
(2015) 01 AHC CK 0037

In the Allahabad High Court

Case No : Criminal Habeas Corpus Petition No. 31615 of 2014

Pawan Kumar Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5), 226

National Security Act, 1980 — Section 11, 3(2), 3(3), 8

Penal Code, 1860 (IPC) — Section 420, 489B, 489-C

Citation : (2015) 1 ACR 1012 : (2015) 2 ADJ 115 : (2016) 2 ALJ 333 : (2015) 88 ALLCC 839

Hon'ble Judges : Mohammad Tahir, J.; Ravindra Singh, J.

Bench : Division Bench

Advocate : Satish Trivedi, Vikash Tripathi and Sheshadri Trivedi, for the Appellant; C.S. Chaturvedi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Satish Trivedi, Senior Advocate, assisted by Sri Sheshadri Trivedi and Sri Vikash Tripathi, learned counsel for the petitioner, learned A.G.A. for the State of U.P. and Sri C.S. Chaturvedi, learned counsel for the Union of India. This Habeas Corpus writ petition has been preferred by the petitioner Pawan Kumar Shukla with the following prayers:

1. a writ, order or direction in the nature of Habeas Corpus directing the release of the petitioner forthwith from Central Jail, Naini, Allahabad.

2. a writ, order or direction in the nature of Certiorari for quashing the impugned order dated 20.3.2014 being order No. 09/2014, passed in exercise of powers under Section 3(3) of the National Security Act, 1980 and under Section 3(2) of the National Security Act, 1980, by the District Magistrate, Allahabad.

3. Any other writ, order or direction which this Hon"ble Court may deem, fit just and proper in the circumstances of the case to meet the ends of justice and,

4. Award costs of this petition to the petitioner.

2. The facts, in brief, of this case are that the impugned order dated 20.3.2014 has been passed by District Magistrate, Allahabad in exercise of powers conferred under Section 3(2) of the National Security Act (hereinafter referred to as N.S.A.) by which the petitioner has been detained in Central Jail, Naini, Allahabad as ordinary prisoner on the grounds that on 24.9.2013, the petitioner was apprehended by A.T.S. Unit of Varanasi headed by the I.O. Sri Ashwani Kumar Chaturvedi, Sub Inspector, on search made by Sub Inspector Sri A.K. Chaturvedi, counterfeited 250 currency notes, each was having the denomination of Rs. 500/- were recovered from the possession of the petitioner, on interrogation made by the police, the petitioner and his associates Deepak Mandal made a confessional statement before the police that they were involved in circulation of counterfeited currency notes as a genuine currency amongst the public to get the personal economic gain. They also disclosed the fact that they had used a counterfeited currency note of the denomination of Rs. 500/- in purchasing the railway ticket from new Farrukha Junction station, it has also been admitted that the circulation of currency notes have been made at different places of country. It has also been disclosed that the counterfeited currency notes, after manufacturing from Pakistan is supplied to India through their agents via Bangladesh with intention to shatter economic system of the country. In pursuance of the conspiracy hatched by neighbouring countries waging economic war against the country. In this regard the FIR against the petitioner and others was registered on 14.9.2013 in case crime No. 211 of 2013 under Section 489B, 489-C, 420 I.P.C., Police Station Shivkuti, District Allahabad. The recovered currency notes from the possession of the petitioner were sent to Public Analyst, according to Public Analyst report dated 2.12.2013, all the recovered currency notes were counterfeited. After completing the investigation, the I.O. submitted the charge-sheet in the Court against the petitioner, in such a circumstance, the petitioner had made an attempt to disturb the economic system of the country and the act done by the petitioner is prejudicial to the maintenance of supplies and services essential to the community, it was prejudicial to security of the State also. The petitioner was detained in Central Jail Naini, Allahabad, he had moved his bail application before Hon"ble High Court and there was a real possibility of releasing the petitioner on bail and there was likelihood of indulging in commission of further prejudicial activities, after releasing on bail. Therefore, the detaining authority was of the view that the detention of the detenu was required in order to prevent him from acting in a manner prejudicial to maintenance of supplies and services of essential to the community.

3. The impugned detention order has been passed on the basis of the detailed report submitted by the sponsoring authority, the copy of impugned order and the grounds of detention alongwith all connected documents forwarded by the District Magistrate vide order dated 20.3.2014 and were supplied upon the petitioner in jail on 20.3.2014, the same were forwarded to the State

Government on 20.3.2014, which were received on 21.3.2014, after examining other aspect of the case, the State Government approved the order of detention on 27.3.2014. Its communication was made to the petitioner through State Government radiogram and letter, both dated 27.3.2014. The copy of detention order, the grounds of detention and all connected documents received from District Magistrate, Allahabad were sent to the Central Government by the State Government through Speed Post dated 28.3.2014 and by means of letter dated 27.3.2014.

