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**(2004) 04 AHC CK 0202**

**In the Allahabad High Court**

**Case No : Habeas Corpus Writ Petition No. 44823 of 2003**

Ram Bharose Yadav

APPELLANT

Vs

District Magistrate, Deoria (Detaining Authority), State of  
U.P., Union of India (UOI)

RESPONDENT

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**Date of Decision : 20-04-2004**

**Acts Referred:**

**Citation : (2004) 04 AHC CK 0202**

**Hon'ble Judges : S.K. Agarwal, J; Krishna Murari, J**

**Bench : Division Bench**

**Advocate : J.S. Sengar and A.K.S. Solanki, for the Appellant; B.N. Singh and S.S.C. and Arvind Tripathi and A.G.A., for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S.K. Agarwal, J.—This petition was preferred in challenge to the order of his detention by the petitioner dated 7.7.2003 passed by the District Magistrate, Deoria, Sri Deepak Krishna Verma, the detaining authority.

2. The facts of the case are that an incident of murder of one Gorakh Nath Yadav had occurred in front of his semi-constructed shop where he was sitting on 6.5.2003 at 7.15 p.m. A report of this incident was registered at the concerned police station at the instance of one Ravi Yadav on the same day at 8.30 p.m.

3. In the incident this petitioner along with six more persons allegedly had participated with firearms and bombs. They all came on motorcycles to the abovesaid place where the deceased was sitting along with other persons. The deceased was fired upon and bomb was also hurled on him upon his fall. He died on the spot. The place, where the incident occurred, is claimed to be a public place. A Nursing Home and some shops existed in the vicinity of this place. It is also claimed that the incident caused commotion in the area and the people ran helter-skelter. The shopkeepers too in panic downed their shutters.

4. The only contention raised by learned counsel for the petitioner before us is

that the incident simply caused a law and order problem and did not come within the purview of any branch of the public order. It is further stated that when any such incident occurs people normally run away from the place of occurrence and the shopkeepers down their shutters and remains indoors due to fear. The persons, who resides in the locality, also prefers to remain indoor. Therefore, every such incident does not cause breach of the public order ipso facto. Such a situation is dependent upon the Expanse of arms of the disorder, its effect upon even tempo of life of the area. Such facts are not available in this case. The disturbance, if any, was short-lived.

5. Learned A.G.A., in response to the submissions, pointed out following circumstances :

(a) The incident had occurred in a densely populated area and there exists some commercial activities also. It brought to a grinding halt these activities as a consequence to this incident.

(b) Learned A.G.A. also pointed out that the incident has taken place near a petrol pump. There were some construction of a shop going on. The deceased was sitting in front of the said shop.

(c) The assailant's enmity, which finds reference in the First Information Report, was between Satya Prakash son of Kuldip and the deceased.

6. We have given thoughtful consideration to the rival submissions. In our opinion disturbance of this nature in such incidents are common in any area where they take place. There does not appear any disturbance to the public order of some lasting endure. It has no where been stated that the incident caused any Chakka jam, etc. organised by the public to show their repugnance to such an occurrence. Public order in itself is a phenomenon, which requires some substantive disturbance in the even tempo of the life of the society. In the region or in whole of the township where such an incident takes place, a temporary disturbance, as a consequence to these incidents, is a normal phenomenon and is most likely to occur. The shorter the life of such disturbance is the lower would be the degree of its potential to disturb the even tempo of the life of the society. This is one serious criterion to differentiate or to draw a wedge between the public order and the law and order. The mere allegation in the General Diary etc. that police force including Circle Officer and S.P. arrived at the spot soon after the occurrence is not sufficient indication of any serious disturbance to the public order. This is a routine and normal practice that senior officers do arrive at the scene of occurrence to supervise the investigation. Therefore, this mere fact does not lead to the conclusion that the incident had any potentiality to disturb the public order or the even tempo of the social life of the concerned area. Nothing serious has been pointed out except the above said fact to disturb the public order. At least no such incident was brought on record otherwise to amplify any such circumstance. We, therefore, see no force in the contention raised by learned A.G.A. In our opinion, the submission made by

learned counsel for the petitioner has sufficient force and is accordingly accepted. From the facts it is evident that while passing the detention order the detaining authority lacked an application of mind to the facts and circumstances brought before him.

7. In view of the above said discussion the writ petition is hereby allowed. The detention order passed by the District Magistrate, Deoria, the detaining authority, dated 7.7.2003 (Annexure "I" to the writ petition) against the petitioner is hereby quashed. The petitioner is in custody. He shall be released forthwith, if not otherwise required to be detained in any other criminal case. There is no order as to costs.