
(2013) 02 AHC CK 0047

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 52949 of 2012

Sonu Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 307, 504, 506

Citation : (2014) 1 ACR 43 : (2013) 4 ALJ 96 : (2013) 82 ALLCC 155

Hon'ble Judges : Bachchoo Lal, J; Amar Saran, J

Bench : Division Bench

Advocate : Sanjay Kumar Tripathi and M.C. Mishra, for the Appellant; C.P. Mishra, A.S.G.I.A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and Shri Vimlendu Tripathi, learned Additional Government Advocate. This habeas corpus petition has been filed for challenging an order of detention dated 9.8.2012 passed by the District Magistrate, Gorakhpur in exercise of powers u/s 3(2) of the National Security Act, 1980 (hereinafter referred as "the NSA").

2. The grounds of detention was that on 7.5.2012 at 1.25 p.m., the petitioner Sonu Tiwari along with his five companions came riding on three motorcycles near the Students Union Crossing, they chased a Tavera car and near the Civil Court, they fired at Ranjit alias Pappu Nishad, as a result of which pane of the side window of the vehicle was broken. The car driver Suresh Paswan received injuries on his leg causing him to be badly injured. One bystander Ravi Paswan also received firearm injury due to the indiscriminate firing. Pappu jumped outside the vehicle and entered into the Vishal Mega Mart where glass panes were also damaged by the firing. By the action of the petitioner and his associates the shopkeepers began to run helter skelter after closing their shops and public order was disturbed. No one was willing to take the injured to the

hospital and only on the intervention of the police, the injured was taken to the Medical College, Gorakhpur. The report of this incident was lodged at case crime No. 311 of 2012, under sections 307, 504, 506, IPC and Section 7 Criminal Law Amendment Act, at PS Cantt. district Gorakhpur.

3. Four submissions were made by the learned counsel for the petitioner:

(1) As the incident in question had taken place on 7.5.2012, there was no live-link between the prejudicial act of the petitioner and the rationale of clamping of the detention order on the petitioner had snapped on the date when the detention order had been issued as there was no need for detaining the petitioner under NSA almost three months after the date of occurrence.

(2) The bail application of the petitioner had already been rejected by the Sessions Court on 9.8.2012, but this fact was not brought to the notice of the detaining authority when he passed the said order on the assumption that the Detenue was likely to be released on bail, hence it was necessary to pass the detention order.

(3) The detention order passed by the District Magistrate was a rubber stamp of the points made in the proposal of the S.S.P., and it showed no application of mind.

(4) There was delay in consideration of the representation of the petitioner dated 21.8.2012 by the Central Government and the District Magistrate.

4. So far as the point relating to the live-link being snapped is concerned, learned counsel for the petitioner has drawn our attention to the Division Bench decision of this Court in the case of Wasim v. State of U.P. and others, 2004 (5) ACC 931, in that case an unexplained delay of three and a half months in issuing the impugned detention order was held to be vitiated in law because it was held by the Division Bench that the live-link between the prejudicial activity of the Detenue and the rationale of clamping the detention order on him had been snapped.

5. To this point, learned Additional Government Advocate replied that there can be no mechanical test for determining whether there was a delay in issuance of the detention order only because some period was allowed to lapse before the order was issued. The totality of the circumstances of the case have to be considered both with regard to the gravity of the offence and also with regard to the other events and developments that have taken place on the facts of a particular case.

6. The present case is one which clearly affected public order as the petitioner along with his accomplices had resorted to firing on the main street on a Tavera Car between the Student Union crossing and the Vishal Mega Mart in the town of Gorakhpur in which three persons had received firearm injuries. The window of the car and the glass panes of the Meghamart had been damaged and it was a grave incident where the entire public of the area had been terrorized and no one

could muster courage to come forward to give evidence and all shops had been closed.

7. Learned AGA has placed reliance on the decision of the Apex Court in *Suraj Pal Sahu Vs. State of Maharashtra and Others*, , wherein a three Judge Bench has observed in paragraph 41 that although there needs to be proximity in the issuance of the detention order and the date when the incident takes place, but no mechanical test of counting months or days after the incident can be laid down as the decision to issue the detention order is dependent on the nature of the acts alleged, the gravity of the situation and the reasons for the delay.

8. In the case of *Wasim v. State of U.P. and others (supra)* the only allegations were that the petitioner therein along with his associates were slaughtering cows in Sarai Bharatrai, who ran away when the police arrived and some quantity of beef was recovered from the spot. They are also said to have fired on the police, but no one had sustained any injury.