4. The petitioner has submitted his representation on 31.3.2014, the same was received in the office of District Magistrate on 31.3.2014, on which the report was called from SSP Allahabad on the same day. The SSP Allahabad has submitted his report dated 1.4.2014, the same was received in the office of District Magistrate on 2.4.2014, thereafter, the representation of the petitioner was rejected by District Magistrate, Allahabad on 3.4.2014, the copy of representation dated 31.3.2014 and a copy of order 3.4.2014 alongwith para-wise comments were sent to the State Government and Central Government on 3.4.2014. The State Government received the copy of representation dated 31.3.2014 alongwith para-wise comments on 4.4.2014, the same were sent to U.P. Advisory Board and Central Government vide separate letters dated 7.4.2014, the representation of the petitioner was rejected by the State Government on 9.4.2014. The case of the petitioner was referred to Advisory Board by the State Government by forwarding the detention order, grounds of detention and all connected papers, on 27.3.2014. The Advisory Board vide letter dated 16.4.2014 informed the State. Government that the case of the petitioner would be heard on 23.4.2014 and directed that the petitioner be informed that if he desires to attend the hearing before the Advisory Board alongwith his next friend (Non advocate), he would be allowed to appear before the Advisory Board, it was communicated to the petitioner, the petitioner appeared before the Advisory Board on 23.4.2014, after hearing the petitioner, the Advisory Board gave its report alongwith his opinion that there was sufficient cause for preventive detention of the petitioner under N.S.A., the report alongwith record of the case was received in the office of State Government on 7.5.2014, on receipt of the above report alongwith record, the State Government once again examined afresh the entire case of the petitioner and took a decision to confirm the detention order and also for getting the petitioner under the detention for a period of 12 months from the date of actual detention of the petitioner. The copy of the representation dated 31.3.2014 and para-wise comments of the detaining authority were received in the Ministry of Home Affairs on 21.4.2014, the same was rejected by the Union Home Secretary on 25.4.2014, its communication was made through wireless message dated 29.4.2014 to the Home Secretary Government of Uttar Pradesh, Superintendent Central Jail Naini, Allahabad, District Magistrate, Allahabad and the detenu.

5. The legality of the impugned order dated 20.3.2014 passed by District Magistrate, Allahabad has been challenged by the petitioner on the following

grounds:

That even the procedure that has to be followed by the Advisory Board, as stipulated under Section 11 of the Act, was also not followed, inasmuch as there is nothing on record to show that the opinion of the Advisory Board indicating sufficient cause for the detention of the petitioner, was recorded and specified in a separate part of the report of the Advisory Board.

That no material whatsoever exists to justify the detention of the petitioner. It is further submitted that so far as the grounds of detention, as recited in the order passed by the District Magistrate/Detaining authority, under Section 8 of the Act, is concerned, it is submitted that the said grounds are wholly insufficient, non-existent and without any substance whatsoever.

That the grounds of detention mean not only the factual inference but, mean the factual inference plus the material on which the inference have been drawn. In absence of not only the factual inferences, but also the absence of any such material, no subjective satisfaction could have been arrived at the detaining authority/District Magistrate to preventively detain the petitioner.

That as enshrined in Article 22(5) of the Constitution of India, is that it is the obligation of the Government, under Article 22(5), to consider the representation "as soon as it is received by it", because it effects the liberty of a citizen. As already submitted, the District Magistrate and State Government have not decided the representation of the petitioner, and are sitting over it, which renders the detention of the petitioner vitiated and unsustainable in the eyes of law.

That preventive detention is a serious inroad on individual liberty and its justification is the prevention of imminent danger of activity prejudicial to the community, the delay at each and every stage would be an important factor that would be liable to be taken in to consideration to justify the preventive detention.

That the alleged offence was of 14.9.2013, hence had there been any imminent danger of activity prejudicial to the community, there was no justification for placing the petitioner under preventive detention belatedly after more than a period of five months and therefore on this ground also the order dated 20.3.2014, as passed by the Detaining Authority/District Magistrate, is liable to be set aside by this Hon"ble Court.

That the respondents have clearly infringed and violated the Constitutional safeguards of the petitioner as mandated under Article 21 and Article 22 of the Constitution of India. In this connection it is submitted that by reason of Article 21, preventive detention cannot be ordered by the executive without the authority of law and without confirming with the procedure laid down therein.

That the petitioner has been placed under preventive detention under the Act only upon the basis of the alleged solitary act, which is absolutely illegal and arbitrary. It is settled law that an individual incident is insufficient to make out a case for issuance of an order of preventive detention. It is further submitted that

assuming the case of prosecution, the alleged act of the petitioner can only be termed as a simple case of law and order problem/situation and does not at all relate to the matters of public problems/situations. Hence the provisions of the National Security Act are not attracted in the case of petitioner.

