

(2006) 11 AHC CK 0030

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 11782 of 2006

Ziyaul Hasan

APPELLANT

Vs

Superintendent, District Jail and Others

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

National Security Act, 1980 — Section 3(2)

Penal Code, 1860 (IPC) — Section 147, 153, 427, 435, 436

Citation : (2007) 3 ACR 2445

Hon'ble Judges : V.D. Chaturvedi, J; R.C. Deepak, J

Bench : Division Bench

Advocate : Daya Shankar Misra and Chandra Kesh Misra, for the Appellant; K.C. Sinha, Asst. S.G.I., Arvind Tripathi, Shiv Shanker Yadav, H.C. Pathak, M.C. Joshi, A.K. Tripathi and A.G.A., for the Respondent

Judgement

R.C. Deepak, J.—The Petitioner Ziyaul Hasan son of Sri Shafiurrahman resident of Mohalla Shahi Katra, Police Station Kotwali Mau, district Mau is detained u/s 3(2) of the National Security Act, 1980 vide detention order dated 3.12.2005 passed by the Sri Mukesh Meshram, District Magistrate, Mau. By way of this habeas corpus writ petition he has challenged the validity of the detention order and has made a prayer to quash the same.

2. The grounds of detention, as disclosed in Annexure-2 to the Writ Petition, are that on 14.8.2005 at 8.00 a.m. at Mohalla Allaaddin, Police Station Kotwali, district Mau the Petitioner Ziyaul Hasan alongwith his sons assembled hundred Muslim youths and shouted the slogan "Allah Ho Akbar", delivered inflammatory speeches and thereby excited and incited the people to loot and put up on fire to the houses and shops, as a consequence the articles of Mohan Shah and Nand Lal Sahani were looted and the shops were set at fire including the house of Mehraj Agarwal. Consequently, the public order was badly effected and communal riots prevailed; that the situation became out of control. The situation was controlled only when the P.A.C., R.A.F. and Police Forces from neighbouring Districts reached there. A case as Case Crime No. 1583-S of 2005 under Sections

147, 435, 436, 153 and 427, I.P.C. was registered against them.

3. We have heard Sri D. S. Mishra, learned Counsel for the Petitioner, Sri A. K. Tripathi, learned Counsel for the State of U.P. and perused the records.

4. Learned Counsel for the Petitioner has made the following submissions that the detaining authority did not apply its mind in passing the detention order dated 3.12.2005, as the grounds of detention (Annexure-2 to the writ petition), as disclosed, are the verbatim of the proposal of the S.H.O. dated 26.11.2005 (Annexure-6 to the writ petition) and in support of his contention he has relied upon the cases of Billa v. Superintendent Jail, Basti, (IIXL) 2001 ACC 995: 2001 (2) ACR 1116 ; Tanu v. Superintendent Jail, Ballia, (XL) 2000 ACC 724 and Rajesh Vasudeo Advani v. State of Maharashtra and Ors. 2006 SCC 61 , that the copy of the bail application in Case Crime No. 1583-S of 2005 under Sections 147, 435, 436, 153 and 427, I.P.C. of the Petitioner was not supplied to him, rather the copy of the bail application of the co-accused Surjeet Singh was provided to him and he has also relied the cases of Khudiram Das Vs. The State of West Bengal and Others, Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, Munna Tuin Vs. District Magistrate, Lucknow and Others, and Gurdeep v. Union of India AIR 1982 SC 362; Icchu Devi Churaia v. Union of India AIR 1980 SC 783; Vijay Narain v. State of Bihar AIR 1984 SC and Rabindra Kumar Ghosel alias Buli Vs. The State of West Bengal, On the basis of these facts and observations made in the cases referred, he has argued that the detention order is bad in law.

5. On the other hand Sri A.K. Tripathi, learned A.G.A. has vehemently argued that the basis of the detention order dated 3.12.2005 is not the bail application of the Petitioner, so the detaining authority did not consider it relevant to supply the copy thereof; that non-supply of the copy of the bail application did not cause prejudice to the Petitioner, as he was aware of the grounds taken therein. It was subjective satisfaction of the detaining authority to pass the said detention order in order to maintain the public order and in support of his contention he has relied upon the cases of Abdul Sathar Ibrahim Manik Vs. Union of India and others, K. Varadharaj Vs. State of Tamil Nadu and Another, Sunila Jain Vs. Union of India (UOI) and Another, and Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others,

6. In regard to the arguments of the learned Counsel for the Petitioner to the effect that the grounds of detention are the verbatim of the proposal of the S.H.O. The learned State counsel argued that the facts are the same which cannot be changed. So it cannot be said to be the verbatim.

7. So far as the delay in sending the representation of the Petitioner to the Union of India is concerned, learned State counsel submitted that the delay, if any, has reasonably and satisfactorily been explained under paragraph 11 of the counter-affidavit of the detaining authority. Learned Counsel for the State concluded his argument expressing that the detention order has been passed to maintain the

public order.

8. We have considered the arguments of the learned Counsel for the parties, that the materials available on record and the facts and circumstances of the case. A perusal of the detention order dated 3.12.2005 would indicate that this order was made to maintain the public order. The order dated 3.12.2005 is reproduced as under.

Niruddhi Aadesh

Choonki janpad Mau ke Jila Magistrate ke roop mein mera samadhan ho gaya hai ki Ziyaul Hasan putra Shafirurrahman Sakin Mohalla Shahi Katra thana Kotwali, Mau umar kareeb 50 varsh ko kisi aisi riti mein karyavahi karne se rokne hetu jo ki lok vyavastha ke anurakshan ke pratikool ho aisa aadesh dena avashyak hai.

Atah Rashtriya Suraksha Adhiniyam sankhya 65, varsh 1980 ki dhara 3 (2) dwara pradatt adhikaron ka prayog karte hua attatdwara yeh nirdesh deta hoon ki Ziyaul Hasan putra Shafirurrahman ko ukt Adhiniyam ki dhara 3 (2) ke aadheen sadaharan bandi ke roop mein jila karagaar mein niruddh rakha jai.

9. Learned Counsel for the Petitioner has not uttered even a word in regard to the public order, which is the basis of the detention order dated 3.12.2005. The grounds of detention disclose that due to the criminal activities of the Petitioner the public order was disturbed, that the communal riot prevailed, that the articles were looted from the shops and houses were set at fire, that lives and property were endangered. In connection with these activities of the Petitioner a case as case crime No. 1583-S of 2005 already referred to above was registered against him and certain others at the police station concerned. He was arrested and he was confined in jail. He had made application for his release on bail in the said case. There was full possibility of his being released on bail and in case he was released, there was apprehension of his being indulged in these criminal activities as already involved. Therefore, it was the subjective satisfaction of the detaining authority on the basis of materials available on record and the prevailing circumstances to pass the detention order, as in identical case the Hon'ble Apex Court justified the detention order passed by the detaining authority in case of A. Geetha v. State of Tamil Nadu and Anr. AIR 2006 SC 4382: 2006 (3) ACR 2814 (SC).

10. Taken into account the entire facts and circumstances of the case and with due regard to the observations of the cases relied upon by the learned Counsel for the Petitioner, we arrive at irresistible conclusion that the detention order dated 3.12.2005 was mandatory to secure the public order. The habeas corpus Writ Petition No. 15165 of 2006 of co-accused Surjeet Singh, identically situated under the same facts and circumstances, has already been dismissed on the ground of public order. Therefore, there is no merit in the habeas corpus writ petition and the same deserves to be dismissed.

11. The habeas corpus writ petition of Petitioner Ziyaul Hasan is accordingly

dismissed.