
(2015) 09 AHC CK 0183

In the Allahabad High Court

Case No : Criminal Misc. Habeas Corpus Writ Petition No. 11907 of 2014

Sanjay Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

National Security Act, 1980 — Section 3(2), 8
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307
Prevention of Damage to Public Property Act, 1984 — Section 3, 4

Citation : (2015) 91 ALLCC 574

Hon'ble Judges : B.K. Narayana and Vijay Lakshmi, JJ.

Bench : Division Bench

Advocate : Daya Shanker Mishra, Chandrakesh Mishra and Balram Mishra, for the Appellant; Nitin Gupta, for the Respondent

Final Decision : Allowed

Judgement

B.K. Narayana, J.—Heard Sri Daya Shanker Mishra, learned Counsel for the petitioner, Sri Nitin Gupta, learned Counsel for the Union of India and Sri. J.K. Upadhyay, learned AGA for the State. This writ petition has been filed by the petitioner Sanjay Singh with a prayer to issue a writ in the nature of habeas corpus commanding the respondents to produce the corpus of the petitioner before this Court and to set him at liberty and also to quash the order of detention dated 18.10.2013, Annexure-5 to the writ petition passed by respondent No. 3/District Magistrate, Sant Kabir Nagar.

2. The impugned order of detention passed by respondent No. 3 in the exercise of his power conferred on him under section 3(2) of the National Security Act (hereinafter referred to as "NSA") and the grounds of detention under section 8 of the NSA were served on the petitioner while he was confined to District Jail, Basti on account of his being accused in case crime No. 557 of 2013, under sections 143 , 307 , 353 , 504 , 506 , IPC and 7 CrI. Law Amendment Act, P.S. Dhanghata, District Sant Kabir Nagar, case crime No. 558 of 2013, under

sections 143 , 307 , 353 , 504 , 506 , IPC and 7 CrI. Law Amendment Act, P.S. Dhanghata, District Sant Kabir Nagar and case crime No. 559 of 2013, under sections 147 , 148 , 149 , 307 , 332 , 353 , 504 , 506 , 427 , IPC, 7 CrI. Law Amendment Act and section 3 /4 Prevention of Damages to Public Property Act, P.S. Dhanghata, District Sant Kabir Nagar. Learned Counsel for the petitioner submitted that petitioner had sent his representation through Superintendent, District Jail, Basti on 27.10.2013 to the District Magistrate, Sant Kabir Nagar/ respondent No. 3, State Government as well as to the Central Government and U.P. Advisory Board, copy whereof has been filed as Annexure-7 to the writ petition. The representation which was submitted by the petitioner against the detention order was received by the District Magistrate, Sant Kabir Nagar/ respondent No. 3 on 28.10.2013 and rejected by him by his order dated 30.10.2013, copy whereof has been filed as Annexure-8 to the writ petition. The impugned detention order was approved by the State Government vide Radiogram No. 84/2/41/13-CX-5-Lucknow dated 28.10.2013. In response to the representation submitted by the petitioner on 27.10.2013 before the State of U.P., he was called upon to appear before the Advisory Board, Lucknow on 6.11.2013. The petitioner appeared before the Advisory Board on the said date. The detention order was approved by the U.P. State Advisory Board on 25.11.2013. The Central Government also approved the impugned detention order on 27.11.2013 after rejecting the petitioner's representation, information whereof was received by him on 18.10.2013. A perusal of the detention order as well as the grounds of detention (Annexure Nos. 5 & 6) supplied to the petitioner reflect that the impugned detention order was passed against the petitioner by the District Magistrate, Sant Kabir Nagar/respondent No. 3 on account of his involvement in three incidents which had taken place at 3.00 p.m. and 9.00 p.m. on 31.7.2013 and at 13.30 hours on 1.8.2013 at Madraha Bah-radadi dam near village Bhikharipur and Turkwalia with regard to which three different FIRs" were lodged, two by Umesh Prasad Yadav, Executive Engineer, Drainage Division-II, Sant Kabir Nagar which were registered as case crime No. 557 of 2013, under sections 143 , 307 , 353 , 504 , 506 , IPC and 7 CrI. Law Amendment Act and case crime No. 558 of 2013, under sections 143 , 307 , 353 , 504 , 506 , IPC and 7 CrI. Law Amendment Act against the petitioner and large number of unknown persons. The third FIR which was lodged by S.O. Sri Shamsheer Bahadur Singh, P.S. Dhanghata, District Sant Kabir Nagar, was registered as case crime No. 559 of 2013, under Sections 147 , 148 , 149 , 307 , 332 , 353 , 504 , 506 , 427 IPC, 7 CrI. Law Amendment Act and section 3 /4 Prevention of Damages to Public Property Act. According to the allegations made in the first FIR, which was registered as case crime No. 557 of 2013, while the informant along with the employees of the Drainage Department and labourers was desperately trying to plug the breach which had developed in the Madraha Bahraddadi Dam near villages Bhikharipur and Turkwalia, on account of unprecedented floods, the petitioner along with 20-25 persons who were armed with lathi and danda reached the place of incident on 31.7.2013 at about 3.00 p.m. and caught hold of the informant's hand and threatened to kill him and throw his dead body into

