
(1999) 10 AHC CK 0015

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 33888 of 1999

Udai Veer Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 123, 147, 302, 307, 504

Citation : (2000) CriLJ 1363

Hon'ble Judges : V.K. Chaturvedi, J;O.P. Garg, J

Bench : Division Bench

Advocate : C.P. Singh and D.S. Mishra, for the Appellant; Mahendra Pratap, AGA, for the Respondent

Final Decision : Allowed

Judgement

O.P. Garg, J.—The principal contention urged for the petitioner Udaiveer Singh son of Shyam Singh, Resident of village Badhal Khurd, P.S. Kotwali, district Muzaffarnagar relates to the of repeated question that the ground of detention has no nexus to the "public order", but is purely a matter of "law of order". In order to appreciate this contention, it is necessary to disclose the facts as have been unfolded from the grounds accompanying the order of detention dated 16-6-1999 passed by the District Magistrate-respondent No. 2 under the provisions of Section 3(2) of National Security Act (Act No. 65 of 1980) (hereinafter referred to as "the NSA") served on the petitioner while he was in jail, in connection with case crime No. 204 of 1999, u/s 302, I.P.C., P.S. Civil Lines, Muzaffarnagar.

2. On 9-5-1999, at 10.30 a.m., the present petitioner and his two nephews Amar Veer Singh and Param Veer Singh, murdered one Ravindra Kumar Malik at his residence in Civil Lines Muzaffarnagar. It is alleged that Amar Veer Singh opened fire on the deceased with his country made pistol while Param Veer Singh dealt

the deceased with knife blows. After committing the gruesome murder, the present petitioner as well as other two persons were successful in escaping on Vespa LML Scooter U.P. 92-C/8346. F.I.R. was lodged by Vinod Kumar brother of the deceased at P.S. Civil Lines Muzaffarnagar at 11.40 a.m. naming the three accused persons. Later on, the petitioner was apprehended by the local Police and from his possession a 22-Bore licensed revolver was seized besides the scooter, which was used in fleeing from the situs of the crime. While the petitioner was in jail, the detaining authority, i.e., District Magistrate, Mazaffarnagar received reports from the sponsoring authorities that the various activities of the petitioner were prejudicial to the maintenance of "public order", inasmuch as, he was previously involved in crime case No. 337 of 1991, u/s 302/307, IPC, P.S. Kotwali, Muzaffarnagar and another crime case No. 50-A/95, under Sections 147/123/504/506, IPC, registered in the same Police Station. It was reported that on account of murder of Ravindra Kumar Malik, who happened to be a teacher, tension and commotion prevailed at district headquarters and the teachers stopped evaluation of the answer books at the various educational centres and staged demonstrations at number of places; a sense of insecurity gripped the general public. All these facts led to break down of the "public order". It was also mentioned in the grounds supplied to the petitioner in support of the detention order that he was making attempts to get himself released on bail and if he is successful in his mission, he would terrorize the witnesses and may commit another horrendous crime.

3. The petitioner made a detailed representation against the order of detention addressed to the Advisory Board through the Home Secretary, Government of Uttar Pradesh and Secretary, Home Ministry, Union of India, New Delhi, a copy of which is Annexure 5 to the writ petition. The State Government approved the order of detention dated 16-6-1999 passed by the District Magistrate-respondent No. 2.

4. In this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the validity of the order of detention passed u/s 3(2) of the NSA on variety of grounds. Counter and rejoinder affidavits have been exchanged.

5. Heard Sri V.P. Srivastava and D.S. Misra, learned counsel for the petitioner and Sri Mahendra Pratap, AGA on behalf of the State of U.P. as well as Sri K.N. Pande for Union of India at considerable length.

6. The challenge to the detention order has been confined only on the ground that in view of the facts mentioned above, it was a case of breach of "law and order" and not of "public order". The grounds relating to infraction of any procedure with regard to the approval and confirmation of the order of detention or delay in the disposal of the representation have not been canvassed.

