
(2015) 09 AHC CK 0214

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 64173 of 2014

Vikrama Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

National Security Act, 1980 — Section 3(3), 8
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 308

Citation : (2015) 9 ADJ 766 : (2015) 91 ALLCC 878 : (2015) 6 AWC 6141

Hon'ble Judges : B.K. Narayana and Vijay Lakshmi, JJ.

Bench : Division Bench

Advocate : Piyush Sinha, Jitendra Kumar and U.N. Sharma, for the Appellant;
Braj Lal, for the Respondent

Final Decision : Allowed

Judgement

B.K. Narayana, J.—Heard Sri Piyush Sinha, learned counsel for the petitioner, Sri Braj Lal, learned counsel for the Union of India and Sri. J.K. Upadhyay, learned AGA for the State. This writ petition has been filed by the petitioner Vikrama Singh with a prayer to issue a writ in the nature of Habeas Corpus commanding the respondents to release the petitioner who is in jail custody pursuant to the order dated 24.7.2014 passed by the respondent No. 3/District Magistrate, Ballia in the exercise of his power under Section 3(3) of the National Security Act (hereinafter referred to as the NSA) forthwith. A further prayer has been made to issue a writ order or direction in the nature of certiorari quashing the impugned detention order dated 24.7.2014 passed by respondent No. 3/District Magistrate, Ballia, Annexure-1 to the writ petition.

2. Learned counsel for the petitioner very fairly submitted that the prayer made by the petitioner has been rendered infructuous as the petitioner has been released after having served the entire period of detention and hence he is confining his challenge in this writ petition to the order of detention dated 24.7.2014 alone.

3. The impugned detention order dated 24.7.2014 passed by respondent No. 3 was served on the petitioner alongwith the grounds of detention under Section 8 of the NSA while he was in District Jail, Ballia. On 24.7.2014 the petitioner had filed representations before the District Magistrate, Ballia, State Government, Central Government and U.P. Advisory Board against the impugned order of detention. The detention order was confirmed by the Central Government and the aforesaid fact was communicated to the petitioner by Radiogram dated 25.8.2014. By a letter dated 22.8.2014 the petitioner was directed to appear before the U.P. Advisory Board on 26.8.2014 at 3.00 p.m.. The petitioner appeared before the U.P. Advisory Board on the aforesaid date. The detention order was confirmed by the U.P. Advisory Board on 9.9.2014 intimation whereof was given to the petitioner on 10.9.2014.

4. The facts of the case as emerging from the perusal of the pleadings of the parties and the grounds of detention are that on 22.3.2014 at about 11.30 a.m., the petitioner alongwith his associates Sudhir Singh, Ram Prakash etc. and hundreds of other unknown persons armed with lathi and danda had entered into the premises of Vikrama Memorial Inter College, Sarai Bharti, P.S. Rasra. District Ballia and assaulted and severely beaten the school clerk- Jitendra Yadav and school peon-Anil Singh causing multiple injuries to them and had also broken and damaged school furniture. With regard to the aforesaid incident case crime No. 232 of 2014, under Sections 147 , 323 , 504 , 506 and 427 IPC was registered at P.S. Rasra.

