted that he led the Hindus and incited communal feeling in them with a view to take revenge against the members of other community. A fact was also added that the muslims had left their houses as a result of the incident though the statement of Riyasat to the contrary is that both the Hindus and Muslims left their houses.

18. Placing these two sets of facts against each other would clearly indicate that the extraneous material added in the reports made by the S.H.O. and the Senior Superintendent of Police were the key facts which gave an entirely different hue to the entire set of facts making it a patent communal incident. This they did by adding some phrases which had foundation at various places. These phrases and distorted facts had a clear capability to condition the process of thinking of the detaining authority, and to induce him to draw the desired inference that the petitioner was likely to indulge in communal violent action.

19. These unfounded facts added in the material placed before the detaining authority cannot be got rid of to justify the order of detention, on the ground that they could not have affected the inference of the detaining authority and were just a prelude or a preamble to the narration of facts.

20. The detaining authority has to find whether the material available to him can lead to possible conclusion that the person is likely to indulge in such activities as would endanger the public order. This inference is usually reached by analysing the nature of his activity and considering the nature of the character as can be deciphered from his past activities. If both the character and the nature of the incident have been distorted, then such distortions are positively likely to mislead the detaining authority to pass the order which he may not have passed on the actual facts alone. Such an order can safely be said to have been passed on extraneous material without much application of mind and would not be defensible on any grounds whatsoever.

21. This inference is supported by the decision of the Supreme Court in the case of Vashistha Narain Karwaria v. State of U.P. and another (1990 SCC (Cri.) 372 (at page 375)). In that case a letter sent by the Senior Superintendent of Police to the detaining authority mentioned that the accused was a hardened criminal having a gang and that there were many cases and Offences against the accused in various police stations. These facts also had been placed in the preamble of the letter submitted by the S.H.O. Neither of the averments were made in the grounds of detention. Repelling the argument that these averments were not likely to influence the mind of the detaining authority, the Supreme Court said:

?In our view, the above averments which are extraneous touching the character of the detenu though not referred to in the grounds of detention might have influenced the mind of the detaining authority to some extent one way or other in reaching the subjective satisfaction to take the decision of directing the

detention of the detenu. As rightly pointed out by Mr. Jain, had these extraneous materials not been placed before the detaining authority, he might or might not have passed this order. Therefore, we have to hold that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the order.?

On behalf of opposite parties reliance was placed on the case of Dhananjay Das v. District Magistrate and another (AIR 1982 SC 1315).

22. In that case the facts alleged to be extraneous were as follows:

?"Sri Das has been playing a leading part in the current agitation on foreigners issue in collaboration with other active agitators who are leaders of ASSU Karmachari Parishad and Ganasangram Parishad, by organising bundhs, noncooperation programme, inciting people to violate law from time to time. Such activities have disturbed peaceful tolerant and harmonious life of society.?"

25. These averments were followed by specific instances of the activities of the detenu and the conclusion recorded after the application of these was that such activities of the petitioner are prejudicial to the interest of the maintenance of public order. It was held that these allegations in the grounds of detention were only by way of introduction.

24. In that case the allegations given in the preamble were found to be deducible from the facts narrated later. In such circumstances such inference could not be said to be extraneous.

25. In the present case, as detailed above, the facts given are not the inferences from the activity but certain added facts which lead to a different inference than can possibly be arrived at on consideration of bare facts. The material relied upon in this case cannot, therefore, be said merely to be a preamble to the actual set of facts.

26. We are, therefore, of the opinion that the detaining authority considered extraneous material for which there was no material available with him.

27. No material was made available to the petitioner from which it could reasonably be concluded that he was connected with hardcore Hindu communalist or that he had incited the Hindus to attack the muslims or that as a consequence of his act only muslims had left the locality. In absence of such a material the petitioner could not have made an effective representation and on this score also, therefore, the order of detention cannot be sustained.

28. The incident which allegedly took place on 26/5/90 related to causing injuries to one Harish Chandra Misra, a constable. The first information report itself discloses that the constable was a tenant in the house of Ashok Kumar, brother of the detenu and he was beaten by the petitioner along With certain other persons. The incident does not disclose any possibility of disturbance of public order. It has been asserted by the petitioner that this incident was a result

of the personal quarrel between him and the constable. This could possibly not be a sole ground for detention of the accused as by no stretch of imagination it could be held that such act was likely to result in disturbance of the public order.

29. This incident also has no relation with the first incident either in nature or in the manner.

30. In view of fact that the detention order is vitiated by consideration of extraneous materials, it is not necessary to go into other aspects of the matter. As a result the petition has to be allowed. The detention order is hereby quashed and the petitioner is directed to be set at liberty forthwith unless required in connection with any other case.

(Petition allowed)