

(2015) 07 AHC CK 0056

In the Allahabad High Court

Case No : Civil Misc. Habeas Corpus Petition No. 64767 of 2014

Sajid

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 22, 22(5), 226, 32

National Security Act, 1980 — Section 3(2)

Penal Code, 1860 (IPC) — Section 120-B, 147, 148, 307, 326-A

Citation : (2015) 6 ALJ 560 : (2015) 90 ALLCC 888 : (2015) 5 AWC 4467 :
(2016) CriLJ 135

Hon'ble Judges : B.K. Narayana, J;Vijay Lakshmi, J

Bench : Division Bench

Advocate : I.M. Khan, for the Appellant

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J—Questioning the legality and validity of the order dated 26.8.2014 passed by the District Magistrate, Aligarh/respondent No. 2, directing detention of the petitioner Sajid under section 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act) the petitioner has preferred this Habeas Corpus Writ petition. We have heard learned Counsel for the petitioner, learned AGA appearing for respondent Nos. 1, 2 and 3, learned Counsel representing the Union of India and perused the records.

2. Some brief facts giving rise to the controversy involved in this writ petition are that on 17.7.2014 two boys going on a motorcycle threw acid on a girl namely Km. Priya Sharma causing severe acid burn injuries on her face, eyes, neck and shoulder. As the incident had taken place in a crowded and most populated area, chaotic situation arose just after the occurrence. The police rushed to the spot where hundreds of people had already gathered. The incident created ruckus and commotion in the entire area and a sense of fear and terror prevailed in the locality. The public order got badly disturbed. Hearing the painful shrieks of the

victim feeling of anger also prevailed and people started raising slogans against the police and administration. The people were shouting that the accused persons be arrested immediately and the girls and ladies be protected from such acid attacks. The victim was immediately taken to the nearby hospital Varun Trauma Hospital, Vishnupuri. The crowd gathered at the place of occurrence accompanied the victim to the hospital and jammed the road demanding immediate arrest of the miscreants. P.A.C. force was deployed at the spot to control the situation. With regard to the said incident a first information report was lodged by maternal uncle of the victim namely Sri Anil Kumar on the same day at Police Station Kwarsi against two unknown persons, which was registered as Case Crime No. 1032 of 2014 under section 326-A, I.P.C. Subsequently during course of investigation, sections 120-B, I.P.C. and 7 Criminal Law Amendment Act were also added. As the victim girl was in a semi conscious stage, she was not in a position to name any miscreant. On 18.7.2014 when the victim regained consciousness, her statement was recorded in which she stated that she was working in "Swadeshi Cloth Store" where two boys Sajid (petitioner) and Neeraj also used to work. Sajid was constantly harassing her, expressing his one sided love. When she refused and scolded him, he got annoyed and threatened her, with the words that he would throw acid on her face. Out of fear she did not inform any of her family members about Sajid and Neeraj but she left the job of "Swadeshi Cloth Store" and started working at "Chhabra Cloth Store". However, Sajid did not spare her and continued to extend threats to her. On 17.7.2014 at 8.30 P.M. when she was returning from the shop and had reached near Varun Hospital, both the boys reached there. Neeraj was driving the motorcycle and Sajid was sitting behind him. Sajid threw acid on her face causing grievous injuries to her. She became unable to see due to the acid attack and started shouting out of unbearable pain.

3. On the basis of the aforesaid statement of victim, Sajid was arrested on 19.7.2014 at 8.00 P.M. and Neeraj was arrested at 11.00 P.M. on the same day. Both the accused persons confessed their guilt and both were sent to District Jail, Aligarh. When the relatives of the petitioner were trying to get him released on bail, the District Magistrate, on the recommendation of S.S.P., Aligarh, passed the impugned order whereby detaining the petitioner under the "Act" for one year.

4. The petitioner has challenged the aforesaid order on the grounds that he has been detained under the Act on the basis of only single criminal case registered against him at Crime No. 1032 of 2014 under section 326-A, I.P.C. registered at P.S. Kwarsi, District Aligarh, in which neither he is named in the FIR nor any specific role has been assigned to him. The detention order dated 26.8.2014, passed by the respondent No. 2 without application of mind is wholly illegal, without jurisdiction and deserves to be set aside. The submission of learned Counsel for the petitioner is that on 9.3.2014 the petitioner had sent his representation before the State Government and the Central Government through respondent No. 3 but it was neither disposed of nor he was informed

about the acceptance or rejection of his representation. It is next contended that the respondent No. 2 has not afforded any opportunity of hearing to the petitioner before passing of the impugned order. Learned Counsel has argued that it is well settled law that before passing any detention order under the Act subjective satisfaction of the detaining authority regarding the fact that after his release on bail, the detenu will act in the manner prejudicial to the maintenance of public order, is a must, whereas in the present case there is no material on record to show the subjective satisfaction of the District Magistrate in this regard. It has been next contended that the representation of the petitioner/detenu was not forwarded to the Central Government by the State Government within seven days as contemplated in sub-clause 5 of section 3 of the Act, hence "detention of the petitioner under the Act got vitiated. It has lastly been contended that the representation made by the petitioner/detenu before the State Government was not considered properly by the respondent No. 1 before referring it to the Advisory Board as provided under the Act.

