
(2003) 02 AHC CK 0148

In the Allahabad High Court

Case No : Criminal Misc. Habeas Corpus Petition No. 44309 of 2002

Raies alias Yogendra Singh Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (2003) CriLJ 3155

Hon'ble Judges : U.S. Tripathi, J;D.P. Gupta, J

Bench : Division Bench

Advocate : V.S. Singh, for the Appellant; B.N. Singh and R.K. Shukla and Arvind Tripathy, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

U.S. Tripathi, J.—The petitioner has filed this writ petition challenging his detention order dated 26-7-2002 passed by District Magistrate, Jhansi, respondent No. 2, u/s 3(2) of National Security Act.

2. The grounds of detention served on the petitioner along with detention order (Annexure S.A.-1 to the supplementary affidavit) disclosed that on the night of 4/5-6-2002 at about 12.30 a.m. 10-12 armed persons of Dhan Singh gang with which the petitioner was associated, came to the site of contractor Jagdish Rai. Driver Sonu, Cashier Sanjai and Foreman Laxmi were sleeping. The persons of the gang enquired from Chaukidar Sitaram as to who were residing there and slapped him. They also looted cash of Rs. 10,000/- by breaking open the almirah, the money of the workers and their clothes. They also kidnapped Sanjai, and Gopi Cashier and worker respectively for purposes of ransom. The persons of the gang also removed air of the wheels of the jeep and also took away its key saying that the above persons would be released on payment of Rs. 80 lac and in case report is lodged, they would kill all of them. Jagdish Rai lodged report of the occurrence on 5-6-2002 at 12.10 on the basis of which a case at Crime No. 193 of 2002 u/s 364, I.P.C. was registered. The persons of the gang took Gopi and

Sanjai in the jungle of Orchha and kept the above kidnapes at different places. The petitioner was visiting the said gang for negotiating the release of the kidnapes. Ultimately negotiation with proprietor of G.S. Company was settled for Rs. 3 lacs. The petitioner and co-accused-Bhaiyan went in the jungle of Orchha on 17-6-2002 with ransom money of Rs. 2,10,000/- and negotiated the release of kidnapes with Dhan Singh gang. On getting Rs. 2,10,000/- the kidnapes were released at about 8 p.m. near railway station. Barua Sagar from where they were taken on utility vehicle of G.S. Company.

3. On account of kidnapping of the workers of the G.S. Company in a dare devil manner, the persons working in the company were terrorised and a sense of fear and insecurity was created amongst them. Due to fear of the petitioner and his gang it could not be mentioned in the report that a sum of Rs. 80,00000/- was demanded as ransom for release of the kidnapes. The police of P.S. Babina confirmed the kidnapping by petitioner and his associate gang.

4. On 25-6-2002 the police got information that some persons of Dhan Singh gang were present in the house of Prem Singh situated at village Khirkan. Believing on above information Sri Nihal Singh, Station Officer, P.S. Babina along with police force reached village Khirkan and surrounded the house of Prem Singh Yadav. On search of the said house, the petitioner and his four associates namely Pappu alias Kishan Lal Dhimar, Kamlesh, Prakash Dimar and Bhaiyan alias Satya Prakash Yadav were apprehended from the said house at about 2.10 a.m. On his personal search, the petitioner was found in possession of Rs. 30,000/- cash, his associates Pappu alias Kishan Lal, Prakash Dimar and Bhaiyan also were found in possession of Rs. 5,000/-each, while Kamlesh was found in possession of Rs. 10,000/-. The bundles of currency notes recovered from the petitioner and his associates were bearing stamp mark of Messrs. Gurmit Singh and Company (G.S. Company) on both sides. The petitioner and his associates also confessed their guilt before the police.

5. On account of above incident and subsequent negotiations by petitioner and his associates, a sense of terror and insecurity was again created in the public. The persons started closing their houses in the evening and were feeling insecure even in performing their daily routine. The persons working in G.S. Company started leaving their job and the construction of Government canal was adversely affected.

6. After rescue of the kidnapes and recovery of ransom amount from the possession of petitioner and his associates, the case was altered under Sections 364A, 395 and 412, I.P.C. and 10/12 Dacoity Affected Area Act.

