
(2019) 01 RAJ CK 0225
In the Rajasthan High Court
Case No : Habeas Corpus No. 118 Of 2018

Prem Kanwar

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 30-01-2019

Acts Referred:

Rajasthan Prevention Of AntiSocial Activities Act, 2006 — Section 3, 3(1), 3(1)(2), 6
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 RAJ CK 0225

Hon'ble Judges : Sandeep Mehta, J;Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : N.K. Bohra, S.K. Vyas

Final Decision : Allowed

Judgement

The petitioner Smt.Prem Kanwar being the wife of Shri Surendra Singh (hereinafter referred to as 'the detainee' for short) has approached this Court for assailing the order dated 04.06.2018 (Annex.3) whereby the detainee was placed under detention for a period of one year from the date of his initial arrest by resorting to the provisions of the Rajasthan Prevention of Anti-Social Activities Act, 2006 (hereinafter referred to as 'the Act of 2006' for short).

Facts in brief are that the detainee is alleged to be a history-sheeter residing in the village Novi P.S.Sumerpur, District Pali. An earlier order of detention dated 03.02.2012 came to be passed against the detainee by the learned District Magistrate, Pali with reference to numerous criminal cases registered against him. The detainee challenged the said order of detention passed against him through his brother Jaspal Singh by filing D.B. Writ (Habeas Corpus) Petition No.5118/2012 (Jaspal Singh Vs. State of Rajasthan & Ors.) which was decided by Hon'ble Division Bench of this Court by order dated 27.8.2012 holding that the notification authorizing the District Magistrates to exercise powers under the Act were issued by the State Government without being satisfied that such powers should be conferred upon the District Magistrates concerned under Section 3(1)

of the Act of 2006. Accordingly, the order of detention passed against the detainee Shri Surendra Singh was quashed vide judgment dated 27.8.2012. It appears that after the order of detention was quashed, the detainee was again found indulged in criminal activities and no sooner, he was released on bail, the District Magistrate, Pali proceeded to pass a fresh order of detention dated 3.5.2018 against the detainee with reference to the cases previously registered against him and in addition thereto, some more cases which came to be registered against him in the intervening period. The detention was sponsored by the Superintendent of Police, Pali and the District Magistrate, Pali, expressing satisfaction with the recommendations of the Superintendent of Police, Pali, proceeded to pass the order dated 03.05.2018 (Annex.2) in exercise of the powers under Section 3 (1) (2) of the Act of 2006 whereby the detainee was directed to be detained at Central Jail, Jodhpur. The matter of the detainee was placed before the advisory board who recommended affirmation of the detention order and pursuant thereto, the State Government confirmed the detention of the detainee for a period of one year from the date of his detention vide order dated 04.06.2018 (Annex.3). The petitioner, being the wife of the detainee Shri Surendra Singh has approached this Court by way of this writ petition filed under Article 226 of the Constitution of India for assailing the order of detention passed against the detainee.

Shri N.K. Bohra, learned counsel representing the petitioner vehemently and fervently urged that the detention of the detainee Surendra Singh vide order of detention dated 03.05.2018 (Annex.2) confirmed vide order dated 04.06.2018 (Annex.3) is grossly illegal, arbitrary and perverse and rather amounts to a contempt of this Court's Judgment dated 27.08.2012 passed in the earlier round of detention. He submitted that the earlier detention order issued against the detainee virtually on the same grounds which form the basis of the present detention order, was quashed by the High Court by exercising its high prerogative writ jurisdiction and thus, it was highly arbitrary and highhanded for the detaining authority to have used the very same grounds for passing a fresh order of detention against the detainee. He further urged that the order of detention suffers from gross non-application of mind to material facts inasmuch as the detaining authority failed to consider the important circumstance that the detainee was in custody for a period of almost three years before the detention order came to be issued. There was no material to show that during this period of three years, the detainee acted in any manner which could be considered as being prejudicial to public order. He further urged that the requisite satisfaction in terms of Section 3 of the Act of 2006 is totally lacking from the order of detention and as such, the same is liable to be struck down.

