

(2007) 03 AHC CK 0171

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 53402 of 2006

Ziaul Haq

APPELLANT

Vs

Jail Superintendent, Varanasi and Others

RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2007) 03 AHC CK 0171

Hon'ble Judges : Mukteshwar Prasad, J and S.C.Nigam, J

Final Decision : Dismissed

Judgement

Mukteshwar Prasad, J.—The petitioner is under preventive detention vide order of the District Magistrate, Varanasi dated 2452006. He has filed this Habeas Corpus petition for quashing the impugned detention order dated 2452006 (Annexure4 to the petition) and for setting him at liberty.

2. The grounds of detention have been disclosed in Annexure5 to the writ petition.

3. The petitioner is an accused in Case Crime No. 42 of 2006 under Sections 489B and 489C of the Penal Code, Police Station Jaitpura District Varanasi. The petitioner in connection with the aforesaid case was apprehended on 1042006 at about 4.20 a.m. alongwith his two associates Nishar and Istikhar. One of the associates succeeded in running away. The Police recovered fake currency notes of the denomination of Rs. 100 each amounting to Rs. 20,000. In other words, two Gaddies of Rs. 10,000 each were recovered. On inspection, it was found by the Police that the currency notes of denomination of Rs. 100 had four numbers only and picture of Mahatma Gandhi was not legible. The Police recovered Rs. 10,000/ from Nishar and Istikhar each. The petitioner and his associates were found involved in the offence of circulating fake currency notes in the market with a view to disturb and affect the economy of the country. It is said that the petitioner and his associates were operating as an organized gang, which was involved in the circulation of fake currency notes in a planned manner. S.O. Sri

Gorakhnath Police Station Jaitpura after the arrest of accused prepared a seizure memo and sealed the recovered currency notes on the spot. The petitioner and his associates were brought to the Police Station and a case was registered on the same day at 5.10 a.m. After investigation, the police submitted chargesheet against the petitioner and others on 1152006.

4. On the report of the sponsoring authority S.S.P., Varanasi and his subordinates the District Magistrate, Varanasi was satisfied that there was every possibility that the petitioner would be enlarged on bail in the case and he would again indulge in the similar activities which would be prejudicial for the maintenance of supplies and services essential to the community, passed the order of detention against him in exercise of his powers under Section 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act).

5. The impugned order of detention passed by respondent No. 2 was served on the petitioner on the same day in District Jail and grounds of detention and order of detention were read over to him. He was also informed about his right to make representation to the authorities including the District Magistrate.

6. Counteraffidavits have been filed on behalf of all the respondents including Union of India and are on record. A rejoinder affidavit was also filed on behalf of the petitioner.

7. We have heard Sri Rajiv Lochan Shukla, holding brief of Sri S. T. Ali, learned Counsel for the petitioner, Sri Arvind Tripathi, learned A.G.A for respondent Nos. 1, 2 and 3 and Sri M.C. Tripathi, learned Counsel for respondent No. 4 and with the consent of learned Counsel for the parties, the petition is being disposed of finally.

8. Learned Counsel appearing for the petitioner has assailed the impugned order mainly on the ground that there was no relevant material before the detaining authority for his subjective satisfaction to pass the impugned order except the F.I.R. showing the arrest of the petitioner alongwith two others with counterfeit currency notes of denomination of Rs. 100/ and as such, there was no question of disturbing the economy of the country. The petitioner submitted his representation to Jail authority on 262006. However, his representation was not forwarded to the Union of India for consideration as required under the law and as such, his continuous detention in Jail stands vitiated and petitioner deserves to be released forthwith.

9. Reliance has been placed by petitioner's Counsel on Division Bench decisions of this Court rendered in the case of coaccused and codetenu. Nishar 2007 (1) JIC 178 (All), Deepak Kumar Singh v. Superintendent, Central Jail, Naini, Allahabad, 2007(2) ESC 283 and a decision of Apex Court in Anand Prakash v. The State of U.P. reported in AIR 1990 SC 516.

