
(1997) 12 AHC CK 0072
In the Allahabad High Court
Case No : Writ Petition No. 362 (H.C.) of 1997

Pushpendra Kumar Bansal

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 18-12-1997

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2)

Citation : (1997) 12 AHC CK 0072

Hon'ble Judges : Virendra Saran, J and A.N.Gupta, J

Final Decision : Allowed

Judgement

1. The petitioner has challenged the order of his detention passed by the District Mastrate, Muzaffarnagar, dated 651997 under Section 3(2) of the National Security Act.

2. In the grounds of detention as background facts it is mentioned that the detaining authority has personal knowledge of the fact that intelligence agency of Pakistan, namely, I.S.I, is conducting such activities in India which are prejudicial to the national security, integrity and against maintenance of good relations between the Hindus and Muslims and also against public order. In pursuance of such activities, the said intelligence agency through its agents is getting firearms distributed throughout India. Haji Anees alias Mota resident of Mohalla Jama Masjid, Police Station Kairana, district Muzaffarnagar and Anees alias Lamboo also resident of the same place are engaged as chief agents of I.S.I. and are dealing in foreign smuggled arms in Delhi and Northern India. The said two persons have been detained by means of orders dated 2711997 and 2141997 passed under the National Security Act.

3. The ground on which the petitioner has been detained states that on 421996 at about 7.30 p.m. Anees alias Lamboo was arrested by Karolbagh, Delhi police when he was receiving Pakistani arms from smugglers namely, Mohd. Rizwan alias Babi alias Anil Sharma and others. At that time, five foreign pistols and

magzines were recovered from the possession of Anees alias Lamboo regarding which SubInspector of Police Harish Chandra had registered a case at Karolbagh police station being crime No. 51 of 19% under Section 25/54/59 of the Arms. On 17/2/1996 the Operation Cell of Lodhi Colony police station Delhi recovered 361 foreign pistols, 367 magazines and 8733 cartridges from Tariq, resident of Lahore, Pakistan who was an I.S.I, agent from tourist bus No. GR 18894. These arms were sent by the I.S.I, in India to disturb India's national security, integrity and public order. Regarding this incident Inspector Pawan Kumar of Operation Cell, Lodhi Colony police station, Delhi registered an F.I.R. being crime No. 64 of 1996 under Section 123B/121/121A/122/124A, I.P.C. and Section 25/54/59 Arms Act. In both these cases, Haji Anees alias Mota and Anees alias Lamboo were interrogated after they had been arrested. On the interrogation of Anees alias Lamboo made by Operation Cell, Lodhi Colony police station, Delhi it was revealed that the petitioner had direct connections with the I.S.I, agents stationed in Delhi and Northern India. It was also revealed that the petitioner had links with one of the important armed smuggler Tariq resident of Lahore, Pakistan. It also came out from the interrogation of Anees that Tariq for antinational activities was giving arms to Haji Anees alias Mota and Anees alias Lamboo and they had been asked to contact the petitioner for onward distribution of these arms. In March, 1994 for the first time, within the area of Shamli police station, district Muzaffarnagar the petitioner had secretly met Anees alias Mota and Anees alias Lamboo for indulging into antinational activities. There after, being engaged in anti national activities, the petitioner received four pistols on one occasion, 3 and 5 pistols on other two occasions in December 1994 from Anees alias Lamboo. By December 1994 the petitioner had received in all 27 pistols for distribution in Northern India in connection with antinational activities.

4. It is further mentioned that in order to fulfil the objectives of the I.S.I, to endanger India's security and the public order, petitioner received two pistols on one occasion and other pistols on other occasions in October 1995, in all he received 18 pistols from the Pakistani smuggler Munir alias Sindhu, resident of Bhaler Kotla, Punjab. It also transpired from the interrogation of Anees alias Lamboo that in case crime No. 64 of 1996, the pistols and magazines etc. recovered, were to be received by Anees alias Lamboo which were to be distributed through the petitioner.

