
(1999) 07 RAJ CK 0030

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 2168 of 1999

Teja Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Criminal Procedure Code, 1973 (CrPC) — Section 107, 116
National Security (Amendment) Act, 1984 — Section 5A
National Security Act, 1980 — Section 3, 3(2), 3(3), 3(4), 4(2)
Penal Code, 1860 (IPC) — Section 147, 323, 354, 379, 380
Rajasthan Control of Goondas Act, 1975 — Section 3
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2000) CriLJ 244 : (1999) 3 RLW 1734 : (2000) 1 WLC 13

Hon'ble Judges : N.N. Mathur, J;A.K. Singh, J

Bench : Division Bench

Advocate : M.D. Purohit, sisted by M.L. Shreemali, for the Appellant; S.S. Bhandawat A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—By way of this Habeas Corpus Petition under Article 226 of the Constitution of India, petitioner detenu Teja Ram seeks to challenge the order of his detention dated 2-6-1999.

2. The Government of Rajasthan having regard to the circumstances prevailing i.e. the anti-social activities in various parts of the State and that certain undesirable elements acting prejudicial to the security of the State and prejudicial to the maintenance of the public order with a view to prevent in effective manner by order dated 11-3-1999 in exercise of power under Sub-Section (3) of Section 3 of the National Security Act, hereinafter referred to as "the Act", directed all the District Magistrates in the State to exercise the power under Sub-Section (2) of Section 3 of the Act during the period from 11-3-99 to

10-6-99. By another notification dt. 4-6-99, all the District Magistrates in the State of Rajasthan have been given powers under Sub-Section (2) of Section 3 of the Act for the further period from 11-6-99 to 10-9-99.

3. Mr. R. N. Arvind, District Magistrate, Banner, by the impugned order, on being satisfied that the activities of detenu Teja Ram are prejudicial to the public order in exercise of powers u/s 4(2) of the Act, directed to detain him in Central Jail, Jodhpur. The order of detention was executed on 3-6-99 and since then, the detenu is in Central Jail, Jodhpur. The grounds of detention along with the documents were served on the petitioner under communication dated 5-6-99. The State Govt. in exercise of the powers under Sub-Section (4) of Section 3 of the Act has approved the detention of the petitioner by order dated 11-6-99. It also appears from the record that on the same day i.e. 11-6-99, as required by Sub-Section (4) of Section 3 of the Act, the State Govt. has reported the fact of petitioner's detention to the Central Government.

4. The grounds of detention recorded by the District Magistrate, as communicated to the petitioner, show that he is involved in as many as fifteen criminal cases registered at Police Station, Balotra and Gida since 1994 for the offences like voluntarily causing hurts, rioting, forming unlawful assembly, criminal house trespass, criminal trespass, mischief, intimidating persons, assaulting poor people and women of the locality and the village etc. The sponsoring authority namely Superintendent of Police, Banner, along with his report, submitted documents i.e. challan papers, F.I.Rs. and complaints from various corners of the town, showing that the detenu was indulging in terrorising the people and preventing them from reporting the incident to the police. It was also reported by the sponsoring authority that the people are not coming forward to depose against him on account of his terrorising activities. The brief of the fifteen criminal cases are given as follows :

1. C.R. No. 112dt. 26-4-1995 under Sections 452, 323, 379 and 427, IPC;
2. F.I.R. No. 77 dt. 13-6-96 under Sections 447, 427 and 379, IPC, Police Station, Balotra;
3. F.I.R. No. 168 dt. 8-6-96 under Sections 447 and 435, IPC, Police Station, Balotra;
4. C.R. No. 242 dt. 5-8-96, under Sections 147, 149, 427, 379, IPC, Police Station, Balotra;
5. C.R. No. 247 dt. 6-8-96 under Sections 447, 147, IPC, Police Station, Balotra;
6. F.I.R. No. 383 dt. 16-11-96, under Sections 451 and 323, IPC, Police Station, Balotra;
7. C.R. No. 3 dt. 2-1-97, under Sections 457 and 354, IPC, Police Station, Gida;
8. C.R. No. 166 dt. 3-5-97 u/s 380, IPC, Police Station, Balotra;

9. FIR No. 304 dt. 24-8-97, under Sections 379 and 447, IPC, Police Station, Balotra;

10. F.I.R. No. 257 dt. 24-7-98, under Sections 447 and 379 IPC, Police Station, Balotra;

11. FIR No. 41 dt. 2-2-1998, under Sections 147, 323 and 452, IPC and u/s 3(i) (5) of the SC/ST Act, Police Station, Balotra;

