

(2016) 02 RAJ CK 0011

In the Rajasthan High Court

Case No : . Habeas Corpus Petition No. 53 of 2015.

Swaroop Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Rajasthan Prevention of Anti-social Activities Act, 2006 — Section 3

Citation : (2016) 2 CriLR 769 : (2017) 1 RajCriC 431 : (2016) 3 RLW 2115

Hon'ble Judges : Gopal Krishan Vyas;P.K. Lohra, JJ.

Bench : Division Bench

Advocate : Dharendra Singh, Advocate, for the Appellant; S.K. Vyas, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.K. Vyas, J. - In this habeas corpus writ petition, the petitioner Swaroop Ram S/o Sagar Ram, resident of Jodhpur is challenging the impugned order of detention dated 27.7.2015 passed by the Commissioner of Police, Jodhpur and prayed that detention order may kindly be quashed and set aside and petitioner may be released forthwith from illegal detention.

2. As per the facts of the case, a report was submitted before the Commissioner of Police, Jodhpur Metropolitan, Jodhpur with regard to criminal activities of the petitioner in which it was observed that due to criminal activities of the petitioner Swaroop Singh, serious problem has been created to maintain public order.

3. Upon receiving such report, the Executive Magistrate-Cum-Commissioner of Police, Jodhpur Metropolitan, Jodhpur considered the facts and material available on record and found that due to criminal activities of the petitioner there is threat to the public order because number of cases are registered against him. The Executive Magistrate-Cum-Commissioner of Police, Jodhpur Metropolitan, Jodhpur while exercising power under Section 3 of the Rajasthan Prevention of Anti Social Activities Act, 2006 (hereinafter referred to as the Act of 2006 for

short) passed impugned order dated 27.7.2013 by which it was ordered that petitioner may be detained for a period of one year, accordingly, he is under custody.

4. The petitioner detainee was informed by the respondent no. 2 with regard to order passed against him and as per sub-section (3) of Section 3 of the Act of 2006, the respondent no. 2 reported the matter to the State Government along with grounds upon which detention order was passed.

5. The State Government after considering entire material approved the order of detention passed by the respondent no. 2 vide order dated 30.7.2015 which is annexed with the writ petition as Annex.2.

6. After approval of detention order, the case of the petitioner was placed before the Advisory Board on 12.8.2015 and after providing an opportunity of hearing to the petitioner, the advisory board approved the order passed by the competent authority on the ground that the number of cases were under IPC or NDPS cases were registered against the petitioner since 1996 which continued till 20 till 2010, 2011, 2013 and 2014.

7. Learned counsel for the petitioner submits that the detention order is totally illegal and far from the truth because the order has been passed by the authorised officer, which is Executive Magistrate-cum-Commissioner of Police upon the direction of Dy. Commissioner of Police, which is evident from the fact that in the detention order it is specifically observed that material was placed before him by the Dy. Commissioner of Police, Jodhpur, therefore, it is obvious that order has been passed in mechanical manner against the principles of natural justice.

8. Learned counsel for the petitioner submits that as per the details of police report, 26 cases were registered against the petitioner, out of which in 18 cases he was acquitted by the competent learned trial court, in remaining 8 cases he is facing trial. It is also submitted that in 10 to 13 cases petitioner's name was not even mentioned in the FIR, therefore, the projection of the petitioner's activities by the Dy. Commissioner of Police, Jodhpur was totally unfounded, but, the authorised officer illegally accepted the said report so as to pass detention order against the petitioner while treating him as "dangerous person", therefore, order impugned is not sustainable in law.

9. Learned counsel for the petitioner submits that even if petitioner was found involved in number of criminal cases, this court cannot lose sight of the fact that out of 26 cases, he was acquitted in 18 cases, as such, this fact itself goes to suggest that petitioner has been falsely implicated in so many cases due to enmity or on oblique motive. With regard to remaining 8 cases it is submitted that mere pendency of criminal cases, it cannot be said that the petitioner is "dangerous person", therefore, the order of detention deserves to be quashed.

10. Lastly, it is argued that order dated 27.7.2015 was passed by the authorised

officer without providing an opportunity of hearing, therefore, in the interest of justice, the impugned order may be quashed because due to illegal detention order, there is complete denial of his fundamental right granted under Article 21 of the Constitution of India.