10. On the other hand, learned A.G.A. appearing for respondent Nos. 1, 2 and 3 submitted that a solitary incident alone is sufficient to invoke powers under

Section 3 of the Act. The petitioner and others were found carrying fake currency notes with a view to circulate them in the market and thereby disturb and affect the economy of the country. The act of the petitioner and his associates was prejudicial to the maintenance of supplies and services essential to the community and as such, there was sufficient material before the detaining authority for passing the impugned order. It was further urged that sufficiency of material is not relevant in such petition and a reasonable inference can be drawn on the basis of solitary incident that a person who is in Jail would repeat the prejudicial activities after being released *Bhanu Saran v. Superintendent, Central Jail, Naini, Allahabad*, 2002 (45) ACC 599. It was also urged on behalf of the State that in grounds of detention itself the petitioner was informed by the detaining authority that he could make a representation to the detaining authority U.P. State Advisory Board, Lucknow as well as Union Government. It was made clear to him that in case he wanted consideration of his representation by the Union Government, he could address his representation to Secretary, Government of India, Ministry of Home Affairs, (Department of Internal Security), North Block, New Delhi. However, the petitioner sent his representations to the detaining authority, Secretary, Department of Home, Secretariat, Lucknow and Chairman, U.P. State Advisory Board, Lucknow and no representation was addressed to the Central Government.

11. Sri Tripathi, learned Counsel for the Union of India also contended that no representation was addressed to the Central Government and it was stated clearly in paragraphs 4 and 5 of the counteraffidavit that a report as envisaged under Section 3(5) of the Act was made by the Government of Uttar Pradesh to the Central Government in the concerned desk in the Ministry of Home Affairs vide letter dated 16/2/2006 which was dealt with. Moreover, no representation from the detenu was addressed to the Central Government.

12. Learned Counsel for the respondents has relied on the following decisions:

(1) *Jasbir Singh v. Lt. Governor, Delhi and Anr.*, 2000(1) JIC 81 (SC) : 1999 (38) ACC 801;

(2) *Union of India v. Paul Manickam and Anr.*, JT 2003 (Suppl.2) SC 503 ;

(3) *Union of India v. Sneha Khemka*, 2004(1) JIC 1082 (SC) : 2004 (50) A.C.C. 25 ;

(4) *R. Keshava v. M.B. Prakash and Ors.*, 2001(1) JIC 721 (SC) : JT 2001 (1) SC 183 ;

(5) *John Martin v. The State of West Bengal*, AIR 1975 SC 775.

13. We have considered the submissions made on behalf of the parties and perused the decisions also relied upon by them. As noted above, the solitary incident can satisfy the detaining authority provided the incident is found to be prejudicial for security of the State or for maintenance of supplies and services essential to the community. In the instant case, an attempt was made by the

petitioner and his associates to circulate the fake currency notes in the market thereby affecting economy of the country. It means the petitioner was involved in a very heinous and serious offence and was acting against the interest of the country. So far the next submission of the petitioner's learned Counsel is concerned, the same too has no substance and lacks merit.

14. As mentioned above, the representation of the petitioner was addressed to the Secretary, Government of U.P., Chairman, U.P. State Advisory Board, Lucknow and District Magistrate, Varanasi and not to the Central Government. The Under Secretary to the State Government has clearly asserted in paragraph 3 of his counteraffidavit that petitioner's representation was not addressed to the Central Government and as such, it was not sent to the Union Government for consideration but we find that the representations made to the detaining authority as well as State of U.P. were considered expeditiously with all promptness and were rejected.

15. Our attention was drawn to Section 14 of the Act, which empowers Union Government to revoke or modify the order of detention. The Central Government has been given supervisory powers. Section 8 of the Act provides and casts an obligation on the detaining authority that it shall afford detenu the earliest opportunity of making a representation against the order of detention to the appropriate Government. In the case in hand, the appropriate Government is State Government. In Jasbir Singh case (supra) it was held that there was no question of consideration of representation by the Central Government when it was addressed to the U.P State Advisory Board. In Union of India v. Sneha Khemka case (supra) it was held that a detenu in law is entitled to make different representations before the different authorities in terms of statutory as well Constitutional schemes. In paragraph 18, it was clearly held that a representation made to one authority cannot be considered by other.

16. It is true that the petition of coaccused and codetenu Nishar was allowed by the Division Bench of this Court. In the case of Nishar, representation was addressed to the Central Government but there was considerable delay in consideration thereof and on the ground of inordinate delay or unexplained delay, his detention was rendered illegal.

17. In view of the foregoing reasons and discussions, we are only of the opinion that no illegality was committed by the Union of India by not considering the representation of the petitioner. Since there was no representation by the detenu addressed to the Central Government, therefore, there was no question of consideration thereof. We, therefore, find that there is no illegality in the order of detention challenged in this petition.

18. No other point was pressed.

19. For the foregoing reasons, we hold that this petition lacks merit and is liable to be dismissed.

20. The petition is, therefore, dismissed.