

(2004) 04 AHC CK 0186

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 2685 of 2004

Uma Kant Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 437
National Security Act, 1980 — Section 15

Citation : (2004) CriLJ 4550

Hon'ble Judges : S. Rafat Alam, J; Ghanshyam Dass, J

Bench : Division Bench

Advocate : V.P. Srivastava and R.N. Yadav, for the Appellant; Ravindra Singh, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner, a detenu under the National Security Act, 1980 (hereinafter referred to as the Act), has approached this Court through this criminal misc. writ petition under Article 226 of the Constitution of India for issuance of a writ of mandamus commanding the respondents to release him on short term bail and to quash the order of the State Government dated 15-4-2004 rejecting his application u/s 15 of the Act for his temporary release.

2. It appears that the petitioner has been detained u/s 3(3) of the Act for the alleged prejudicial activities by the order of the District Magistrate dated 15-3-2004 contained in Annexure-5 to the writ petition, served on him in the District Jail, Jaunpur on 16-3-2004. He thereafter filed his nomination for contesting Lok Sabha election from the Parliamentary Constituency Machchlishahr in the district of Jaunpur as a Bahujan Samaj Party candidate. He also moved an application/representation u/s 15 of the Act on 31-3-2004 before the District Magistrate, Jaunpur for his temporary release to enable him to contest the said election. The said application was rejected vide order dated

1-4-2004 on the ground that the District Magistrate has not been empowered under the Act to grant temporary release. Aggrieved petitioner then preferred Criminal Misc. Writ Petition No. 2328 of 2004 before this Court which was dismissed vide order dated 7-4-2004 with the observation that in the event he moves an application/representation u/s 15 of the Act before the State Government for temporary release within three days, the same may be considered and disposed of on merit expeditiously, preferably within a period of one week from the date of filing of such representation. Consequently, the petitioner filed an application before the State Government on 9-4-2004 which has been rejected by order dated 14-4-2004 and has been impugned in his petition.

3. We have heard learned counsel for the petitioner and Sri Ravindra Singh, learned Additional Advocate-General appearing for the State respondents.

4. Learned counsel for the petitioner vehemently contended that the order of detention has been passed by the District Magistrate at the behest of the State Government solely with a view to prevent the petitioner from canvassing for his election in his constituency and thus, it would be expedient and in the interest of justice that he may be temporary released till the date of declaration of election result so that he may effectively participate in the ensuing parliamentary election. On the other hand, Sri Ravindra Singh, learned Additional Advocate General, opposed the prayer and submitted that the petitioner has criminal antecedent and is involved in a number of criminal cases and looking to his prejudicial activities his detention was necessary under the law for preventing him from acting in any manner prejudicial to the maintenance of public order. It is submitted that the petitioner instead of challenging the order of detention by Habeas Corpus Writ Petition has filed this criminal misc. writ petition seeking temporary release which cannot be allowed without challenging the order of detention.

5. We have carefully considered the submissions made on both sides. It is not in dispute that this Court has jurisdiction to release a detenu temporarily on bail. But this jurisdiction has to be sparingly exercised and in rarest of rare cases having regard to the object and purpose of the order of detention. The question regarding grant of interim bail in the matter of preventive detention was the subject-matter of consideration before a Constitution Bench of the Apex Court in the case of *The State of Bihar Vs. Rambalak Singh and Others*, wherein it has been held that the High Court has jurisdiction to grant bail but the exercise of such jurisdiction is inevitably circumscribed by considerations which are subject to such proceeding and which have relevance to the object which is intended to be served by the order of detention. Even in the matter where the allegations made in the writ petition disclose serious defect in the order of detention which would justify the release of detenu or where mala fides are alleged in respect of the order of detention, instead of granting temporary release or interim bail, hearing of writ petition is to be expedited without any delay. The Apex Court in para 10 of

the judgment has held that the jurisdiction of the High Court to grant relief to a detenu in such proceeding is very narrow and limited. Para 10 of the aforesaid judgment is extracted below :

"Having thus rejected the main argument urged by the learned Advocate General, we must hasten to emphasise the fact that though we have no hesitation in affirming the jurisdiction of the High Court in granting interim relief by way of bail to a detenu who has been detained under Rule 30 of the Rules, there are certain inexorable considerations which are relevant to proceedings of this character and which inevitable circumscribe the exercise of the jurisdiction of the High Court to pass interim orders granting bail to the detenu. There is no doubt that the facts on which the subjective satisfaction of the detaining authority is based, are not justiciable, and so, it is not open to the High Court to enquire whether the impugned order of detention is justified on facts or not. The jurisdiction of the High Court to grant relief to the detenu in such proceeding is very narrow and very limited. That being so, if the High Court takes the view that prima facie the allegations made in the writ petition disclose a serious defect in the order of detention which would justify the release of the detenue the wiser and the more sensible and reasonable course to adopt would invariably be to expedite the hearing of the writ petition and deal with the merits without any delay. Take the case where mala fides are alleged in respect of an order of detention. It is difficult, if not impossible, for the Court to come to any conclusion, even prima facie, about the mala fides alleged, unless a return is filed by the State. Just as it is not unlikely that the High Courts may come across cases where orders of detention are passed mala fide, it is also not unlikely that allegations of mala fide are made light heartedly or without justification, and so judicial approach necessarily postulates that no conclusion can be reached, even prima facie, as to mala fides unless the State is given a chance to file its return and state its case in respect of the said allegations; and this emphasizes the fact that even in regard to a challenge to the validity of an order of detention on the ground that it is passed mala fide, it would not be safe, sound or reasonable to make an interim order on the prima facie provisional conclusion that there may be some substance in the allegations of mala fides. What is true about mala fides is equally true about other infirmities on which an order of detention may be challenged by the detenu. That is why the limitation on the jurisdiction of the Court to grant relief to the detenus who have been detained under Rule 30 of the Rules inevitably introduces a corresponding limitation on the power of the Court to grant interim bail."