12. Proceeding u/s 3 of the Rajasthan Control of Gundas Act, 1975;

13. Complaint u/s 107 and 116, Cr. P.C.;

14. Various entries made in the Roznamcha from 9-4-1999 to 11-5-1999;

15. Various complaints of the :

i. Complaint by Arya Samaj, Balotra. ii. Trika Jyoti, Balotra dt. 5-5-99. iii. Complaint of Block Congress/I on 12-5-99.

iv. Complaint by Gopna Ram.

v. Complaint by Akhil Bhartiya Scheduled Castes Parishad dt. 26-5-99

vi. Complaint by Parbhat singh Rathore, President, B.J.P. Barmer, dt. 26-5-99.

5. The submission on behalf of the petitioner is that he was in Government service as Laboratory Technician in the Department of Medical and Health till he sought voluntary retirement on 21 -1 -1995. He performed his duties with sincerity and utmost integrity and during his service career, no criminal case was registered against him. It is stated that out of fifteen criminal cases, seven cases are under Sections 107 of the Code of Criminal Procedure. The cases pertain to the individual disputes, which have no relation at all, even remotely to the public order. It is submitted that the dispute arises out of the land bearing khatedari No. 375. The said land was of one Gumna Ram Mali, who has four sons viz; Uda Ram, Sawala Ram, Hazari Ram and Chotha Ram. Gumna Ram Mali, who was short of money, entered into an agreement to sell, with Shri Shivnath Ram, father of petitioner, in the year 1973. He sold 1/4 share of his minor son Chotha Ram to Shivnath Ram for Rs. 10,000/-on 3-8-1973 and gave the site plan of the land showing the separate share of his son Chotha Ram. Thereafter, he got mutation of 1/4 share of each of his four sons with regard to Khatedari No. 375. Then in 1983, Hazari Ram and Sawala Ram, sons of Gumna Ram, sold their 1 /4 shares each by separate registered sale deeds to the petitioner and others suggested by him as per agreement with the petitioner and his father to various persons. It is also stated that the remaining land was sold by Uda Ram to petitioner's father by a written agreement to sell dated 12-12-1983. It is further stated that whole land was divided into several plots and some of the purchasers have built their houses, while some other plots were transferred by the purchasers according to their own convenience as per plan to different persons, who have also built their houses. The trouble started with escalation of the prices

of Abadi land in Balotra, which became an industrial town. Thus, Chotha Ram along with his brothers wanted to extort more money from petitioner's father and demanded Rs. 2,18,000/- against the prices of the land, which was ex facie illegal. Chotha Ram succeeded in recovering Rs. 1,18,000/- with a promise to make payment of the balance amount of Rs. 1,00,000/- in five yearly instalments. An agreement was executed on 14-10-91. Petitioner's father paid three instalments to Chotha Ram, the last being paid on 24-10-94. Uda Ram also started demanding exorbitant amount for his share. It was not possible for his father to face all this and, therefore, he left Balotra for his village Nosar. The petitioner sought retirement on 25-1-95 and took charge of the disputes. He resisted all the ulterior desires of Gumna Ram and his sons. This led to quarrel between them. Gumna Ram and his sons entangled the petitioner and his family members in false and fabricated criminal cases. It is alleged that Gumna Ram is politically powerful as he belongs to Mali community, which has a large number of votes in the area. It is also alleged that Gumna Ram is financially powerful and, as such, he has succeeded in influencing the local authorities. The petitioner has also referred to certain civil disputes between him and Gumna Ram and his sons. Thus, according to the petitioner, the order of detention is mala fide being at the instance of Gumna Ram.

6. It is contended by Mr. M. D. Purohit, Senior Advocate and Mr. M. L. Shreemali learned counsel for the petitioner, that the continued detention of the petitioner is illegal being in violation of the statutory provisions of the Act and Article 22(5) of the Constitution of India. Learned counsel has raised the following contentions :

(i) That the grounds of detention and the detention order have not been made contemporaneously or simultaneously as such detention of the petitioner is vitiated being in violation of Section 3(2) of the Act.

(ii) That the petitioner was not supplied with the legible copies of the documents along with the grounds of detention, which has deprived him of submitting effective representation. Thus, there is a violation of fundamental rights of the petitioner guaranteed under Article 22(5) of the Constitution of India.

