
(2012) 07 RAJ CK 0078

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 108 and 109 of 2012

Manohar Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-07-2012

Acts Referred:

Rajasthan Prevention of Anti-Social Activities Act, 2006 — Section 3(2)

Citation : (2013) 3 RLW 1864

Hon'ble Judges : Narendra Kumar Jain, J;Bela M. Trivedi, J

Bench : Division Bench

Advocate : Yogesh Kumar Sharma, for the Appellant; Rajendra Yadav, Government Advocate, for the Respondent

Judgement

Bela M. Trivedi, J.—Both the petitions involving similar facts and common issues were ordered to be tagged together and were heard simultaneously, and hence this common order is being passed. For the sake of convenience the facts of petition No. 108/12 are referred to, which are identical to the facts of petition No. 109/12. The petitioner Manohar Lal (the detenu) has been detained pursuant to the order dated 21.11.11 (Annex. 1) passed by the respondent No. 2 in exercise of the powers conferred upon him under Sec. 3(2) of the Rajasthan Prevention of Anti-Social Activities Act, 2006 (hereinafter referred to as "the said Act") and has been sent to the jail at Chittorgarh. It was mentioned in the said order that on having been satisfied that the petitioner was a dangerous person and his activities were prejudicial to the maintenance of the public order, the said order was passed. The petitioner was served with the said order alongwith the annexures, in which seven cases were shown to have been registered against him. The petitioner thereafter had submitted a representation on 30.11.2011 to the respondent No. 1 bringing to its notice interalia that out of the seven cases shown pending against the petitioner by the respondent No. 2 in the order dated 21.11.11, he has already been discharged in criminal case No. 10/11 by the competent court and that the case bearing No. 193/11, for the alleged offence u/s 160 of IPC did not fall under Chapter-XVI and XVII of IPC and even otherwise

no charge-sheet was filed in the said case. It was also mentioned in the representation inter alia that there was non-application of mind on the part of the respondent No. 2 in passing the impugned order and that the same was passed with the mala fide intention. The said representation of the petitioner was rejected by the respondent No. 1 vide order dt. 7.12.11 (Annex-5) by a non-speaking order.

2. The petitioner therefore, being aggrieved by the said order, had preferred a habeas corpus petition being No. 19/2012 before this court. However, in the reply to the said petition it was stated by the respondents inter alia that the Advisory Board had already confirmed the orders dated 21.11.11 and 7.12.11 passed by the respondents u/s 11 of the said Act. The said petition, therefore, was disposed of by the court vide order dated 30.4.12 granting the petitioner liberty to file fresh petition challenging the order/opinion passed by the Advisory Board. The petitioner, therefore, has filed the present petition challenging the order dated 21.11.11 (Annex. 1), the order dated 7.12.11 (Annex. 5), the order/opinion dated 8.12.11 (Annex. 6) and the order dated 16.1.12 (Annex. 7), and has sought the directions against the respondents to release the petitioner immediately from the jail.

3. It has been vehemently submitted by the learned counsel Mr. Yogesh Kumar Sharma for the petitioners that the impugned order dated 21.11.11 passed by the respondent No. 2 u/s 3 of the said Act suffered from total non-application of mind inasmuch as out of the 7 cases shown pending against the petitioner in the said order, the petitioner was already discharged in the case No. 10/11 and that in the case bearing No. 193/11, no charge-sheet was filed and, therefore, could not be said to be pending and even otherwise the said case having been registered u/s 160 of the IPC, the same did not fall under Chapter XVI or XVII of the IPC, so as to include the petitioner within the definition of the "dangerous person" contained in Section 2(c) of the said Act. He further submitted that the representation made by the petitioner against the said order was also rejected by the respondent No. 1 by a non-speaking order without non-application of mind and that the Advisory Board also confirmed the said orders passed by the respondent No. 1 and 2 without properly considering the material before it. He further submitted that the other cases shown pending against the petitioner were pertaining to Section 457 and 380 of IPC which were petty offences, and that the concerned courts had already released the petitioner on bail in all the said cases. According to him the petitioner could not be said to be "dangerous person" within the meaning of Section 2(c) of the said Act, inasmuch as there was no material on record to show that the petitioner had acted in any manner prejudicial to the maintenance of public order. The learned counsel has relied upon on catena of decisions of the Apex Court in support of his submissions.

4. The learned Government Advocate Mr. Rajendra Yadav though supported the impugned orders passed by the respondents, fairly conceded that the petitioner was already discharged from the case No. 10/11 and that Section 160 of the IPC

did not fall within Chapter XVI or XVII of the IPC, so far as the case No. 193/11 was concerned.

5. Before advertng to the contentions raised by the learned counsel for the parties, it would be beneficial to refer to the observations made by the Apex Court in various decisions with regard to the law of preventive detention. In case of *Shafiq Ahmad Vs. District Magistrate, Meerut and Others*, , the court held as under:-

Preventive detention is a serious inroad into the freedom of individuals. Reasons, purposes and the manner of such detention must, therefore, be subject to closest scrutiny and examination by the courts.

This court further added:

...there must be conduct relevant to the formation of the satisfaction having reasonable nexus with the action of the petitioner which are prejudicial to the maintenance of public order. Existence of materials relevant to the formation of the satisfaction and having rational nexus to the formation of the satisfaction that because of certain conduct "it is necessary" to make an order "detaining" such person, are subject to judicial review.

6. The Apex Court in case of *Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others*, has observed that:

Under Article 22(5), a detenu has two rights (1) to be informed, as soon as may be, of the grounds on which his detention is based and (2) to be afforded the earliest opportunity of making a representation against his detention. The inclusion of an irrelevant or non-existent ground among other relevant grounds is an infringement of the first right and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second right.

