

(2018) 08 CAT CK 0137

In the Central Administrative Tribunal

Case No : Original Application No. 3057 Of 2017, Miscellaneous Application No. 4694, 4695 Of 2017

Sumit Bhardwaj And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 10-08-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2018) 08 CAT CK 0137

Hon'ble Judges : Praveen Mahajan, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : Ajesh Luthra, Krishan Kumar

Final Decision : Allowed

Judgement

The argument of this case concluded on 04.09.2018. We then made the following order:-

"Heard Sri Jitendra Kumar Shishodia, learned counsel for the petitioner, Sri Jitendra Prasad Mishra, learned counsel for Union of India, Smt. Manju Thakur, learned A.G.A. for the State and perused the material brought on record.

We will give reasons later. But we are making the operative order here and now.

The impugned detention order dated 07.09.2017 passed by the District Magistrate, Saharanpur under section 3 (2) of the National Security Act, 1980 is hereby quashed.

The petitioner, Sudhir shall be released forthwith unless he is wanted in any other criminal case."

Here are the reasons:- In this petition, the validity of the detention of petitioner Sudhir has been challenged. He has been detained by the District Magistrate, Saharanpur by an order dated 07.09.2017 made under Section 3(2) of the National Security Act, 1980 (hereinafter referred to as the NSA).

Briefly stated the facts of this case as emerging out from the pleadings of the parties are that on the occasion of Maharana Pratap Jayanti, on 05.05.2017 a symposium was organized in M.P.M. Inter College, situate in village Shimlana, Police Station Budgaon. About 50-60 youths belonging to the Rajpoot community residents of village Shabbirpur, Police Station Budgaon, were going on motorcycles and bicycles to participate in the aforesaid symposium accompanied by a loader on which 'DJ' was playing. On the protest made by members belonging to the Dalit community of the village, the police arrived on the spot and stopped the playing of 'DJ' on which an altercation took place between the two groups which was followed by an incident of stone pelting in which one Sumit son of Brahma Singh, resident of village Rasoolpur, Police Station Deoband was seriously injured and he died during treatment, as result of which a huge mob from village Shimlana reached village Shabbirpur and indulged in arson and damaged the houses belonging to the members of the scheduled caste community. The mob then moved to village Maheshpur where also it indulged in arson and damaging private properties.

In order to protest against the incident, which had taken place on 05.05.2017 in village Shabbirpur, 600-700 members of Bhim Army Bharat Ekta Mission Sangathan, Saharanpur, led by its founder Chandra Shekhar, gathered in village Ram Nagar situate on Malhipur road within the territorial jurisdiction of Police Station Kotwali Dehat. The administrative and police officers present on the spot tried to remonstrate with the crowd but the crowd did not listen them. The members of Bhim Army became violent and started pelting stones and set ablaze 30 motorcycles and one Swift car which were parked on the roadside and indulged in arson at Police outpost Ramnagar. They also demolished the under construction boundary wall of Maharana Pratap Inter College and indulged in arson and destruction. In the aforesaid incident, Sri Satish Kumar Dubey, A.D.M. (Administration) and his gunner Sanjeev Kumar received injuries. The aforesaid incident adversely affected tempo of life in district Saharanpur and public order was disturbed.

As a reaction to the aforesaid two incidents, while Narendra Kumar, Narsingh and Tinku, residents of village Halalpur, Police Station Kotwali Dehat, District Saharanpur who were returning on their motorcycles at 4:30 p.m. after attending the rally organized by Bahujan Samaj Party on 23.05.2018, in village Shabbirpur which was graced by the national President of B.S.P. Sushri Mayawati and when they reached village Chandpur, 15-20 persons who were already waiting there on noticing the B.S.P. flag on their motorcycles attacked them with swords and balkati causing injuries to the aforesaid persons. The miscreants also exhorted each other to finish the aforesaid persons belonging to the scheduled caste community. However, on noticing some other villagers coming towards them, the assailants fled firing with their firearms in the air and escaped towards jungle damaging the motorcycles of the injured. The injured were taken to the hospital and admitted for treatment. The first information report of the incident was lodged by one Raj Kumar on 23.05.2017 at 19:45 hours which was

registered at Case Crime No.71 of 2017 under Sections 147, 148, 149, 307, 327 I.P.C. and 3 (2)(5) SC/ST Act, Police Station Budgaon, District Saharanpur.

