

(2017) 02 RAJ CK 0030
In the Rajasthan High Court
Case No : 2 of 2017

Salim Khan S/o Shri Azad Khan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

Constitution of India, Article 21, Article 19 - Amendment of the Schedule - Protection of certain rights regarding freedom of speech, etc
Code of Criminal Procedure, 1973

Citation : (2017) 02 RAJ CK 0030

Hon'ble Judges : Gopal Krishan Vyas, Kailash Chandra Sharma

Bench : DIVISION BENCH

Advocate : RK Charan, SK Vyas

Final Decision : Allowed

Judgement

1. The instant habeas corpus petition has been filed by Salim Khan S/o Azad Khan R/o Chaniya Khedi, Tehsil & District Pratapgarh to challenge the order of detention dated 22.8.2016 of his son detenue Ayub Khan passed by the District Magistrate, Pratapgarh, so also, approval of detention order dated 1.9.2016 and the detention order dated 18.10.2016 passed by the State of Rajasthan after confirmation by the advisory board, Jaipur whereby Ayub Khan son of the petitioner was detained for a period of one year w.e.f. 22.8.2016 to 21.8.2017.
2. As per the facts of the case, the District Magistrate, Pratapgarh while exercising powers conferred under Section 3(1)

of the Rajasthan Prevention of Anti Social Activities Act, 2006 (hereinafter referred to as the Act of 2006 for short) passed an order on 22.8.2016 whereby on the basis of 15 criminal cases registered against the detainee Ayub Khan and other material placed before him by the Superintendent of Police, Pratapgarh passed the detention order and detained Ayub Khan while treating him as "dangerous person". The State Government approved the order of District Magistrate, Pratapgarh vide order dated 1.9.2016 (Annex.22) and granted an opportunity to the detainee Ayub Khan to file representation against the detention order so as to place before the advisory board for confirmation.

3. The detainee Ayub Khan filed his representation (Anex.25) against the order of detention dated 22.8.2016 passed by the District Magistrate, Pratapgarh. The said representation of the detainee was placed before the advisory board and detainee Ayub Khan was granted an opportunity to raise his grounds against the order of detention personally before the advisory board. The advisory board after considering the representation and arguments of detainee Ayub Khan confirmed the order of detention vide order dated 20.9.2016 and, thereafter, the formal confirmation order was issued by the State of Rajasthan on 18.10.2016 whereby detainee Ayub Khan son of the petitioner Salim Khan was ordered to be detained for one year w.e.f. 22.8.2016 to 21.8.2017.

4. In this writ petition filed by Salim Khan, father of detainee Ayub Khan it is submitted that order of detention is per-se illegal because it is against fundamental right of the detainee Ayub Khan.

5. Learned counsel for the petitioner submits that in the order of detention was passed by the District Magistrate, Pratapgarh dated 22.8.2016 against the detainee Ayub Khan on the basis of

15 criminal cases registered against him from the year 2008 to 2015 and the proceedings initiated against him under Section 110 of the Cr.P.C. on 20.10.2015 in which detenue Ayub Khan was bounded for one year to maintain peace, were considered. The learned District Magistrate, Pratapgarh while recording satisfaction on the basis of criminal record of the detenue Ayub Khan passed the detention order, but upon perusal of the entire record submitted, it will reveal that in none of the case registered against the detenue Ayub Khan he was convicted, out of 15 cases mentioned in the detention order dated 22.8.2016 in FIR no.226 dated 22.5.2008 registered under Section 341 and 323 at Police Station Pratapgarh, in Lok Adalat, benefit of probation was granted because both the offences were bailable offences. It is also submitted that in case no.3 mentioned in the order dated 22.8.2016 which is registered against detenue Ayub Khan at Police Station Pratapgarh on 5.6.2008 for the offences under Section 147, 148, 149, 323 and 307, but in that case, he was acquitted from the charges levelled against him vide judgment dated 7.3.2011 (Annex.31). In case no.6 mentioned in the order dated 22.8.2016 registered against the detenue Ayub Khan at Police Station Pratapgarh for the offences under Section 3 / 25, 5 and 29 of the Arms Act, the detenue Ayub Khan has been acquitted from the charges levelled against him after trial vide judgment dated 27.1.2015 (Annex.27). Similarly, in case no.8 as mentioned in order dated 22.8.2016 being no. 255 registered on 7.7.2010 at Police Station Dadabadi, District Kota under Section 394 IPC, the detenue Ayub Khan was acquitted vide judgment dated 27.11.2015 (Annex.28). In case mentioned at S.No.12 of order dated 22.8.2016 registered against the detenue Ayub Khan on 24.1.2013 being FIR no.42 at Police Station Pratapgarh, after

trial, detainee Ayub Khan was acquitted by the Chief Judicial Magistrate, Pratapgarh vide judgment dated 20.5.2016 (Annex.30).