7. The petitioner was detained in jail in connection with case Crime No. 193 of 2002 and had moved bail application before the Special Judge, Dacoity Affected Area. There was every possibility of his being released on bail and after his release on bail, there was also possibility that he would indulge in similar activities prejudicial to the maintenance of public order.

8. Heard Sri V.S. Singh learned counsel for the petitioner and Sri Arvind Tripathi, learned A.G.A. for respondents Nos. 1, 2 and 3 and the standing counsel for respondent No. 4, the Union of India.

9. The learned counsel for the petitioner has challenged the detention order on the following grounds :--

1. The incident regarding which the petitioner was detained related to only law and order and had no effect on public order.

2. That the petitioner was detained in the jail at the time of passing of detention order and there was no possibility that he would be released on bail.

3. There was delay in deciding representation of the petitioner.

10. On the first ground it was contended by the learned counsel for the petitioner that the incident of kidnapping for ransom for which, the petitioner was detained was a solitary incident and the petitioner had no criminal history. He further contended that the petitioner was not even named in the F.I.R. and the incident in question had no effect on public order, as it was purely law and order problem. He further contended that it is alleged that the petitioner was negotiating the payment of ransom money and release of the kidnapes, but initially Jagdish had named Bhaiyan alias Satya Pal Yadav, as the negotiator and by making interpolation in the case diary, the name of petitioner was inserted in place of Bhaiyan alias Satya Pal.

11. Word "public order" and "law and order" have been explained by the Apex Court in the case of Angoori Devi for Ram Ratan Vs. Union of India (UOI) and Others, as below (para 10) :--

"The impact on "public order" and "law and order" depends upon the nature of the act, the place where it is committed and motive force behind it. If the act is confined to an individual without directly or indirectly affecting the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquillity, it may fall within the orbit of the public order. This is precisely the distinguishing feature between the two concepts. Sometimes, as observed by Venkatachaliah, J. in Ayya alias Ayub v. State of U.P. "What might be an otherwise simple "law and order" situation might assume the gravity and mischief of a "public order" problem by reason alone of the manner or circumstances in which or the place at which it is carried out." Necessarily, much depends upon the nature of the act, the place where it is committed and the sinister significance attached to it."

12. The Apex Court in the case of Mrs. T. Devaki Vs. Government of Tamil Nadu and others, as below (para 18) :--

"Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of

public order. There is basic difference between "law and order" and "public order." The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society. A solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so much as to bring the case within the purview of the Act providing for preventive detention. Such a solitary incident can only raise a law and order problem and no more.

13. Testing the incident in question in the light of above observations it would reveal that no doubt the petitioner was not named in the F.I.R. lodged by Jagdish Rai and it was mentioned in the F.I.R. that 10-12 miscreants armed with guns, out of which two were covering their faces committed looting by tying the persons present on the site with the charpai and kidnapped Sanjai and Gopi, cashier and worker respectively of the company. However, in his statement u/s 161, Cr. P.C. Jagdish Rai told that the miscreants while kidnapping the two persons had also told that they would be released only after payment of Rs. 80 lac as ransom. It is also mentioned in the grounds of detention that during investigation it was revealed that the petitioner and his other associates were negotiating With the proprietor of G.S. Company for release of the above persons and the matter was settled for Rs. 3 lac: That on 17-6-2002 the petitioner along with his associate Bhaiyan came in the jungle of Orchha and settled with Dhian Singh gang the release of the above persons on payment of Rs. 2,10,000/- and that the above persons were released on payment of above money. It is also revealed from the grounds of detention that the petitioner was arrested by the police on 25-6-2002 at 2.10 a.m. along with His other associates from the house of Prem Singh Yadav at village Khirkan and on his personal search he was found in possession of Rs. 30,000/-, which was the ransom money of his share. The participation of the petitioner in the kidnapping and realisation of ransom money thus came into light during investigation and not naming of the petitioner did not show that the incident had no effect on public order.

14. The incident of kidnapping, detaining the kidnapes in jungle of Orchha at various places and their release after payment of Rs. 3 lac by the negotiation of petitioner came to the knowledge of workers of G.S. Company and persons of the locality and taking into consideration the entire incident from kidnapping to release of kidnapes, it was an incident, which affected public order. A sense of terror and insecurity was created in the workers of G.S. Company and public at large was feeling insecure.

