

(2002) 12 AHC CK 0019

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 14812 of 2002

Shiv Prasad Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-12-2002

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2003) CriLJ 1107 : (2003) 1 RCR(Criminal) 649

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

Bench : Division Bench

Advocate : H.N. Singh and B. Narain Singh, for the Appellant; Ajit Kumar Singh (Addl. S.C.) and A.G.A, for the Respondent

Final Decision : Allowed

Judgement

M. C. Jain, J.—The petitioner has challenged the detention order dated 14-1-2002 passed against him by respondent No. 3 District Magistrate, Mau u/s 3(2) of the National Security Act, 1980 and his continued detention thereunder.

2. The grounds of detention are contained in Annexure-3 to the writ petition. The first ground is that on 13-4-1995 at about 7.45 p.m. he with his associate Ranvir Singh alias Guddu had fired on one Kamla Kant, though he had escaped unhurt. Crime No. 34 of 1995 u/s 307 I.P.C. was registered at Police, Station Ranipur, District Mau in which chargesheet had been submitted. He had secured bail in that case. That incident had disturbed the public order. People had to run helter-skelter and an atmosphere of terror and insecurity was created in the area.

3. The second ground is that on 5-1-2002 at about 3 p.m. in Rainipur he assaulted his tenant Muvattar Raza at his clinic under his tenancy, though in respect of the tenancy a case was also pending. He was first attacked with rods and thereafter he was shot in his abdomen. At that time, the petitioner was accompanied by his associate Ranvir Singh alias Guddu. While fleeing, each of them fired two shots for scaring away all those nearby, creating an atmosphere

of terror. People started shutting down their shops and ran hither and thither to save themselves. The public order was greatly disturbed. The victim being of minority community, communal tension erupted. Crime No. 4 of 2002 u/s 307 I.P.C. and crimes No. 5 and 6 of 2002 u/s 25 Arms Act came to be registered with regard to this incident. He and his associate were allegedly arrested after being chased for a short distance and illicit weapons were recovered.

4. Counter and rejoinder affidavits have been exchanged. We have heard Sri H. N. Singh, learned counsel for the petitioner, learned counsel appearing for Union of India-respondent No. 1 and learned A.G.A. for respondents No. 2 to 4.

5. It is urged by the learned counsel for the petitioner that the two grounds on which the detention order has been passed could, at the best, relate to law and order but not to public order. It has also been argued that the first incident of 1995 was too stale to provide a ground for passing the impugned detention order on 14-1-2002. On the other hand, learned A.G.A. has made reference to Section 5A of the National Security Act that the grounds of detention are severable. His submission is that the detention order can even be passed on the basis of a single incident. He has also referred to the case of Kamal Pramanik Vs. The State of West Bengal, to strengthen his argument that gap between the two incidents providing the grounds for passing the impugned detention order is not material. In that case, the detention order had been passed after about a year after happening of the alleged incidents. The detention order was necessitated because criminal cases could not proceed and the detinue was discharged, he being a dangerous person against whom the witnesses were afraid to depose.

6. The grounds of detention, indeed, are severable as provided by Section 5A of National Security Act and it is the established position that a single incident may form the foundation for passing the detention order, provided it is relatable to public order. The question whether a person has only committed 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. An act by itself is not determinant of its own gravity. In Its quality, it may not differ from another but in its potentiality it may be very different. Similar acts in different contexts affect differently law and order on the one hand and the public order on the other. It is always a question of degree of the harm and its effect upon the community. An individual act can be a ground of detention only if it leads to disturbance of the current of life of the community so as to amount a disturbance of the public order and not if it affects merely an, individual, leaving the even tempo of the life of the society undisturbed.

7. In the present case, there is no material to indicate that by the first incident of 1995, the public order and even tempo of the society was disturbed. So is the position with the second incident of 2002 also. Both the incidents took place because of personal enmity. In the first instance, the petitioner had allegedly opened fire on Kamla Kant, Manager of an Inter College, because he wanted to grab some land of the college. The second incident was also related to personal

grudge that the victim was the tenant of the petitioner whom he wanted to evict. The mere fact that the victim belonged to minority community cannot be taken to mean that the incident kicked up communal tension.

8. Our conclusion is that the incidents whereupon the impugned detention order is based are not relatable to disturbance of public order. The detention of the petitioner under National Security Act cannot be justified. As such we allow the writ petition and quash the detention order in question.

9. It is ordered that the detenue shall be released forthwith if not wanted in any other connection.