6. Their Lordships in para 11 further laid down that the Court has to bear in mind the object which is intended to be served by the order of detention. Para 11 of the judgment is extracted below :

"In dealing with writ petitions of this character, the Court has naturally to bear in mind the object which is intended to be served by the orders of detention. It is no doubt true that a detenu is detained without a trial, and so, the Courts would

inevitably be anxious to protect the individual liberty of the citizen on grounds which are justiciable and within the limits of their jurisdiction. But in upholding the claim for individual liberty within the limits permitted by law, it would be unwise to ignore the object, which the orders of detention are intended to serve. An unwise decision granting bail, to a party may lead to consequences, which are prejudicial to the interests of the community at large; and that is a factor which must be duly weighed by the High Court before it decides to grant bail to a detenu in such proceedings. We are free to confess that we have not come across cases where bail has been granted in habeas corpus proceedings directed against orders of detention under Rule 30 of the Rules, and we apprehend that the reluctance of the Courts to pass orders of bail in such proceedings is obviously based on the fact that they are fully conscious of the difficulties -- legal and constitutional and of the other risks involved in making such orders. Attempts are always made by the Courts to deal with such applications expeditiously; and in actual practice, it would be very difficult to come across case where without a full enquiry and trial of the grounds on which the order of detention is challenged by the detenu, it would be reasonably possible or permissible to the Court to grant bail on prima facie conclusion reached by it at an earlier stage of the proceedings."

7. It is also settled legal proposition that while considering the preventive detention for maintenance of public order, vis-a-vis personal liberty of a citizen, the former is to be given weightage and importance. Reference may be made to the judgment of the Hon"ble Apex Court in the case of Ram Bali Rajbhar Vs. The State of West Bengal and Others, , wherein the Hon"ble Apex Court has observed in para 13 of the judgment that "the law of preventive detention, whether we like it or not, is authorized by our Constitution presumably because it was foreseen by the Constitution makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subverts or disrupt the bases of an established order may outweigh the claims of personal liberty.

8. Now coming to the case in hand, admittedly the Election Commission has notified the date of polling on 26-4-2004. It appears from the order of the State Government dated 14-4-2004 contained in Annexure SA-1 to the supplementary affidavit that on the application of the petitioner a report from the District Magistrate, Jaunpur was called for wherein the District Magistrate reported that the petitioner is a candidate from 43 Machchlishahr constituency and he has a long criminal history and that constituency is highly sensitive one. The State Government having considered the report and the circumstances found that temporary release of the petitioner will not be proper in the interest of free and fair conduct of election and, therefore, rejected the application.

9. Having regard to the facts of this case, we are of the view that at this stage if the petitioner is allowed to be released temporarily, the very object intended to be served by the order of detention would be defeated. That apart there is a

substance in the contention of the learned Additional Advocate General that a detenu detained under the preventive law cannot straight away seek prayer for temporary release under extraordinary jurisdiction of this Court without assailing the validity of the order of detention. No doubt, this Court's jurisdiction under Article 226 of the Constitution is plenary and it has wide power to issue appropriate writs and directions in appropriate cases but that cannot be used only for the purpose for giving interim relief as the only and final relief.

10. In the case of *The State of Orissa Vs. Madan Gopal Rungta*, , the Hon''ble Apex Court opined that Article 226 of the Constitution cannot be used for the purpose of giving interim relief as the only and final relief. In that case, the writ petition was disposed of by the Orissa High Court in the following terms :

"We direct that till three months from today or one week after the institution of their (respondents) contemplated suit, whichever is earlier, the Government of the State of Orissa should refrain from disturbing the petitioner's possession over the mining areas in question and that thereafter this order will cease to have effect."

11. On appeal preferred by the State of Orissa, the Hon''ble Apex Court observed that the above directions were given only to circumvent the provision of Section 80 of the C. P. C., which is not within the scope of Article 226 of the Constitution. It is further held that interim relief can be granted only in aid of and an ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. The Apex Court further observed that if the High Court was of the opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of Mandamus or any other direction of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante.

12. Learned counsel for the petitioner could not cite before us any authority wherein the interim relief has been granted without challenge to the order of detention nor addressed us on this question. Though the grounds of detention have been annexed as Annexure- 6 to the writ petition and we have carefully perused the same but we feel that it would not be proper to express any opinion at this stage as admittedly the order of detention along with relevant material has been referred to the Advisory Board u/s 10 of the Act for its opinion and, therefore, any observation of this Court in this writ petition may prejudice the matter before the Advisory Board.

13. However, we need not to go into this question as this petition can be disposed of on the first contention as to whether the interim relief prayed for can be allowed in this writ petition in the facts of the case or not. It has been stated in the order of the State Government that the Machchlishahr Constituency is

highly sensitive, and therefore, we are of the view that it would not be appropriate to allow temporary release of the petitioner which may defeat the very object intended to be served by his detention.

14. Having appreciated the rival contentions of the parties and having regard to the facts and circumstances of the case, we are of the view that this petition deserves to be dismissed.

15. In the result, the writ petition fails and is hereby dismissed. There shall be no order as to costs.