5. On the same day the petitioner and his associates Achcheylal Rajbhar, Narayan Rajbhar alongwith a huge crowd of thousands of persons again reached the premises of Vikrama Memorial Inter College and started indulging in hooliganism. In-charge Inspector Sri Kunwar Kanchan Singh who alongwith his force was on patrol duty on reaching Pakvinar received information about the aforesaid incident and immediately rushed to the place of incident where he found that Sub-Inspector Suresh Singh and others officers already present. The petitioners and his companions had gathered in Vikrama Memorial Inter College with the object of beating the employees of the college in retaliation to the registration of case crime No. 229 of 2014, under Section 308 and 342 IPC against the Administrators and others in respect of the incident which had taken place earlier on the same day. Although the officers present on the spot tried to coax and persuade the petitioner and his associates to stop their activities but they were not ready to listen to anyone. The unruly mob was lead by the petitioner. Upon realizing that the situation was slipping out of his control, In-charge Inspector Kunwar Kanchan Singh requisitioned additional force from the other police stations of Rasra. Responding to his request C.O. Rasra, Dr. Ajay Kumar Singh, In-charge Inspector Gadwar, In-charge Inspector Jeet Bahadur Singh, In-charge Inspector, P.S.-Ubhaon Sri P.K. Mishra, Incharge Inspector, P.S. Nagra, Sri S.P. Chaudhary, SHO, P.S.-Bheempura, Sri Aatmaram Yadav alongwith their forces, S.D.M., Rasra, Sri Anil Kumar Mishra, Tehsildar, Rasra, Vijai Naraian Singh also reached the place of occurrence and once again tried to cajole the

petitioner and his angry associates but they paid no heed to their request and besieged the school premises at about 17.30 and started pelting stones and brick bats at the police forces and at the same time provoking and exhorting the public present on the spot to kill all the police personnel present there. Police and Administrative Officers tried their best to control the members of the public but the mob became violent under the petitioner's leadership and attacked the police personnel causing serious injuries to several police officers. The petitioner and his associates demolished a portion of the boundary wall and set on fire several rooms of the college. The police personnel in order to save their lives threw themselves on the ground and it was only after the additional police forces had arrived at the place of incident that the injured persons were taken in an ambulance for treatment to CHC, Rasra and District Hospital, Ballia. As a result of the criminal activities of the petitioner and his associates, fear and terror had gripped the nearby villages, common man had started feeling insecure and public order was totally shattered. On the basis of the FIR lodged by the then Incharge Inspector Kunwan Kanchan Singh of P.S. Rasra, case crime No. 231 of 2014, under Sections 147 , 148 , 149 , 307 , 326 , 324 , 323 , 504 , 506 , 332 , 333 , 436 , 342 , 336 , 352 , 427 , 353 IPC and 7 CrI. Law Amendment Act was registered at P.S. Rasra, District Ballia against the petitioner and his associates who were fully identified as the person responsible for the aforesaid incident.

6. The grounds of detention further reflect that on the account of the dare devil activities of the petitioner and his associates the maintenance of public order was prejudicially affected and the daring act of the petitioner and his associates had created fear and terror amongst the members of the public who were feeling insecure and on the basis of the confidential letter of S.S.P. Ballia ST-NSA -19/2014 dated 22.7.2014 and the report appended thereto, the detaining authority/District Magistrate was satisfied that the petitioner who was confined in District Jail, Ballia on account of his being accused in case crime No. 231 of 2014 was making efforts to obtain bail and on being released on bail the petitioner would again indulge in objectionable activities and commit similar offences which would adversely affect the maintenance of public order and hence in order to prevent the maintenance of public order from being adversely affected, it was imperative to pass an order of preventive detention against the petitioner under Section 3(3) of the NSA. It was in the background of the aforesaid fact that the impugned order was passed by the respondent No. 5

7. Learned counsel for the petitioner submitted that the impugned detention order has been passed by the respondent No. 3 against the petitioner on account of his alleged participation in two incidents which had taken place on 22.3.2014 at about 11.30 a.m. and on 26.3.2014 in an around the premises of Vikrama Memorial Inter College, Sarai Bharti, P.S. Rasra, District Ballia, on the basis of which case crime No. 232 of 2014, was registered against the petitioner and other accused at P.S. Rasra, District Ballia. Advancing his submissions further, learned counsel for the petitioner submitted that since the impugned order of preventive detention was passed by the respondent No. 3 while the petitioner

was in prison as a person under judicial custody, it was incumbent upon the detaining authority respondent No. 3 while passing impugned order of detention to record therein that there was real possibility of the detenu being released on bail from the said judicial custody, the detaining authority respondent No. 3 having failed to record any such satisfaction in the impugned order the same stands vitiated and liable to be set aside.

