
(2002) 01 RAJ CK 0102

In the Rajasthan High Court

Case No : DB Habeas Corpus Petition No. 3506 of 2001

Yaru Khan

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 04-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3

Citation : (2002) 2 WLN 701

Hon'ble Judges : Rajesh Balia, J;O.P. Bishnoi, J

Bench : Division Bench

Advocate : Sandeep Mehta, for the Appellant; Rajendra Vyas, AAG, for the Respondent

Judgement

Balia, J.—Heard learned counsel for the parties.

2. The petitioner was detained by order dated 20th June, 2001 made by the District Magistrate, Jaisalmer u/s 3 of the National Security Act, 1980. This order has been made by recording satisfaction that it is necessary to prevent the petitioner from acting in any manner prejudicial to security of the State. This order has been challenged by the petitioner on number of grounds.

3. Firstly, it has been contended that the petitioner has been served with grounds of detention dated 22.6.2001 only but the original order of detention dated 20th June, 2001 and order of confirmation of detention order dated 26th June, 2001, were not served on the detinue at all and order of confirmation has been passed without providing a proper opportunity of hearing to the detinue to make a representation before the State Government or the Board. In connection with this it was submitted by the petitioner that in the meeting of Advisory Board the petitioner's brother Sheru Khan has got a representation prepared through his lawyer. A request was made to the Jail Authorities at Jaipur in the High Court premises for giving the same to the detinue, but the same was turned down. This according to the learned counsel for the petitioner, vitiates the detention

order being violative of Article 22(5) of the Constitution of India.

4. A reply has been submitted by the respondents on being called upon to do so to the writ petition. In this it has been clearly asserted by the respondents that copy of the detention order dated 20th June, 2001 was served on the petitioner on 21 st June, 2001 which has been accepted by him after understanding the same and the said copy retained by the respondents bears endorsement made by the petitioner thereon on 21st June, 2001. A photostat copy of order bearing endorsement under the signatures of petitioner acknowledged receipt of the order after understood the same has been produced as Annexure-R1.

5. It has also been stated in reply denying the petitioner's assertion that the order of detention was approved by the appropriate Govt. on 26th June, 2001 and it was also served on the detinue petitioner on 27th June, 2001 and receipt was also obtained in lieu of service of order dated 26th June, 2001. The said receipt has been produced as Annexure-R3 along with the reply.

6. There is no dispute even on petitioner's assertions that grounds of detention accorded by the Detaining Authority were duly served on the petitioner on 21st June, 2002.

7. In these circumstances from the averments made in the reply and documents furnished along therewith, which facts have not been denied by the petitioner, it must be held that the petitioner was duly served with the order of detention on 21.6.2001. The grounds of detention and order of approval were also served within reasonable time of its making and the order of detention cannot be vitiated on that ground.

8. As a limb of the aforesaid contention on behalf of petitioner, it has further been submitted that the petitioner has not been supplied with legible documents along with the grounds of detention, which has vitally affected his right of making an effective representation against his detention. This assertion of the petitioner too is not well founded and cannot legitimately affect the detention order as Annexure-R2 submitted alongwith the reply shows that it contains endorsement under the signatures of petitioner that he has received grounds of detention order dated 22nd June, 2001 alongwith 30 Annexures on 23rd June, 2001 at the Central Jail, Jodhpur. The endorsement further states that details of the detention order were not only delivered to him, but were read over to him and he was made to understand the same in his own language and he has put his signature after hearing and clearly understanding the purport of those documents. It also bears the endorsement of Jail Superintendent that the details of detention grounds were read over and explained to the petitioner in his own language. Moreover, no complaint was raised about the illegibility of any document until filing of this petition by raising that ground about the illegibility of documents supplied to the petitioner nor any demand was made by the petitioner for supply of legible documents in order to enable him to make effective and appropriate representation against his detention. Thus, it cannot be

said that any prejudice was caused, even if it is be assumed for sake of argument that some of the documents may not have been easily readable. Yet merely because some of the documents annexed with grounds-for detention, which were delivered to the detainee were illegible, by itself cannot vitiate the validity of detention order, unless it can be shown that any prejudice was caused to detainee because of supply of any illegible documents.

