
(2013) 07 AHC CK 0229

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 59815 of 2012

Taufique

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226
National Security Act, 1980 — Section 3, 5A
Penal Code, 1860 (IPC) — Section 489A, 489B, 489C

Citation : (2013) 7 ADJ 133 : (2014) 4 ALJ 389 : (2013) 83 ALLCC 85

Hon'ble Judges : Vipin Sinha, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Pradeep Chandra, Devendra Singh and Pratik Chandra, for the Appellant; C.S. Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sinha, J.—Heard learned counsel for the petitioner and Sri Syed Ali Murtaza and Sri Rishi Chaddha, learned counsel for the State. Petitioner namely Taufique has filed the present Habeas Corpus Writ Petition under Article 226 of the Constitution of India praying for quashing of the impugned order of detention dated 21.10.2012 passed by District Magistrate, Jalaun in exercise of powers u/s 3 Sub-Clause (3) of the National Security Act, 1980 by virtue of which the petitioner has been detained and has further sought a writ, order or direction in the nature of mandamus directing the respondents to release the petitioner forthwith.

The writ petition has been filed inter alia on the grounds that the petitioner was falsely involved by Sri Rajendra Singh Bhadoria S.O.G. Prabhari, District Jalaun who lodged an F.I.R. Dated 23.8.2012 in Case Crime No. 1575 of 2012 (Chick No. 492/12) u/s 489A, 489B and 489C I.P.C. against the petitioner and one Baura @ Iqbal son of Akbar Ali. It is also on record that accused had admitted that they were dealing in counterfeit currency notes which they used to obtain

from one Saroj Kanjar and then they were circulated in the market by the petitioner.

2. From the perusal of the said First Information Report, it appears that the petitioner was arrested by the police on the basis of information received from "Mukhbir" to the effect that he was carrying counterfeit currency notes along with one other person namely Iqbal @ Baura who was also arrested. As per the F.I.R., an amount of Rs. 30,000/- was recovered from the possession of the petitioner, Taufique.

3. In pursuance of the said F.I.R., Circle Officer, Orai, District Jalaun made a recommendation to the Superintendent of Police, Orai at Jalaun recommending the detention of the petitioner under the National Security Act, 1980 and these proceedings ultimately culminated in the passing of the impugned detention order dated 21.10.2012 under the National Security Act, 1980, which is under challenge in the present writ petition.

4. The said detention order has been challenged by the petitioner on three main grounds:

(I) It was primarily contended that a "solitary incident" cannot form the basis of detention order.

(II) It was further prayed that there were two persons who were arrested and no proceeding was drawn against the other accused or in other words, the detention order against the other accused was revoked. Therefore, on the basis of parity also, the petitioner should be released and the detention order should be quashed.

(III) Thirdly, the order is based on extraneous considerations without there being any independent application of mind on the part of the detaining authority.

All the aforesaid three contentions raised by the petitioner are being dealt with collectively herein as under:

5. In support of his contention, the learned counsel for the petitioner has cited a judgement of Apex Court in the case of Yumman Ongbi Lembi Leima Vs. State of Manipur and Others, , wherein in paragraph 15, it has been held as under:

15. As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. An individual incident of an offence under the Indian Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention.

As far as the question of solitary incident is concerned, it has been held by the Hon''ble Apex Court in a number of cases that solitary incident can also form the basis of detention order.

6. Learned A.G.A. has cited the following judgements at the bar:

In the case of Aftab Quressy v. Union of India (UOI) and others, in Habeas Corpus Writ Petition No. 18609 of 2010 decided on 8.10.2010, it has been held that "it is for the appropriate Government, and no body else, to assess and to be subjectively satisfied with regard to the detention order.

In the aforesaid case of Aftab Quressy also, the petitioner at the time of his arrest was found to be carrying counterfeit currency notes.

