

(1975) 03 AHC CK 0035

In the Allahabad High Court

Case No : Criminal Miscellaneous Habeas Corpus Writ No. 1230 of 1975

Ramadhin Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-03-1975

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3, 3(1), 8
Penal Code, 1860 (IPC) — Section 188

Citation : (1975) 03 AHC CK 0035

Hon'ble Judges : H.N. Seth, J;G.D. Srivastava, J

Bench : Division Bench

Advocate : G.C. Dwivedi, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Seth, J.—By this application for a writ of Habeas Corpus, Ramadhin Singh, seeks to impugn the validity of the detention order dated 22-1-1975 passed by the District Magistrate Allahabad.

2. The District Magistrate, Allahabad, passed the impugned order dated 22-1-1975 authorising the detention of the Petitioner in the Central Jail Naini, under the provisions of Section 3(1)(a)(ii), as he was satisfied that it was necessary to do in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Subsequently, the grounds for the detention of the Petitioner, as required by Section 8 of the Act were served upon the Petitioner in Naini Jail on 26-1-1975.

3. This petition was heard along with a similar writ petition No. 1227 of 1975, filed by Brijesh Kumar. The Petitioners in both the cases were initially arrested on 17-1-1975 in connection with a criminal case, and while they were still in jail, orders dated 22-1-1975 directing their detention under the provisions of the Maintenance of Internal Security Act were passed and the grounds for detention were served upon them on 26-1-1975. Several of the points raised in this

petition were identical to those raised in the petition filed by Brijesh Kumar and with the consent of parties they have been dealt with in the judgment in Brijesh Kumar's case judgment which is also being delivered today. It is accordingly not necessary for us to discuss those arguments here. The grounds for the detention served upon the Petitioner show that District Magistrate's satisfaction that it was necessary to detain the Petitioner was arrived at on grounds which were different from the grounds communicated to Brijesh Kumar. Petitioner's argument is that the grounds communicated to him in this case are also vague and are not relevant for the purposes of determining whether he was likely to act in a manner prejudicial to the maintenance of public order. We accordingly proceed to consider this argument.

4. It is now well settled that the satisfaction of the District Magistrate that it is necessary to detain a person so as to prevent him from acting in a manner prejudicial to the maintenance of public order is his subjective satisfaction. If the satisfaction has been arrived at on a number of grounds and even if one of those grounds is found to be either vague and irrelevant this Court will have to strike down the detention order inasmuch as it will not be possible to predicate that the detaining authority would necessarily have passed the detention order on the remaining grounds.

5. A copy of the grounds for Petitioner's detention has been filed as Annexure 2 to the counter affidavit of Sri R.D. Sonkar, District Magistrate, Allahabad. These grounds show that the D.M. formed the necessary satisfaction on account of what took place in five different public and student meetings on 22-3-1974, 10-4-1974, 13-5-1974, 28-9-1974 and 17-1-1975.

6. The first ground mentioned in the grounds of detention translated into English reads thus:

On 22-3-1974, between 11.30 o'clock and 2.00 o'clock a meeting of students was held in Union Hall of the Allahabad University, in which thirty students, including you, participated. In that meeting following resolutions were put up.

1. Students should also be associated with the administration of the University.
2. Mode of Education should be changed.
3. Rising price be checked.
4. Age for exercising voting rights be reduced to 18 years.
5. Arrested students should be released without delay.
6. Corruption be eradicated.

In that meeting it was also said that now we are not to be judged here (sic) but for achieving our demand we have to flow blood on streets and to sacrifice ourselves. (sic). In this meeting it was also decided that in order to achieve their object Allahabad University should be made the base (sic) and it should be

closed. Thereafter, there will be Allahabad Band and if even. then the demands are not met, there will be U.P. Band. For this purpose all the student leaders would be called here and we will have to make it Gujrat As a result of this, fear has been instilled in the minds of peace loving students and they are afraid to pursue the studies in the University. Further public order in the University area has also been adversely affected."

7. The aforesaid ground indicates that in the meeting held on 22-3-1974, resolution concerning six demands were considered. So far as the six demands were concerned, there was nothing in them which could be said to be objectionable from the point of view of maintenance of public order. When in that meeting it was asserted that the students were not to be judged (sic) there, but in order to achieve their demands they would flow their blood and sacrifice themselves, it cannot be said that any one was being incited to commit violence. It only meant that come what may, the students would fight for their demand, As a matter of fact the modus operandi for achieving their demand was also clarified by saying that first of all steps will be taken by getting the University closed, and in case their demands were not acceded to, by resorting to Allahabad Band followed by U.P. Band. A call for University or Allahabad Band, followed by U.P. Band, does not necessarily mean creating an atmosphere of violence so as to prejudicially affect the maintenance of public order,

8. It was argued that in that meeting a further threat that in case the demand of the students was not met a Gujrat would be created, was a call for creating violence and disturbance of public order. In the case of Ram Bahadur Rai Vs. The State of Bihar and Others, the Supreme Court had an occasion to consider the validity of a detention order made inter alia on the ground that the Petitioner of that case had in his capacity as Secretary of All India Vidyarthi Parishad, attended a meeting of the Bihar Rajya Chhatra Neta Sammelan held on 17th and 18th February 1974 in the Patna University campus in which a decision was taken at his instance that a Gujrat type of agitation should be started in Bihar and it was also decided to resort to hunger strike and Gherao of the office of the Bihar Chief Minister, the Patna District Magistrate and other officials. The Supreme Court held that despite what had happened in Gujrat, the expression "Gujrat type of agitation" used in the detention order, was a phrase of vague and uncertain import. Consequently the Petitioner was deprived of an opportunity of making an effective representation; and the detention order passed on such a vague ground was invalid. In the present case although the expression used in ground for detention is "student leader would be called and we will have to make it Gujrat" and not that "Gujrat type agitation should be started", in substance the call was to start "Gujrat type of agitation". If the expression "starting Gujrat type agitation" is vague, the expression, "we will have to make it Gujrat" would be more vague, and the Petitioner will not be in a position to make any effective representation against that ground.

9. We thus find that according to the facts mentioned in the first ground of

detention, there was no material to indicate that there was any call by the Petitioner for violence, much less violence on a large scale so as to affect the maintenance of public order. The threat to get the University closed might possibly have annoyed the peace loving student, but there was nothing in it to show that fear of personal safety would be instilled in their mind and that they would be afraid to pursue their studies in the University. The first ground communicated to the Petitioner, therefore, has no relevance to the question of maintenance of public order and is also vague. The detention under the provision of Section 3 of the Maintenance of Internal Security Act, based on such a ground cannot be sustained.

10. The petition therefore succeeds and is allowed. The Respondents are directed to release the Petitioner from their custody forthwith subject to his complying with the necessary formalities for being released on bail in crime case No. 63/75 u/s 188 IPC and 7 CrL. Law Amendment.