That where the detaining authority fails to apply its independent mind the facts of the case and fails to record its subjective satisfaction, specially where there is no material and the order has been passed only on the basis of apprehension, then that order will stand vitiated and violative of Article 22 of the Constitution of India.

That in the present case the State Government and the District Magistrate, have not decided the representative of the petitioner so far and in a case where the Jail Superintendent fails to forward any of the copies of the representation of the petitioner to any authority then, it is apparent that the petitioner has been denied on his right of making an effective representation rendering his detention illegal.

That as is apparent that the Superintendent, Central Jail, Naini, Allahabad clearly made delay in transmitting to the authorities, rendering the detention of the petitioner vitiated.

That the purpose of detention under the Act is preventive and not punitive. From the facts and circumstance of the case, the respondents have clearly acted in a manner so as to render the detention of the petitioner punitive and therefore, the detention of the petitioner is absolutely illegal and arbitrary.

That the petitioner has no other equally efficacious alternative and speedy remedy except to invoke the extra ordinary jurisdiction of this Hon"ble Court under Article 226 of the Constitution of India.

The District Magistrate, Allahabad has passed the impugned order without going through and considering the material supplied by sponsoring authority it has been passed in a mechanical manner, in such a circumstance, the impugned order is illegal and is liable to be set aside.

There is delay in deciding the representation of the petitioner by the State Government as well as Central Government. There was undue delay on the part of State Government to send the representation to the Union of India. Admittedly the copy of the detention order, grounds of detention forwarded by District Magistrate, Allahabad vide letter dated 20.3.2014 were received by the State Government on 21.3.2014, the order of detention was approved by the State Government on 23.3.2014 but the copy of detention order, grounds of detention and all connected documents were sent to the Central Government by Speed Post on 28.3.2014 and by means of letter dated 27.3.2014 but the same were received on 21.4.2014. There is no explanation of delay in receiving the copy of detention order, grounds of detention and all connected documents. According to the affidavit filed on behalf of Union of India, the representation of petitioner was

rejected by Union Home Secretary on 25.4.2014, there is no day to day explanation of delay in deciding the representation. Due to undue delay in sending representation and all other documents to Union of India and delay in deciding the representation making the detention of the petitioner is illegal, in such a circumstance by setting aside the impugned order dated 20.3.2014, the petitioner may be set at liberty forthwith.

6. In reply of the above contention, it is submitted by learned A.G.A. that the impugned order dated 20.3.2014 passed by the District Magistrate, Allahabad is not suffering from any illegality or irregularity, the impugned order has been passed by the District Magistrate, Allahabad after his subjective satisfaction, the sponsoring authority has produced all the relevant documents before the detaining authority for examining the same before passing the impugned order. The contents of the impugned order are based on material supplied by the sponsoring authority, there is no illegality in the impugned order. There is no delay in sending the copy of the impugned order, the grounds of detention and all other connected documents to the State Government and Central Government. There is no delay in referring the case to the Advisory Board. There is no delay in communicating the opinion formed by the Advisory Board on which basis the impugned order was confirmed and the petitioner was detained for a period of 12 months, there is no violation of any provision of the N.S.A., even the grounds taken by the petitioner to quash the impugned order only because that no action has been taken against co-accused Deepak Mandal in exercise of the powers conferred under the NSA whereas the co-accused Deepak Mandal was also apprehended alongwith counterfeited currency notes at the time of arrest of the petitioner. The impugned order may be passed on the basis of solitary incident. The learned District Magistrate was fully satisfied that in case the petitioner is released on bail, he would further indulge in commission of further prejudicial activities. The delay in passing the impugned order after the commission of the offence of case crime No. 211 of 2013 under Sections 489B, 489-C, 420 I.P.C., Police Station Shiv Kuti, District Allahabad, does not vitiate the impugned order. There is no delay in deciding the representation of the petitioner because the State Government and Central Government have explained properly the period of pendency of the representation prior to its rejection. The impugned order is not suffering from any illegality or irregularity. There is no violation of the mandatory provisions of the N.S.A., consequently, the further detention of the petitioner has not become illegal. The present writ petition is devoid of the merits, the same may be dismissed.