7. Before embarking upon the controversy whether in view of the established facts, it is a case of "public order" or of "law and order", it would be proper to

determine a seemingly preliminary question, raised by Sri Mahendra Pratap that it is not for this Court to probe into the correctness of the alleged facts on the basis of which the detaining authority felt satisfied in passing the order, since this Court has a limited role in the matter of examining the validity of the detention order. In support of his contention, learned AGA placed reliance on the decision of the apex Court in the case of *State of Gujarat Vs. Adam Kasam Bhaya, ; Smt. K. Aruna Kumari Vs. Government of Andhra Pradesh and Others, Mrs. U. Vijayalakshmi Vs. State of Tamil Nadu and another*, and the decision of this Court in *Vijay Pal alias Pappu v. Union of India 1996 (33) ACC 741*. The gamut of all these rulings is that the High Court in its writ jurisdiction under Article 226 of the Constitution is to see whether the order of detention has been passed on any materials before it. If it is found that the order has been passed by the detaining authority on materials on record, then the Court cannot go further and examine whether the material was adequate or not, which is the function of an appellate authority or Court. It can examine the material on record only for the purpose of seeing whether the order of detention has been based on no material. The satisfaction mentioned in Section 3 is the satisfaction of the detaining authority and not of the Court. It may be further clarified that there can be no quarrel about the well established proposition of law that the subjective satisfaction of the detaining authority as regards the factual existence of the condition on which the order of detention can be made, namely, the grounds of detention constitute the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. Nor can the Court, on a review of the grounds, substitute its own opinion for that of the authority. In a recent decision of the Court reported in the case of *Ravi Singh Vs. State of Uttar Pradesh and Others*, similar view was taken that it is the subjective satisfaction of the detaining authority which should weigh and this Court cannot interfere if there was enough material before the detaining authority to form a particular opinion. We find it difficult to agree with the AGA on the point that this Court has to accept the subjective satisfaction of the detaining authority as such and cannot go behind the reasons which impelled him to pass the order of detention. If the submission of the AGA is accepted in that case, perhaps, no order of the detaining authority would be subject to scrutiny by this Court. As said above, and as was reiterated by the apex Court in *Shafiq Ahmad Vs. District Magistrate, Meerut and Others*, it has to be seen by this Court whether the grounds or the reasons supplied to the detenu in support of the detention order were germane to the maintenance of "public order". The Court can examine the record and determine the validity whether the order is based on no material or whether materials have rational nexus with satisfaction that "public order" was breached.

8. Having thus cleared the cobwebs created by learned AGA with regard to the jurisdiction of this Court to look into the facts on the basis of which detaining authority formed his satisfaction, now it is the time to consider whether on the basis of the material available on record, the instant case relates to the breach of

"law and order" or it has disturbed the maintenance of "public order". The distinction between the areas "law and order" and "public order" has come to be canvassed in a catena of decisions of apex Court as well as this Court. The oft quoted leading decision in the case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, ; Arun Ghosh Vs. State of West Bengal, ; came to be considered in the subsequent cases in Pushkar Mukherjee and Others Vs. The State of West Bengal, ; Nagendra Nath Mondal Vs. The State of West Bengal, ; Kishori Mohan Bera Vs. The State of West Bengal, ; Shri Amiya Kumar Karmakar Vs. The State of West Bengal, ; Samaresh Chandra Bose and Others Vs. The District Magistrate, Burdwan and Others, ; Tribhuvan Nath Vs. The State of Maharashtra, ; Babul Mitra Vs. State of West Bengal and Others, ; Ram Ranjan Chatterjee Vs. The State of West Bengal, ; Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others, ; Ashok Kumar Vs. Delhi Administration and Others, ; State of U.P. Vs. Kamal Kishore and Another, ; Gulab Mehra Vs. State of U.P. and Others, ; Angoori Devi for Ram Ratan Vs. Union of India (UOI) and Others, ; Harpreet Kaur (Mrs.) Harvinder Singh Bedi v. State of Maharashtra 1992 AIR SC 835 ; Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others, The gamut of all the above decisions in short is that the distinction between the areas of "public order" and "law and order" lies not in nature and quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might effect specific individuals only and therefore, touch the problem of law and order, while in another it might affect public order. The act by itself, therefore is not determinant of its gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order.

9. On both sides, besides the decisions, referred to above, a number of decisions were cited in support of their respective contentions. As a matter of fact, the various decisions only furnish certain guidelines and parameters which may be relevant for the decision of a particular case but this fact cannot be lost sight of that the same act in a given setting may appertain to law and order while in a changed setting may be in the realm of public order. The dare devil way in which the acts were committed, the setting in which the incidents took place, the reaction that followed from these activities, and the repercussion thereof on the locality have to be taken into consideration to determine if the activities fall within the mischief of public disorder. To ascertain whether the order of detention is valid or is liable to be vacated, it is not advisable to blindly follow the guideline in a different case. The problem arising in each case, must be considered on its own facts and in the proper setting. To import the ratio of a case vitally connected with facts thereof is bound to have misleading results.