the river on account of his having denied the petitioner contract for supplying bricks, brick bats and "Jhawan" to be used in plugging the dam on the ground of that the petitioner was not registered although he had granted contracts to all other contractors. As a result of the act of the petitioner an atmosphere of terror was created, the employees and the labourers had got immensely scared and had started running away. The petitioner and his associates pushed the informant and other employees and started chasing and threatening them, as a result, the work of plugging the breach in the dam was seriously hampered.

3. The allegations made in the second FIR, which was also lodged by Umesh Prasad Yadav, Executive Engineer, Drainage Division-II, Sant Kabir Nagar on the basis of which case crime No. 558 of 2013 was registered against the petitioner are to the effect that when the petitioner came to know about the lodging of the FIR against him by the informant with regard to the incident which had taken place on 31.7.2013 at about 3.00 p.m., he along with 20-25 persons armed with lathi & danda again arrived at the site of the dam and started abusing and threatening the informant, the employees and labourers present there and caught hold of the informants collar and attempted to push him into the river with the intention of committing his murder, however, on the cries for help raised by the informant and employees, labourers, villagers and colleagues of the informant and the members of the police force which had been posted in the nearby villages for maintaining law and order reached the place of occurrence and tried to apprehend the petitioner and his companions, who taking advantage of the cover of darkness and the presence of huge crowd at the place of incident managed to escape. The aforesaid act of the petitioner and his companions had caused a stampede among the employees, labourers and the members of the public who were present at the place of occurrence and an atmosphere of terror prevailed. The work of plugging the breach in the dam was badly affected and as a result of setback suffered in the relief work, another 100 mtr. breach had developed in the dam which threatened to inundate the surrounding villages by the swelling Ghaghara River.

4. As per the allegations made in the third FIR on the basis of which case crime No. 559 of 2013 was registered, the petitioner along with 250 persons including Indal @ Ugrasen, Jairam, r/o. Bajraha, Sanjay Singh (petitioner), Raju, Hukum Ali, Sadanand Yadav, Munni Lal Kanaujia, Barsati, Shravan, Bhushan armed with lathi, danda and unlicensed arms reached the site of the dam and started abusing Sri Umesh Prasad Yadav, Executive Engineer, Drainage Division, Sant Kabir Nagar and blaming him for the breach caused in the dam because of his having used bricks and brick pieces in filling the breach instead of stones, procured by him from other contractors and thereafter threatened the officers, employees and labourers, present there with dire consequences and asked them to go away. In the meantime D.M., S.P., A.D.M., A.S.P. and CO. Mehdawal also arrived at the place of incident in their respective vehicles and tried to persuade the petitioner and his companions to stop their activities but neither the petitioner nor his accomplices were ready to understand anything and started

misbehaving with the higher officers and labourers present there and assaulted them with bricks, stones, lathi and danda. In the incident government vehicles of D.M., S.P., A.D.M. and CO. Mehdawal and Dhanghata were damaged. In the meantime on the information given by someone about the activities of the petitioner and his accomplices to Sri Shamsheer Bahadur Singh, S.H.O., Dhanghata, he also reached the place of occurrence along with his force whereupon, the petitioner and his accomplices started firing at them but somehow they managed to save themselves. In order to control the violent activities of the petitioner and in self defence, the police on the directions of the D.M. and S.P. had to fire rubber bullets at them and also in the air. As a result of the activities of the petitioner and his accomplices the relief work on the spot was badly affected causing another breach of 100 mtr. in the dam which threatened to deluge the nearby villages and at the aforesaid prospect, the villagers became scared and terrorized and started fleeing from their houses in order to save their lives and properties. Public order was totally disturbed. It was only after the petitioner and his accomplices had left the place of incident and the situation came under control it was discovered that several police constables who were deployed there for maintaining law and order had received injuries caused by lathi and danda and to maintain law and order additional police force had to be requisitioned and it was only after considerable persuasion and coaxing that the employees and the labourers resumed the work of plugging the dam.