11. Per contra, while filing reply it is submitted by the learned Addl. Advocate General Sh. S.K. Vyas that the order dated 27.7.2015 by which the petitioner was detained under the provisions of the Act of 2006 is in consonance with law. The petitioner is history-sheeter, remained engaged in criminal activities continuously, therefore, due to his illegal activities he cause eminent danger to the public order. So many victims lodged complaint against him, therefore, to take action under preventive law it is felt necessary by the competent authority to exercise its power under Section 3 of the Act of 2006 to pass an order for detention.

12. While inviting attention towards the list of cases it is submitted that since 1996, 26 cases were registered against the petitioner under various offences of Indian Penal Code so also NDPS Cases. In the reply details of cases are given with the submissions that from time to time proceedings under Section 110 of the Cr.P.C. were also taken against him despite that he went on committing criminal activities, which caused eminent danger to the public order. The order of detention cannot be treated as illegal order, more so, the order is perfectly in consonance with law.

13. The learned Addl. Advocate General submits that the detenue was offered opportunity of hearing before the Advisory Board and Advisory Board after examining the entire record approved the order of detention on the basis of material considered by the competent authority at the time of passing of detention order dated 27.7.2015. Therefore, the order impugned does not suffer from any illegality, hence, this writ petition may kindly be dismissed.

14. After hearing the learned counsel for the parties, we have examined the details of the cases registered against the petitioner and considered by the Police Commissioner, Jodhpur before passing the order of detention, which reads as under:

dz0la0 eq0la0 rkjh[k dk;eh /kkjk Fkkuk (tgka vfHk;ksx ntZ gqvk gks) pktZ"khV
ua0 ts0,Q0,u0 U;k;ky; dk uke urhtk dksVZ dksVZ dsl dh fLFkfr o vkxkeh rkjh[k
is"kh

1 167 4-12-96 341]323]307]147 Hkknla0 yw.kh 18@28-2-97 223@97 ,lhts,e,e
dksV tks/kiqj cjh 7-9-99 and

2 156 12-7-97 341] 323 Hkknla0 "kkL=h uxj 109@31-7-97 251@97 ,lhts,e,e
la[k 1 tks/kiqj jkthukek cjh 19-2-98 and

3 127 23-9-98 341] 323@34 Hkknla0 mn;eafnj 71@25-4-98 523@98 ,lhts,e,e
la[k 4 tks/kiqj jkthukek cjh 29-6-99 and

4 79 4-6-99 147] 452] 323] 427] 324 Hkknla0 ckluh 57@31-7-99 163@10 ,lhts,e,e la[;k 4 tks/kiqj lUnsg dk ykHk nsdj nks"keqDr 21-3-13 and

5 228 3-6-99 /kkjk 147] 323] 324] 341] 190 Hkknla0 ljdkjiqjk 133@31-7-99 211@99 lh,e,e tks/kiqj lUnsg dk ykHk nsdj nks"keqDr 21-3-13 and

6 167 15-9-00 341] 427] 323 Hkknla0 ckluh 103@30-9-00 13715@00 ,lhts,e,e ua0 4 tks/kiqj jkthukek nks"keqDr 16-11-02 and

7 204 2-10-00 147] 148] 149] 323] 307] 394] 365 Hkknla0 eFkkfu;k 98@26-11-01 150@12 ,lhts,e,e 4 tks/kiqj isf.Max V~k;y 15-7-15

8 179 5-10-00 147] 148] 323] 307 Hkknla0 ckluh 138@20-12-00 477@01 lslu dksVZ tks/kiqj ltk 2-11-01 and

9 274 18-7-01 379 Hkknla0 ljdkjiqjk 77@30-4-02 54@04 ,e,e 8 tks/kiqj isf.Max V~k;y 3-8-15

10 93 6-4-02 341] 323 Hkknla0 ckluh 68@8-5-02 210@02 ts,e la[;k 4 tks/kiqj jkthukek cjh 16-01-03 and

11 171 1-6-02 448] 323 Hkknla0 ckluh 110@25-6-02 327@02 ts,e la[;k 4 tks/kiqj Qslyk jkthukek 26-10-09 and

12 281 7-8-02 147] 452] 323] 75 Hkknla0 "kkL=h uxj 251@16-11-02 138@09 ,lh,e,e la[;k 4 tks/kiqj jkthukek 23-9-13 and

13 168 5-12-02 143] 365] 395 Hkknla0 yw.kh 30@7-4-03 252@12 ,Mhts la[;k 1 tks/kiqj cjh 21-7-03 and

14 252 23-5-03 143] 379] 341] 323 Hkknla0 fcykMk 323@13-11-03 518@03 ,slhts,e fcykMk tks/kiqj jkthukek cjh 9-9-11 and

