

(2003) 08 AHC CK 0015

In the Allahabad High Court

Case No : Habeas Corpus Petition No's. 50600 and 51251 of 2002

Sandeep Singh (in Jail)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 7
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2003) 3 ACR 2657

Hon'ble Judges : V.S. Bajpai, J;S.K. Agarwal, J

Bench : Division Bench

Advocate : Zafar Abbas and Samit Gopal, for the Appellant; B.N. Singh, S.C., for the Respondent

Judgement

S.K. Agarwal, J.—These two connected petitions were preferred by Sandeep Singh and Ramakant Singh. Both of them were arrayed as accused u/s 147/148/149/307/504/506, I.P.C. and Section 7 of the Criminal Law Amendment Act, P. S. Maharajganj, district Azamgarh, in connection with an incident that had taken place on 13.8.2002 at about 11.30 a.m.

2. Initially, a kabaddi competition was going on between two sections of the village. During the course of kabaddi match, a free fight took place between the villagers supporting the two sections of the players. The parties retreated back to their residences from the play ground after the game being disturbed. Some of them were present at the marhai of Ramjeet Rajbhar alias Jittan including deceased Km. Manisha and the aforesaid Ramjeet. The two Petitioners along with number of others came armed with firearms to this place where Ramjeet was sitting along with others. They challenged them and opened indiscriminate fire upon the persons present with Ramjeet. This caused injuries to Ramjeet Rajbhar, Km. Manisha and some others. Out of them, Ramjeet Rajbhar alias Jittan and Km. Manisha breathed their last later on. A report was lodged. The case on their demise was converted into one u/s 302, I.P.C., apart from the sections referred

to above. The report was lodged by Smt. Kailashi Devi, wife of Ramjeet Rajbhar, on that very day.

3. From a perusal of the grounds of detention, it is apparent that on account of this incident, the people of the village have completely shut themselves into their houses. They were not prepared to speak out or do anything. This averment shows the degree of fear and panic in their minds. The S.I., K. P. Singh of P. S. Maharajganj, gave a R. T. set message to his senior officers in the district. One and half section of the P.A.C. was posted in the village to maintain peace and harmony. This fact is verified by the G.D. Entry No. 28, dated 13.8.2002 made at 6.45 p.m. at the concerned police station. The present order of detention came into existence as a consequence of the said incident of violence and the panic created by the incident in the minds of the residents of the concerned village. It was alleged in the grounds of detention that the public order in the village was completely disrupted by the act of the Petitioners and their cohorts.

4. The basic contention raised by learned Counsel for the Petitioners in these petitions is that the detention orders were passed without any application of mind and mechanically. The other contention is that the incident gave rise to purely a law and order problem and did not cause any public order disruption. There is no averment in the grounds of the detention that disruption to the public order lasted for long. Mere posting of P.A.C. in the village does not in itself provide any clue to the degree of disturbance to public order. The allegations that on being released on bail, they are likely to repeat the offence or indulge in similar act is not based upon any reasonable evidence. Therefore, the order of detention is bad in law.

5. We have given our anxious consideration to the contentions raised by learned Counsel for the Petitioners. After perusing the petitions, counter-affidavits and rejoinder-affidavits filed by the Joint Secretary, Government of India, the Joint Secretary, State of U. P., the Superintendent of District Jail, Azamgarh and the District Magistrate, in support of the detention order and the rejoinder-affidavits so filed in response to these counter-affidavits by the Petitioners, we find some force in these contentions.

6. On a careful scrutiny of the grounds of detention, we find that the occurrence has given rise only to a law and order problem and no public order disruption was caused by it. The allegations made in this regard are not based upon any unassailable evidence. No detention can be made on mere irrational apprehension of any such situation.

7. The occurrence was a sequel to the quarrel that took place during the game of kabaddi between the supporters of the two sides in the village. There is no allegation in the grounds of detention that the incident occurred on account of any caste division or bias in the village. It had occurred immediately after the withdrawal of the supporters who indulged into quarrelling during the course of kabaddi match. It was, therefore, a sequel to that incident. What happened in

that incident was not revealed. Why the disruption occurred in that game is also a mystery. No lapse of time between the two incidents further lends assurance to our opinion. Complete absence of any averment regarding any caste or community division behind this incident having taken place soon after the earlier occurrence of disruption in the kabaddi match, in our opinion, takes it out of the purview of an act capable to cause any disruption to the public order. Apart from this, the bail application was only moved before the Chief Judicial Magistrate, who was not competent to grant bail to these Petitioners or any other accused in an offence u/s 307 or 302, I.P.C. legally. It was an offence u/s 302/307, I.P.C. In the circumstances, there was no apprehension at all of the release of these persons on bail at that stage. The apprehension to the contrary expressed in the grounds of detention, therefore, does not stand strict scrutiny. Till that time, no bail application before the Sessions Judge was moved. At least, there is no such allegation. There was no possibility of their release on bail until then. From the above discussions, it appears that the District Magistrate failed to apply himself to the facts of the case properly, brought before him by the sponsoring authority, against these Petitioners.

8. Every criminal act or commission of a heinous offence ipso facto constitutes only a law and order disturbance. The distance between law and order and public order is undoubtedly very marginal. Howsoever small this margin may be, it has to be discerned and located properly. Not only this, it has to be placed in a manner that this Court may also assess it. If the detaining authority fails to dispense this obligation, his failure would certainly cause miscarriage of justice. It is common knowledge that it involves curtailment of a citizen's liberty without a trial for a period of 12 months in the least.

9. No submission was made regarding any delay in the disposal of the representation at the end of the Advisory Board, State Government or Union of India and in confirming the detention order.

10. In view of the above said discussions, we are inclined to allow these petitions. Both the petitions are, therefore, allowed. The Petitioners are in jail in pursuance to the above said detention order dated 12.9.2002. Accordingly, the impugned detention order is hereby quashed. The Petitioners shall be released forthwith, if they are not required under any other provision of laws of the land.