
(2002) 09 AHC CK 0259

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 23345 of 2002

Ram Pratap Singh (In Jail)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Arms Act, 1959 — Section 25
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2002) 3 ACR 2867

Hon'ble Judges : Y.R. Tripathi, J; M.C. Jain, J

Bench : Division Bench

Advocate : S.P. Singh Raghav, for the Appellant; Ajit Kumar Singh, Additional S.C. and Deepak Verma, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—The Petitioner has challenged the detention order dated 23.1.2002 passed against him by Respondent No. 2 District Magistrate, Bulandshahr u/s 3(2) of the National Security Act, 1980 and his continued detention thereunder.

2. The grounds of detention are contained in Annexure-1 to the writ petition. The detention order was passed on the basis of an F.I.R. of Crime No. 360 of 2001, inter alia, u/s 302, Indian Penal Code, registered at P.S. Jahangirabad, district Bulandshahr, the related incident of which took place on 25.11.2001. One Hari Mohan son of Badri Prasad was murdered by Vikas with his three associates by firing while he (victim) was returning from Jahangirabad to Surkharu at about 3 p.m. and had reached near his village. One she-buffalo had also been injured in the incident. The firing was allegedly resorted to on the witnesses also who escaped unhurt. The deceased was the grandson in relation of the informant Charan Singh resident of the same village. The assailants had allegedly run away with the licensed revolver, cartridge and scooter No. DL 4 S/P 9945 belonging to the deceased. The Petitioner is said to be associated with the said crime.

3. Another ground of detention of the Petitioner is second incident of 29.11.2001 of about 3.45 p.m. in respect of which F.I.R. had been lodged at P.S. Jahangirabad the same day at 16.50 hours by Satyendra Singh. Charan Singh is the author of the first F.I.R. dated 25.11.2001. A Case Crime No. 366 of 2001 u/s 307, Indian Penal Code and Section 25 Arms Act was registered in consequence of the F.I.R. made by Satyendra Singh relating to the incident of 29.11.2001 of 3.45 p.m. As per this incident, the Petitioner and three others riding on two motor cycles opened fire on him, Dhiraj Singh, Ram Kishan and Aniruddh when they were travelling in Santro Car No. U.P. 12F 0008, which was driven by Dhiraj Singh. At that time, they were travelling from their village Surkharu to Bulandshahr. The incident had occurred 200 yards away from the brick kiln of Nepal Singh on the road leading to Jahangirabad. The Petitioner and his associates allegedly opened fire, smashing the front screen of the car on the driver side. However, none was hurt. The Petitioner and some of his associates managed their escape good but one of them, namely, Indrajeet was caught at the spot from whom illicit arm and ammunition had been recovered, when the occupants of the car had come out after stopping the car.

4. Counter-affidavits have been filed from the side of the Respondents. We have heard Sri S. P. S. Raghav, learned Counsel for the Petitioner, learned A.G.A. and learned standing counsel representing the Union of India, Respondent No. 5.

5. It is urged by the learned Counsel for the Petitioner that the grounds relied upon by the detaining authority in passing the detention order in question are not at all related to public order. They could at best, simply raise the question of law and order. The detention order has been passed by the authority concerned without application of mind, saying that the Petitioner was attempting to be bailed out and on coming out from jail on bail, he would indulge in such activities which may be prejudicial to maintenance of public order. It has also been pointed out that he was not named in the first F.I.R. relating to the incident of 25.11.2001 concerning the murder of Hari Mohan. On the other hand, the argument from the side of the State is that the matter certainly pertains to public order and the acts of the Petitioner were prejudicial to the maintenance of the same.

6. Indeed, the intensity of the act and its impact on the society has to be considered to ascertain as to whether it is a question of law and order or public order. In the present case, the Petitioner is not even named in the F.I.R. of the first incident of 25.11.2001 in which Hari Mohan was murdered, though he is resident of the same village. One Vikas and three others allegedly committed the murder of Hari Mohan and it is also borne out from perusal of the F.I.R. that the background was the personal enmity of Vikas with the deceased and the Petitioner is said to be associated with the said crime by being in criminal conspiracy. The murder which took place over the enmity between the two sides did not make out a case of public order.

7. So far as the second incident of 29.11.2001 is concerned, the same took place

at a lonely place outside the inhabitation about 200 yards away from the brick kiln of Nepal Singh. To our mind, it also could not form the foundation for subjective satisfaction of the detaining authority to detain the Petitioner under the National Security Act. The alleged acts of the Petitioner related to law and order only. The acts complained against the Petitioner could not provide a rational basis for his detention under the National Security Act for the reason that they could not make out a case of public order. Though the objective standards do not apply to subjective satisfaction, but it has to be actual satisfaction based on credible material. Preventive detention has the effect of depriving the detenu of his personal liberty without trial and there has to be tangible material to provide foundation for the formation of subjective satisfaction of the detaining authority to do so.

8. We come to the conclusion that the incidents whereupon the instant detention order is grounded are not relatable to disturbance of public order. On the basis of the alleged incidents, it could not reasonably be inferred that the Petitioner was likely to repeat such acts as to warrant his detention under the National Security Act. As such, we allow the writ petition and quash the detention order in question.

9. It is ordered that the detenu Ram Pratap Singh shall be released forthwith, if not wanted in any other connection.