(iii) The impugned order of detention suffers from the vice of non-application of mind in as much as that out of 15 cases, at least 7 cases are non-existent.

(iv) The activities attributed to the petitioner in the grounds of detention by referring criminal cases registered against him, may fall within the domain of "law and order" but have no nexus with the public order as they are not of the nature, which can be said to have impact on the general public to disturb the public order. We shall deal with each of the contentions in seriatim.

7. Contention No. (i) :

It is contended by the learned counsel for the petitioner that the order of detention is illegal being in violation of the mandatory provisions of Section 3(2)

of the Act as the District Magistrate did not formulate the grounds of detention simultaneously with the order of detention. In support of his contention, learned counsel has placed reliance on a decision of this Court in Smt. Sujata Bhardwaj and Another Vs. State of Rajasthan and Others,

8. Dr. S. S. Bhandawat, learned Addl. Advocate General submits that factually, it is incorrect to say that grounds of detention were not formulated at the time of passing the order of detention. He has invited my attention to para 12 of the reply supported by the affidavit of Shri R. P. Sharma, Addl. Collector, stating inter alia that at the time of recording the order of detention, the grounds were prepared by the detaining authority on 2-6-99 itself. However, the same were communicated to the petitioner on 5-6-99. We have perused the record produced before us by the learned Addl. Advocate General. The ordersheet. dt. 2-6-99 under the signatures of Shri R. N. Arvind, District Magistrate, Banner, contains all the grounds of detention. We ourselves have compared each and every ground of detention as appeared in the ordersheet dt. 2-6-99 with the grounds of detention communicated to the petitioner under communication dt. 5-6-99 and we find that they are exactly the same. Thus, it is factually incorrect to say that the grounds of detention were not formulated simultaneously with the order of detention. In view of this, we reject the first contention of the petitioner.

9. Contention No. (ii) :

It is contended by the learned counsel for the petitioner that the continued detention of the petitioner is illegal for the reason that the petitioner has been deprived of his right to submit an effective representation guaranteed under Article 22(5) of the Constitution of India. The grievance voiced by the petitioner is that he has not been provided legible copies of the documents attached with the grounds of detention. Nothing specifically has been pointed out as to which document, on what page and which portion is not legible. Dr. Bhandawat has invited our attention to para 5 of the reply, wherein it is stated that the detenu at the time of receipt of the grounds of detention did not make any complaint with respect to the documents. On the contrary, he has made an endorsement that the documents were read to him in his language and he has received the same after fully understanding. The relevant endorsement is extracted as follows :

^ ^lyXu dkxtr eSusa ejh Hkk"kk esa i<dj le>dj izfr izkIr dh gS**

10. A photostat copy of the communication dt. 5-6-99 on which the said endorsement has been made, as placed on record as Ex. R. 9. Such endorsement also finds place on documents Ex. R. 10 and R. 11. It is not in dispute that the petitioner never made any complaint to the detaining authority or the jail authority about the documents being not legible. It also does not appear if the petitioner made any representation challenging the order of detention. The petitioner has neither complained nor demanded copies of the documents, which are not legible according to him, for making representation against the order of detention. For this omission on the part of the petitioner, no fault can be found

with detaining authority. The detenu cannot be allowed to take advantage of his own omission. Even otherwise, no prejudice has been caused to the detenu for non supply of the documents, which according to him, are not legible for the simple reason that all the documents attached along with the grounds of detention pertain to the fifteen criminal cases referred therein. The petitioner in his petition has dealt-with each of the fifteen cases. This clearly shows that the petitioner has been able to read all those documents. A Division Bench of the Gauhati High Court in Yandrambam Sonachand Singh Vs. State of Manipur and Others, held that a detenu must make a demand for copy of such document and if he does not object forthwith, he cannot be allowed to take advantage of his own omission. Thus, we find no merit in the second contention as well. and the same is rejected.

