
(2015) 02 RAJ CK 0054
In the Rajasthan High Court
Case No : Habeas Corpus Petition No. 5/2015

Poonam Chand Bhadu

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307
Rajasthan Prevention of Anti-social Activities Act, 2006 — Section 10, 2(c), 3, 3(1), 3(3)

Citation : (2015) 02 RAJ CK 0054

Hon'ble Judges : Anupinder Singh Grewal, J.;Gopal Krishan Vyas, J.

Bench : Division Bench

Advocate : C.S. Kotwani, for the Appellant; Rajesh Panwar, A.A.G, Advocates for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—The instant Habeas Corpus Petition has been filed by the petitioner Poonam Chand Bhandu, uncle of detenu Tola Ram S/o. Kishana Ram, resident of Tilak Nagar, Bikaner against the order dated 2.6.2014 (Annex. 1) passed by the District Collector, Bikaner whereby the District Collector, Bikaner while exercising power under Section 3(1) of the Rajasthan Prevention of Anti-Social Activities Act, 2006 (hereinafter referred to as the Act of 2006 for short) passed an order of detention of detenu Tola Ram.

2. In the writ petition, although so many grounds are raised by the petitioner, but the main ground is that the satisfaction recorded by the District Collector, Bikaner to treat detenu Tola Ram "dangerous person" deserves to be quashed because at the time of consideration of the matter, the District collector, Bikaner registration of 30 criminal cases against the detenu Tola Ram since Dec., 1993 to 17.1.2014, out of which in most of the cases, the detenu Tola Ram was either acquitted or discharged by the learned trial court after trial and compromise arrived at between the parties. Therefore, the ground for detention for one year

of detenu Tola Ram is totally illegal and finding to treat him dangerous person who is creating law and order problem in the Bikaner District is contrary to the intention of the Act.

3. The learned counsel for the petitioner vehemently argued that Act of 2006 was enacted for preventive detention of boot-leggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their antisocial and dangerous activities, but according to the material which is taken into consideration for detention of the detenu Tola Ram, it cannot be said that the case of detenu Tola Ram falls in any of the category for the purpose of detention of one year because the Section 3 of the Act of 2006 provides that District Collector can exercise its powers but those powers are required to be delegated to the District Collector by the State Government after recording satisfaction that it is necessary to do so for the purpose of preventive measure, but in this case, the delegation of power to the District Collector, Bikaner under Section 3 is totally without jurisdiction because satisfaction recorded by the State Government for the purpose of delegating the power under Section 3 to the District Collector is totally against the record and the basic principle of law. Therefore, the order of detention of the detenu Tola Ram deserves to be quashed.

4. The learned counsel for the petitioner further submits that since 2.6.2014, the detenu Tola Ram is in custody for no reason, therefore, the order impugned may be quashed.

5. In the additional affidavit submitted today, it is stated by the petitioner that when detenu Tola Ram was directed to appear before the Advisory Board for hearing, a representation was submitted by him in which so many grounds and facts were submitted but Advisory Board did not consider his representation in its true and correct perspective and solely on the basis of pendency of criminal cases against the detenu Tola Ram, the Advisory Board confirmed the detention order, therefore, it is a case in which the grounds taken by the detenu Tola Ram before the Advisory Board are not considered and rejected without discussion. In support of above argument it is submitted that detenu Tola Ram stood acquitted, discharged in 19 cases out of 30 cases registered against him but these facts have not been considered properly by the Advisory Board and straightway held that on the basis of material available on record the detenu Tola Ram is falling in the definition of "dangerous person", therefore, considering the material available on record, we find reasons and grounds to send the report to the State Government without interfering in the order of detention but in fact, it was the duty of the Advisory Board to consider the important aspect of the matter that in 19 cases either detenu Tola Ram was acquitted or discharged and cases are settled on compromise, therefore, the order of detention is based upon non-application of mind. Lastly it is argued that order impugned is not sustainable in law.

6. Per contra, the learned Addl. Advocate General appearing on behalf of the respondent submits that detention order was passed by the District Collector,

Bikaner on the ground that detenu Tola Ram was involved in various criminal activities and he is a land grabber for which 30 criminal cases were registered against him in various police stations of Bikaner since 1993 and looking to the history-sheet of detenu Tola Ram, the Superintendent of Police, Bikaner moved a complaint against detenu Tola Ram on 24.1.2014 before the District Magistrate, Bikaner to take action against him under the Act of 2006 and after considering the anti social activities in various parts of District Bikaner, the State Government authorized District Magistrate, Bikaner to exercise power under Section 3(1) of the Act of 2006 vide notification dated 16.5.2014 and thereafter, the District Magistrate, Bikaner perused the criminal record of detenu Tola Ram and after applying judicious mind and the fact that 30 criminal cases were registered against him in various police stations under the Indian Penal Code and Arms Act came to the conclusion that detenu Tola Ram comes under the definition of dangerous person as enumerated under Section 2(c) of the Act of 2006, therefore, after due satisfaction passed an order of detention on 2.6.2014 whereby while exercising power under Section 3(1) of the Act of 2006, the District Collector passed detention order of the detenu Tola Ram for the period of one year. After arrest, the order of detention order was communicated to the detenu Tola Ram, thereafter, a representation was filed by him and same was considered by the Advisory Board constituted under Section 10 of the Act of 2006 and, thereafter, the Advisory Board granted an opportunity of hearing to the detenu Tola Ram and vide order dated 11.8.2014 the Advisory Board gave its opinion that detention order is justified and, thereafter, an order was passed on 11.8.2014 by the Joint Secretary (Home) Group-IX Department, Jaipur which is placed on record as Annex. R/12, which is communicated to the detenu Tola Ram in jail.

