

(1993) 01 AHC CK 0036

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 31393 of 1992

Ram Baboo (in Jail)

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 21-01-1993

Acts Referred:

Electricity Act, 1910 — Section 40
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 379, 427

Citation : (1993) AWC 721 : (1993) CriLJ 3701

Hon'ble Judges : S.K. Verma, J; Giridhar Malaviya, J

Bench : Division Bench

Advocate : Shree Ram Gupta, for the Appellant; Shiva Ji Mishra, Learned Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Giridhar Malaviya, J.—These three petitions have been filed by the petitioners against the order dated 18-6-1992 passed by the District Magistrate, Banda u/s 3(2) of the National Security Act, by which the petitioners have been detained. The detention order says that as it was necessary to prevent the petitioners from indulging in such activity which was prejudicial to the maintenance of supply and services essential to the community, hence the detention of the petitioners had become necessary.

2. The grounds of detention furnished to the petitioners indicate that on 19-12-1991 the electric wire insulator, channel and transformer etc. of the govt. tube wells Nos. 54 and 123 of village Nari, police station Pailani, district Banda had been stolen. A First Information Report in respect of the alleged theft was lodged at the concerned police station vide crime No 240 of 1991 u/s 379/427 Indian Penal Code and Section 40 Indian Electricity Act. During investigation the petitioners were arrested on 11-6-1992 and from their possession 11 KV line wire and LT leg coil-winding aluminium wire as also LT leg coil winding wire of

transformer were recovered and had been kept in gunny bags. The theft of these articles had affected the supply of electricity.

3. It is further mentioned that on 17-4-1992 the aluminium electric wire along with insulators falling between tube wells Nos. 17 and 55 from 11 KV electric line had been stolen with the result that government tube wells Nos. 55, 15, 60, 14, 78, 35, 34 and 100 had to be closed down and the electric supply to village Galauli, Gadola, Mawai Ghat, Ghazipur etc. had been disrupted. A first information report in respect of this incident was also registered at police station Jaspura at crime No. 42 of 1992 u/s 379/427 Indian Penal Code and u/s 40 Indian Electricity Act. The investigation of this case also showed the complicity of the petitioners who had been arrested and from them also the stolen articles were recovered. This theft had prejudicially affected the supply and services essential to the community inasmuch as the electric supply as also the water supply had been partially affected by it.

4. There was again a theft of the electric transformer the cable attached to it as also all the material from the tube wells Nos. 15 and 63 situated in village Galauli, within the jurisdiction of police station Jaspura, district Banda on 27-4-1992. A first information report in respect of this crime was also registered at police station Jaspura vide crime No. 43 of 1992 u/s 379/427 Indian Penal Code read with Section 40 of the Indian Electricity Act. During the investigation of this crime the complicity of the petitioners came to light and from their possession the stolen articles were recovered.

5. Similarly on 15-5-1992 from the Govt. tube wells Nos. 38 to 48 and up to 50, 11 KV electric line from 20 electric polls had broken down due to hail and storm which had been thereafter stolen. A report of this theft was also lodged at police station Jaspura vide crime No. 52 of 1992 registered u/s 379/427 Indian Penal Code read with Section 40 of the Indian Electricity Act. In this case also the stolen property was recovered from possession of the petitioners.

6. The District Magistrate, Banda who examined the case of the petitioners was satisfied that the petitioners had acted in a manner which was prejudicial to the maintenance of supply and services essential to the community, hence he passed the orders against the petitioners u/s 3(2) of the National Security Act.

7. We have heard Sri S.R. Gupta learned counsel appearing on behalf of Ram Baboo in petition No. 31393 of 1992, and on behalf of Nanki Singh in petition No. 31392 of 1992 we have also heard Sri J.N. Misra in petition No. 31394 of 1992 we have heard Sri Shiva Ji Mishra learned Addl Govt. Advocate on behalf of the State in all the three cases.

8. Learned counsel for the petitioners argued that the allegations against the petitioners that they were involved in the theft of electric wire and the electric equipments of the tube wells are incorrect and that the petitioners have been falsely implicated in these cases. It was further averred that the petitioners were never convicted or prosecuted for any offence earlier and they and no criminal

history. The further assertion by learned counsel for the petitioners was that in any case the cases alleged against the petitioners were not so serious as to warrant their detention by an order passed u/s 3(2) of the National Security Act. It was also asserted that the representations made by the petitioners were not promptly considered and the detent in order has been confirmed illegally.

9. We have examined the counter affidavits which have been filed in all these cases. The allegation of the petitioners that their representations have not been properly disposed of cannot be sustained. In the case of all the three petitioners in the counter affidavits filed by Sri Ram Charan on behalf of the State Govt. it has been asserted by him that all the three petitioners made their representation on 2-7-1992. They were received by the State Govt. on 8-7-1992 along with the comments of the District Magistrate dated 7-7-1992. The representations were examined by the Deputy secretary on 8-7-1992, by the Special Secretary on 9-7-1992 and by the Principal Secreary on 10-7-1992 whereafter it had been sent to the authority concerned for final orders. It is then mentioned that the State Govt. rejected the representations of the petitioners on 15-7-1992. 11-7-1992 and 12-7-1992 being holidays on account of Second Saturday and Sunday of the month. We thus find that there has been no delay in disposal of the representations filed by the petitioners.

10. So far as the allegation of the petitioners that their orders of detention have been confirmed in an illegal manner, learned counsel for the petitioners have not been able to show what illegality was committed in passing these orders. Accordingly this argument has also no force.

11. The arguments of learned counsel for the petitioners that they had been falsely implicated in the case shown against them is not possible to be accepted because along with the grounds of detention the relevant extract of the case diary had been supplied to the petitioners which had been annexed with the grounds of detention in this petition. A perusal of the said case diary shows that when the petitioners were apprehended from their possession the stolen wires etc. had been recovered, they admitted having cut the electric line of the transformers of different tube wells at different times and they also had confessed that they had been indulging in the theft of the transformer and its parts including the electric wires.

12. This confession of the petitioners was also borne out from the recoveries made from them of the electric wires etc. What the learned counsel has argued before us is that these confessions have been made to the police authorities, they could not be admissible in the eyes of law. Learned counsel for the petitioners have wrongly tried to introduce the law of evidence in the matter of preventive detention. A Constitution Bench of the Supreme Court in the case of Haradhan Saha Vs. The State of West Bengal and Others, has clearly observed as follows in paragraph:-

"The power" of preventive detention is qualitatively different from punitive

detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding."

It is now no longer a matter of doubt that in a preventive detention matter the evidence is not to be of the nature which needs conviction of an accused in a criminal case. Even retracted confession made to the enforcement authorities have been made the basis of detention and the Supreme Court has upheld such orders of detention. Consequently the plea that the alleged confession made by the petitioner to the police authorities could not be considered by the detaining authority as a material in support of his ground of detention is not correct.

13. The grounds of detention make it amply clear that the petitioners had indulged in activity of cutting the electric wire of tube wells and transformers which had affected the electric supply as also the water supply. It can-not be imagined that the disruption of this supply was not essential to the community. Hence the object of detention i.e. to prevent the petitioners from affecting these supply was absolutely justified by the orders of detention passed against the petitioners. No other point has been pressed before us.

14. There is no merit in these habeas corpus petitions which are accordingly dismissed.