
(2006) 08 AHC CK 0215

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 65534 of 2005

Sanoo urf Ulanga

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Explosives Act, 1884 — Section 3, 5
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 307, 386, 506

Citation : (2007) 1 ACR 183

Hon'ble Judges : M.C. Jain, J;K.K. Misra, J

Bench : Division Bench

Advocate : Sufia Saba, for the Appellant; Arvind Tripathi, A.G.A., for the Respondent

Judgement

K.K. Misra, J.—Through this petition, the Petitioner has challenged the detention order dated 3.8.2005 passed by District Magistrate, Kanpur Nagar, Respondent No. 2, u/s 3(2) of the National Security Act.

2. The grounds of detention are contained in Annexure-1 to the writ petition. It is stated therein that on 21.12.2004 at about 3.30 p.m. the Petitioner alongwith his other associates took out Rs. 20,000 from the pocket of Nazim son of Barkat Ullah at the leather shop at Iftikharabad within P. S. Anwarganj. It was objected to by Nazim, Shariet Ullah and Altab Farman. The Petitioner attacked with bombs and in the incident Shariet Ullah sustained injuries in both his legs. On getting the information, Barkat Ullah-father of Nazim reached the spot with his licensed gun and opened fire in the air in defence of his son and brother. Then the Petitioner alongwith his associates ran away. An F.I.R. was registered as case Crime No. 182/04 under Sections 386, 307 and 506, I.P.C. and 3/5 of Explosives Act. The copy of the F.I.R. is Annexure-5 to the writ petition. It has also come on record that because of the said incident, shops in the locality were closed. The incident had taken place in broad day-light. There was hue and cry and atmosphere was exceedingly charged which resulted in breach of public order.

3. Counter and rejoinder-affidavits have been exchanged.
4. We have heard Miss. Sufia Saba, learned Counsel for the Petitioner and Sri Arvind Tripathi, learned A.G.A. No-body has turned up for the Union of India.
5. The main contention of the learned Counsel for the Petitioner is that the incident relied upon for passing the impugned detention order relates only to the problem of law and order and it had nothing to do with the maintenance of public order.
6. On the other hand, Sri Arvind Tripathi, learned A.G.A. strongly contended that due to the incident, shops in the area were closed and the force had to be deployed in the locality for maintenance of public order. In short, the submission of the learned A.G.A. is that the incident in question gave rise to breach of public order and not of law and order. A perusal of the detention order as well as the F.I.R. shows that shops were closed and public started running helter skelter in panic.
7. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent affect the peace prevailing in the locality and it may also affect law and order but the same need not always affect maintenance of public order. The question whether a person has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society. In our opinion, the incident in question definitely breached public order.
8. The second submission of the learned Counsel for the Petitioner is that the Petitioner has been falsely implicated. This requires factual consideration and the merit of the case is not to be decided in habeas corpus petition.
9. The third submission of the learned Counsel for the Petitioner is that there was inordinate delay in passing impugned order as the incident relates to 21.12.2004 whereas the N.S.A. was imposed on 3.8.2005. This fact has been controverted by the learned A.G.A. He has drawn our attention to the CrI. Misc. Bail Application No. 13297 of 2005 filed by the Petitioner on 18.7.2005 before this Court which was pending when the detention order was passed. This fact goes to show that the Petitioner was trying to be released on bail and the detaining authority rightly gathered, that if not detained, he would be released on bail. So, this goes to show that there was no delay in passing the detention order.
10. In the above circumstances, we find that the incident on the basis of which the present detention order was passed related to question of public order. No argument of the learned Counsel for the Petitioner holds good. Consequently, the detention order passed by the District Magistrate, Kanpur Nagar does not suffer from any illegality.
11. In the result, the writ petition is dismissed.