Per contra, Shri S.K. Vyas, learned Additional Advocate General vehemently and fervently opposed the submissions advanced by Shri Bohra. He urged that after the previous detention order issued against the detainee had been quashed, he was again found indulged in numerous criminal activities, most of which were causing serious threat to public order and as such, the detaining authority was

absolutely justified in passing the fresh order of detention against the detainee so as to curb his prejudicial activities and to save the public at large from the anti-social activities of the detainee. He further contended that the detaining authority, while passing the fresh order of detention, duly applied its mind to the fact that the detainee was in custody for a period of 3 years after quashing of the previous order of detention and that the fresh order of detention was necessitated because of the fresh criminal activities of the detainee which in themselves constitute independent grounds so as to justify issuance of a fresh order of detention. In this regard, he referred to Section 6 of the Act of 2006 and implored the Court to dismiss the habeas corpus petition as being devoid of merit.

We have given our thoughtful consideration to the arguments advanced at the Bar and have gone through the material available on record.

The most significant and forceful contention of Shri Bohra for assailing the order of detention was that the detainee had been previously detained by the detaining authority under the provisions of the Rajasthan Prevention of Anti-Social Activities Act, 2006 mostly on common grounds which constitute the foundation of the present order of detention and that while passing the fresh order of detention, virtually the same grounds were relied upon by the detaining authority without even advertent to the significant fact that the previous detention order was quashed by the High Court in the exercise of its high prerogative writ jurisdiction.

For appreciating this argument, we have perused the grounds of detention used to detain the detainee in the previous round as well as the present set of grounds of detention. We find that other than a few fresh criminal cases, registered in the intervening period, most of the incidents which have been relied upon by the detaining authority for passing the order of detention are common in both the detention orders. The most striking feature of the matter is that while passing the fresh order of detention, the detaining authority failed to take into account and totally ignored the fact that the previous order of detention issued against the detainee on mostly common grounds was quashed by the High Court. The total ignorance shown by the detaining authority to this material fact reflects gross non-application of mind while passing the fresh order of detention and rather amounts to showing total disrespect to the High Court's judgment dated 27.8.2012. Notwithstanding that, we feel that the contention advanced by learned Govt. Advocate that the detention order is valid as it deemed to have been passed individually on each ground as the same are severable, has to be considered in light of the plain language of Section 6 of the Act of 2006 which reads thus:

"6. Grounds of detention severable .- Where a person has been detained in pursuance of an order of detention under Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and according.-

(a) Such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are.-

(i) Vague,

(ii) non-existent,

(iii) not-relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the State Government or the authorized officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention.

(b) the State Government or the authorized officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

The direct implication of this provision would be that the earlier set of grounds of detention on which, the detainee was detained, would have to be eschewed (as the order passed on the basis thereof was quashed by the High Court) from consideration and it would have to be assumed that the fresh detention was passed on the remaining grounds. For this purpose, we have examined the grounds of detention formulated by the detaining authority for detaining the detainee Surendra Singh afresh. In addition to the incidents which were relied upon by the detaining authority for passing the previous order of detention, the following instances were set out in the grounds so as to justify the order of detention:-

"नवीनतम वर्ष 2017 में दर्ज अभियोग का विवरण:-

मु.न.129/4.4.2017 धारा 384 भादस पुलिस थाना सुमेरपुर प्रार्थी कमलेश कुमार अग्रवाल निवासी सुमेरपुर ने लिखित रिपोर्ट पेश की कि मुलजिम सुरेन्द्रसिंह ने केन्द्रीय कारागृह जोधपुर से पैसों की अवैध वसूली के लिए प्रार्थी के मोबाईल नम्बर 7742983031 पर अपने मोबाईल नम्बर 7822965347 से जान से मारने की धमकिया देने पर मु.न. 129/4.4.2017 धारा 384 भादस पुलिस थाना सुमेरपुर में दर्ज कर बाद अनुसंधान नतिजा चालान चार्जशीट नम्बर 104 तारीख 5.6.17 धारा 384, 120बी भादस में पेश किया गया जो जैर ट्रायल चल रहा है। पुलिस अधीक्षक, पाली द्वारा उपरोक्त तथ्यों के समर्थन में सुसंगत रेकॉर्ड उपलब्ध करवाया गया।

