

(2008) 01 AHC CK 0243

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 22056 of 2007

Radhey Mohan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 295, 3(2), 341, 436

Citation : (2008) 2 ACR 1960

Hon'ble Judges : Yatindra Singh, J;Ran Vijay Singh, J

Bench : Division Bench

Advocate : P.C. Srivastava, D.S. Misra and C.K. Misra, for the Appellant; N.I. Jafri, A.S.G.I. and A.G.A., for the Respondent

Judgement

Yatindra Singh and Ran Vijai Singh, JJ.—An incident took place on 29.1.2007, an F.I.R. was also lodged. It was registered as Case Crime No. 36 of 2007 under Sections 143, 295, 436, 341, I.P.C. and 3/4 of Lok Sampati Nuksan Nivaran Adhiniyam, 1984, police station Gagha, District Gorakhpur. The Petitioner was arrested in pursuance of the same. He applied for the bail before the C.J.M. which was rejected. He filed bail application before the District and Sessions Judge, Gorakhpur. In the meantime, the District Magistrate passed an order on 21.2.2007 u/s 3(2) of the National Security Act. Hence, the present habeas corpus petition.

2. We have heard counsel for the Petitioner and A.G.A. and Sri N. I. Zafri for the Respondents.

3. The counsel for the Petitioners made following submissions before us:

- (i) The satisfaction of the detaining authority has been recorded in mechanical manner. It is no satisfaction in the eyes of law ;
- (ii) The detention order has been passed on extraneous materials/considerations ;
- (iii) Sixteen persons were accused in the F.I.R. The Petitioner is the only one

against whom the order for preventive detention has been passed. This is discriminatory ; and

(iv) There is delay in considering the representation of the Petitioner by the Central Government.

FIRST SUBMISSION:

4. The counsel for the Petitioner submitted that detention order has been passed in a mechanical manner and grounds are copied verbatim from the police report. He also placed reliance on the following decisions.

Jai Singh and Others Vs. State of Jammu and Kashmir,

Billa alias Birla v. Superintendent, District Jail, Basti and Ors. (VIII)2001 ACC 995: 2001 (2) ACR 1116 ;

Tunnu and Anr. v. Superintendent, Distt. Jail, Ballia and Ors. (XL)2000 ACC 729: : 2000 (1) ACR 611 ;

Rajesh Vashdev Adnani v. State of Maharashtra and Ors. 2006 (1) SCC (Cri).

5. In the grounds of detention it has been mentioned that Yogi Sri Aditya Nath, Member of Parliament from Gorakhpur was arrested on 29.1.2007. An agitation was started because of this. In this agitation three buses of U.P. State Road Transport Corporation were burnt. Thereafter mosque and religious books were set at fire. These grounds relate to public order.

6. A perusal of the order of the District Magistrate and the police report shows that certain portion of the police report is not mentioned in the detention order and even the portion which has been mentioned there is difference between two. In view of this, it cannot be said that detention order is copied from the police report. The order records satisfaction of the detaining authority. In view of this, it cannot be said that satisfaction is mechanical.

SECOND SUBMISSION:

7. The counsel for the Petitioner submitted that neither any history of the criminal cases has been mentioned in the police report nor in the detention order and extraneous materials have been taken into account while mentioning that the Petitioner is of criminal nature. He has also placed reliance on the following decisions.

Vashisht Narain Karwaria v. State of U.P. and Anr. 1990 SCC 372 : 1990 ACR 325 (SC); Mohinuddin alias Moin Master Vs. District Magistrate, Beed and Others,

8. The District Magistrate in the detention order has stated the incident and thereafter has recorded that on the basis of the aforesaid act, he has come to conclusion that the Petitioner is of criminal nature.

9. Neither the District Magistrate nor the police authority has taken into account

any other document for coming to the conclusion. This satisfaction is based on the incident which is mentioned in the detention order. No extraneous material has been taken into account. In our opinion, even if there is one incident then such satisfaction can be reached.

THIRD SUBMISSION:

10. The counsel for the Petitioners submitted that there were 16 persons named in the F.I.R. and the Petitioner is the only one against whom the order for preventive detention has been passed. This is discriminatory. He in support of his submission has also cited *Saeed v. State of U.P. and Ors.* JT 2007 (1) 230 (All): 2007 (1) ACR 481.

11. Even if many people are involved in an incident, it is not necessary to detain each and every person. The detaining authority in his discretion may detain one person if the detaining authority consider that person is likely to cause breach of public order. The discretion of the detaining authority cannot be faulted merely on the ground that other persons involved in the incident have not been detained. In any case it was the Petitioner on whose exhortation the buses were burnt. There is no discrimination.

FOURTH SUBMISSION:

12. The Petitioner had given his representation to Central Government on 27.2.2007. It was sent by the District Magistrate on 28.2.2007 to the Central Government. It has been rejected on 19.3.2007. The counsel for the Petitioner submitted that there is unexplained delay in deciding the same representation.

13. The District Magistrate and Central Government have filed their counter-affidavits. The District Magistrate in his counter-affidavit has stated that the representation was sent by Speed Post on 28.2.2007. It has been stated in the counter-affidavit filed by the Central Government that the representation alongwith comments of the detaining authority was received at the desk of the Ministry of Home Affairs on 15.3.2007. Thereafter it was rejected on 19.3.2007. Considering the fact that it was received on 15.3.2007, there is no undue delay.

CONCLUSION

14. There is no merit in any of the submissions raised by the Petitioner. There is no merit in the habeas corpus writ petition. It is dismissed.