5. The detaining authority also took note of the fact that the activities of the petitioner and his companions had affected the relief work to such an extent that two additional breaches of 100 mtr. each were caused by the Ghaghara River in the dam threatening to inundate the nearby villagers which had created an atmosphere of fear and terror forcing people to flee from their houses along with their belongings and family members. In order to prevent the large scale exodus from the nearby villages" additional police forces had to be deployed for restoring confidence of the people. In order to keep the situation under control Officer-In-charge, P.S. Dhanghata had to personally patrol the place of occurrence and the nearby villages along with additional police force which was requisitioned for maintaining law and order.

6. During the investigation, the statements of Umesh Prasad Yadav, S.D.O. Sri Muni Shanker Mishra, Sri Amresh Kumar Singh, Bhupendra Mishra, Sri Anirudh Rai, Sri Bhalchandra, Janardan Yadav, S.O. Shamsheer Bahadur Singh, S.O. Anup Kumar Shukla, S.O. Ajit Kumar Singh, S.I. Sri Virendra Singh, Sri Ram Pratap Yadav, Sri Deen Dayal Gaur, Sri Ravi Shanker, Sri Subedar Yadav, Constable 272 Radheysham Singh, Sri Ramchandra driver and Sri Suresh Kumar Chaubey were recorded who fully supported the prosecution case. The grounds of detention further disclose that the daring acts committed by the petitioner and his companions on 31.7.2013 and on 1.8.2013 had created an atmosphere of fear and terror in Ashrafpur, Turkwalia and other nearby villages on account of which the maintenance of public order was badly affected and although the petitioner and his companions were in jail they were sending threatening messages

through jail that in case anybody dared to speak anything against them, he would be murdered as soon as they were released from jail, Constable Rajendra Prasad and Constable Durgesh Prasad Yadav who were on duty for maintaining law and order in the area on their return got a beat information recorded in the register maintained at P.S. Dhanghata that despite the petitioner being in jail, his terror and fear was so much that no-one was willing to lodge any complaint against him and his associates or to give evidence against them and there was every likelihood of their committing serious offences after coming out of jail.

7. The aforesaid beat information on being inquired by officer in charge Inspector P.S. Dhanghata was found to be true and accordingly incharge Inspector, P.S. Dhanghata posted additional police force in the affected places to ensure that the law and order situation was not disturbed.

8. The grounds of detention further disclose that in order to maintain law and order situation which was totally disturbed as a result of the aforementioned criminal activities of the petitioner and his other companions, additional police force and Provincial Armed Constabulary had to be deployed in the area for maintaining law and order. On the basis of the aforesaid facts the detaining authority was satisfied that the petitioner was a dare devil criminal who was involved in criminal activities which were prejudicial to the maintenance of public order and as a result of the criminal activities of the petitioner, maintenance of public order was prejudicially affected and a feeling of fear and terror had engulfed the common man and unless the petitioner was detained, he would continue to indulge in his criminal activities which would adversely affect the maintenance of public order and terrorize the general public. The grounds of detention further reflect that the Detaining Authority also noted that the petitioner who was confined in District Jail, Basti on account of his being accused in case crime No. 557, 558 and 559 of 2013, P.S. Dhanghata, District Sant Kabir Nagar was making every possible effort to obtain bail and after being released on bail he would again indulge in activities which would affect the maintenance of public order and hence, the detaining authority respondent No. 3 was satisfied that there was possibility of the petitioner indulging in activities prejudicial to maintenance of law and order and in order to stop the petitioner from indulging in any such activities, it was necessary to pass an order of preventive detention against him.

9. Learned Counsel for the petitioner submitted that since the impugned order of preventive detention was passed by respondent No. 3 against the petitioner while he was in prison as a person under judicial custody, it was incumbent upon the detaining authority respondent No. 3 while passing the order of detention to record therein that there was strong possibility of the detenu being released on bail from the said judicial custody, the detaining authority respondent No. 3 having failed to record any such satisfaction in the impugned order, the same stands vitiated and liable to be set aside.