11. Contention No. (iii) : Learned counsel appearing for the petitioner has invited our attention to the averments made in para 13(vii)(a) to (i). It is submitted that in the case at S. No. 2, the charges were quashed by this Court. In this regard, it is submitted by the respondents that the High Court while quashing the charge by the order dt. 10-8-98, directed the learned Judicial Magistrate to hear the petitioner on the point of charge and proceed in accordance with law. It is reported that after hearing the petitioner, the trial Court has framed charge against the petitioner. It is pointed out that in cases at item Nos. 3 and 7, the petitioner has been acquitted. In cases at item Nos. 8 and 10, a Final Report has been given by the police. It is submitted by the learned Addl. Advocate General that though the Final Report has been given, the Court of A.C.J.M. has taken cognizance against the petitioner in the said cases. It is pointed out that the petitioner has nothing to do with the case at item No. 12 but in that case also, a Final Report has been given by the police. Thus, according to the petitioner, out of 15 cases, at least five cases are non-existent. It is, thus, submitted that the order of detention stands vitiated when one or some of the grounds are found to be vague, irrelevant or non-existent, In alternate, it is submitted that in any case, it shows that the detaining authority did not apply its mind to each case while considering the report of the sponsoring authority. The criticism cannot sustain in view of Section 5-A, which was introduced in the National Security Act by the Act of 1984. Section 5-A provides that where person has been detained in pursuance of the order made u/s 3 of the Act, which has been made on two or more grounds, such ground shall be deemed to have been made separately. Thus, after introduction of Section 5-A, the grounds of detention is severable. Section 5-A of the Act reads as follows :?

5-A. Grounds of detention severable.? 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 ground and accordingly ?

(a) such order shall not be deemed to be invalid or inoperative merely because

one or some of the grounds is or are ?

- (i) vague,
- (ii) non-existent,
- (iii) non-relevant,
- (iv) not connected or not proximately connected with such person, or
- (v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

12. The object of inserting Section 5-A in the National Security Act is to overcome the effect of such interpretation by the Courts as a result of which the order of detention was liable to be struck down, even if the single ground was found to be invalid. Even if one or more grounds are found to be vague, non-existent, not relevant, not connected, irrational or invalid for any other reason whatsoever, the detention can be sustained on remaining grounds. Thus, even if out of fifteen cases, five cases are held to be nonexistent, the order of detention cannot be struck down on this ground. Accordingly, the third contention raised by the petitioner being devoid of merit is rejected.

13. Contention No. (iv) :

The thrust of the last argument of the learned counsel is that the activities of the detenu could be said to be prejudicial only to the maintenance of "law and order" and not prejudicial to the maintenance of "public order". It is submitted that the activities which had been attributed to the detenu, have no impact on the general members of the community and, therefore, could not be said to disturb the even tempo of the society and as such his detention for acting in any manner prejudicial to "public order" was unjustified.

14. A distinction has been drawn between the "public order" and "law and order" by a catena of decisions of the Apex Court. It is not necessary to refer all the decisions and burden this judgment as the Apex Court in Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another, has considered all the decisions and has laid down the guidelines in para 14 of the judgment as follows (at page 773-774 of CriLJ) :

From the law laid by this Court, as noticed above, it follows that it is the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of "law and order" or has acted in a manner likely to cause disturbance to "public

order". It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of "public order". Whenever an order of detention is questioned, the Courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to "public order" or belong to the category of being prejudicial only to "law and order". An order of detention under the Act would be valid if the activities of a detenu affect "public order" but would not be so where the same affect only the maintenance of "law and order". Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention.

15. We are reminded by Mr. M. D. Purohit, Senior Advocate, learned counsel for the detenu that the law relating to the preventive detention is draconian having the potentiality of being misused by the executive. Justice (Dr) A. S. Anand, Judge of the Supreme Court (as his lordship then was, now the Chief Justice of India) speaking for the bench in Harpreet Kaur's case (supra) observed that "the crime is a revolt against the whole society and an attack on the civilization of the day. Order is the basic need of any organised civilised society and any attempt to disturb that order affects the society and the community". In para 18 of the judgment, their lordships referred to the present state of law pointing out that a criminal can be punished only when the prosecution is able to lead evidence and prove the case against an accused person beyond a reasonable doubt. When the prosecution is unable to lead evidence to prove its case, the case fails, though that failure does not imply that no crime had been committed. Where the prosecution case fails, because witnesses are reluctant on account of fear of retaliation to come forward to depose against an accused, obviously, the crime would go unpunished and the criminal would be encouraged. Their lordships further emphasized that respect for the law has to be maintained in the interest of the society and discouragement of a criminal is one of the ways to maintain it.

16. On consideration of various judgments, the following principle to distinguish breach of "law and order" and disturbance of "public order"; is culled out :

(1) The contravention of law always affects the order but before it could be said to affect the "public order", it must affect the community and public at large.

