
(1974) 08 AHC CK 0011
In the Allahabad High Court

Om Prakesh

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 17-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) CriLJ 198

Hon'ble Judges : K.N. Singh, J;C.D. Parekh, J

Bench : Division Bench

Judgement

C.D. Parekh, J.—This is a habeas corpus writ petition under Article 226 of the Constitution of India directed against the order of the District Magistrate. Meerut, dated 15-5-1974, whereby the petitioner was detained under Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 3 of the Maintenance of Internal Security Act, 1971. The impugned order was passed because the District Magistrate was satisfied that it was necessary to do so with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of the supplies and services essential to the community, On 29th May. 1974. the grounds of detention were served on the petitioner u/s 8 of the said Act. Shorn of unnecessary wording of the grounds, the charge may be stated thus:

(1) That on 29-8-1970 when the Senior Marketing Inspector visited the shop of the petitioners he found that there was no entry of 22 quintals and 10 kgs. of Tara Mira in the stock register and that 30 bags of groundnut were found in excess and thus the petitioner committed breach of Clause 8 of the U.P. Oil Seeds and Oil Seed Products Control (Amendment) Order 1967 and of condition No. 1 of the licence issued under the said Order. For these irregularities a sum of Rupees 150/- were forfeited from the security deposit of the petitioner as a penalty.

(2) That on 29-8-1970 when the Senior Marketing Inspector inspected the account books of the shop of the petitioner he found that on behalf of five persons, who were not authorised dealers, the foodgrains were purchased and

thus a breach of U. P, Foodgrains Licensing Order and Condition No. 8 of the Licence was committed by the petitioner.

(3) That on 8-4-1973 the Senior Marketing Inspector visited the shop of the petitioner and found that on different dates of the month of April 1973. different quantities of levy paid released free sale Bajra were shown in the stock whereas on the said dates the said Bajra was sent to Modinagar, Mowana and Khatauli. The Inspector also found that there was no rate-board in the shop.

(4) That on 17-7-1973 the Senior Marketing Inspector inspected the shop of the petitioner and found that the cash-memos for the sale of 4617.99 quintals of Bajra did not bear the signatures of the customers. He also found some change having been made in the relevant records, In consequence thereof the Regional Food Controller, Meerut. suspended the commission agent's licence in Form F of the petitioner.

2. After service of the grounds of detention the petitioner submitted explanation. The explanation submitted by the petitioner need not detain us. Suffice it to say that the petitioner submitted explanation on each item of the charge and denied the same, but before the explanation could be considered and disposed of the petitioner rushed to this Court, However, the petitioner's explanation has now been rejected.

3. The main contention on behalf of the petitioner is that the grounds on which the petitioner has been detained are based on events which took place in the years 1970 and 1973 and that between the past conduct or antecedent history and the impugned order there is considerable time lag. The time is ex facie long and the District Magistrate. Meerut, should explain the delay with a view to show that there was proximity between the prejudicial activity and the order. According to the learned Counsel for the petitioner in the instant case the detaining authority has failed to explain this delay and this is a serious infirmity for which the detention order has to be set aside.

4. Four affidavits have been filed on behalf of the State of U.P. (1) by Shri Bhola Nath Tewari, the present District Magistrate of Meerut. (2) by Shri Kalyan Singh. Regional Marketing Officer, Meerut Region. Meerut. (3) by Shri Bageshwari Narain, Section Officer. U.P. Civil Secretariate. Lucknow and (4) by Shri Triloki Nath Dhar. the then District Magistrate. Meerut. None of the counter-affidavits tend to explain away the delay between the order and the prejudicial and the past activity of the petitioner. It has been tried to explain away the delay in disposal of the matter after the passing of the detention order. But that is not very material for the purposes of this case. In this case the time lag between the alleged prejudicial activity of the petitioner detente and the detention order is ex facie long. The learned Government Advocate relying on the case reported in Bhim Sen For R.S. Malik Mathra Das and Others Vs. The State of Punjab, stated that the grounds given for the detention be relevant and whether they are sufficient or not is not for the decision of the court because the detaining

authority should have only a subjective satisfaction while making the order. He has stressed that the past activities are relevant to be considered in giving rise to the subjective satisfaction and conviction of the detaining authority. The contention is beyond the point stressed by the learned Counsel for the petitioner. The grounds in the case before us may be relevant and the question whether, they are sufficient or not be not for the decision of the court. This question of law is well settled and it is not disputed by the learned Counsel for the petitioner. The submission on behalf of the learned Counsel for the petitioner is that the order of detention on the past conduct or antecedent of the detente should ordinarily be approximate in time and should have rational connection with the conclusion that the detention of the person was necessary. In our opinion, therefore, the case relied upon is distinguishable.

Reliance has also been placed on another case reported in *Sri Nagen Murmu Vs. The State of West Bengal*, and it has been stated that the past conduct or antecedent history of a person can be taken into consideration in making the detention order. This proposition, as we have said above, has not been disputed by the learned Counsel for the petitioner. This case has also been relied upon by the learned Counsel for the petitioner for showing that the events which are available in the case before us are too remote for the purpose of raising any rational and reasonable inference of any apprehension of repetition of any act so as to justify the detention. According to the Supreme Court to justify an inference for the purpose of detention it is necessary that the past conduct or antecedent history should ordinarily be approximate in time and should have a rational connection with the conclusion that the detention of the person is necessary. The Supreme Court has further observed that the detention of a person without trial is a very serious encroachment on the personal freedom. So at every stage all questions in relation to the detention must be carefully and solemnly considered. In the case before the Supreme Court the antecedents which were considered for the detention of the detente Nagen Murmu had taken place in the midnight of 13/14th October, 1969, and the detention was made on December 24, 1971. The Supreme Court on the consideration of facts set aside the order of detention and directed that the detente should be set at liberty forthwith.

5. Learned Counsel for the petitioner has also relied on a case reported in *SK. Abdul Munnaf Vs. The State of West Bengal*, . In the case the order for detention was made on March 6, 1972 and the detente was arrested on March 23, 1972. According to the grounds of detention the detente was detained because of June 7, 1971 he and his associates committed theft of navigational lamp from Achipore Buoy in river Hooghly as a result of which the movement of vessels carrying essential commodities was disrupted. A period of nine months had elapsed between the incident and the order of detention and the delay of nine months in making the order of detention was not explained. No attempt was made on behalf of the State to explain the delay and thus the delay remained unexplained. It was, therefore, held that the time lag between the prejudicial

activity of the detente and the detention order made because of that activity was ex facie long and in the absence of explanation from the detaining authority it was held that serious infirmity has crept in the detention order and the detention was set aside.

6. In the present case the past activities dated 13-5-1971, 16-6-1973 and 1-11-1973 of the detente were taken into consideration and the detention order was passed on 15-5-1974. The first incident or activity of the detente related back to about three years, the second activity related back to about eleven months and the third activity was more than six months old, and the District Magistrate or others who have filed the counter-affidavits have not explained the delay between the prejudicial activity and the detention order. In our opinion, therefore, there is serious infirmity in the impugned detention order and the order is liable to be set aside.

7. We, therefore, allow the petition, set aside the impugned order dated 15-5-1974 passed by the District Magistrate, Meerut, and direct that the corpus of the petition be, freed. Let the petitioner be released forthwith from detention unless wanted in any other matter.