15. Even if, it is assumed that the petitioner was not recognised by the workers of G.S. Company at the time of kidnapping, but the action of petitioner was known to the kidnapes, when he started negotiating for their release and realisation of ransom money from the proprietor of G.S. Company.

16. Learned counsel for the petitioner placed reliance on decision of this Court in Yuvraj Singh v. State of U.P., (2002) 45 All Cri C 998. In the said case on

29-11-2001 at 3.45 p.m. the petitioner and three others riding on two motor cycles opened fire on Satyendra Singh when he along with two other persons was travelling in Santro Car. The above incident had taken place 200 yards away from the brick kiln of Nepal Singh on the road. From perusal of F.I.R. it was borne out that the background of the incident was the personal enmity of Vikas with the deceased and the petitioner was said to be associated with the said crime by doing a criminal conspiracy. Held that the murder which took place over the enmity between the two sides did not make out a case of public order. The facts of the present case are totally different. The incident was not confined only to kidnapping, but also release only on payment of ransom money amounting to Rs. 3 lac. There was no enmity between the petitioner or his associates and the kidnapes or the proprietor of G.S. Company. The incident in question was for purposes of realisation of ransom money. The nature of incident was such that it had affected public at large as any one could be kidnapped for purposes of ransom.

17. The learned counsel for the petitioner further contended that Jagdish had told before the I.O. that it was co-accused-Bhaiyan, who was negotiating for release and came to jungle of Orchha in that connection. But the name of petitioner was subsequently inserted by scoring out the name of Bhaiyan and this fact was also noticed by the trial Court while granting the bail. For this purpose, the original case diary of the case was summoned. On perusal of the case diary, we found that Gopi and Sanjai, of G.S. Company, the kidnapes, were interrogated by the I.O. on 18-6-2002 and both of them had disclosed in their interrogation that petitioner-Rais Yadav used to come for negotiation of their release. However, Jagdish Rai was interrogated by the I.O. on 25-6-2002, and he had previously told that Bhaiyan was involved in the negotiation of release and kidnapes and subsequently some interpolation was made and name of petitioner "Rais" was inserted. Assuming that there was some interpolation in the statement of Jagdish Rai interrogated on 25-6-2002, the two kidnapes namely Sanjai and Gopi had already disclosed the name of petitioner, as the negotiator of their release.

18. Therefore, the incident in question and subsequent incident of negotiation and release of two kidnapes for ransom of Rs. Three lac affected public order and incident cannot be said to be confined only with law and order problem.

19. The next point raised by the learned counsel for the petitioner was that at the time of passing of the detention order, the petitioner was detained in jail and there was no material for the detaining authority to record his satisfaction that he would be released on bail.

20. It is settled law that the detention order can be passed even if the detenu is in jail, provided the detaining authority has recorded his satisfaction that there was every possibility of his being released on bail and that after release on bail, he would indulge in similar activities prejudicial to the maintenance of public order. The Apex Court held in the case of Kamrunnisa v. Union of India (1990) 27

All Cri C 621 that in case a person is in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity, and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher Court.

21. In the instant case, the detaining authority has mentioned in the grounds of detention that at present the petitioner was detained in district jail, Jhansi in connection with case Crime No. 193 of 2002 under Sections 364A/395/412, I.P.C. and 10/12 Dacoity Affected Area Act relating to P.S. Babina and he and co-accused-Bhaiyan alias Satyapal had moved application for their bail in the Court of Special Judge (Dacoity Affected Area), Jhansi and there was real possibility of being him released on bail. That there was also possibility that after release on bail, he would indulge in similar activities prejudicial to the maintenance of public order.

22. No doubt in para 18 of the petition it was mentioned that the detention order was passed by the District Magistrate on non-application of mind, as the petitioner was in custody and the Chief Judicial Magistrate was not competent to grant bail to the petitioner, so there was no likelihood for the petitioner to be released on bail. It is also mentioned in paragraph 24 of the said petition that at that time when the detention order was passed, no bail application of the petitioner was pending, to create apprehension in the mind of detaining authority to prevent his liberty, so there was no occasion for detaining authority to pass detention order.

