
(2004) 02 AHC CK 0252

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 44372 of 2003

Mubeen Ahmad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2004) 2 ACR 1196

Hon'ble Judges : M.C. Jain, J; Ghanshyam Dass, J

Bench : Division Bench

Advocate : R.P. Tiwari, for the Appellant; B.N. Singh, S.S.C. and J. Lal, S.D. Kautilya, M.P. Singh and A.G.As., for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—The detention order dated 30.7.2003 passed by the Respondent No. 3 District Magistrate, Jhansi, against the Petitioner u/s 3(2) of the National Security Act, 1980 has been challenged through this petition.

2. The grounds of detention are contained in Annexure-5 to the writ petition. His detention is based on an incident concerning Case Crime No. 509 of 2003, inter alia, under Sections 307 and 302, I.P.C. of police station Premnagar, district Jhansi. It is disclosed from the grounds of detention that on 10.4.2003 in the evening time, the Petitioner had had an altercation with one Bobby alias Parmindar Singh son of Sardar Dilbagh Singh. In between the night of 11/12.4.2003 at about 11 p.m., the said Bobby alias Parmindar Singh, accompanied by his father and one Pradeep Singh of his locality, was returning to his home. When all the three reached in front of the house of Nathan, the Petitioner aged about 19 years appeared there with a country made pistol and fired on Bobby alias Parmindar Singh owing to the altercation that he had with him a day before. The shot not only hit Bobby alias Parmindar Singh, but Pradeep Singh also sustained injuries. He (Petitioner) then ran away flaunting his pistol

and issuing threats. While being taken to medical college, Bobby alias Parmindar Singh succumbed to his injuries and Pradeep Singh had to be treated for sufficient time. That was the night of Ramnaumi and because of this festival a large number of persons were passing through the scene of occurrence. The incident created an atmosphere of terror. The people started running hither and thither to save their lives. Even tempo of the life of the society was disturbed. The people were so much scared that they were lacking courage to come out of their houses. Additional force and P.A.C. had to be deployed in the area to infuse confidence in the people and for the restoration of normalcy.

3. Counter and rejoinder-affidavits have been exchanged.

4. We have heard Sri R. P. Tiwari, learned Counsel for the Petitioner, Sri Mahendra Pratap Singh, learned A.G.A. on behalf of Respondent Nos. 2 to 4 and Sri J. Lal, learned Counsel for Respondent No. 1-Union of India.

5. The only argument advanced by the learned Counsel for the Petitioner is that it was not a case of public order, but of law and order only and for this reason the detention order in question is illegal and so is the continued detention of the Petitioner thereunder. He has relied on the case of *Nizamuddin v. State of U.P.* (H.C.) 2002 (1) ACR 579: (44)2002 ACC 593, to argue that merely because the assailant was Muslim and the victim Hindu did not mean that it was a communal incident. Another case relied upon by him is *Rashid v. State of U.P. and others* 2001 (1) ACR 542 (LB): (41) 2000 ACC 930 (HC-LB) in which it was held that the disturbance of law and order is not equivalent to public order.

6. It should be pointed out that it is the gravity of an incident and repercussion produced by it in the society that has to be considered to find out whether it was a case of disturbance of law and order or of public order. There is no dispute that the disturbance of law and order is not equivalent to public order. But each case depends upon its own facts and the way the society is affected by a particular incident. In the case at hand, the Petitioner was only aged about 19 years. At that young age he was allegedly so hot headed that over a trivial altercation with the victim Bobby alias Parmindar Singh a day before, he shot him dead at a busy public place in the night of Ramnaumi when a large number of persons were passing through the place of incident on account of festivity. It was not so that he chose his target, but was completely unmindful as to others around him. Apart from Bobby alias Parmindar Singh, an innocent person Pradeep Singh also sustained injuries of the shot fired by him. To put it shortly, the safety of innocent persons around was jeopardized by his act. He left the spot brandishing his pistol and offering threats so that nobody could dare to chase him. The District Magistrate -Respondent No. 3 has emphatically averred in his counter-affidavit that additional force including P.A.C. had to be deployed in the area to restore the confidence of people who were extremely scared because of the disturbance of public order which was attributable to this dare devil act of the Petitioner.

7. For the reasons given above, we are of the opinion that it was a case of public order. The petition lacks merit and we accordingly dismiss it.