5. In support of his contentions learned Counsel for the petitioner has placed reliance on the verdicts given by this Court in the following cases in all of which, this Court has set aside the detention order:--

(I) Sher Ali. Superintendent, District Jail, Muzaffar Nagar and others 2009 (67) ACC 523 (HC).

(II) Raju Khan alias Tyagi v. State of U.P. 2013 (80) ACC 788 (HC).

(III) Sarju Prasad Shukla Vs. State of U.P. and Others, (2009) 3 ACR 2687 .

(IV) Cheeku Badla Vs. Superintendent, District Jail and Others, (2014) 1 ACR 78 : (2013) 8 ADJ 513 : (2014) 3 ALJ 744 : (2013) 83 ALLCC 520 .

6. Learned Counsel for the petitioner has also referred to a judgment of Hon''ble Apex Court rendered in Rajammal Vs. State of Tamil Nadu and Another, AIR 1999 SC 684 : (1999) CriLJ 826 : (1998) 8 JT 598 : (1998) 6 SCALE 574 : (1999) 1 SCC 417 : (1998) 3 SCR 551 Supp : (1999) AIRSCW 139 : (1998) 9 Supreme 398 , in which the Apex Court has observed as under:--

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes."

7. Per contra learned AGA appearing for respondent Nos. 1, 2 and 3 has contended that the grounds taken by the petitioner have no legs to stand. There is no illegality or irregularity in the detention order impugned in this writ petition,

which is evident from the perusal of the facts mentioned in the various counter-affidavits filed by the respondents. Learned AGA has contended that on 29.7.2014 the Investigating Officer recorded the statements of several eyewitnesses, all of whom supported the statement of the victim and also stated about the disturbance of public order due to the incident. The injury report of the victim shows grievous injuries on her face, eyes, shoulder and neck. After the incident the guardians of the girls, in a grip of fear, stopped them from going outside or going to their schools. The incident totally disturbed the maintenance of public order, spreading disaffection and terror in the public at large. The news about the occurrence was published in the headlines of all the newspapers engaging attention of even those persons, who were not present at the spot causing terror and anger in their minds. Learned AGA has argued that as the accused had applied for his bail in the Court of C.J.M. Aligarh, and his family members were making constant efforts for his release and the one sided love of petitioner for the victim being frustrated, the detaining authority, expressing his clear view that he was personally satisfied that the petitioner, who was making efforts to be released on bail, would again involve himself in criminal activities causing prejudice to the public order passed the impugned order. The District Magistrate also considered the fact that district Aligarh being a sensitive district and the accused/petitioner and the victim being of different communities criminal activities of the detenu may disturb communal harmony of the district. Moreover, the petitioner was informed that he had a right to make a representation before the State Government and the Advisory Board and he was entitled for personal hearing before the Advisory Board, if he so desired.

8. The submission of learned AGA is that the incident was not merely a case of disturbance of law and order but has largely disturbed the public order. Learned AGA has submitted that the order impugned has been passed after considering the reports of the Sponsoring Authority, case diary, the entire materials produced by Sponsoring Authority and after considering the propensity and intensity of the entire incident, which had totally disturbed the public order of the area taking all the local people in the grip of fear and apprehension that similar incident-might happen with them as well.

9. Controverting the facts mentioned in the petition, learned AGA has submitted that the victim, who has sustained severe burn injuries distorting her face, had in her statement categorically named the petitioner and specific role of throwing acid was assigned to him. The name of the petitioner came into light on 18.7.2014 when the victim gave the statement to the Investigating Officer. The incident had occurred on 17.7.2014 and thus it cannot be said that time name of the petitioner came into light after a longtime. The said incident of throwing acid was witnessed by several people whose statements were also recorded by the Investigating Officer. Thus it cannot be said that the local police has falsely implicated the petitioner.