7. It is submitted by counsel for Union of India that within a period prescribed, the copy of the petitioner's representation dated 31.3.2014 with para wise comments was forwarded by District Magistrate, Allahabad to the Ministry of Home Affairs vide letter dated 3.4.2014, the same was received by the Central Government on 21.4.2014, on receipt of the same, the processing of the petitioner's representation and para wise comments was done and the file was sent to the Joint Secretary (Security) on 24.4.2014 and with the comments of

Joint Secretary (Security) was sent to Union Home Secretary on 25.4.2014, on the same day, the representation of the petitioner was rejected and file was sent back to the Joint Secretary, its wireless message was communicated on 29.4.2014 to the Home Secretary of Government of Uttar Pradesh, Superintendent, Central Jail, Naini, Allahabad, District Magistrate, Allahabad and the detenu, the delay in the aforesaid communication occurred only because there were holidays on 26.4.2014 and 27.4.2014, being Saturday and Sunday, respectively. There is no undue delay in deciding the petitioner's representation by the Union Home Secretary.

8. Considering the facts, circumstances of the case, submission made by counsel for the petitioner, learned A.G.A. and Sri C.S. Chaturvedi, counsel for Union of India, it appears that the impugned order dated 20.3.2014 passed by District Magistrate, Allahabad has been firstly challenged on the ground that on solitary incident, the impugned order by which the petitioner has been detained for a period of 12 months under Section 3(2) N.S.A. may not be passed. Secondly, it has been challenged on the ground that there was no material before detaining authority to show that on releasing on bail, the petitioner may indulge in such prejudicial activities. Thirdly, on the ground that petitioner was apprehended by the police on 14.9.2013 but the impugned order has been passed on 20.3.2014 i.e. after 6 months of his arrest, there was no proximity in passing such order at belated stage. Fourthly, it has been challenged that proper explanation has not been given of delay in deciding the representation by the State Government and by the Central Government. Fifthly, it has been challenged on the ground that co-accused Deepak Mandal, who was also apprehended by the police alongwith the petitioner and from his possession also, counterfeited currency notes were recovered but such order of detention has not been passed against him. Lastly, it has been challenged on the ground that only possession of counterfeited currency notes has been shown, there is no allegation of manufacturing of such counterfeited currency notes, in any case it may not be prejudicial to economic stability of the State.

9. So far as the first ground taken by the petitioner challenging the impugned order i.e. solitary incident is concerned, it is a settled position of law that considering the gravity of the offence, on a solitary incident, the order of detention in exercise of powers conferred under Section 3(2) of N.S.A. 1980 may be passed, in the present case the recovery of the counterfeited currency notes huge in number has been made from the possession of the petitioner which is prejudicial to economic stability of the country. So far as second ground with regard to the likelihood of petitioner's release on bail and after releasing on bail, further indulge in such prejudicial activity is concerned, the manner in which the counterfeited currency notes were brought by him and used and the confession made by him of recovered counterfeited notes were manufactured in Pakistan and circulation to this country through Bangladesh is sufficient for subjective satisfaction of detaining authority that there was real possibility of releasing the petitioner on bail and to further indulge in such a prejudicial activity. So far as

3rd ground with regard to delay in passing the impugned order i.e. after 6 months of the arrest of the petitioner, such delay in passing the impugned order may not be vitiated the impugned order because the petitioner had applied for bail in the Hon"ble High Court on 22.2.2014, the detaining authority was satisfied that there was a real possibility of releasing the petitioner on bail to prevent the petitioner from indulging in such prejudicial activity, the impugned order has been passed on 20.3.2014. So far as 4th ground with regard to delay in deciding the representation of the petitioner by the State Government and Central Government is concerned, the State Government and the Central Government have properly explained the delay in deciding the representation, there was no undue delay in deciding the representation of the petitioner. In the present case, the delay has occurred in receiving the representation by Union of India for which neither the State Government nor Union of India was under obligation to explain. So far as 5th ground with regard to co-accused Deepak Mandal against him such order of detention has not been passed is concerned, for passing the detention order, the act of the each accused is considered. According to the recovery memo itself, the case of the petitioner is distinguished with the co-accused Deepak Mandal. The detaining authority is not required to mentioned the same in the grounds of detention. The order of detention passed by detaining authority may not be vitiated on such a ground. So far the last ground is concerned i.e. with regard to possession of counterfeited currency notes, according to the ground of detention the petitioner was involved in circulation of counterfeited currency notes, merely on the ground that the allegation of manufacturing of recovered counterfeited currency notes are not against the petitioner, the impugned order may not be vitiated because the act done by the petitioner is prejudicial to economic stability of the country and to maintain the economic stability of the country is prime consideration. The detaining authority has not committed any error in passing the impugned order. There is no good ground to show that the subjective satisfaction of the detaining authority was not based on the material produced by the sponsoring authority, the grounds taken for passing the impugned order are based on record. The detaining authority has passed the impugned order after being subjectively satisfied, considering the material available on record against the petitioner.

10. The impugned order dated 20.3.2014 does not require any interference by this Court, therefore, the prayer for quashing the impugned order dated 20.3.2014 passed by the District Magistrate, Allahabad is refused. Accordingly, this Habeas Corpus petition is dismissed.