पुलिस अधीक्षक, पाली द्वारा अवगत कराये गये उपरोक्त तथ्यों से यह प्रमाणित है कि उक्त अपराधी की हरकतों से लोक शान्ति एवं समाज की व्यवस्था में भारी व्यवधान उत्पन्न हो रहा है। अपराधी के विरुद्ध तीन आबकारी अधिनियम के प्रकरण दर्ज होकर 3 में विचाराण चल रहा है यह अपराधी शराब माफिया है। भारतीय दंड संहिता के अध्याय 16, 17 के अधीन प्रकरण दर्ज होकर चालान हुये हैं साथ ही आयुध अधिनियम के भी प्रकरण दर्ज हुये हैं ऐसे व्यक्ति का स्वतंत्र रहना आम जनता के लिये खतरनाक है इसकी अपराधी गतिविधियों को रोकने के लिये सामान्य कानून के तहत की गई कार्यवाहियाँ विफल हो रही हैं। अपराधी के विरुद्ध अधिकांशतः हत्या, उद्घाटन, जबरन वसूली, झगडा, मारपीट, हत्या का प्रयास, सरकारी कर्मचारियों से मारपीट करना, पुलिस अभिरक्षा में होते हुए पुलिस गार्ड पर फायर कर फरार हो जाना एवं जेल में बन्द होते हुए भी अवैध वसूली के लिये व्यापारी को धमकाना आदि जैसे अपराधों में मामले चल रहे हैं। इन

अपराधों का बार बार सार्वजनिक स्थानों पर करने से इस व्यक्ति का आमजन में ऐसा भय एवं आतंक हो गया है कि आम आदमी इसके विरुद्ध प्रकरण दर्ज करवाने या न्यायालय में गवाही देने से कतराते हैं उक्त सुरेन्द्रसिंह पुत्र भवानीसिंह बहुत खतरनाक प्रवृत्ति का इंसान है, इसकी गतिविधियां चरम पर हैं जो धारा 2 (ग) राजस्थान समाज विरोधी क्रियाकलाप अधिनियम (राजपासा) 2006 के अंतर्गत परिभाषित कृत्य की श्रेणी में आता है, उक्त अपराधी ने आस-पास के बदमाशों की गैंग बना रखी है यह स्वयं गैंग का सरगना है इसके अन्य साथी भी इसके निर्देशन में बैखौफ होकर अपराध करते रहते हैं। जिससे आम आदमी भयग्रस्त है अपराधी के अधिकांश अपराधिक प्रकरणों में गुप्त तौर पर पीड़ितों को डरा-धमकाकर राजीनामा करवा दिया जाता है जिससे यह अपराधी बरी हो चुका है फिर भी कई मुकदमों में सजा हुई है।

पुलिस अधीक्षक, पाली के पत्र दिनांक 23.11.2017 द्वारा अवगत करवाया गया है कि उक्त हार्डकोर अपराधी की गतिविधियां जेल से भी निरन्तर जारी हैं साथ ही उक्त अपराधी जमानत होते ही सकुनत से भाग जायेगा क्योंकि पूर्व में दिनांक 25.08.2015 को चालानी गार्ड सिरौही की हिरासत से बाद पेशी सिरौही जाते समय ड्रिमलैण्ड होटल साण्डेराव से आगे सुमेरपुर की तरफ इसके पुराने साथियों द्वारा चालानी गार्ड पर फायरिंग कर मुलजिम सुरेन्द्रसिंह को भगाकर ले गये।

अभी हाल में पुलिस अधीक्षक पाली के पत्र क्रमांक पाली/एम.ओ.बी./राजपासा/17/1550 दिनांक 01.05.2018 द्वारा अवगत कराया गया है कि अपराधी के विरुद्ध 30.04.2018 सम्बन्धित पुलिस थाने में रपट दर्ज हुई है जिससे ज्ञात होता है कि अपराधी से आम जन/ पीडित व्यक्तियों में भय है, उसके विरुद्ध दर्ज प्रकरणों में गवाहों को पक्षद्रोही करने का खतरा है। इससे यह प्रमाणित है कि अपराधी की आपराधिक गतिविधियाँ वर्तमान में बरकरार हैं।"

Shri Bohra has placed on record copies of judgments passed in different cases registered against the detainee wherein he was acquitted by competent courts of jurisdiction, the details whereof are mentioned hereinbelow for the sake of ready reference:-

S.No.