10. He next submitted that a valid detention order should reflect that the

authority was aware that the detenu was already in prison under judicial custody and there was reliable material before him on the basis of which he had reason to believe that there was every possibility of the detenu being released on bail and in case of such release the detenu would indulge in prejudicial activities and in order to prevent him from indulging in any activities affecting the public order or the tranquility of the community, it was imperative to pass an order for his preventive detention and unless the aforesaid satisfaction is recorded, the application of mind by the detaining authority cannot be proved and testing the impugned order on the aforesaid principle, the impugned order appears to suffer from vice of complete non application of mind.

11. Per contra learned AGA and Sri Nitin Gupta, learned Counsel for the Union of India made their submissions in support of the impugned order.

12. We have very carefully perused the impugned order as well as other material brought on record.

13. A careful reading of the grounds of detention supplied to the petitioner under section 8 of the Act along with the detention order (Annexure-5) reveal that the same merely contains a recital that the petitioner who was in District Jail, Basti on account of his being involved in case crime No. 557, 558 and 559 of 2013 was making efforts to obtain bail. The impugned order does not contain any further recital to the effect that the petitioner had moved a bail application and there was every likelihood of his being released on bail and in the absence of any such satisfaction being recorded in the impugned order, recording subsequently therein that upon being released on bail, he may again indulge in criminal activities, which may be prejudicial to the public order, will not validate the impugned order.

14. A Division Bench of this Court in Cheeku Badla Vs. Superintendent, District Jail and Others, , while examining the legal impact of the failure of the detaining authority to record in the order of preventive detention passed with regard to a detenu already in prison as a person under judicial custody "that there was possibility of the detenu being released on bail, from said judicial custody", has held hereunder:

"Considering the submission made by the learned Counsel for the petitioner and the learned A.G.A. for the State of U.P. and from the perusal of the record it appears that in the grounds of detention, it is mentioned that the petitioner is making efforts/trying to get the bail but for recording such satisfaction there was no material before the detaining authority, even the sponsored authority has not committed any effort to show that the petitioner was trying or making efforts for releasing on bail, merely on the ground that the detenu was trying to release or trying for releasing on bail, is not sufficient to satisfy the detaining authority to answer that there was real possibility of releasing the detenu on bail and he shall involve in prejudicial activities after releasing on bail, this ground has been taken on the basis of information given by the Pairokar of P.S. Lalkurti to verify this

information detaining authority did not summon the record by which the bail application of the petitioner was rejected by the Additional District & Sessions Judge, Court No. 18 Meerut and the application moved before the High Court, shows that the such satisfaction recorded by the detaining authority is not subjective but it is based on hearsay even on the basis of information given by the Pairokar of P.S. Lalkurti detaining authority has not recorded his satisfaction that there was real possibility of releasing of the petitioner on bail. The Supreme Court of India observed in the case of Haradhan Saha Vs. The State of West Bengal and Others, , in its paragraph No. 35 that "where the concerned person is actually in jail custody at the time when the order of detention is passed against him, and is not likely to be released for a fair long time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in the activities which would jeopardize the security of the State or the public order." The Supreme Court have laid down principles as to when the such detention order can be passed. In this regard, the leading case of Kamarunnissa and Others Vs. Union of India and another, , which has been followed in the case of T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, , T.V. Sravanan alias SAR Prasana Venkatachaariar Chaturvedi v. State through Secretary and another JT 2003 (Suppl 2) SC 503, Union of India v. Paul Manickam and another. It has been held by the Supreme Court of India in paragraph 13 of Kamarunnisa case;--

"From the catena of decisions referred to above, it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in his behalf, such an order can not be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court."

The above mentioned conditions should be satisfied for the above valid detention or against the person in custody, one of the condition is that there should be real possibility of the person being released on bail."

15. Learned AGA and Sri Nitin Gupta, learned Counsel for the Union of India despite making elaborate submissions failed to demonstrate that the detaining authority had recorded his satisfaction in the impugned order that the petitioner who was in prison had moved bail applications for his release and there was strong possibility of his being released on bail.

16. For the aforesaid reasons and keeping in view the settled law on the issue, we are of the view that the impugned order cannot be sustained and is liable to

be quashed.

17. The writ petition is allowed. The impugned order dated 18.10.2013 passed by the respondent No. 3 Annexure-5 to the writ petition is hereby quashed.

18. Since the petitioner has already been reused after undergoing the total period of detention there is no necessity to issue a direction to respondents to release the petitioner. There shall however be no order as to costs.