5. It is further mentioned in the grounds that the petitioner has been working as one of the chief agents of Pakistani smuggler Tariq in collaboration of Anees alias Mota and Anees alias Lamboo. Sometimes in March, 1994 and April 1994 twenty pistols of 30 calibre were given by I.S.I, agent Munir to Haji Anees alias Mota and Anees alias Lamboo out of which five pistols were received by the petitioner and he also received twentyfive pistols from Hamid alias Kranti alias Sharif who was an arm smuggler. Similarly, the petitioner also received twenty pistols out of forty pistols given by Pakistani arm smuggler Mustaq alias Mota to Haji Anees alias Mota and Anees alias Lamboo. The petitioner has connections with Bashir

Ahmad, Akbar Ali and Munir of Pakistan, Mohd. Hasan Podar of Turkey and Ajit Singh alias Jeeta of Jammu and Kashmir and Suleman, Iqbal, Kranti Appan and Pappu of India in order to carry on the I.S.I, activities of destabilising the country. According to the grounds, this is confirmed by the fact that on the pointing of Anees alias Lamboo in case crime No. 51 of 1996 illegal arms were recovered from petitioner's arm shop situated in Shamli, district Muzaffarnagar regarding which case crime No. 40 of 1996 under Section 466, I.P.C. and case crime No. 41 of 1996 under Section 3/5/25/30 Arms Act were registered which are under consideration in the Court. After detention of Haji Anees alias Mota and Anees alias Lamboo under the National Security Act, now the secret activities of the I.S.I, are being conducted directly through the petitioner and he is having secret meetings regarding which entry was made in G.D. No. 56 at 7.50p.m. on 25/4/1997 and G.D. No. 62 at 9.40 p.m. on the same day of police station Shamli, district Muzaffarnagar. The Local Intelligence Unit of Muzaffarnagar had also sent secret information on 20/4/1994 in this respect. With these grounds, the petitioner was detained in order to prevent him from acting in any manner prejudicial to the security of the State and prejudicial to the maintenance of public order.

6. The petitioner in this petition has raised several grounds, but the learned Counsel for the petitioner confined his arguments only to one ground. He contended that the copies of many of the documents referred to in the grounds of detention were so illegible that the petitioner was prevented from making effective representation against his detention and, therefore, his rights under Article 22(5) of the Constitution have been violated. The petitioner has filed copies of the documents which were furnished to him along with the detention order and the grounds of detention. From these documents, it is clear that documents at Serial Nos. 18, 25 to 32 and 71 to 74 are totally illegible. They are photo copies of some documents. Amongst these documents are F.I.R. of the main incident on the basis of which the petitioner has been detained. It also includes the chargesheet in the said case filed against other accused persons. These are important documents and when the F. I.R. of the main incident upon which the detention of the petitioner is based, is not legible and similarly the chargesheet filed in the case against other accused cannot be deciphered, it is not unreasonable to infer that the petitioner was prevented from making an effective representation on account of the illegible copies furnished to the petitioner.

7. This Court in the case of Ganesh Prasad Kapoor v. State of U.P. and others 1986 Lucknow Law Journal 17 and in Writ Petition No. 307 (HC) of 1991, Anup Kumar v. State of Uttar Pradesh and others, decided on 9/11/1992 has held that if some of the documents which are relied upon by the detaining authority are illegible, the order of detention gets vitiated because in that event the detenu is prevented from making an effective representation. Since the documents referred to above were mentioned and referred in the grounds of detention and were in fact basis of the detention order of the petitioner and as they are illegible, the detention order against the petitioner is rendered invalid

8. In the result, the writ petition is allowed. The continued detention of the petitioner in pursuance of detention order, dated 651997 passed by the District Magistrate, Muzaffarnagar is declared to be bad in law. The petitioner shall be set at liberty forthwith unless wanted in some other case.