7. In the case of Jafar Husain v. Union of India (UOI) and others, in Habeas Corpus Writ Petition No. 43478 of 2008 decided on 9.2.2009 a Division Bench of this Court while referring to a judgement of Supreme Court, the Court in paragraph Nos. 7, 8 & 9 held as follows:

7. The question as to whether and in what circumstances an order for preventive detention can be passed against a person, who is in custody, came for consideration before a three Judges" Bench of the Hon''ble Supreme Court in the case of Dharmendra Suganchand Chelawat and another Vs. Union of India and others, , wherein after considering all the earlier relevant decisions, the Apex Court answered the question in the following words:

The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that: (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implied that there must be cogent material before the detaining authority on the basis of which it may be satisfied that; (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

8. In view of the above decision of the Supreme Court the criteria for judging the validity of a detention order would not be the number of activities complained of but the principles stated in the aforesaid ruling. Even a single case may be sufficient to pass a valid detention order and such view was approved by the Apex Court in the decision in Abdul Sathar Ibrahim Manik Vs. Union of India and others, , and by this Court in the decision in Vijai Pal alias Pappu v. Union of India and others, 1996 (33) ACC 741.

9. When applying the principles laid down in the case of Dharmendra

Suganchand Chelawat v. Union of India, on the facts of the present case there could be no escape from the conclusion that the impugned order of detention was validly passed and there was cogent material before the detaining authority to pass this order.

8. The present case also show the effects of solitary incident which is the basis of detention order, which is as under:

10. The grounds of detention indicate the detaining authority's awareness of the fact that the detenu was in judicial custody at the time of making the detention order. He had also mentioned the cogent material in the detention order, i.e., the details of the offending activity, investigation by the police, the effect which the activity had on the public, which was necessary for arriving at the satisfaction that the further detention was necessary under the circumstances of the case. The facts of solitary case, which was the basis of the detention order, show that the petitioner was not doing the trade of fake currency notes all alone, but he was doing the prejudicial activity in association with other persons. The activity complained of against the petitioner was sufficient to indicate that he was actively engaged in the trading of fake currency notes as the huge amount of fake currency notes was recovered from his possession and this act of him was definitely prejudicial to the maintenance of supplies and services of the Indian currency essential to the community. In such factual matrix the District Magistrate was perfectly justified in reaching to the subjective satisfaction that the detention of the petitioner was necessary for the maintenance of supplies and services of Indian Currency essential to the community at large.

9. In the case of Sarvesh Yadav v. State of U.P. and others, in Habeas Corpus Writ Petition No. 3579 of 2012 decided on 6.7.2012 wherein again after relying upon the judgement of Supreme Court, it has been held in paragraph Nos. 6 & 7 of the judgement that a solitary incident can be the basis of detention order. The observation of the Court is quoted herein below:

6. Learned A.G.A. also relied on another judgment of the Apex Court in the case of Union of India (UOI) and Another Vs. Shrimati Chaya Ghoshal and Another, and has pointed out the law written in paragraph-23 of the said judgment which is quoted herein-below:

So far as the finding of the High Court that there was only one incident is really a conclusion based on erroneous premises. It is not the number of acts which determine the question as to whether detention is warranted. It is the impact of the act, the factual position as highlighted goes to show that the financial consequences were enormous and ran into crores of rupees, as alleged by the detaining authority. The High Court seems to have been swayed away that there was only one incident and none after release on bail. The approach was not certainly correct and the judgment on that score also is vulnerable. At the cost of repetition it may be said that it is not the number of acts which is material, it is the impact and effect of the act which is determinative. The High Court's

conclusions in this regard are therefore not sustainable.

7. Learned A.G.A. also relied on another judgment of the Apex Court in the case of David Patrick Ward and Another Vs. Union of India (UOI) and Others, and has drawn the attention of the Court towards paragraph-22 of the said judgment which is quoted hereinbelow:

22. Tested in the light of the above decision, certainly, the acts in which the petitioners indulged would form the basis of detention. The detaining authority can base its order of detention even on a solitary act provided that the conduct of the person concerned with the act in the circumstances in which it was committed, is of such a nature as would enable the formation of requisite satisfaction that the person, if not prevented by an order of detention, is likely to indulge in repetition of similar acts in future. That is certainly so in the present case, having regard to the various circumstances from the beginning, viz. The concealment of the purpose of visit, the entry without permit in the prohibited area up to the time of arrest of the petitioners. Therefore, the ground of detention relating to what occurred on the night between January 30 and 31, 1992 sufficed for making the detention orders under challenge. Debu Mahato and M. Mohamed Sulthan the decision of this Court on which reliance is placed to support the point under examination, indeed go against the point. Hence, the point cannot succeed.

