
(2016) 06 AHC CK 0001
In the Allahabad High Court
Case No : Habeas Corpus No. 311 of 2015

Ram Shlok Pandey

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 95 ACrC 781 : (2016) 7 ADJ 80

Hon'ble Judges : Sudhir Kumar Saxena and Pramod Kumar Srivastava, JJ.

Bench : Division Bench

Advocate : Kapil Misra and Anurag Tilhari, Advocates, for the Appellant;
Govt. Advocate, A.S.G. and Shiv P. Shukla, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Pramod Kumar Srivastava, J.—This writ petition in the nature of habeas corpus has been filed with the prayer to declare the impugned detention order dated 10.7.2015 passed by District Magistrate as well as order of confirmation dated 21.8.2015 passed by State of U.P. to be quashed.

2. The facts giving rise to present petition are that on 22.10.2014 at about 7:00 pm in the evening Vinod Kumar Yadav, Rajiv Yadav, Sunil Kumar Yadav, Shailendra Kumar, Ram Bahadur and Dharendra Kumar Yadav were coming by three motor-cycles from gram Dafra at about 8:00 pm in the evening. They reached at the border of Dafra Setapur where an unnumbered white car blocked their way from which Rakesh Kumar, Brijesh Kumar, Kailash, Ajay, Ram Shlok Pandey and Kallu Dubey @ Premchand come out with firearms in their hand and started firing on them. When complainant Vinod Kumar Yadav and his companions tried to run away then these six persons started firing indiscriminately on them. One fire shot of Rakesh hit Rajiv Yadav who fell there and died immediately. Thereafter, the culprits went towards village Dafra Gadhiyawan by their car. Rajiv was taken to hospital by ambulance where he was declared dead. For this incident, case crime no. 264 of 2011 under Section, 147,

148, 149, 302 IPC was registered on 22.10.2014 at about 22:30 hours against said accused. During investigation, firearms were also recovered. Thus after completion of the investigation, charge sheet was submitted in court against above mentioned persons.

3. After about eight and a half months of this incident, Station House Officer of concerned police station had submitted a report to the Superintendent of Police, Pratapgarh with proposal to initiate proceedings under National Security Act.

4. After receipt of the report along with proposal from the Superintendent of Police, Pratapgarh on 10.7.2015, the District Magistrate, Pratapgarh had passed the impugned order dated 10.7.2015 for detention of petitioner for a period of one year under Section 3(2) of the National Security Act, 1980. The order was served on the petitioner on 11.7.2015 in district jail, Pratapgarh. After the detention order was passed by District Magistrate, the papers were submitted to the State Government which approved his detention vide order dated 21.8.2015.

5. Learned counsel for the petitioner submitted that entire incident does not give rise to any disturbance to the public order and tranquillity. The incident is squarely covered under the law and order and the sponsoring authority being badly biased had mala fide sponsored for the detention of the petitioner and therefore cooked up the facts. The facts averred about the character and antecedents of the petitioner were totally false and concocted. He also submitted that the petitioner has been detained in the incident relating to this matter, and when he had been granted bail then after a long gap of time, impugned order was passed for illegally detaining him. He submitted that there is no proximity in the date of occurrence of the incident in question and the initiation of proceedings for detention under National Security Act or the date of impugned order of detention by the District Magistrate, Pratapgarh.

6. It is admitted case that the incident relating to this matter was of 22.10.2014 at about 8:00 pm at Dafra Setapur border, a car stopped and blocked the way and petitioner and others persons came out the car with firearm in their hand and exhorted for killing Vinod Kumar Yadav and others then complainant Vinod Kumar Yadav and others had tried to run away from the spot, the culprits started firing. During firing a shot hit Rakesh in his chest and he fell down, after which Ram Shlok Pandey and other persons fled away from the spot. According to prosecution's case, this day-light incident on public way was committed due to enmity of election. Then considering the tension in the locality, the police pickets were posted at the spot for maintaining law and order. Considering the facts and circumstances of the matter, in our opinion, the facts adverted to above do not make out any case of disturbance of public order. The disturbance caused by the incident in question occurred at a lonely place on public way due to personal enmity which did not cause any disturbance of public order.

7. Apart from it, even if we accept the case of State in verbatim as alleged by sponsoring authority and accepted by the District Magistrate, the disturbance

was not of that much gravity so as to cause any disruption to public order of the area and its tranquillity for which petitioner may be detained under National Security Act, 1980. Whatever disturbance was caused, was momentary, and police force appears to have been sent in apprehension of possibility of breach of law and order. That is why the proceedings under National Security Act was not required to be initiated after a very long time, during which no public order was disturbed by the petitioner. It is also informed that when the petitioner was granted bail in the main case relating to incident in question then he was again challaned under the Gangster Act, and when his bail was granted in that matter, then after about 8 and half months, SHO Aaspur Deosara had submitted his report to Superintendent of Police, Pratapgarh. On same day the Superintendent of Police, Pratapgarh had submitted his detailed representation to the District Magistrate for considering the said report. After receiving the said representation on 10.7.2015, the District Magistrate had passed impugned order on the same day itself, which was promptly served on petitioner on 11.7.2015 in district jail, Pratapgarh. There is no explanation of delay in initiation of proceedings under Section 3 of National Security Act after more than 8 and half months of the incident in question, in absence of any other disturbance, and without any new cause of action. Proceeding for his detention in present matter were initiated with undue haste on 10.7.2015 when the concerned SHO has submitted his report to Superintendent of Police, Pratapgarh. On same day, the Superintendent of Police, Pratapgarh has submitted his report to District Magistrate, and on the same day District Magistrate had passed the impugned order. This impugned order contains routine averments without specifying any facts in the order. This contention of learned counsel for the petitioner is not unacceptable that impugned order appears to have been passed without application of mind and has been passed by the District Magistrate without understanding the facts and circumstances of the matter. It is difficult to infer from the solitary ground set out in the grounds of detention that the act alleged to have been committed by the petitioner would have disturbed the public order as distinct from law and order.

8. In this matter the single criminal act emanates from the rivalry of election, which cannot be the basis of subjective satisfaction of detaining authority to pass an order of detention on ground that the impugned act purports to affect public order, that is the even tempo of the life of the community which is the sole basis of clamping the order of detention. Therefore we are of the view that the impugned order of detention was passed by the District Magistrate without his subjective satisfaction.

9. The delay of more than eight and a half months in passing the impugned detention order is also pertinent. There is no explanation of this inordinate delay and no such evidence is there that during this long period of arrest, the petitioner was trying to disturb the public order again by any of his overt act, or there may be any possibility for the same. Therefore, the chain of connection between the dangerous activities relied on in the detention order passed is snapped by this long and unexplained delay. Considering these facts,

circumstances and other points of the above, the detention order dated 10.7.2015 is liable to be quashed.

10. In view of above, the detention order dated 10.7.2015 of District Magistrate and consequential approval order dated 21.8.2015 passed by Government under National Security Act, 1980 are hereby quashed. Accordingly, the petition is allowed. Petitioner will be released forthwith if not wanted in any case.