On the same day Ashish and Sachin, residents of village Suakhedi, Police Station Sarsawa, District Saharanpur who were also returning on their motorcycle after attending B.S.P. rally when they reached the grove between village Budgaon and Chandpur at 5:00 p.m., they were waylaid by the assailants who were armed with countrymade pistols, swords, iron rods, balkati and gadasa, on noticing B.S.P. flag on their motorcycle, stopped them and assaulted Ashish and Sachin with their weapons with intention of causing their death. Ashish was shot at while Sachin received serious injuries. Thereafter, they ran towards jungle and while escaping from the place of the incident they proclaimed that they had taken revenge of their insult from members of the scheduled castes and they would continue to kill them. After the incident, both Ashish and Sachin were taken to the hospital where Ashish was declared brought dead and Sachin was referred to a higher centre for treatment. The first information report of the said incident was lodged by one Meghraj on 24.05.2017 at 9:30 p.m. which was registered at Case Crime No.75 of 2017 under Sections 147, 148, 149, 302, 307, 504, 506 I.P.C. and 3 (2)(5) SC/ST Act, Police Station Budgaon, District Saharanpur.

As a result of the aforesaid incidents, atmosphere of fear, panic and hatred between Dalit and Rajpoot communities engulfed the entire area and caste violence erupted in district Saharanpur seriously affecting the tempo of life. People closed themselves inside their houses and atmosphere of chaos prevailed everywhere. Education, medical services and public transport were seriously affected and public order was totally shattered.

During course of the investigation of Case Crime No.71 of 2017, the name of the petitioner as an accused came to light in the statement of the informant Raj Kumar recorded by the Investigating Officer.

Similarly, informant in Case Crime No.75 of 2017 Meghraj also named the petitioner as an accused in his statement. The incident which had taken place on 23.05.2017 was given wide publicity by several national and local newspapers namely Amar Ujala, Hindustan and Dainik Jagaran in the editions published on 24.05.2017.

In order to restore public order, the then District Magistrate, Saharanpur and Senior Superintendent of Police, Saharanpur were transferred. After being arrested on account of being nominated as accused in the aforesaid two cases, the petitioner was sent to district Jail Saharanpur.

While the petitioner was in District Jail, Saharanpur, he was served with the impugned detention order dated 07.09.2017 along with the grounds of detention.

Learned counsel for the petitioner 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.

Learned counsel for the petitioner next submitted that since on the date of the passing of the detention order, the petitioner was already in jail and mere possibility of his released on bail was not enough for preventive detention unless there was material before the respondent no.3 justifying the apprehension that detenu would indulge in prejudicial activities in case of his release on bail. He next submitted that although the detaining authority has in the grounds of detention recorded his satisfaction that the petitioner who was in jail on account of his being accused in Case Crime No.71 of 2017 under Sections 147, 148, 149, 307, 327 I.P.C. and 3 (2)(5) SC/ST Act, Police Station Budgaon, District Saharanpur and Case Crime No.75 of 2017 under Sections 147, 148, 149, 302, 307, 504, 506 I.P.C. and 3 (2)(5) SC/ST Act, Police Station Budgaon, District Saharanpur, had moved a bail application before the Sessions Judge and there was strong possibility of his being released on bail and in the eventuality of his being released on bail he would again indulge in similar activities prejudicial to the public order but in the instant case there was no material made apparent on record that the detenu if released on bail was likely to indulge in activities prejudicial to the maintenance of public order and hence the impugned detention order cannot sustained and is liable to be set aside. In support of his aforesaid submissions, learned counsel for the petitioner has placed reliance on Shashi Agarwal Vs. State of U.P. and others reported in 1988 (1) SCC 436 and Rameshwar Shaw Vs. District Magistrate, Burdwan & another reported in AIR 1964 SC 334.

Per contra, learned AGA submitted that the impugned detention order does not suffer from any illegality or infirmity requiring any interference by this Court. He further submitted that there was sufficient material before the respondent no.3 justifying his belief that in case the detenu was released on bail, he would again indulge in activities disturbing the public order.

