

(2004) 09 AHC CK 0042

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No's. 20875 and 20878 of 2004

Zakaullah (In Jail)

APPELLANT

Vs

Superintendent, District Jail and Others

RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 302

Citation : (2005) CriLJ 2021

Hon'ble Judges : M.C. Jain, J;K.K. Misra, J

Bench : Division Bench

Advocate : Chandrakesh Mishra and Daya Shanker Mishra, for the Appellant;
B.N. Singh, S.S.C., J. Lal and Arvind Tripathi, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

K.K. Misra, J.—Both the above Habeas Corpus writ petitions have been filed challenging the impugned detention orders dated 4-3-2004 passed by the District Magistrate, Basti, respondent No. 2, u/s 3(2) of the National Security Act, 1980. The impugned detention orders dated 4-3-2004 have been passed on the basis of the one and the same FIR, hence both the petitions are disposed of by a common order.

2. In the grounds of detention, Annexure-2 to the petition, it is stated that on 21-2-2004 at about 9 p.m. in Mohalla Rahmatganj, P.S. Kotwali, District Basti when informant Mohd. Ashraf along with his brother Akmal Khan and some other persons of his Mohalla was going to his house and reached near the house of the petitioner Zaka Ullah and his brother Wasi Ullah, they along with his associates were standing there and upon seeing them they began to hurl abuses on the Corporator Akmal Khan. When the informant and his companions objected, Wasi - Ullah and Inayat Ullah fired upon Akmal Khan Corporator. Others exhorted that he was involved in the snatching of their Mobile. The shot hit Akmal Khan and the case crime No. 200 of 2004 u/s 302, IPC was registered against the

petitioners and their associates at P.S. Kotwali, district Basti. It is further stated that due to the incident, atmosphere of terror and fear prevailed in the locality and the public order was completely disturbed. In the grounds of detention order passed in respect of Inayatullah petitioner of H.C. Petition No. 20878 of 2004, there is also mention of an incident involving him, which took place on 27-11-1996.

3. Counter and rejoinder-affidavits have been exchanged.

We have heard Sri Chandra Kesh Misra, learned counsel for the petitioners and Sri Arvind Tripathi, learned A.G.A. as well as Sri J. Lal, counsel for the Union of India.

4. The contention of the learned counsel for the petitioners is that the incident which has been made basis for passing the impugned detention order gives rise to maintenance of law and order only. He further argued that the incident took place in the night. Only one person was done to death and it has come in the FIR that the incident took place in connection with the snatching of a Mobile. No passerby sustained any injury and the incident took place in a residential area. The crime was committed due to personal enmity. In support of the contention, learned counsel for the petitioners relied upon the case of *Mrs. T. Devaki Vs. Government of Tamil Nadu and others*, .

5. The question for consideration in the present case is whether the incident in question, on the basis of which the petitioners have been detained by invoking the provisions of Section 3(2) of the Act, relates to disturbance of maintenance of public order or it is merely a case of breach of law and order. After going through the grounds of detention and the FIR, we are of the opinion that the present incident related to the maintenance of law and order only and not public order. We find that the incident was the result of personal enmity committed against an individual only and it did not affect the public at large.

6. It is settled position that if the act is restricted to particular individual(s) due to enmity, it breaches the law and order only. A solitary incident directed against a particular individual even if it may cause scare temporarily in the locality cannot be held to affect public order. The true 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. In the case of *Mrs. T. Devaki (supra)*, the alleged incident occurred during a seminar. It was found in that case that the detenu's activity disturbed the proceedings of the seminar for a while but the same continued later on. It was held that the incident did not and could not affect public peace and tranquility, nor it had potential to create a sense of alarm and insecurity in the locality.

7. In this case, the crime was allegedly committed by the petitioners and their associates due to enmity of Mobile snatching. The incident did not take place on a busy road. The place of occurrence was near the house of the petitioners. The ratio of the decision in the case of *Mrs. T. Devaki (supra)* relied upon by the

counsel for the petitioners is fully applicable to the facts of the present case.

8. In view of what has been stated above, we find that it was a case of law and order only and the District Magistrate, Basti was not justified in passing the impugned detention order. Consequently, the continued detention order of the petitioners is rendered illegal. We, therefore, allow the writ petitions and quash the impugned detention order dated 4-3-2004 passed by the District Magistrate, Basti. The respondents are directed to set the petitioners at liberty if their detention is not required in any other case.