15 251 15-7-03 147] 149] 307] 323 Hkknla0 "kkL=h uxj 322@25-12-03 174@05 ,e,e 5 tks/kiqj isf.Max V~k;y 6-7-15

16 145 8-10-03 147] 148] 149] 353] 399 Hkknla0 Mkafx;kokl 26@7-4-2004 682@11 lh,e,e dksVZ tks/kiqj isf.Max V~k;y 11-08-15

17 6 6-1-04 341] 323@34 Hkknla0 ckluh 7@22-1-04 252@04 ts,e la[;k 4 tks/kiqj isf.Max V~k;y 26-8-15

-18 387 13-12-04 147] 178] 427] 452] 323] 307 Hkknla0 ckluh 137@29-7-05 179@12 ,Mhts la[;k 4 tks/kiqj isf.Max V~k;y 7-7-15

19 80 16-3-05 452] 323] 354 Hkknla0 ckluh 101@22-6-05 163@06 ,slhts,e,e la[;k 4 tks/kiqj jkthukek 21-6-06 and

20 155 4-4-05 147] 148] 149] 458] 323 Hkknla0 izrkiuxj 64@1-3-06 214@06 ,slhts,e,e la[;k 2] tks/kiqj jkthukek 7-7-06 and

21 387 22-9-06 341] 323] 325] 307] 147] 148] 149 Hkknla0 o 3@25 vkElZ ,DV mn; eafnj 228@15-9-08 189@07 vij ls"ku U;k;k/kh"K QkLV VS~d la[;k 1 tks/kiqj

jkthukek nks"keqDr 25-11-09 and

22 133 23-4-09 3@25 vkElZ ,DV ckluh 205@20-8-09 289@09 ts,e ua0 4 tks/kiqj
isf.Max V~k;y 16-9-15

23 99 3-5-09 143] 342] 323] 365] 327] 308 Hkknla0 o 3(1)(10) o 3(2)
(5) ,llh@,IVh ,DV yw.kh 90@29-7-09 59@09 ,llh@,IVh dksVZ tks/kiqj cjh
22-3-10 and

24 77 7-6-14 452]387 Hkknla cksjkukM tSj rQ~rh"k and and tSj rQ~rh"k "kjhd

25 386 14-7-14 8@18] 25] 29 ,uMhih,l ,DV guqekux<+ tad"ku tSj rQ~rh"k and
and eqyfteku dh fxjQ~rkjh "ks"k gS and

15. Upon perusal of the above details of cases it is revealed that out of 25 cases he was either acquitted after trial or cases were decided by the court on compromise, but this court cannot lose sight of the fact that petitioner is facing trial in 6 cases from last 10-15 years. In the case under Section 3/25 of the Arms Act registered on 23.4.2009 at Police Station Basni he is facing trail from last 6 years. Two cases were registered in the year 2014 under Section 452, 387 IPC and under Section 8/18, 25 and 29 of the NDPS Act registered at Hanumangarh Junction are under investigation. Upon totality of the circumstances, it emerges from the facts that till 2009, 23 cases were registered against the petitioner, out of which in 17 cases he was either acquitted after trial or on compromise and since 2009 to 2014 for near about 5 years, no criminal case was registered against the petitioner. Thereafter, on 7.7.2014 for the first time after 5 years, the FIR was registered at Boranada Police Station under Section 452 and 307 IPC and on 14.7.2014 at Hanumangarh Junction under Section 8/18, 25 and 29 of the NDPS Act.

16. We have perused the definition of "dangerous person" and "habitual Offender" provided under sub-section (C) and (G) of Section 2 of the Act of 2006, which reads as under:

"(c) "dangerous person" means a person, who either by himself or as member or leader of a gang, habitually commits, or a attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 (Central Act No. 45 of 1860) or any of the offences publishable under Chapter V of the Arms Act, 1959 (Central Act No. 54 of 1959) or any of the offences punishable under first proviso to sub-section (1), and sub-section (1-A) of Section 51 of the Wild Life (Protection) Act, 1972 (Central Act No. 53 of 1972) or any offence punishable under section 67 of the Information Technology Act, 2000 (Central Act No. 21 of 2000).

(g) "habitual" with all its grammatical variations, includes acts or omissions committed repeatedly, persistently and frequently having a thread of continuity stringing together similar repetitive acts or omission but shall not include isolated, individual and dissimilar acts or omission."