(2) Whether objectionable activities upon which the order of detention is grounded have the potentiality to disturb the even tempo of life of the community, which makes it prejudicial to the maintenance of the "public order".

(3) The potentiality of a person to disturb public order has to be adjudged in the facts and circumstances of each case. In a given case, the incident may not fall within the purview of the "public order" but when the same incident is viewed in the context of several other criminal activities of the same nature, it may show and exhibit the criminal potentiality of a person to disturb the "public order".

(4) The objectional activities of a detenu must be judged in the totality of the circumstances to find out whether those activities had any prejudicial effect on

the society as a whole or not. If the society, and not only an individual suffers on account of questionable activities of a person then those activities are prejudicial to the maintenance of the "public order" and are not merely prejudicial to the "law and order". It is the potentiality of the act to disturb the even tempo of life of the community, which makes it prejudicial to the maintenance of the "public order" but if the contravention in effect, is confined to few individuals only, who are directly involved, the contravention would raise the problem of law and order" only as distinguished from the wide spectrum of "public order".

17. Before we proceed to examine the merits of the case, we may re-state the limits of this Court in exercise of its powers under Article 226 of the Constitution of India in the matter of subjective satisfaction of the detaining authority. This Court does not sit in appeal against the order of detention and, therefore, neither this Court will enter into propriety or sufficiency of the ground on which the satisfaction of the detaining authority is based nor this Court will substitute its own satisfaction for that of subjective satisfaction of the detaining authority but this does not imply that the subjective satisfaction of the detaining authority is wholly immune from the power of a judicial review. The subjective satisfaction, being a condition precedent for the exercise of power conferred on the executive, the Court can always examine whether the requisite satisfaction was arrived at by the authority and whether the detaining authority acted fairly and justly with care and caution.

18. As laid down by the Apex Court in *Khudiram Das Vs. The State of West Bengal and Others*, a detaining authority for the subjective satisfaction is required to consider ?

(a) whether a person concerned having regard to his past conduct judged in the light of the surrounding circumstances and the other relevant material, would be likely to act in a prejudicial manner as contemplated under the relevant provisions.

(b) Whether it is necessary to detain him with a view to preventing him from so acting.

19. The Apex Court held that these are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. This is the reason that the legislature has deliberately and advisedly left the determination of prejudicial activities to subjective satisfaction of the detaining authority. The only thing, which is required to be re-emphasized is that the detaining authority must exercise the power of detention with due care and caution and must act fairly and justly.

20. Reverting to the question of "Law and Order" and "Public Order", we have examined the each ground of detention and the material on record as supplied to the detenu. It clearly appears that the petitioner detenu left the Government

service and started the business of purchase and sale of plots. Even on his own saying, his father had purchased a land from Gumna Ram Mali by executing an agreement to sell. A person does not acquire any right merely on the basis of agreement to sell. Still he sold the plots showing himself as the owner of the land to a number of persons, which led to civil and criminal disputes between the parties. With a view to earn illegal money, plots already sold to parties, were re-sold. The petitioner is reported to have indulged in getting vacated the plots already sold by him by force, for which he has formed the gang of criminals like TejaRamNai, Manojia, Rajia, Rangar Chothgar etc. These persons are not the persons who have purchased the plots. The record shows they are the persons or criminal background. He has also violated the prohibitory orders for maintenance of peace. Mushroom growth of land grabbers in the various names of business from Metros to down the small towns have not only sabotaged the town planning but has given raise to tremendous civil, criminal and revenue litigations and above all disturbed the public order. Such illegal activities are carried out with the aid of gangs of criminals, who pose serious threat to "public order". These persons have no respect for the law and innocent persons. In such cases, it is difficult to get material for their prosecution. In our opinion, in a fit case, if a land-grabber is detained under the National Security Act for preservation of public peace, there is nothing wrong in it. The record shows that the detenu has formed a gang of unlawful persons for the purpose of harassing and terrorising the poor people. The activities of the petitioner detenu have the potentiality to disturb the "public order". On reading of the police papers, which formed the basis of grounds of detention that all the criminal activities of petitioner fall within the domain of the "public order" and, therefore, there is no error whatsoever on the part of the District: Magistrate to reach the subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of the public order. Thus, we find no merit in the fourth contention as well and the same is accordingly rejected.

21. No other ground has been urged before us.

22. Irview of the aforesaid, we find no merit ir this Habeas Corpus petition and the same is hereby dismissed.