23. In paragraph 4 of the counter-affidavit of Sri Shyam Mohan Srivastava, District Magistrate, Jhansi, detaining authority, had deposed that bail application was moved on behalf of the petitioner, which was pending when the order was passed against him and the copy of bail application has also been supplied to the petitioner along with grounds of detention. That he has considered activities of the petitioner and was satisfied that though the petitioner was in jail, but he was trying for his release and his release was a real possibility. That he was also satisfied on the basis of relevant and cogent material that in case the order is not passed against the petitioner under National Security Act, he would repeat the similar activities in future after getting the bail.

24. The above assertion in the petition indicated that according to petitioner he had moved bail application before the C.J.M., who had no jurisdiction to grant bail and that no bail application was moved prior to passing of detention order before the competent Court. As mentioned above, the above averments were emphatically denied by the detaining authority. The original record of the case of

the petitioner was also summoned and a perusal of it shows that the petitioner moved his bail application on 27-6-2002 before the Special Judge Dacoity Affected Area, Jhansi. Copy of the bail application was received by Government counsel on 28-6-2002, while detention order was passed much after it i.e. on 26-7-2002. The copy of above bail application was also supplied to the petitioner along with grounds of detention. Thus, there were sufficient material for recording his satisfaction by the detaining authority that there was possibility of being the petitioner released on bail.

25. The detaining authority has also deposed in his counter-affidavit that he considered the activities of the petitioner and was satisfied that after release on bail; the petitioner would indulge in similar activities prejudicial to the maintenance of public order. Perusal of original record further shows that there were sufficient material before the detaining authority which showed that the petitioner was active member "of gang of Dhan Singh and was indulged in kidnapping and illegally detaining the kidnapped persons for ransom and earning money through his above criminal activities. It is also clear from the statement of the witnesses of case Crime No. 193 of 2002 that the petitioner was negotiating for ransom money with the proprietor of the company the workers of which were kidnapped. Thus there were sufficient materials for the detaining authority to satisfy that after release on bail, the petitioner would again indulge in similar activities (kidnapping for ransom) prejudicial to the maintenance of public order.

26. The next and last contention of the learned counsel for the petitioner was that the representation of the petitioner was decided with delay, which rendered his continued detention invalid.

27. The counter-affidavit of Sri Rajendra Prasad, Jailor, District Jail, Jhansi discloses that the petitioner submitted his representation to the Jail authorities on 5-8-2002 and on the same day it was sent to the District Magistrate, Jhansi for further action. The counter-affidavit of Sri Shyam Mohan Srivastava, District Magistrate, Jhansi show that representation of the petitioner was received in his office on 5-8-2002 and he considered the said representation and rejected the same on 6-8-2002. That on the same day he sent the representation of the petitioner to the State Government and Central Government through special messenger. The State Government has rejected the said representation and sent message dated 16-8-2002. The counter-affidavit of Sri C. P. Singh on behalf of the State of U.P. discloses that the representation of the petitioner dated 5-8-2002 along with parawise comments thereon forwarded by the District Magistrate, Jhansi, vide his letter dated 6-8-2002 was received in the concerned section on 7-8-2002. The State Government sent copy of representation to the Central Government through letter dated 8-8-2002. The State Government examined the representation on 9-8-2002. The Special Secretary examined it on 12-8-2002. Secretary examined it on 12-8-2002 and submitted to the higher authorities and after due consideration the said representation was finally rejected by the State Government on 12-8-2002. The counter-affidavit of Sri

Ramesh Kumar on behalf of the Union of India shows that the representation of the petitioner dated 5-8-2002 along with parawise comments of the detaining authority was received by the Central Government on 7-8-2002. The representation was immediately processed for consideration and the District Magistrate asked to send parawise report through crash wireless message dated 9-8-2002. The report was received on 12-8-2002. The representation was processed for consideration and was put up before the Director Ministry of Home on 13-8-2002 and he along forwarded to the Union Home Minister on 4-8-2002. The Union Home Minister considered and rejected the same on 14-8-2002.

28. In this way the authorities concerned had decided the representation without any delay and there is explanation for each day. As the District Magistrate, detaining authority decided the representation of the petitioner on next day, State Government decided it on 12-8-2002 and the Central Government on 14-8-2002. Thus, there is no delay.

29. In view of our above discussions and observations on the points raised by the learned counsel for the petitioner we find that there is no force in the petition and the same is liable to be dismissed.

The petition is hereby is dismissed.