7. The learned Addl. Advocate General submitted that on the basis of material available on record and the fact that 30 case were registered against detenu Tola Ram in various police stations, it was felt necessary to pass an order of dentition of one year, therefore, the State Government and the District Collector after due application of mind passed an order of detention of one year under Section 3 of the Act of 2006 in which there is no illegality. More so, the conduct of the detenu Tola Ram itself speaks loudly that he become dangerous person so as to destroy the public peace, therefore, this writ petition may be dismissed.

8. After hearing the learned counsel for the parties we have perused the details of the cases registered against the detenu Tola Ram which are as follows:

9. It is stated in the additional affidavit filed by the petitioner that detenu Tola Ram stood acquitted, discharged or FR were submitted against him in 19 cases. Meaning thereby, although 30 cases were registered against detenu Tola Ram, but the day on which his case was considered by the District Collector, Bikaner only 11 cases were pending and those cases were registered against detenu Tola Ram under different sections of IPC, but the day on which the order of detention was passed, which is 2.6.2014 although two cases were registered against him in

the month of Jan., 2014 for different sections of IPC including Sec 307 IPC, but he was granted bail by the learned trial court. It appears from the fact that before the Advisory Board the submission was made by the detenu Tola Ram in his representation that 19 decided cases in which he was acquitted have been taken into consideration by the District Collector, Bikaner so as to take action against him for detention, therefore, satisfaction recorded by the State Government and Collector is totally unfounded, but the Advisory Board did not consider the above ground.

10. We have perused the order of the Advisory Board also in which the following finding is given by the Advisory Board, which reads as under:--

"The first ground to challenge the order of detention is delay in production of detenu before the Board. The order of detention was passed on 2.6.2014 and a copy thereupon was served on the detenu immediately. Thus, compliance of Section 9 of the Act of 2006 was made. The Government thereupon approved the order on 10.6.2014. Thus, compliance of Section 3(3) of the Act has also been made. The State Government thereafter referred the matter to the Advisory Board vide its letter dated 12.6.2014. We are passing appropriate order within 50 days from the date of detention. Thus, there is no violation of any of the provision of the Act of 2006.

The other argument of the denue is in reference to list of 30 cases, out of which, in few cases he has been acquitted and in other cases, F.R. has been given, though it is shown to be pending. WE have considered each case for aforesaid and find that even if few cases are excluded, material exist for passing the order of detention.

Section 3 of the Act provides about detention of certain persons and on perusal of Section 3(4) and the definition clauses, the detenu falls in the definition of "dangerous person" given under Section 2(c) of the Act and in those circumstances, the detention order is in conformity to the provisions of the Act of 2006. It was also informed to the Board that there was a Gang-war between the two Gangs, out of which one belongs to the detenu and there is a terror and fear in the mind of the people of Bikaner, though the aforesaid facts are not on record, thus we ignore it, but the material available on record is sufficient to show that the detenu is falling in the definition of "dangerous person". The detenu is having long history and track record of the criminal cases, thus we find no reason to interfere in the order of detention. Thus, considering the material available on record, we find reasons and grounds to send the report to the State Government without interfering in the order of detention."

11. In our opinion, the District Collector, Bikaner, State Government and Advisory Board did not consider the important aspect of the matter that in most of the cases the detenu Tola Ram was either acquitted or discharged by the learned trial court and Advisory Board itself observed in the order that although there is allegation of gang-war against the detenu Tola Ram but the facts of gang-war are

not on record. Meaning thereby the overall assessment made by the District Collector, Bikaner so as to declare detenu "Dangerous person" was not in consonance with law. It is true that if any habitual offender creates problem of law and order or disturb the peace in the society, the action is must, but at the same time, this Court cannot loose sight of the fact that question of liberty of a citizen should be taken note before passing out for detention, therefore, before passing any order the authorities are under obligation to apply its mind judiciously, but here in this case, the District Collector, Bikaner as well as the Advisory Board has completely ignored the fact that out of 30 case registered against him since the year 1993 in most of the cases, he was acquitted by the trial court. In view of the fact that there is no counter to the fact that in 19 cases which were taken into consideration by the District Collector, Bikaner before passing the detention order out of 30 cases, the detenu Tola Ram was either acquitted or discharged by the competent trial court, it cannot be said that detenu Tola Ram is "dangerous person" as defined under Section 2(c) of the Act of 2006 so as to take action against him for detention of one year under Section 3 of the Act of 2006. The detenu Tola Ram is in custody from last near about 8 months but in our opinion, on the basis of material available on record, it cannot be said that detenu Tola Ram is "dangerous person" against on whom detention order is justified.

12. In view of the above, we are of the opinion that the detention order dated 2.6.2014 passed by the District Magistrate, Bikaner while exercising powers under Section 3 of the Act of 2006 which is subsequently, confirmed by the State Government vide order dated 11.8.2014 are against the principle of natural justice because both the orders have been passed without considering the material available on record in right perspective, so also, it is a case of non-consideration of the grounds raised by the detenu Tola Ram before the Advisory Board.

13. On the basis of the above discussion, this habeas corpus petition is hereby allowed. The impugned order dated 2.6.2014 (Annex. 1) passed by the District Magistrate, Bikaner and order dated 11.8.2014 (Annex. R/12) passed by the Joint Secretary, Home (Aapada Prabhdan) Department are hereby quashed and set aside. The detenu Total Ram S/o. Kishana Ram, resident of Tilak Nagar, Bikaner is released forthwith if not needed in any other case.