10. The Court would also like to refer to the judgement of Hon"ble Apex Court rendered in the case of Union of India (UOI) and another v. Shrimati Chaya Ghoshal and another in Criminal Appeal No. 1474 of 2004 decided on 13.12.2004, the Court in paragraph No. 21 has held as under:

21. So far as the finding of the High Court that there was only one incident is really a conclusion based on erroneous premises. It is not number of acts which determine the question as to whether detention is warranted. It is the impact of the act, the factual position as highlighted goes to show that the financial consequences were enormous and ran to crores of rupees, as alleged by the Detaining Authority. The High Court seems to have been swayed away that there was only one incident and none after release on bail. The approach was not certainly correct and the judgment on that score also is vulnerable. At the cost of repetition it may be said that it is not the number of acts which is material, it is the impact and effect of the act which is determinative. The High Court's conclusions in this regard are therefore not sustainable.

11. The Hon"ble Apex Court in the case of Debu Mahato Vs. The State of West Bengal, , wherein the Apex Court has observed as under:

We must, of course, make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may, in a given case be such as to reasonably justify an inference

that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or a series of acts. But whatever it be, it must be of such a nature that an inference can reasonably be drawn from it that a person concerned would be likely to repeat such acts so as to warrant his detention....

12. Even in the recent past, the Hon''ble Supreme Court in the case of Chowdarapu Raghunandan Vs. State of Tamil Nadu and Others, , has held that in the cases of solitary incident, the detention order can be passed.

13. In the aforesaid case, the Hon''ble Supreme Court while relying upon an earlier judgement of a Constitution Bench of 9 Judges'' rendered in the case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, , observed in short that though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The Court further goes to show that similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and organization. They are not like ordinary law and order crimes and thus, it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.

14. In the case of Abdul Qayyum v. Union of India (UOI) and others, in Civil Misc. Habeas Corpus Writ Petition No. 17442 of 2010 decided on 19.8.2010, a Division Bench of this High Court, which too is a case similar to the case in hand and wherein in paragraph 7 of the judgement it was held, on the basis of judgement of judgement of Hon''ble Apex Court, as under:

7. Thus, the effort of the Hon''ble Supreme Court was to dispose of the question regarding vagueness of any provision of NSA. In view of the aforesaid observation, a notification was issued on 8.2.1982 vide Notification No. n/15011/1/82-IS (DO-II) enumerating the services which would include the "maintenance of supplies and services essential to the community". As many as 16 services were mentioned in the list given in the notification and at serial No. 11 the services included was "any service" relating to the banking or emanating for the bank services and at serial No. 16 any other services related to the State which has not been mentioned under the, other heads, were also included.

Meaning thereby wide power was given to the State and there were a number of categories of services which would have a direct and indirect effect of maintenance of security of the State relating to the essential services.

15. It may be appreciated that in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, , wherein 16 cases were categorized and included in the activities detrimental for maintenance of essential supplies and services to the community. The case of the petitioner is squarely covered within the frame work of Clause 11 & 16 which is very wide, includes each and every services which relates to the services to the community at large.

16. As far as the question of parity is concerned, it has been held by the full Bench of this High Court in the case of Chandresh Paswan v. State of U.P. and others, in Habeas Corpus Writ Petition No. 10215 of 1998 decided on 26.2.1999, wherein in paragraph 14, it has been held as under:

14. The principle of parity, which is only a facet of and steins from the doctrine of equality as enshrined in Article 14 of the Constitution of India, cannot be invoked ignoring the limitations prescribed by the statute and dictated by, inter alia, nature; purposed contemporary conditions and standards prevailing in the society, urgency of the given situation and, above all, well being of the people. Unbridled "right to equality before law" or "equal protection of the laws" is destructive of meaningful enjoyment of the right to equality itself guaranteed by the Constitution and is fraught with the peril of procreating serious disorder and disruption of the society. It is true that right to personal liberty is very precious. But, it is not absolute and cannot be above the public-weal. The prime object of all laws is promotion of the well being of the people, and the welfare of the people is the Supreme Law. See Latin Maxim "salus populi suprema lex esto," which means : Let the welfare of the people be the final law.