9. Our attention was invited to a recent decision of this Court in *Teja Ram v. State of Rajasthan* (1) wherein the similar contention raised by the petitioner detainee was not countenanced when it was found that there was an endorsement on the receipt of the documents that the same has been received after reading and understanding the same. Moreso, when no demand for a copy of document which was alleged to be illegible was made and no objection for supply of said copies was raised at any earlier stage. In fact, the petition lacks singularly in details and particulars about the documents which are alleged to be illegible copies supplied to the petitioner.

10. In the aforesaid *Teja Ram*'s case the Court observed as under:

"Nothing specifically has been pointed out as to which document, on what page and which portion is not legible and relevant endorsement on the acknowledgment of receipt of document conveys that the documents were read over to him and were explained to him in his own language and no complaint was made to the detaining authority or the jail authority about the documents being not legible, no fault can be found with the detaining authority. The detainee cannot be allowed to take advantage of his own omission".

11. The Court relying on the Bench decision of Gauhati High Court in *Yandram-bam Sonachand Singh v. State of Manipur and Ors.* (2) held that a detainee 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.

12. In view of the aforesaid, we do not find any merit in the aforesaid contention as well and the same is rejected.

13. It was stated with some force that petitioner was deprived for making representation before the Advisory Board when his brother Sheru Khan was not allowed to deliver representation prepared by him to the detainee when such a request was made in the Court premises at Jaipur.

14. Right to make representation rests with the detainee. If the detainee himself does not make demand for making representation, we do not see how somebody else can make request to make representation on his behalf and on refusal of such request he can come to rescue of the detainee.

15. Moreover, it has been clearly asserted in the reply that no request was made to the Jail Authorities by brother of detainee to handover the representation to detainee at any time. It was averred by the respondents that the Jail Authorities were not at all present at the Common Hall of the Hon"ble Court, because when

for appearance before the Advisory Board, the detainee was taken from Jail, he was accompanied by the police officials and not by Jail Authorities, There could not be any occasion for the Jail Authorities to be present at the Common Hall of the Hon'ble Court to whom representation could have been made. It has further been asserted that on 9.7.2001, the detainee himself submitted an application before the Superintendent, Central Jail, Jodhpur that he wants to appear before the Advisory Board on the date of hearing i.e. 13.7.2001 and he desired that he will put up his case personally. This clearly suggested that he desired to make his own representation before Advisory Board and this request was granted. Thus, it cannot be said that the petitioner was denied right as envisaged under Article 22(5) of the Constitution namely the opportunity of making representation against the order of detention served on the petitioner. Annexure-R1 clearly mentions that if the petitioner desires, he can submit his representation before the State Government or the Central Govt. or Advisory Board. He chose to appear before the Advisory Board in person to make his own representation. The opportunity was offered to him and availed by him. Therefore, the allegation that he was not given proper opportunity to represent his case before the Advisory Board, cannot be accepted. Detenue having been granted opportunity desired by him, somebody else cannot raise a claim that such other person was denied access to Board through representation prepared by him. The right vests in detenue and not in such other person.

16. It was next contended by learned counsel pointing out from Annexure-R2 that in the detention in Ex.R/2 as many as 10 criminal cases registered against the petitioner have been referred to. However, the petitioner had been acquitted from all cases except from the cases shown at Sl.No. 7 and 9 of Annex.-2. However, no reference has been made to that fact. He, therefore, contends that non-application of mind to the relevant material which was before the detaining authority is writ large when he has taken into consideration such criminal complaints, which have resulted in acquittal. Merely the registration of cases against the petitioner has been considered, But the detaining authority has not considered the acquittals recorded against him.

17. This contention does not impress. Apart from the fact that no material has been placed before us in the form of any acquittal in any of the cases to sustain his plea, there is inherent fallacy in the contention raised by the learned counsel.

18. Annexure-R2 is neither the ground nor the detention order on the basis of which this plea can be raised. Annexure-R2 is the document emanating from the sponsoring authority submitted to the detaining authority, recommending to take action under the National Security Act in the case of petitioner as there was ample material in the opinion of sponsoring authority for detaining the petitioner. However, out of 10 incidents referred to in the communication from sponsoring authority, the detaining authority has not taken into consideration 8 cases, but has only referred to 2 incidents of which one is dated 18.9.2000 and another is dated 17.10.2000. Therefore, it cannot be said that detaining authority has acted

without application of mind on the ipse dixit of the sponsoring authority or any material which has lost its nexus due to its antiquity with the required satisfaction to be recorded by the detaining authority about necessity to detain the petitioner as a preventive measure. The two incidents referred to in the grounds recorded by detaining authority cannot be said to lose relevance due to its staleness, and it also dispel any doubt about non-application of mind to material placed before him.