6. Learned counsel for the petitioner submits that the case no.15 mentioned in detention order dated 22.8.2016 which is taken into consideration by the District Magistrate, Pratapgarh to exercise its powers under Section 3 of the Act of 2006 was not registered in District Pratapgarh. The said case was registered at Police Station Kotwali, District Banwara for the offences under Sections 399, 402 IPC and under Section 3 / 25 and 4 / 25 of the Arms Act in which number of accused persons were charge-sheeted that case is pending at Banswara. It is also argued that the complaint filed against the detainee Ayub Khan under Section 110 on 20.10.2015 written statement also taken into consideration in which bonds and surety was taken from the detainee Ayub Khan of Rs.20,000/- to maintain peace, the said period of one year has already expired.

7. The cases mentioned at S.No.13,14 and 15 were not registered in the District Pratapgarh. The last case against the detainee Ayub Khan at Police Station Pratapgarh for the offences under Section 384 IPC on 24.1.2013 in which he has already been acquitted from the charges levelled against him, therefore, there was no material on record to take action against the detainee Ayub Khan under the Act of 2006 and to treat him as "dangerous person".

8. Learned counsel for the petitioner submits that it is a question of liberty of citizen. The authorities cannot be permitted to pass an order in illegal manner and to violate the fundamental right of the detainee Ayub Khan granted under Article 21 of the Constitution of India. It is true that there is provision in the Act of

2006 to detain a person if his criminal activities are going on to destroy the peace of public, but here in this case, from last three years, no case was registered against the detainee Ayub Khan in the jurisdiction of Pratapgarh District. The last case was registered against the detainee Ayub Khan in Pratapgarh on 24.1.2013 and the said case he has already been acquitted by the learned trial court. With regard to case mentioned at S.No.13, 14 and 15 in the order dated 22.8.2016 are concerned, it is submitted that in all these cases trial is going on and no serious allegation has been levelled against the detainee Ayub Khan for committing serious offence, because the FIR was registered alongwith so many other accused persons without any specific allegation against him, therefore, it is argued that material available on record loudly speaks that there is no question to treat the detainee Ayub Khan as "dangerous person", but the learned District Magistrate, Pratapgarh illegally and without application of mind passed the order of detention on 22.8.2016 which is subsequently approved by the State Government and advisory board by non-speaking order. Therefore, the order of detention deserves to be quashed. According to the learned counsel for the petitioner, at the time of passing order of detention, the authorities are required to record satisfaction independently because in case of Anil Nayak Vs. State of Rajasthan (D.B. Habeas Corpus Petition No.13569/2006) it is held that subjective satisfaction of the State Government conferring power upon the District Magistrate is necessary. It is also pointed out that there is no such notification by the State Government to confer the power on the District Magistrate, Pratapgarh to pass detention order, therefore, the detention order passed by the District Magistrate, Pratapgarh (Annex.1) is totally without jurisdiction.

9. Without prejudice to above argument, it is submitted that although in the detention order, number of cases registered against the detainee Ayub Khan were taken in to consideration, but out of 15 cases, last three cases mentioned at S.No.13, 14 and 15 were registered in different district which is Banswara. In the District Pratagparh last case for offence under Section 384 IPC was registered on 24.1.2013 in which after trial, the learned trial court acquitted the detainee Ayub Khan from the charges levelled against him under Section 384 IPC.

10. While inviting attention towards the aforesaid facts, it is prayed that the entire proceedings undertaken by the respondent against the detainee Ayub Khan deserves to be quashed because there is no such material available on record to treat the detainee Ayub Khan as "dangerous person" under the definition of Section 2 of the Act of 2006, in none of the case mentioned in the order of detention, the detainee Ayub Khan was convicted, more so, acquitted in 3-4 cases. It is true that although complaint under Section 110 of the Cr.P.C. was filed on 20.10.2015 in which detainee Ayub Khan was bound and bond and surety of Rs.20,000/- was taken from him to maintain peace for one year but that period have also been expired, in between that period, no case was registered against the detainee Ayub Khan in Pratapgarh District, therefore, the order of detention dated 22.8.2016 passed by the District Magistrate, Pratapgarh, which is subsequently approved by the State Government and confirmed by the advisory board may kindly be quashed.