8. He next submitted that a valid detention order should reflect that the authority was aware that the detenu was already in prison under judicial custody and there was reliable material before him on the basis of which he had reason to believe that there was every possibility of the detenu being released on bail and in case of such release the detenu would indulge in prejudicial activities and in order to prevent him from indulging in any activities affecting the public order or the tranquillity of the community, it was imperative to pass an order for his preventive detention and unless the aforesaid satisfaction is recorded, the application of mind by the detaining authority cannot be proved and testing the impugned order on the aforesaid principle, the impugned order appears to suffer from vice of complete non application of mind.

9. Per contra, Sri J.K. Upadhyay, learned AGA for the State and Sri Braj Lal, learned counsel for the Union of India made their submissions in support of the impugned order.

10. We have very carefully considered the submissions made by the learned counsel for the parties, perused the impugned order, pleadings filed by the parties and as well as the other material brought on record.

11. A careful reading of the impugned order and the grounds of detention supplied to the petitioner under Section 8 of the Act alongwith the detention order (Annexure-2) reveals that the same merely contains a passing reference to the fact that the petitioner who was in District Jail, Ballia on account of his being involved in case crime No. 232 of 2014 was making efforts to obtain bail. The impugned order does not contain any further recital to the effect that the petitioner had moved a bail application and there was real possibility of his being released on bail and in the absence of any such satisfaction being recorded in the impugned order, recording subsequently therein that upon being released on bail, he may again indulge in criminal activities, which may be prejudicial to the public order, will not validate the impugned order.

12. Even for recording the satisfaction in the impugned order, that the petitioner was making efforts to obtain bail, there was no material before the detaining authority except the confidential report of Superintendent of Police, Ballia and even the aforesaid report of the Superintendent of Police dated 22.7.2014, copy whereof has been filed as Annexure-8 to the writ petition, does not refer to any material in this regard.

13. The Hon''ble Supreme Court of India in paragraph 35 of its judgment rendered in the case of Haradhan Saha Vs. The State of West Bengal and

Others, , observed that where the concerned person is actually in jail custody at the time when the order of detention is passed against him, and is not likely to be released for a fairly long time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in the activities which would jeopardise the security of the State or the public order.

14. The Hon"ble Supreme Court has laid down the principles as to when a detention order can be passed with regard to a person already in judicial custody in the case of *Kamarunnissa v. Union of India and another*, 1990(27) ACC 621 SC and in paragraph 13 of the aforesaid case the Hon"ble Supreme Court has held as hereunder :

"13. From the catena of decisions referred to above, it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him(a) that there is real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in his behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question of before a higher Court."

15. What follows from the above is that a valid preventive detention order passed against a person in judicial custody must fulfill the conditions spelt out herein above by the Apex Court and one such essential condition is that there should be real possibility of the person being released on bail.

16. Learned AGA and Sri Braj Lal, learned counsel for the Union of India despite making elaborate submissions failed to demonstrate that the detaining authority has recorded his satisfaction in the impugned order that the petitioner who was in prison had moved a bail application for his released and there was real possibility of his being released on bail.

17. In the present case the detaining authority has merely, mentioned in the ground of detention that the petitioner who was in jail custody was making effort to obtain bail and there was possibility of the petitioner indulging in similar activities prejudicial to the maintenance of public order on his being enlarged on bail. He has not recorded his satisfaction in the impugned order or the grounds of detention that there was real possibility of his being released on bail which omission in our opinion has totally vitiated the impugned order.

18. For the aforesaid reasons and keeping in view the settled law on the issue, we are of the view that the impugned order cannot be sustained and is liable to be quashed.

19. The writ petition is allowed. The impugned order dated 24.7.2014 passed by the respondent No. 3/District Magistrate, Ballia, Annexure-1 to the writ petition is hereby quashed.

20. Since the petitioner has already been released after undergoing the total period of detention there is no necessity to issue a direction for his release. There shall however be no order as to costs.