Cr.Case No.

Judgment Dated

By the Court

1

Sessions Case No.10/2016

09.10.2017

Special Judge, SC/ST (PA) Act Cases, Sirohi.

2

Cr.Case No.120/2012

21.10.2013

ACJM, Sumerpur, Pali.

3

Cr.Case No.626/2014

13.11.2017

ACJM, Sumerpur, Pali.

4

Sessions Case No.28/2005

15.09.2005

Special Judge SC/ST (PA) Act Cases, Pali.

5

Cr.Case No.948/2008

01.07.2016

Judicial Magistrate, Sumerpur.

6

Sessions Case No.75/2008

11.05.2016

Special Judge, SC/ST (PA) Act Cases, Pali.

Manifestly, the incidents of the year 2014 (F.I.R. No.346/2014) & 2015 (F.I.R. No.8/2015 & 116/2015) have no proximity with the instant detention order which came to be passed in the Year 2018 and the same have to be termed as stale grounds. Furthermore, it is an admitted case of the prosecution that the detainee was in custody in relation to the F.I.R. No.110/2015 and was released on bail in the said case just before the passing of the fresh order of detention after being incarcerated in prison for almost three years. The detainee was released from custody in December 2017. From a bare perusal of the grounds of detention, it becomes amply clear that the detaining authority failed to advert to the important circumstance that the detainee was in custody for a prolonged period of three years, just before the order of detention came to be passed against him. From amongst the three fresh incidents (referred to supra) which were relied upon by the detaining authority and even most of the earlier instances mentioned in the grounds of detention, the detainee has been acquitted in numerous of these cases as is evident from the pleadings and the documents placed on record. The competent court has acquitted the detainee in connection with the case registered in furtherance of F.I.R. No.8/2015 vide judgment dated 9.10.2017. From a perusal of the grounds of detention, it becomes clear that the detaining authority failed to take into account the factum of acquittal of the detainee in these cases and acting in a totally mechanical manner, utilized these instances as grounds for detaining the detainee which shows a total non-application of mind by the detaining authority. Needless to say that any criminal case in which the detainee has been acquitted can also be utilized for passing an order of detention under the Act of 2006, but in such a circumstance, it is imperative for the detaining authority to consider the factum of acquittal of the

detenue and assign a reason as to why, despite that, the incident is being used as a ground for passing the order of detention. If the order of detention is passed without referring to the factum of acquittal, then manifestly the same would be tainted by the vice of gross non-application of mind. Reference in this regard may be had to the Hon'ble Supreme Court Judgment in the case of Ibrahim Bachu

Bafan Vs. State of Gujarat & Ors. reported in AIR 1985 SC 697 and Vashisht Narain Karwaria Vs. State of U.P. & Anr. reported in 1990 AIR 1272.

In view of the discussion made hereinabove, we are of the firm opinion that the detaining authority acted with gross indifference to material facts and even went to the extent of ignoring the High Court's order quashing the order of detention passed against the detenue and utilized most of the earlier grounds for passing the fresh order of detention and thus, the impugned order is perverse, arbitrary and suffers from total non application of mind to significant facts. Furthermore, factum of acquittal of the detenue even in most of the fresh instances relied upon as grounds to detain the detenue was also not considered by the detaining authority in the right perspective and therefore also, we are of the firm opinion that the impugned order of detention is liable to be struck down as having been passed without applying mind to the material circumstances/orders/judgments and hence, the same cannot be sustained.

In wake of the discussion made hereinabove, the writ petition deserves acceptance and is hereby allowed. The impugned orders dated 3.5.2018 (Annex.2) and 4.6.2018 (Annex.3) whereby the detenue Surendra Singh S/o Bhawani Singh was placed under detention is hereby quashed and set aside. The detenue is in custody. He shall be released forthwith if not wanted in any other case.