17. It is true that advisory board relied upon some judgments of this Court and Hon"ble Supreme Court but none of the judgments are related with the provisions of the Act of 2006. The Division Bench of this Court in the case of Imran @ Katiya v. State of Rajasthan and Ors. in DB Habeas Corpus Petition No. 58/2015 quashed the detention order upon identical circumstances. Similarly, in case of Poonam Chand Bhadu v. State of Rajasthan and Ors, D.B. Habeas Corpus Petition No. 5/2015, decided on 10.2.2015 the detention order was passed on the ground of registration of 30 criminal cases against the petitioner, out of which in 11 cases either detenue Tola Ram was acquitted and discharged and 11 cases were pending against him. In view of above facts, the advisory board was under obligation to consider the important aspect of the matter that out of 25 cases registered against the petitioner he was acquitted from the charges levelled against him after trial or on compromise. The day on which the detention order was passed only 8 cases were pending against him out of which in 2 cases registered in the year 2014 the investigation is going on.

18. It is also important to observe that after 2009 only 2 cases were registered against the petitioner in the year 2014. Meaning thereby, the finding of treating the petitioner as "dangerous person" upon which the detention order has been passed is not in consonance with law for the simple reasons that after 2009 only 2 cases were registered against the petitioner and in both the cases investigation is going on. It was expected from the respondents that at the time of passing the order of detention, entire material was to be taken into considered objectively, but it has not been considered.

19. Although definition of "dangerous person" provides that if one by himself or as member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 or any of the offences punishable under Chapter V of the Arms Act, 1959 or any of the offences punishable under first proviso to sub-section (1), and sub-section (1-A) of Section 51 of the Wild Life (Protection) Act, 1972 or any offence punishable under section 67 of the Information Technology Act, 2000, then would fall within the definition of "dangerous person".

20. In this case, on the basis of details of cases registered against the petitioner and upon the fact that after 2009 only two cases were registered against him and in those cases as per respondents the investigation is still going on, we have no hesitation to hold that the order of detention has not been passed upon proper consideration of facts. In the case of Poonam Chand Bhadu (supra) based upon identical facts, the following adjudication was made, which reads as under:

"In our opinion, the District Collector, Bikaner, State Government and Advisory Board did not consider the important aspect of the matter that in most of the cases the detenu Tola Ram was either acquitted or discharged by the learned trial court and Advisory Board itself observed in the order that although there is allegation of gang-war against the detenu Tola Ram but the facts of gang-war are

not on record. Meaning thereby the overall assessment made by the District Collector, Bikaner so as to declare detenu "Dangerous person" was not in consonance with law. It is true that if any habitual offender creates problem of law and order or disturbs the peace in the society, the action is must, but at the same time, this Court cannot lose sight of the fact that question of liberty of a citizen should be taken note before passing order for detention, therefore, before passing any order the authorities are under obligation to apply its mind judiciously, but here in this case, the District Collector, Bikaner as well as the Advisory Board has completely ignored the fact that out of 30 cases registered against him since the year 1993 in most of the cases, he was acquitted by the trial court. In view of the fact that there is no counter to the fact that in 19 cases which were taken into consideration by the District Collector, Bikaner before passing the detention order out of 30 cases, the detenu Tola Ram was either acquitted or discharged by the competent trial court, it cannot be said that detenu Tola Ram is "dangerous person" as defined under Section 2(c) of the Act of 2006 so as to take action against him for detention of one year under Section 3 of the Act of 2006. The detenu Tola Ram is in custody from last near about 8 months but in our opinion, on the basis of material available on record, it cannot be said that detenu Tola Ram is "dangerous person" against whom detention order is justified.

In view of the above, we are of the opinion that the detention order dated 2.6.2014 passed by the District Magistrate, Bikaner while exercising powers under Section 3 of the Act of 2006 which is subsequently confirmed by the State Government vide order dated 11.8.2014 are against the principle of natural justice because both the orders have been passed without considering the material available on record in right perspective, so also, it is a case of non-consideration of the grounds raised by the detenu Tola Ram before the Advisory Board."

21. On the basis of above adjudication and upon consideration of the facts pleaded in the reply, the order of detention is not sustainable in law, therefore, this habeas corpus petition is hereby allowed. The order dated 27.7.2015 passed by the Commissioner of Police, Jodhpur Metropolitan, Jodhpur while exercising powers under Section 3(1)(2) of the Act of 2006 which is subsequently affirmed by the State Government vide order dated 30.7.2015 and approved by the advisory board vide order dated 12.8.2015 is hereby quashed and set aside, the detenu Swaroop Ram shall be hereby released forthwith if not needed in any other case.