19. In this connection our attention has been invited to State of T.N. v. Balasubramaniam (3). In the like circumstances the contention has been raised against the detention order that in the affidavit of sponsoring authority it has been mentioned that detenu was involved in 6 cases. The Court repelled the contention by pointing out:

"It is correct that the detaining authority has to apply its mind before issuing a detention order. However, it is equally important that the Court, hearing a habeas corpus petition under Article 226 of the Constitution of India, also applies its mind before it quashes a detention order. Undoubtedly, in the affidavit filed by the sponsoring authority reliance has been placed on six cases. However, the detaining authority has not placed reliance on six cases, This itself shows that the detaining authority had applied its mind and not gone just by what was stated by the sponsoring authority."

20. From the facts it is clear that though the sponsoring authority has referred to 10 cases registered against the petitioner, the detaining authority has only referred to 2 cases and has taken into consideration only such complaints made in recent past before making the order of detention, goes to show that he has duly applied his mind to the material which was before him and the impugned order has not been made in mechanical way.

21. The ambit of judicial review of a detention order is now well settled by principles enunciated by the Courts. The satisfaction which provides the backdrop for making the detention order is subjective satisfaction which is founded on objective material before the authority concerned. The ambit of judicial review of such an order founded on such subjective satisfaction is inhibited like any other case of judicial review of an order which is to be made on subjective satisfaction of the authority making such order. The Court cannot examine objectively the material which was before the authority to upset it. It cannot come to its own conclusion as an Appellate Authority, whether it would come to the same conclusion and substitute its own satisfaction. The sufficiency or adequacy of the grounds upon which the satisfaction of authority issuing the detention also cannot be a ground for interfering with the order so long as they are founded on the material which exists, which has some nexus with the formation of opinion.

22. If the grounds which weighed with the detaining authority for making order if have a rational probative value in the light of existing material and are not extraneous for the purpose of legislative provision, the same cannot be interfered

with by judicial review.

23. In another words, judicial review in the order of detention is permissible to the extent it relates to non-existence of satisfaction, non-existence of any material on the basis of which such satisfaction can at all be reached and considering the material which is extraneous to the purpose for arriving at the subjective satisfaction. Apart from the aforesaid grounds mala fide can always be ground for judicial review of an order.

24. It has been stated in *Bhim Sen v. State of Punjab* (4) and since then consistently followed. The Court laid down firstly "Instances of past activities are relevant to be considered in giving rise to subjective mental conviction of the detaining authority that persons to be detained are likely to indulge in objectionable activities.

25. Secondly, "where the grounds given for detention are relevant, the question whether they are sufficient or not is not for the decision of the Court".

26. And thirdly, "where a statement of fact contained in (he affidavit filed in Court by the detaining authority is disputed, the matter has to be considered by the Advisory Board. The question of truth of that statement is not within the jurisdiction of the Court to decide".

27. The Court again said in *Khagen Sarkar v. State of W.B.* (5) considering preventive detention under West Bengal (Prevention of Violent Activities) Act, 1970:

"The Court would not sit in appeal against the impugned order and, therefore, would not go into the question of sufficiency or otherwise of the materials for arriving at the satisfaction by the relevant authority u/s 3. The court would have, however, no hesitation to interfere with such an order if, for instance, it were shown that the exercise of power u/s 3 was mala fide or on grounds alien to the Act."

28. The Apex Court restated the principle in *State of Gujarat v. Adam Kasam* (6) while considering a case under COFEPOSA. Reversing the decision of High Court the Court said:

"The High Court has misdirected itself to its jurisdiction to inquire into the order of detention by an authority. The High Court, accepting the contention of the counsel of the detinue, before it has held that there was no material on record to prove knowledge of the detinue with the contraband goods in the vehicles. By implication; the High Court has erroneously imported the rule of criminal jurisprudence that the guilt of an accused must be proved beyond a reasonable doubt into the law of detention. 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 based 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 function of an

appellate authority or Court."