We have very carefully scanned the impugned order and the grounds of detention and also the counter affidavits filed on behalf of the respondent nos. 1 to 3 and 4 in this writ petition and we are constrained to observe that no material justifying the apprehension that detenu would indulge in prejudicial activities in case of his being released on bail was placed before the respondent no.3. In our opinion the bald statement made in the grounds of detention that the petitioner upon being released on bail would repeat his criminal activities prejudicially affecting the maintenance of public order, was not enough to justify

passing of an order of preventive detention against him. We stand fortified in our view by the law laid down by the Apex Court in the case of Rameshwar Shaw (supra) and Shashi Agarwal (supra).

The Hon'ble Apex Court in paragraphs 9 and 10 of its judgement rendered in the case of Rameshwar Shaw (supra) has observed as hereunder :-

"9. It is also true that in deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that if the said person is not detained, he may act in a prejudicial manner, and this conclusion can be reasonably reached by the authority generally in the light of the evidence about the past prejudicial activities of the said person. When evidence is placed before the authority in respect of such past conduct of the person, the authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. That is why this Court has held in *Ujagar Singh v. The State of Punjab* and *Jagjit Singh -v. The State of Punjab* that the past conduct or antecedent history of a person can be taken into account in making a detention order, and as a matter of fact, it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.

10. In this connection, it is, however, necessary to bear in mind that the past conduct or antecedent history of the person on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary. It would, for instance, be irrational to take into account the conduct of the person which took place ten years before the date of his detention and say that even though after the said incident took place nothing is known against the person indicating his tendency to act in a prejudicial manner, even so on the strength of the said incident which is ten years old, the authority is satisfied that his detention is necessary. In other words, where an authority is acting bona fide and considering the question as to whether a person should be detained, he would naturally expect that evidence on which the said conclusion is ultimately going to rest must be evidence of his past conduct or antecedent history which reasonably and rationally justifies the conclusion that if the said person is not detained, he may indulge in prejudicial activities. We ought to add that it is both inexpedient and undesirable to lay down any inflexible test. The question about the validity of the satisfaction of the authority will have to be considered on the facts of each case. The detention of a person without a trial is a very serious encroachment on his personal freedom, and so, at every stage, all questions in relation to the said detention must be carefully and solemnly considered"

Similarly the Apex Court in paragraphs 8, 9, and 10 of its judgment rendered in *Smt. Shashi Agarwal (supra)* which are being reproduced hereinbelow has held as hereunder:-

"8. The principles applicable in these types of preventive detention cases have been explained in several decisions of this Court. All those cases have been considered in a recent decision in *Poonam Lata v. M. L. Wadhawan*, [1987] 4 SCC 48. The principles may be summarised as follows.

Section 3 of the National Security Act does not preclude the authority from making an order of detention against a person while he is in custody or in jail, but the relevant facts in connection with the making of the order would make all the difference in every case. The validity of the order of detention has to be judged in every individual case on its own facts. There must be material apparently disclosed to the detaining authority in each case that the person against whom an order of preventive detention is being made is already under custody and yet for compelling reasons, his preventive detention is necessary.

9. We will now refer to the two decisions which according to Mr. Yogeshwar Prasad are not in tune with the ratio of the decision in *Alijan Milan's case* (supra). In *Ramesh Yadav v. District Magistrate Etah and Ors.*, [1985] 4 SCC 232 at p. 234, this Court observed:

"On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised;. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed."

What was stressed in the above case is that an apprehension of the detaining authority that the accused if enlarged on bail would again carry on his criminal activities is by itself not sufficient to detain a person under the National Security Act.

10. Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the Court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order. That has been made clear in *Binod Singh v. District Magistrate Dhanbad*, [1986] 4 SCC 416 at 421, where it was observed: "A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority

charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens."

In the instant case, there was no material made apparent on record that the detainee, if released on bail, will indulge in activities prejudicial to the maintenance of public order. The detention order appears to have been made merely on the ground that the petitioner who was in jail had moved an application for bail and there was strong possibility of his being released bailed out. We do not think that the impugned order of detention can be justified on that basis.

These are the reasons upon which we set aside the impugned order dated 07.09.2017 passed by the District Magistrate, Saharanpur, respondent no.3.

The petitioner is set at liberty forthwith unless he is wanted in any other case.

In the result, the instant petition succeeds and is accordingly allowed.

There shall, however, be no order as to costs.