11. Per contra, learned Addl. Advocate General Sh. SK Vyas argued that detention order was passed by the District Magistrate, Pratapgarh while exercising powers conferred under Section 3(1) of the Act of 2006 because the detainee Ayub Khan is a history-

sheeter of Police Station Pratapgarh and due to his criminal activities, eminent danger, caused to maintain the public order. The people who have been victim of his criminal activities, have from time to time lodged cases against him. The lodging of criminal cases and action taken under preventive law could not yield any result nor could they stopped the criminal activities of the detainee Ayub Khan which were prejudicial to the public order, therefore, while considering the seriousness of the cases of causing physical assaults with deadly weapons, committing house trespass, grabbing lands, administering threatening for ransom, the District Magistrate exercised its power and passed detention order after recording subjective satisfaction. It cannot be said that order of detention is illegal in any manner. More so, it is a case in which to check criminal activities of the detainee Ayub Khan it is felt necessary to take action against him under the Act of 2006 and therefore, no case is made out for interference. Number of cases mentioned in the order of detention passed by the District Magistrate, Pratapgarh dated 22.8.2016 loudly speaks that despite taking action under Section 110, 161 and 151 Cr.P.C. against the detainee Ayub Khan and despite being bound to maintain the good behavior he went on to commit offences which resulted in eminent danger to the public order, therefore, State Government approved the order of detention passed by the District Magistrate after recording objective satisfaction. It is also submitted that in the Section 2(g) of the Act of 2006 the word "habitual" is defined. The word "habitual" with all its grammatical variations, includes acts or omissions committed repeatedly, persistently and frequently having a threat of continuity stringing together similar repetitive acts or omission but shall not include isolated, individual and dissimilar acts or

omissions. It is submitted that the detainee Ayub Khan is "habitual offender" and also "dangerous person" because number of cases were registered against him which is evident from the order of detention.

12. Lastly, it is argued that cases of the detainee Ayub Khan was placed before the advisory board and advisory board after providing an opportunity of hearing to the detainee Ayub Khan confirmed the order of detention vide order dated 20.9.2016. Therefore, writ petition may kindly be dismissed.

13. After hearing the learned counsel for the parties the following facts emerges for consideration to assess the validity of the order of detention.

14. Admittedly, there is list of 15 cases in the order of detention. Out of 15 cases, the case no.1, 8,9, 13,14 and 15 were not registered in Pratapgarh District. In FIR registered against the detainee Ayub Khan on 3.7.2008 under Section 8 / 18 of the NDPS Act, trial is going on from last 9 years. The case no.2 registered on 22.5.2008 under Section 341 and 323 IPC in which was granted probation by the court in Lok Adalat. Out of remaining cases, the detainee Ayub Khan was acquitted in case no.262/2008 registered against him on 5.6.2008 at Police Station Pratapgarh vide judgment dated 7.3.2011 (Annex.31). In case no.71/2010 registered against him on 29.6.2010 under Section 3 / 25, 5 / 29 and 5 / 25 of the Arms Act the detainee Ayub Khan was acquitted vide judgment dated 27.1.2015 (Annex.27) after trial while giving benefit of doubt. In case no.255/2010 registered on 7.7.2010 under Section 394 IPC, the detainee Ayub Khan was acquitted from the charges levelled against him vide judgment dated 27.1.2015 (Annex.28). In case No.368/12 registered under Section 384 IPC, the detainee Ayub Khan was acquitted from the

charge vide judgment dated 22.11.2016. In case no.42/2013 registered against detainee Ayub Khan on 24.1.2013 under Section 384 IPC he was acquitted from the charges levelled against him vide judgment dated 20.5.2016.

15. It is also very important to mention here that out of 15 cases taken into consideration for passing detention order, the case no.1, 8,9,13,14 and 15 were not registered in the District Pratapgarh, admittedly, last case was registered against the detainee Ayub Khan in Pratapgarh on 24.1.2013 under Section 384 Cr.P.C. in which he has already been acquitted from the charges.

16. In view of the above facts, it is apparent that in none of the case, detainee Ayub Khan has been convicted.

17. We have perused the definition of "dangerous person" incorporated under Section 2(c) of the Act of 2006, which reads as under:

"(c) "dangerous person" means a person, who either by himself or as member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 (Central Act No.45 of 1860) or any of the offences punishable under Chapter V of the Arms Act, 1959 (Central Act No.54 of 1959) or any of the offences punishable under first proviso to sub-sec. (1), and sub-sec. (1-A) of Sec. 51 of the Wild Life (Protection) Act, 1972 (Central Act No.53 of 1972) or any offence punishable under sec. 67 of the Information Technology Act, 2000 (Central Act No.21 of 2000).

18. Similarly, we have perused Section 2(g) wherein there is definition of "habitual" is provided, which also reads as under:

"(g) "habitual" with all its grammatical variations, includes acts or omissions committed repeatedly, persistently and frequently having a threat to continuity stringing together similar repetitive acts or omission but shall not include isolated, individual and dissimilar acts or omission;"

19. Upon perusal of both the definitions coupled with the facts of present case and finding of the advisory board, we are of the

opinion that at the time of passing detention order, the authorities were required to consider the fundamental rights granted to the citizen under Articles 19 and 21 of the Constitution of India. It is true that for maintaining law and order situation, the action can be taken under Section 3 of the Act of 2006 but at the same time, the competent authority which is District Magistrate is required to apply its mind towards record and fundamental rights of the citizen, the order cannot be passed in casual manner because it is a question of liberty of person.

