
(2008) 02 AHC CK 0006

In the Allahabad High Court

Case No : Criminal Miscellaneous H.C. Petition No. 54991 of 2007

Sazid

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2008) 26 CriminalCC 120

Hon'ble Judges : Yatindra Singh, J; Ran Vijai Singh, J

Bench : Division Bench

Advocate : Anurag Pathak, for the Appellant; Mohd. Salim and AGA, for the Respondent

Final Decision : Allowed

Judgement

Yatindra Singh & Ran Vijai Singh, JJ.—An incident took place on 17.07.2007 by which the petitioner is alleged to have thrown the acid on the victim. An FIR was also lodged which was registered as case crime No.363 of 2007. In pursuance of this criminal case the petitioner was arrested on 23.07.2007. Thereafter the detention order was passed on 31.07.2007 u/s 3(2) of National Security Act (the Act). Hence the present writ petition.

2. We have heard Shri Anurag Pathak, learned Counsel for the petitioner, learned AGA for the State and Shri Mohd.Salim for Union of India.

3. The Counsel for the petitioner submitted that the detention order is illegal as no satisfaction of the detaining authority has been recorded that the petitioner is likely to be released on bail.

4. There is no dispute on the question whether detention order can be passed if a person is in jail or not. The Courts have laid down the principle when such detention order can be passed. The leading case is in Kamarunnissa and Others Vs. Union of India and another, . This has been followed in 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. The Supreme Court in paragraph 13 of the Kamarunniassa case has held:

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 a 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 this behalf, such an order cannot 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 before a higher Court.

5. In the detention order satisfaction of the District Magistrate is not recorded that the petitioner is likely to be released on bail. It is necessary before detention order can be passed.

6. In view of the above, the continued detention of the petitioner is illegal. The petitioner is set at liberty; he may be released unless he is wanted in some other case. With these observations, the writ petition is allowed.