

(1996) 05 AHC CK 0004

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 1895 of 1995

Mukesh Tyagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226

National Security Act, 1980 — Section 3

Penal Code, 1860 (IPC) — Section 307, 336, 384, 452, 506

Citation : (1996) 20 ACR 547

Hon'ble Judges : R. Dayal, J; J.C. Gupta, J

Bench : Division Bench

Advocate : S.K. Tyagi, for the Appellant;

Judgement

R. Dayal and J.C. Gupta, JJ.—This writ petition brought under Article 226 of the Constitution seeks a writ of certiorari quashing the impugned order of detention dated 5th August, 1995 passed by the District Magistrate, Ghaziabad against the Petitioner and also a direction to the Respondents that he be set at liberty forthwith.

2. The impugned order of detention was passed by the District Magistrate, Ghaziabad on 5th August, 1995 under the provision of Sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred as the Act) in exercise of the power vested in him under the provision of Sub-section (3) of Section 3 of the Act to prevent him from acting in any manner prejudicial to the maintenance of public order. A copy of this order is Annexure 8B to the petition. Grounds of detention (Annexure 8A to the petition) were also served on the Petitioner. The grounds may be summarised as under:

On 30th July, 1995 at 9.30 a.m. in the town of Hapur at National High Way inside Sneh Nursing Home situate at Delhi Road belonging to Dr. Vimal Kumar Sabbarwal and his wife Dr. Kusum Sabbarwal, you demanded a sum of Rs. 1 lakh from them and when they refused to comply with your demand, you whipped out

a revolver and fired shot at Dr. Vimal Kumar Sabbarwal, but he escaped and thereafter you fired shots at the gate of the Nursing Home and said that he would destroy the Nursing Home. As a result of this, the patients and their attendants got terrorized, shops were closed and traffic came to a stand still. A case under Sections 452, 307, 384, 336 and 506, I.P.C., was registered against you. You had been threatening the doctor for the previous 3-4 days saying that if he wanted to run his Nursing Home, he must give you Rs. 1 lakh, otherwise his children would be abducted. On that very day at about 12.30 in the noon, you were arrested and from your custody a country made pistol and cartridges were recovered from your possession and with great difficulty law and order situation could be restored.

3. The Petitioner has alleged that the impugned order of detention is illegal, arbitrary and against the provisions of law, as there was no reasonable justification for the satisfaction as to legitimate apprehension and future repetition of similar activity to the detriment of public order. Some other grounds were also taken in the petition, but it is not necessary to make mention of them, since the learned Counsel for the Petitioner has pressed only one ground about which facts have already been referred.

4. Sri S.K. Tyagi, learned Counsel for the Petitioner, has submitted that the order of detention has been made only on one solitary ground and that solitary ground is not sufficient to sustain the order of detention. On the other hand, Sri Mahendra Pratap, learned Additional Public Prosecutor, has submitted that it is legally permissible to pass an order of detention only on one solitary ground, and if one incident is such as to disturb the public order, that incident alone is sufficient to sustain the order of detention.

5. In *Attorney General for India and Ors. v. Amratlal Prajivandas and Ors.* 1994 SCC 1325, which is a decision rendered by nine learned Judges of the Apex Court, it was held that it is beyond dispute that an order of detention can be based upon one single ground:

Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity.

It was further observed:

If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention.

6. In the present case, according to the grounds of detention, the act was of only one individual. Though there is an allegation that he had been threatening for

the previous 3 or 4 days, that is not sufficient to give rise to an inference of organised activity on the part of the detenu. As observed by their Lordships in the judgment referred to above, ordinarily one act is not sufficient. For one act to be sufficient to sustain an order of detention, there must be an indication that the act is an organised act or a manifestation or organised activity. Furthermore, though there is an allegation that a shot was aimed at by the Petitioner, it is not disputed that no injury was caused to any one. Keeping in view the facts and circumstances of the case, we are of the view that the solitary ground on which the order of detention is based in the instant case, is not sufficient to sustain the order of detention.

7. In the result, the petition is allowed, the impugned order of detention is quashed, and the Respondents are directed to set free the Petitioner, if he is not required to be detained in any other case. In the circumstances, there shall be no order as to costs.