10. An act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted

to particular individuals or a group of individuals it breaches the law and order problem but if the effect and reach and potentialities of the act is so deep as to affect the community at large and/or the even tempo of the community then it becomes a breach of the public order. Learned counsel for the petitioner urged that the case against the petitioner is simply that of taking part in the commission of the crime of murder of Ravindra Pratap Singh who happened to be a teacher. The F.I.R., it was pointed out, indicates that the petitioner as well as his two companions exterminated the deceased on account of enmity at his residence and, therefore, the incident is a case of mere breach of "law and order" which can be tackled by the general criminal law of the land. Learned AGA, however, repelled the above submission and urged that since the impact of the murder has been that the teachers struck down the work and stopped evaluation of the answer books, at different centers, and commotion prevailed at district headquarters, it was a case of disturbance of "public order".

11. In a recent decision of this Court in Balram Gupta Vs. Superintendent, District Jail and Others, one Prem Singh, an Executive Engineer, was killed in pursuance of a conspiracy hatched at the residence of M.A. Khan, Executive Engineer. The deceased was done to death by piercing a screw driver in his stomach. Thereafter, his body was tied by woollen shawl and was put on the Railway track with the design that it shall be cut into pieces by a passing train and it shall be treated as a case of accident. An order of detention under the NSA was passed, which was challenged and one of the grounds of apparent "public disorder" was that the employees of various departments of the district approached the detaining authority and apprised him of their fear and feeling of insecurity. They also threatened to boycott the Parliament Elections. The detaining authority said that in view of the aforesaid reaction among the employees, maintenance of public order and law and order was seriously threatened. It was also said that by the aforesaid occurrence of murder of Executive Engineer, persons employed in technical services in the entire State, officers and employees of other departments and the public at large fell in a grip of fear and terror. Placing reliance on the Full Bench decision in the case of Sheshdhar Mishra v. Superintendent Central Jail, Naini 1985 (Suppl) Acc 304 in which it was observed :

Whether in a detention order the detenu was alleged to have committed murder of an Advocate at a public place as a result of which local residents closed the doors of their houses and shops and it was further alleged to have threatened the prosecution witnesses to desist from tendering evidence in the murder case pending against him, the two grounds being intimately connected with the incident of murder committed on account of personal animosity and there being no material on record to suggest that the detenu would have indulged into similar activities of murder, in future, it could not be said that the single act of murder had its impact on the society to such an extent as to disturb the normal life of the community, thereby rudely shocking the ordinary tempo of the normal life of the public. Merely because the local residents closed the doors of their

houses and shops did not mean that the balanced tempo of the life of the general public was disturbed as a result of which the members of the public could not many on normal avocation of their life.

It was held that no disturbance to even tempo of life was created. Every breach of peace does not lead to public disorder. Reliance was also placed on the decision of the apex Court in the case of Dipak Bose alias Naripada Vs. State of West Bengal, in which it was observed that every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all of such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed. In respect of such acts the drastic provisions of the NSA are not contemplated to be resorted to and the ordinary provisions of our penal laws would be sufficient to cope with them. In Habeas Corpus Writ Petition No. 3552 of 1998, Jiwan Singh v. State of U.P. and Ors. decided on 17-11-1998 by this Court, an incident had taken place on 30-11-1997 at about 1.30 p.m. when the deceased Shiv Singh, who was talking with another person near a betel shop, was murdered. The detenu and his companions took away the deceased in their vehicle. In the grounds of the detention order, it was mentioned that due to the above incident an atmosphere of terror prevailed in the locality. Nobody tried to intervene nor gave a chase to the assailants of Shiv Singh. A sense of insecurity gripped the general public. People remained inside their houses out of fear. Confusion was created amongst the passers by on the road. In this manner, even the tempo of life in the locality was disturbed and public order was breached. In these circumstances, the detaining authority was of the opinion that there was every likelihood that after being released on bail, the detenu will again indulge in such criminal activities which will affect public order. Conscious of the fact that even a single incident taking place at a crowded public place may, in the facts and circumstances, affect public order this Court took the view that the incident did not affect the public order. The incident aforesaid can, it was observed, reasonably be said to have disturbed law and order at the place but does not have the potential and the reach to affect the even tempo of life of the community and the public at large.

