
(2006) 04 AHC CK 0006

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 72760 of 2005

Rakesh Kumar

APPELLANT

Vs

Superintendent of Jail and Others

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 302, 506

Citation : (2007) 1 ACR 750

Hon'ble Judges : M.C. Jain, J;K.K. Misra, J

Bench : Division Bench

Advocate : G.S. Hajela, for the Appellant; A.K. Srivastava, K.C. Sinha and Arvind Tripathi, A.G.A., for the Respondent

Judgement

K.K. Misra, J.—Through this petition, the Petitioner has challenged the detention order dated 13.8.2005 passed by District Magistrate, Farrukhabad, Respondent No. 2, u/s 3(2) of the National Security Act.

2. The grounds of the detention are contained in Annexure-2 to the writ petition. It is stated therein that on 7.7.2005 at about 5.30 in the evening, one Smt. Shashi Prabha was sitting with her husband at his shop along with her brother and daughter. The detenu came there and asked her husband to come with him as some matter was to be discussed. She, her daughter and her brother also followed them. As soon as the detenu reached near Nakhasa Faizbagh, he demanded money from her husband for liquor. It is further stated that when her husband refused to give him money, the detenu took out a country-made pistol and fired a shot which hit him in the neck and he died on the spot. The F.I.R. was registered at 6.40 p.m. the same day at police Station Shamsabad, being Crime No. 499 of 2005 under Sections 302 and 506, I.P.C. The copy of the F.I.R. is Annexure-5 to the writ petition. It has also come on the record that because of the said incident, shops in the locality were closed. There was hue and cry and atmosphere was exceedingly charged which resulted in breach of public order.

3. Counter and rejoinder-affidavits have been exchanged.
4. We have heard Sri G. S. Hajela, learned Counsel for the Petitioner and Sri Arvind Tripathi, learned A.G.A. No-body turned up for the Union of India.
5. The main contention of the learned Counsel for the Petitioner is that the incident relied upon for passing the impugned detention order related only to the problem of law and order and it had nothing to do with the maintenance of public order.
6. On the other hand, Sri Arvind Tripathi, learned A.G.A. strongly contended that due to the incident, shops in the area were closed and the force was deployed in the locality for maintenance of public order. In short, the submission of the learned A.G.A. is that the incident in question gave rise to breach of public order and not of law and order. A perusal of the detention order as well as the F.I.R. shows that shops were closed and public started running helter skelter in panic.
7. 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 always affect maintenance of public order. The question whether a person 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.
8. In the present case, the F.I.R. itself shows that the shops were closed and the people of locality were terrorized. Additional police force and P.A.C. was deployed in the area for maintaining public order. The place where the incident occurred was a busy locality and after the incident there was much tension. Everyone was terror stricken in the locality. The situation could be eased only after deployment of additional police force.
9. In the above circumstances, we find that the incident on the basis of which the present detention order was passed related to question of public order. Consequently, the detention order passed by the District Magistrate, Farrukhabad does not suffer from any illegality.
10. In the result, the writ petition is dismissed.