It is also to be noticed in paragraph 13 of the said judgement, the full Bench further back down to hold the inequitable answer to the question referred by the Division Bench that the order of preventive detention cannot be challenged on the ground of parity. All decisions of this Court taking contrary view must and shall stand overruled at this stage itself. It is clarified that the question which was referred to the larger Bench is as under:

Whether the order of preventive detention can at all be challenged on the ground of parity, the origin of which has been traced in Article 14 of the Constitution and if it can be claimed, what should be its extent and basis?

17. Similar view has been taken by the Supreme Court in the case of Yogendra Murari Vs. State of U.P. and Others, . The Court has categorically held as under:

9. There is no merit whatsoever in the petitioner's grievance of discrimination on the ground that the other co-accused persons have not been detained. The role of the petitioner and that of the others are not identical and the reasonable apprehension as to their future conduct must depend on the relevant facts, and

circumstances which differ from individual to individual. It would have been wrong on the part of the detaining authority to take a uniform decision in this regard only on the ground that the persons concerned are all joined together as accused in a criminal case.

Thus, it has been the consistent view of the Hon"ble Apex Court that though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity.

18. Reference may also be made to an earlier judgement of Hon"ble Apex Court in the case of Mrs Saraswathi Seshagiri Vs. State of Kerala and Another, , wherein again, it has been held that solitary incident can form the basis of detention order.

19. To the averments made in the writ petition, the State of U.P. has filed a counter-affidavit relating with regard to the disposal of the representations and the order passed by the Advisory Board. However, the same is not under challenge in the present writ petition.

20. A supplementary affidavit was filed on behalf of the petitioner and in which it was stated that the detention order in favour of the Riyaz @ Raju and Irfan @ Bhure have been revoked on 30.12.2012.

21. Needless to say that the detention orders have been revoked after the passing of the detention order against the petitioner. The detention order against the petitioner was passed on 21.10.2012 i.e. much before the detention of Bhure was revoked and thus, the said fact cannot have any implications on the detention order as passed against the petitioner.

22. A perusal of the record in the present case shows that the representation of the petitioner was duly considered by the State Government even the detention order passed by the District Magistrate was approved by the Advisory Board and after the report of the Advisory Board, the same was confirmed by the State Government in accordance with law.

23. The representation which was decided by the District Magistrate on 16.11.2012 was served upon the petitioner through Jail Authorities of Orai on 18.11.2012. The representation decided by the State Government on 29.11.2012 was also served upon the petitioner on 31.11.2012. There is also ample evidence on record to show that petitioner was involved in circulating fake currency notes of Rs. 1000 and 500 denominations in a partnership with other accused persons. It is also apparent that the notification has already been issued by the Central Government in which 16 categories of cases have been included in the activities detrimental for maintaining of essential supplies services to the community.

The case of the petitioner is squarely covered by the said notification dated 8.2.1982. That reference may also be made to Section 5-A of National Security Act, 1980 which clearly provides that the detention order can survive even on one ground and before the parity with the case. Section 5-A is quoted herein below:

5-A. Grounds of detention severally.--Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] u/s 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-.....

It may be recorded that much reliance has been placed by learned counsel for the petitioner on a case of Hon''ble Apex Court in the case of Ashok Arora @ Ashoki Thekedar v. State of U.P. and others, in Criminal Appeal No. 826 of 1985 decided on 29.11.1985 for the contention that there has been non application of mind.

However, the said case is squarely distinguishable on facts of the present case and is not applicable to the facts of the present case.

In view of the facts and circumstances stated above, the position that crystallizes is that there is consistent view in law to the effect that the:

- (a) even a solitary incident can form the basis of the detention order;
- (b) no party can be claimed in cases of detention as every detention order is based on the subjective satisfaction of the detaining authority;
- (c) the detention order can survive even on single ground.

Accordingly, considering the facts and circumstances of the case, we are of the view that the petitioner is not entitled to grant of any indulgence of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition fails and is accordingly dismissed.

No order as to costs.