12. Emphatic reliance was placed by learned counsel for the petitioner on the guiding principles laid down by the apex Court in Smt. Victoria Fernandes Vs. Lalma Sawma and others, . Subhash Bhandari Vs. District Magistrate, Lucknow and Others, , Subhash Bhandari v. District Magistrate, Lucknow 1986 (23) ACC 288 Mrs. T. Devaki Vs. Government of Tamil Nadu and others, , Mrs. T. Devaki v. Government of Tamil Nadu. We have thoroughly scrutinized the decisions aforesaid as well as the decisions relied upon by the learned AGA reported in Veeramani Vs. State of T.N., Suneel Roy Vs. State of U.P. and Others, and some Ors. which have already been referred above. There is, at least, one such case of the apex Court on which both the parties have placed reliance, namely Smt. Tarannum Vs. Union of India and Others, in which the main incident pertained to looting of gold ornaments; writ watches and cash from the house by the detenu

and his associates by wielding knives and pistols. The other ground of detention was based on an incident relating to alleged threats held out by the detenu himself or through his agent while he was put in jail. After discussing the cases of Angoori Devi; Harpreet Kaur and Ayya alias Ayub (supra) it was held that the incident pertained to law and order problem and not to the maintenance of public order. In the instant case, the District Magistrate has observed that the teachers had stopped evaluating answer books and staged demonstrations at different places with the result commotion and tension prevailed in the area. It is common knowledge that whenever a murder is committed and the deceased belongs to a class of employees or profession, the officers and employees of the department assemble to pressurize the administration with a view to take swift action to apprehend the criminals. Such pressures are usually exerted on the administration and the departmental authorities so that the arrest of the culprits is expedited. In the instant case, the teachers were not in the vicinity of locus in que. They were examining evaluating answer books at different centers. They became agitated and stopped work of evaluation of the answer books and staged demonstrations with a view to put pressure on the administration to apprehend the criminals. Their agitation; stoppage of work and demonstrations had nothing to do with the public order. There is nothing on record to indicate that the people living in the locality where the incident of murder took place, were prevented from following their usual avocation.

13. It is also mentioned in the detention order that in case the petitioner is successful in getting the bail he would be released and in that event, he may repeat the crime. This aspect of the matter also came to be considered by the apex Court in the case of Shashi Aggarwal Vs. State of U.P. and Others, wherein it was observed that every citizen has a right to have recourse of law. He has a 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, it should oppose bail. He cannot be interdicted from moving the Court for bail by clamping an order of detention. The possibility of Court's granting bail may not be sufficient nor a bald statement that the person would repeat his criminal activities, would be enough.

14. Without repeating the facts all over again, suffice it to say that the incident alleged against the petitioner pertained to specific individuals and none of the incidents alleged against the petitioners suggest that his activities endangered public peace or tranquillity or his activity was directed towards general members of the public and its impact was so much in the locality that those living there were prevented from following their normal avocation of life. It is true that the act or incident which may be attributed to the detenu may be reprehensible and yet if it concerns only specific individuals and it has no impact on general members of the community and has no potentiality of disturbing even tempo of life of the people, it cannot be held to be an activity prejudicial to public order. Merely because the murder had taken place in the brilliant light of the day at 12.30 p.m. in the densely populated locality of Civil Lines at district Headquarters, it cannot be said that the public order was, in any manner,

disturbed. There is no evidence, as said above, to indicate that normal life of the residents of the locality was, in any manner, disturbed.

15. It is a case where the nominal law of the land shall take care of the petitioner. If the prosecution is able to lead evidence and prove the case against the petitioner beyond reasonable doubt, the petitioner shall certainly be punished. Judging the objectionable activities of the petitioner in the totality of the circumstances, we have no hesitation in recording the finding that the questionable activities of the petitioner were not, in any manner, prejudicial to the maintenance of public order.

16. In the result, the writ petition succeeds and is accordingly allowed. The petitioner shall be set at liberty forthwith unless he is required to be detained in some other case.