10. It has further been submitted by learned AGA that there was no delay in

forwarding the representation. The representation of the petitioner dated 9.9.2014 was received by the respondent No. 2 on 9.9.2014 i.e. on the same day and it was sent to the State Government and Central Government by special messenger. There was no deliberate delay on the part of the respondent No. 2 in forwarding the representation to the Central Government and the State Government. The respondent No. 2 rejected the representation of the petitioner on 15.9.2014 and rejection order was immediately communicated to the petitioner through Jail Superintendent, District Aligarh, on 15.9.2014 itself. The petitioner was served with the rejection order passed by the respondent No. 2 on 15.9.2014 itself and receiving to this effect was also obtained by Jail authorities. Thus, it cannot be said that the representation has not been timely decided by respondent No. 2. The entire documents alongwith detention order and the grounds of detention were served on the petitioner. All such documents which were supplied by the Sponsoring Authority were also duly supplied to the petitioner to enable him to make effective representation. The State Government rejected the representation of the petitioner on 24.9.2014. The order of rejection was communicated through radiogram on 25.9.2015 and the petitioner was duly informed about the said rejection on the same day i.e. 25.9.2014. Learned AGA has submitted that the detention order passed by the District Magistrate after recording his subjective satisfaction was duly considered by the Advisory Board and confirmed by the State Government. Hence the writ petition being devoid of merit is liable to be dismissed.

11. Learned Counsel appearing for respondent No. 4, Union of India, has contested the case by submitted that a detailed reply has been given by the concerned authority/Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, showing clearly that there was no delay at any stage. It has been submitted that a copy of representation from the petitioner dated 9.9.2014 and parawise comments of the detaining authority were forwarded to the Central Government i.e. Ministry of Home Affairs by the District Magistrate, Aligarh, vide his letter No. 1081(2)/Judi Asst. dated 15.9.2014. The same was received by the Central Government in the concerned section of Ministry of Home Affairs on 16.9.2014. On receipt of the same, the representation along with parawise comments was processed for consideration of the Union Home Secretary (who has been delegated powers vide order No. 11/15011/14/07-NSA dated 11.11.2013 by the Home Minister to decide such cases. As Under Secretary (NSA) was on leave on 19.9.2014, the same was forwarded to the Joint Secretary (Security) on 22.9.2014. With the comments of Joint Secretary (Security) the file was sent to Union Home Secretary on 22.9.2014. During the intervening period 20th to 21st September, 2014 were holidays being Saturday and Sunday, respectively. The Union Home Secretary after duly considering the order of detention, grounds for the same and the representation of the detenu, rejected the representation on 24.9.2014 and sent the file back to the Joint Secretary. The file reached the section through the aforesaid two levels of officers on 29.9.2014. During the intervening period 27.9.2014 and 28.9.2014

were again holidays being Saturday and Sunday. Accordingly, a wireless message No. II/15028/148/2014-NSA dated 29.9.2014 was sent to the Home Secretary, Government of Uttar Pradesh, Lucknow; Superintendent, District Jail, Aligarh; District Magistrate, Aligarh, U.P. and the detenu, informing that the representation of the petitioner was considered and rejected by the Central Government.

12. After having heard learned Counsel for the parties and giving our thoughtful consideration to the factual and legal aspects of this case, we are of the considered view that this petition has no merit and it is liable to be dismissed for the reasons mentioned hereunder:--

(1) The victim girl has categorically named the petitioner as the main accused, who has thrown acid on her face distorting it forever and causing severe burn injuries on various other parts of her body. The reason behind the gruesome occurrence has also been categorically stated by her that the petitioner was continuously harassing her due to one sided love affair. She, for the aforesaid reason was compelled to leave her earlier job at "Swadeshi Cloth Store". The petitioner had threatened her that he would throw acid on her. The occurrence has taken place in a crowded area, where several people have assembled just after the incident hearing the painful shrieks of the girl, who have given their statements to the Investigating Officer as eye-witnesses. There appears no reason why a victim of such heinous crimes like acid attack would falsely implicate any innocent person while exonerating the real culprit?

(2) The petitioner being a Muslim boy and the victim girl being a Hindu and the occurrence being taking place in District Aligarh, which is comparatively a more sensitive district prone to communal riots, the possibility of disturbance in communal harmony involving huge public disorder could not be ruled out after the occurrence. The detaining authority also found that huge public order was involved in this matter necessitating to pass detention order. Moreover, the petitioner was making constant efforts for his release on bail and situation might have got worst had he been successful in getting bail. In the aforesaid circumstances the District Magistrate after recording his subjective satisfaction, passed the order for detaining the petitioner under the National Security Act.

(3) So far as the arguments advanced by learned Counsel for the petitioner that no "public order" was involved and it was only a case relating to "law and order", is concerned, we are of the firm opinion that the instant case relates to disturbance of public order.

What is public order has been explained by Hon"ble Apex Court in paras 7 to 15 in the case of State of U.P. and Another Vs. Sanjai Pratap Gupta @ Pappu and Others, (2004) CriLJ 4600 : (2004) 8 SCALE 75 : (2004) 8 SCC 591 : (2005) 1 UJ 219 , which is quoted here as under:--

"The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the

potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed" This question has to be faced in every case on its facts.