9. In the instant case, apart from the gravity of the incident, we find that after the incident dated 7.5.2012, the petitioner absconded and he surrendered before the Court below only on 23.5.2012 and on 17.7.2012 the bail application was moved on behalf of the petitioner before the Sessions Judge and when the detaining authority became apprehensive that the petitioner would be granted bail as a bail application had been moved before the Sessions Judge then a decision was taken to issue the detention order on 9.8.2012. In the circumstances, it cannot be said that there was an undue delay in issuing the detention order snapping the live-link between the prejudicial activity of the Detenu and the need to put a check on the same. We, therefore, do not find much substance in this contention of the learned counsel for the petitioner.

10. So far as the second point of the petitioner that as the bail application of the petitioner had already been rejected on 09.08.2012 and this fact was not noticed vitiates the detention order, which had been issued on the same date, wherein it was mentioned that the Detenu is likely to be soon released on bail. Learned Additional Government Advocate submitted that when the proposing police authority makes a proposal for the detaining authority that it is important to preventively detain a person because his being at large may affect the public order and the even tempo of life, then it is not expected that minute to minute communication be made by the proposing authority on any developments that may take place on the matter till the order of detention is signed.

11. Learned counsel for the petitioner has placed reliance on the decision of Hon"ble Apex Court in the case of *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others*, , wherein it was observed that non-placing of the bail order whereunder the Detenu was released on bail, before the detaining authority vitiated the subjective satisfaction of the detaining authority. It may be noted that the said authority was one where the Detenu had been released on bail much earlier on 14.8.2010, but the detention order was passed on

10.1.2011 much after the release of the Detenu on bail. This fact was not brought to the notice of the detaining authority when he passed the detention order. Hence the detention order would be said to be vitiated for non-application of mind because the fact that a person had already been granted bail and he may or may not have abused bail in any manner might have affected the subjective satisfaction of the detaining authority. On this ground the detention order had been rendered invalid for vitiating the subjective satisfaction of the detaining authority. Learned counsel for the petitioner also referred to the decision of the Apex Court in the case of Ramesh Yadav Vs. District Magistrate, Etah and Others, , wherein it was mentioned that the bail of the accused could have been opposed and simply because the accused may have obtained the bail, ordinarily an order of detention ought not to have been passed.

12. That was a two Judges decision of the Apex Court and it has to be confined to its own facts.

13. However, in a number of decisions, which have been cited by the learned Additional Government Advocate a contrary view has been taken.

14. In Ahamed Nassar Vs. The State of Tamil Nadu and Others, , the Apex Court had held that it has to be decided on the facts and circumstances of each case that in spite of rejection of bail by a Court, it is open to the detaining authority to come to a satisfaction on the basis of the contents of the bail application that there was likelihood of the Detenu being released on bail. Merely because no bail application was then pending affords no basis for holding that there was no likelihood of his being released on bail.

15. This view was followed by a Division Bench of this Court in Raju Vs. District Magistrate and Others, .

16. The decision in Ahamed Nassar Vs. The State of Tamil Nadu and Others, was followed in Naushey vs. District Magistrate and Others, (2002) 2 ACR 1503, and it was held that merely because the Detenu bail application was rejected before the impugned detention order was passed, the detention order could not be held to be illegal on that score.

17. Learned AGA also relied upon the decision of Apex Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, , wherein it has been held that even if the bail application of the Detenu and the order refusing bail was not placed before the detaining authority, it did not amount to suppression of relevant material. The question of non-application of mind and the satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the Detenu was in actual custody.

18. We are, therefore, of the view that on the ground that the bail application of the Detenu was refused on the date when the detention order was passed and the said order was not communicated to the District Magistrate would not vitiate the detention order.

19. So far as the third submission of the learned counsel for the petitioner that the District Magistrate merely rubber stamped the report of the S.S.P. and the police authorities, this contention has no legs to stand upon as this point was not even raised that the ground of detention was the verbatim reproduction of the proposal given by the S.S.P. and the same has not been established and the State has no opportunity to refute the same. No material was indicated how the District Magistrate had only rubber stamped the proposal without application of mind.