20. Upon assessment of list of cases annexed with the reply and cases mentioned in the detention order, it is more than enough to say that District Magistrate has passed the order of detention without proper assessment of the seriousness of the case, so also, completely good bye to the fact that since Jan., 2014 no case was registered against the detenue Ayub Khan in Pratapgarh district and in four cases he was acquitted from the charges levelled against him, therefore, we are of the opinion that finding of the respondent authorities to treat the detenue Ayub Kahn as "dangerous person" is not based upon proper assessment.

21. Learned AAG submits placed before us the order of advisory board whereby the order of District Magistrate was confirmed.

22. The advisory board while considering the reply of the detenue Ayub Khan gave following opinion, which reads as under:

"We have considered oral and written submissions of detenu and gone through the nature of offences as well as relevant record. We find that detenu has involved himself in many cases thus falls in the definition of "dangerous person", as defined under the Act of 2006. For ready reference, definition of "dangerous person" is quoted hereunder:

"dangerous person" means a person, who either by himself or as member or leader of a gang, habitually commits, or a attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 (Central Act No.45 of 1860) or any of the

offences punishable under Chapter V of the Arms Act, 1959 (Central Act No.54 of 1959) or any of the offences punishable under first proviso to sub-sec. (1), and sub-sec. (1-A) of Sec. 51 of the Wild Life (Protection) Act, 1972 (Central Act No.53 of 1972) or any offence punishable under sec. 67 of the Information Technology Act, 2000 (Central Act No.21 of 2000)." From the perusal of definition quoted above, it comes out that if a person either by himself or as member of leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of IPC apart from other offense mentioned in the definition then he is considered to be "dangerous person". The detenu herein has repeatedly caused offences one after another, that too, under the relevant Chapters of IPC . When detenu repeatedly committed offences then he becomes habitual offender also. The definition of "habitual" is given in in Section 2(g) of the Act of 2006, which is also qoted hereunder for ready reference:

"habitual" with all its grammatical variations, includes acts or omissions committed repeatedly, persistently and frequently having a threat to continuity stringing together similar repetitive acts or omission but shall not include isolated, individual and dissimilar acts or omission;"

In the aforesaid background and pursuant to the provisions of Section 3(4) of the Act of 2006, the detune is found to be a "dangerous person" affecting

public order adversely. He is said to be involved in the communal activities also effecting peace in the area and has again come as threat to public order. OPINION OF THE ADVISORY BOARD We find that District Magistrate, Pratapgarh has exercised his powers as per the provisions of the Act of 2006 and the order was approved by the Government under Section 3(3) of the Act of 2006 within time period. The detenu falls within the definition of "dangerous person" and after considering even the definition of "habitual", we find that he has committed offences one after another under the provisions of IPC, NDPS Act and Arms Act . In the background aforesaid, we are of the opinion that there exists material to justify the detention of detenu, accordingly, we confirm the order of detention. The report may accordingly be sent to the Government as per the provisions of the Act of 2006."

23. Upon perusal of order of advisory board, we are of the opinion that it is totally a non-speaking order, none of the ground raised by the detenue Ayub Khan in his representation supported with documents were considered by the advisory board. The advisory board gave opinion that the case of detenue Ayub Khan falls under the definition of "dangerous person", without considering the fact that out of 15 cases which is taken into

consideration by the District Magistrate, Pratapgarh, the last three cases were not registered in District Pratapgarh and all the three cases were registered at Police Station Kotwali, District Banswara and in four cases, he was acquitted from the charges levelled against him much before passing of detention order. Therefore, the opinion of the District Magistrate, Pratapgarh as well as of the State Government to treat the detainee Ayub Khan as "dangerous person" is not based upon objective satisfaction, more so, all the grounds raised by the detainee Ayub Khan in his representation were not considered by the advisory board nor discussed in the order of confirmation.

24. Every citizen of India has a right of liberty, therefore, at the time of deciding the case for detention, it is the duty of the competent authority to consider each and every fact so as to hold the citizen as "dangerous person" because it effects life and liberty of citizen. The material which is placed before us loudly speaks that order of detention passed by the District Magistrate, Pratapgarh which is subsequently approved by the State Government and confirmed by the advisory board is unconstitutional because it is a case of life and liberty of citizen.

25. Consequently, this habeas corpus petition is hereby allowed. The order of detention dated 22.8.2016 (Annex.1) passed by the District Magistrate, Pratapgarh, subsequently approved by the State Government vide order dated 1.9.2016 and confirmed by the advisory board vide order dated 20.9.2016 are hereby quashed and set aside. The detainee Ayub Khan son of petitioner Salim Khan shall be released forthwith, if not required in any other case.