7. It has also been held by the Apex Court in case of *Madhu Garg Vs. Union of India (UOI) and Another*, that when one of the ground of detention is found to be based on irrelevant materials not germane for passing the order of detention, the entire order of detention shall stand vitiated in law.

8. So far as the definition of "dangerous person" is concerned, Section 2(c) of the said Act reads as under:-

2(c) "dangerous person" means a person, who either by himself or as member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 (Central Act No. 45 of 1860) or any of the offences punishable under Chapter V of the Arms Act, 1959 (Central Act No. 54 of 1959) or any of the offences punishable under first proviso to sub-section (1), and sub-Section (1A), of Section 51 of the Wild Life (Protection) Act, 1972 (Central Act No. 53 of 1972) or any offence punishable u/s 67 of the Information Technology Act, 2000 (Central Act No. 21 of 2000)

9. The powers of the State Government to make orders for detaining certain persons under the said Act have been conferred u/s 3 of the said Act. In this regard, it is pertinent to note that the District Magistrate of the concerned area could also pass the order of detention u/s 3(2) of the said Act, if he is satisfied with respect to any person that such person was acting in the manner prejudicial to the maintenance of public order. As per Section 3(4) a person is deemed to be acting in any manner prejudicial to the maintenance of the public order, if such person is engaged in the activities inter alia as a dangerous person which are likely to effect adversely the maintenance of public order.

10. Now so far as the facts of the present case are concerned, the respondent No. 2 had passed the order dated 21.11.11 in exercise of his power u/s 3(2) of the said Act, on his having been allegedly satisfied that the petitioner was a dangerous person, and his activities were likely to effect adversely the maintenance of the public order. In the annexure to the said order, the respondent No. 2 had shown that there were seven cases pending against the petitioner. Now admittedly, the petitioner was already discharged from the case No. 10/11 shown at serial No. 6 on the date of passing of the said order and that no charge-sheet was filed in case No. 193/11 shown at serial No. 7 of the said order. The other cases shown pending against the petitioner were the offences of similar nature, registered u/s 457 and 380 of IPC, and in all the said cases, the petitioner was already released on bail by the concerned court. If the cases at serial No. 6 and 7 are not taken into consideration, the last case registered against the petitioner being case No. 303/10 shown at serial No. 5 was registered on 4.12.10, and the impugned order was passed by the respondent No. 2 u/s 3(2) of the said Act on 21.11.11 for detaining him. As rightly submitted by the learned counsel Mr. Yogesh Kumar Sharma for the petitioners, relying upon the decision of the Apex Court, in case of *Rajinder Arora Vs. Union of India (UOI) and Others*, there was no explanation coming forth from the respondents as to what activities, adverse to the maintenance of the public order were found to have been committed by the petitioner, requiring his detention and as to why there was so much of delay in passing the order of detention for the alleged illegal activities after 4.12.10. The learned Government counsel also was not in a position to explain as to what were the compelling circumstances requiring detention of the petitioner on 21.11.11. Under the circumstances and as held by the Apex Court, in the aforesaid decision, passing of the detention order after the delay of more than one year to the alleged offence committed by the petitioner itself was a ground to set aside the detention order.

11. The court has also found much substance in the submission of the learned counsel for the petitioners to the effect that though the petitioner had made detailed representation, the respondent No. 1 did not consider the same and passed a non-speaking order dated 7.12.11 rejecting the said representation, it is needless to say that the right to make representation against the detention order has been recognised under Article 22(5) of the Constitution, and the State Government was bound to apply its mind and pass a reasoned order, while

considering such representation. By rejecting the representation of the petitioner in cursory manner, by the non-speaking order dated 7.12.11. the respondent No. 1 had violated the constitutional right of the petitioner.

12. From the impugned orders passed by the respondents, it also clearly transpires that the said orders were passed on absolutely irrelevant and nonexistent material and were passed without having any rational nexus to the formation of the satisfaction that it was necessary to detain the petitioner u/s 3 of the said Act. There was also no material whatsoever to show as to how the activities of the petitioner were prejudicial to the maintenance of the public order and how the same could not be dealt with under ordinary criminal law. From the facts of this case, it appears that even if it is assumed that the petitioner had committed the alleged offences, it could not be said by any stretch of imagination that such offences were prejudicial to the maintenance of public order, and could not be dealt with under ordinary criminal law. The Apex Court has aptly made the distinction between the words "public order" and "law and order" in case of *The Commissioner of Police and Others Vs. Smt. C. Anita*, , in which it has been observed as under:-

7....The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror was unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order".

13. As rightly submitted by the learned counsel for the petitioners, in absence of any germane material connecting the detenu with the alleged activities adversely affecting the maintenance of public order, no such orders detaining him u/s 3 of the said Act could have been passed. It also appears that the respondent No. 1 while referring the case to the Advisory Board u/s 11 of the said Act had also not placed the relevant material before it, which resulted into confirmation of the impugned orders at the instance of the Advisory Board. Since this court is of the opinion that the impugned orders passed by the respondents suffered from non-application of mind, and there being no material on record to show that his activities were prejudicial to the maintenance of public order, the impugned orders deserve to be set aside and the petitioner deserves to be released from

the jail forthwith. in view of the above, the order dated 21.11.11 (Anne. 1), order dated 7.12.11-(Annex. 5), order dated 8.12.11 (Annex. 6) and order dated 16.1.12 (Annex. 7) in both the petitions are quashed and set aside. The petitioners of both the petitions are ordered to be released forthwith from the jail, if not required in any oilier case. The petitions stand allowed accordingly. Copy of this order be placed in the connected petition No. 109/12.