"Public order" is what the French call "order publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed (See *Kanu Biswas Vs. State of West Bengal*, AIR 1972 SC 1656 : (1972) CriLJ 1006 : (1972) 3 SCC 831 : (1973) SCC(Cri) 16 : (1973) 1 SCR 546 : (1973) 5 UJ 80 .

(4) There is no such bar that a person cannot be detained under the National Security Act only for a single criminal case. In *State of Punjab Vs. Sukhpal Singh*, AIR 1990 SC 231 : (1990) CriLJ 584 : (1989) 4 JT 95 : (1989) 2 SCALE 731 : (1990) 1 SCC 35 : (1989) 1 SCR 420 Supp , the Apex Court has observed as under:--

"Preventive order is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from so doing. The justification of such detention is suspicious or reasonable probability and not criminal conviction which can only be warranted by legal evidence. Thus, any preventive measures even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the state.....

When power is given to an authority to act on certain facts and if that authority acts on relevant facts and arrives at a decision, which cannot be described as either irrational or unreasonable, then the order is not bad and the Court cannot substitute the decision or opinion in place of the decision of the authority concerned on the necessity of passing the order.

Considering the relevant facts and circumstances including the time and place, the contents of detention order and the allegations in the grounds of detention in this case, we are of the view that non-registration of any criminal case is no bar to an order of preventive detention and it does not reflect non-application of mind or absence of subjective satisfaction on the part of detaining authority.

(5) The impugned order also shows that the detaining authority has already

recorded his subjective satisfaction for detaining the petitioner, hence it cannot be said that the order has been passed without application of mind. There is no straitjacket formula as to what amounts to subjective satisfaction."

In *Gurdev Singh Vs. Union of India and ors*, AIR 2002 SC 10 : (2002) 1 Crimes 115 : (2001) 78 ECC 459 : (2001) 9 JT 374 : (2001) 8 SCALE 27 : (2002) 1 SCC 545 : (2002) 35 SCL 386 : (2001) AIRSCW 4598 : (2001) 8 Supreme 121 , the Hon"ble Apex Court has observed as under:--

"Whether the detention order suffers from non-application of mind by the detaining authority is not a matter to be examined according to any straitjacket formula or set principles. It depends on the facts and circumstances of the case, the nature of activities alleged against the detenu, the materials collected in support of such allegations, the propensity and potentiality of the detenu in indulging in such activities etc. The Act does not lay down any set parameters for arriving at the subjective satisfaction by the detaining authority. Keeping in view the purpose for which the enactment is made and the purpose it is intended to achieve, Parliament in its wisdom, has not laid down any set standards for the detaining authority to decide whether an order of detention should be passed against a person. The matter is left to the subjective satisfaction of the competent authority."

(6) Lastly, it is to be kept in mind that while deciding the Habeas Corpus Writ Petition this Court does not sit in appeal against the detention order. Hon"ble Apex Court in *Sukhpal Singh's* case (*supra*) has also held that:

"The High Court under Article 226 and Supreme Court under Article 32 or 136 do not sit in appeal against the order of preventive detention. But the Court is only to see whether the formality as enjoined by Article 22(5) had been complied by the detaining authority and if so done, the Court cannot question the efficiency of the grounds of detention for the subjective satisfaction of the authority".

(7) The case laws cited by the learned Counsel for the petitioner are unable to extend any help to the petitioner because the facts of all those cases are entirely different from the fact of the case in hand. *Sher Ali's* case was related to Cow Slaughter Act, in *Raju Khan's* case the petitioner was involved in the offence under sections 147 and 148 (rioting) and 307 I.P.C. (attempt to murder) and in the case of *Rajammal* before the Supreme Court, the detenu was found involved in the occurrence as a "bootlegger" under Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slub-Grabbers Act, 1982.

None of the above offences can ever have such severe, intense and grave impact on the society so as to shake the public conscience as in the cases of acid attacks. The gravity of this offence has engaged the attention of the Apex Court in *Laxmi Vs. Union of India and Others*, (2013) 9 SCALE 291 : (2014) 4 SCC 427 , wherein the Apex Court has observed as under--

"Tragic incidents of acid attacks continue to happen. In various orders passed by this Court from time to time, the Court has indicated the seriousness of the issue. But we find that no effective steps have been taken to address this serious issue either by the Central Government or by the State Governments/Union Territories.

..... The solution to this grave problem is not forthcocom(sic)

(8) The girl and the boy being belonging to two different communities, there was all the more possibility of disturbance of public order and communal harmony, had the petitioner been not booked under the National Security Act.

For the aforesaid reasons, we find no illegality or irregularity in the order impugned. So far as the delay is concerned. Even assuming for the sake of arguments, that there was some delay in fulfilling the procedural formalities, it cannot be a ground for setting aside the detention order in the present case because delay has been satisfactorily explained by the respondents.

The writ petition is devoid of merit and is accordingly dismissed.