29. In this connection attention may also be invited to State of T.N. v. Balasubramaniam (supra) the Court said:

"It is correct that the detaining authority has to apply its mind before issuing a detention order. However, it is equally important that the court, hearing a habeas corpus petition under Article 226 of the Constitution of India, also applies its mind before it quashes a detention order".

30. In a very recent case in Ahmed Nassar v. State of Tamil Nadu (7), the Supreme Court cautioned while considering the prevention detention order what ought to be taken note by the Court. It said:

"Thus courts first find, the extent of the individual right deciphering with the degree of trespass it makes on the public right, on which there is embargo. Where an individual acts clandestinely for his personal gain against the national interest deleteriously affecting the national economy or security the drastic curtailment of his right should be kept in mind to see that no such person escapes from the clutches of law. On the one hand, as it takes away one's liberty it should be strictly construed, on the other hand to subserve the objective of this Act, in the national interest it should be seen that no such person escapes".

31. In this light before examining the facts we would also like to invite attention to the decision of Supreme Court in Phulwari Jagdambaprasad Pathak v. R.H. Men-donca (8), the Court while probing the scope of judicial review in the context of Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers and Drug Offenders Act, 1981, using expression "activities which affect or are likely to affect adversely the maintenance of public order stated the principle as under:

"Preventive detention measure is harsh, but it become necessary in the larger interest of society. For the purpose of exercise of power it is not necessary to prove to the hilt that person concerned has committed any of the offences as stated in the Act. It is sufficient if from the material all available on record the detaining authority could reasonably fact satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieved, the power vested in the detaining authority should not be unduly restricted."

32. It was also a case in which after referring to various activities in which the detainee was observed to be engaged in by the detaining authority which lead to satisfaction of the detaining authority that liberty of detainee was likely to have adverse affect on maintenance of public order the order of detention was made. The detaining authority claimed privilege in respect of certain material for not

disclosing the same to detainee in public interest. The Court after noticing above facts held that where assertions are not assailed as untrue, nor which can be said to be irrelevant for the purpose of the order, the order of detention cannot be vitiated.

33. In the present case the District Magistrate has referred before, recording his satisfaction that the activities of the petitioner which includes smuggling; frequent border crossing to Pakistan illegally; his close proximity with the anti-national elements, his collusion with the known smugglers causing law and order problem in the State; and sympathising with Pakistan in the current scenario, are all dangerous to the security of the State. The petitioner also found to be involved and having connection with. On the basis of information reports received from intelligence agencies that the Pakistan intelligence agencies are making all efforts through its agents in India for propping up terrorist activities; smuggling of explosives, illegal armaments, and false currency notes into Indian territory and securing the information of defence importance. For this objective they are conniving with local anti-social elements and using them to be in the anti-national terrorist activities within Indian territories. Common citizens, because of the terror of such persons are prevented from coming forward and making statements openly in the Court or from giving information, against them, suggesting that it is not possible to deal with such elements under ordinary procedures.

34. With all these allegations the claim to privilege about sensitive informations not to be divulged to the detainee has been made.

35. None of the assertions made in the order containing grounds of detention has been asserted to be untrue by the petitioner in his petition. He has also not challenged the privilege claimed by the respondents for non-supply of the sensitive material in which such information is contained.

36. In these circumstances, it cannot, but be concluded that the impugned order passed by the District Magistrate is founded on existing material which is relevant for the formation of satisfaction required u/s 3 of the Act of 1980 before making the detention order. Such order is not liable to be interfered with by way of judicial review in exercise of extra-ordinary jurisdiction.

37. We are further informed that on earlier occasion also the petitioner had been detained for the like activities and a petition Filed by him as D.B. Habeas Corpus Petition No.4585/94 was dismissed by this Court on 31st May, 1995.

38. As we find that none of the grounds raised in the petition by the petitioner are sustainable and on the material placed before us the satisfaction recorded by the District Magistrate that it is dangerous to the security of the State, if the petitioner is allowed to remain free, is founded on existing and relevant material, the petition must fail and accordingly it is hereby dismissed.

39. There shall be no order as to costs.