20. So far as the point of delay in consideration of the representation by the Central Government is concerned, learned counsel for the petitioner has placed reliance on the decision of Supreme Court in the case of Rajammal Vs. State of Tamil Nadu and Another, , and another decision of this Court in the case of Pranshu Dutt Dwivedi v. Superintendent District Jail, Fathehgarh Farrukhabad (2009 (67) ACC 83) in which one of us (Hon"ble Amar Saran, J.) was a member. His contention was that the petitioner had submitted a representation dated 21.8.2012 which was handed over to the Jail Superintendent. The State Government sent the same to the Union of India on 30.8.2012. It reached the Union of India on 20.9.2012 and it was only rejected on 4.10.2012. The delay in consideration of the representation by the Central Government has not been satisfactorily explained.

21. Learned AGA and learned counsel for Union of India pointed out that an order of detention cannot be impaired merely because there were some routine delays in consideration of the representation. There is no legal requirement for explaining each day"s delay in consideration of the representation. However, only a reasonable explanation showing that the representation had been dealt with promptly was required.

22. Learned AGA placed reliance on the decision in Vinod K. Chawla Vs. Union of India (UOI) and Others, which has considered the earlier decisions of Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, ; Frances Coralie Mullin Vs. W.C. Khambra and Others, ; Madan Lal Anand Vs. Union of India and others, ; Kamarunnissa and Others Vs. Union of India and another, ; Birendra Kumar Rai alias Virendra Kumar Rai Vs. Union of India (UOI) and Others, .

23. What was emphasized in these cases was that whilst the detaining authority is expected to act with utmost expedition but as held in Frances Coralie Mullin Vs. W.C. Khambra and Others, , "the time imperative can never be absolute or obsessive". Whether the delay has properly been explained or not would depend on the facts of each case and this decision cannot be taken in vacuum. What was condemned was that there should be no supine carelessness, indifference or callousness on the part of the authority which was considering the representation.

24. In the present case, so far as the Union of India was concerned, there were normal postal delays in receipt of the representation which was sent by the State on 30.8.2012 and which reached the concerned section of the Union of India on

20.9.2012. Thereafter it was placed for the consent of the Union Home Secretary on 25.9.2012. As there were two holidays on 22.9.2012 and 23.9.2012, it was finally rejected on 4.10.2012 by the Union Home Secretary, who was authorised to finally consider the same. Between 25.9.2012 and 4.10.2012 there were two weekly holidays on 29.9.2012 and 30.9.2012 and one National Holiday on 2.10.2012 on the occasion of Gandhi Jayanti. The delays thereafter in this case were merely routine delays. Even in the case cited by the learned counsel for the petitioner viz. Rajammal Vs. State of Tamil Nadu and Another, the representation was given on 13.1.1998 and after passing through the prescribed route it had reached the Secretary, Government of Tamil Nadu on 5.2.1998. This delay was not considered to be unreasonable in the said order. The delay thereafter in consideration of the representation from 9.2.1998 till 14.2.1998 which the Minister did not examine for five days because he was on camp away from Headquarters was disapproved and it was observed that merely being on tour was not a good explanation and showed an indifferent and callous attitude in considering the representation and the said delay was held to be unjustified as the liberty of a person was involved.

25. In the Division Bench decision of this Court in Pranshu Dutt Dwivedi v. Superintendent District Jail Fathehgarh Farrukhabad (supra), there was a 47 days delay in disposal of the representation because a petty official, who dealt with the files relating to preventive orders was on leave from 18.2.2009 to 9.3.2009 resulting in a huge backlog of cases. This was considered to be an unexplained delay as it indicated the casualness and lethargy, which shocked the conscience of the Court. The Court observed that merely because the official had gone on leave, the disposal of representation could not be held up on that count for 47 days as someone else should have been put in his place and hence the delay was considered unexplained and unjustified.

26. The facts of both the cases were clearly distinguishable from the present case.

27. So far as the delay in consideration of the representation by the District Magistrate is concerned, the learned counsel for the petitioner has submitted that the representation dated 21.8.2012 was rejected by the District Magistrate only on 29.8.2012. To this point learned AGA points out that the representation was in fact handed over to the Jail Superintendent only on 25.8.2012 as has been mentioned by the Jail Superintendent in his counter affidavit and hence there was no undue delay in disposal of the same within a period of hardly 3-4 days.

28. Moreover, it may be mentioned that no specific ground has been taken that the District Magistrate did not decide the representation at the earliest. For what has been indicated herein above, we find no illegality in the order of detention detaining the petitioner under the NSA. Accordingly, this habeas corpus petition lacks force and is dismissed.