

A.F.R.

Court No. - 9

Case :- HABEAS CORPUS No. - 906 of 2021

Petitioner :- Rajeev Singh Thru His Wife Smt. Kiran Singh

Respondent :- U.O.I.Thru Secy.Home Deptt. New Delhi & Ors. Counsel for  
Petitioner :- Pawan Kumar Pandey, Mohd. Amir Khan, Rajesh K. Agnihotri

Counsel for Respondent :- Govt. Advocate, A.S.G.

Hon'ble Ramesh Sinha, J.

Hon'ble Narendra Kumar Johari, J.

(Per Ramesh Sinha, J.)

(1) The instant Habeas Corpus Petition under Article 226 of Constitution of India has been filed by the petitioner, Rajeev Singh, through his next friend/wife Smt. Kiran Singh, challenging the validity and correctness of the order of detention dated 25.10.2020 passed by the District Magistrate, Hardoi (respondent no.2) (hereinafter referred to as "Detaining Authority") under Sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as "Act, 1980") contained in Annexure No.2 to the writ petition on being satisfied that the detention of the petitioner was necessary with a view to prevent him from acting in any manner prejudicial to the maintenance of public order as well as confirmation order dated 08.12.2020 passed by the Under Secretary, Home (Confidential) Department, Government of U.P., Lucknow (respondent no.2) contained in Annexure No.1 to the writ petition.

(2) Heard Shri Pawan Kumar Pandey, learned Counsel for the petitioner/detenué and Shri S.P. Singh, learned Additional Government Advocate for the State and perused the material brought on record.

(3) No one is present on behalf of the Union of India to press this petition.

(4) The order of detention along with grounds of detention was served upon the petitioner on 25.10.2020 in jail, while he was in jail in a criminal case.

Against the said order of detention, the petitioner made a representation dated 10.11.2020 to the Detaining Authority, the Secretary, Department of Home and another representation to the Advisory Board constituted under Section 9 of the Act, 1981. The State Government, in exercise of powers conferred under Section 12 (1) of the Act, 1981, has confirmed the order of detention and directed that the petitioner be detained for a period of three months from the date of detention vide order dated 29.10.2020, which was communicated to the petitioner on 10.11.2020.

(5) It transpires from the grounds of detention that in the night of 31.08.2020/01.09.2020, Baba Heeradas, his disciple Meeradas and his son Netram were brutally murdered by suffocating and assaulting them with bricks, stones, rolling board, knife and butt of country made pistol in Hulasi Bagiya Aashram near Kumaon Village. On account of the said incident, the public

order was completely breached and attempts were made to spread religious fanaticism by various social organizations and political parties.

(6) On the basis of written report of Om Shankar in respect of the aforesaid incident, an F.I.R. was lodged, which was registered as Case Crime No. 353 of 2020, under Section 302 I.P.C. against unknown persons, at Police Station Tadiyawa, District Hardoi on 01.09.2020. During investigation, it came into light that the main accused for murdering three deceased persons is Rakshpal, who used to stay at Ashram. On the clue of the informer, main accused Rakshpal was arrested by the police on 02.09.2020 at about 04:30 P.M. near Badauli Petrol Pump and on his interrogation, he admitted his guilt in murdering three deceased persons and narrated the story in detail to the police and disclosed the names of Sanjay and Shafiq in their connection of murder of the deceased persons and also disclosed the name of Rajiv Kumar Singh (petitioner herein) and his brother Hariram in connection of preparing forged 'Will deed'. Immediately thereafter, on the pointing out of Rakshpal, the police had recovered forged 'Will deed', blood stained brick, blood stained knife and T-Shirt. Thereafter, the associate of Rakshpal, namely, Sanjay, was also arrested and on his pointing out, blood stained brick was also recovered. On 07.09.2020, the accused Shafiq was arrested, whereas on 21.09.2020, accused Hariram was arrested.

(7) During investigation, the confessional statements of accused persons including the petitioner were recorded. All the accused in their statements admitted the fact that it was Rajiv Singh (petitioner herein), who made conspiracy in making forged 'Will' in favour of Rakshpal and on his advise, they killed the deceased. The petitioner/detenu in his confessional statement admitted the fact that friendship with Rakshpal was made in jail several years ago and since then Rakshpal is in his contact and Rakshpal has treated him as elder brother. The petitioner has stated that Rakshpal told him that if land of the Ashram is given to him on any count, then, he would give 1/3rd of the land to him and life will go smoothly for both of them. On this, the petitioner told Rakshpal that if he will give him thumb impression of Heeradas on any count in a blank stamp paper, he would make forged 'Will deed' with the help of his Advocate and on the basis of the said forged Will, he become the owner of whole property of the Ashram, whereupon Rakshpal had given him a blank stamp paper affixing therein thumb impression of Netram, who was the son of Heeradas, to which he (the petitioner), after making a forged 'Will deed' in favour of Rakshpal, has given to Rakshpal. Later on, Rakshpal told him that Heeradas has already made a 'Will deed' in favour of his disciple Meerdas and prepared for selling seven bigha of land and also wanted to evict him from the Ashram. On this, he (the petitioner) told Rakshpal that if you get all the three out of

the way, then, no heirs would remain alive and both of them will succeed in their design.

(8) On the basis of the statements of the accused persons and recovery of weapons of assault on their pointing out and also other available evidences, Investigating Officer found the involvement of the petitioner in the crime and has filed charge- sheet before the competent Court. The petitioner is having a criminal history of 21 criminal cases, which are registered at various police stations of the district. On account of the said triple murder, thousands of villagers of village Kuamau and nearby villages had gathered at the place of occurrence and a panic situation has been prevailed in the village. The children and women have closed their door due to fear. On account of death of Mahant, a malicious attempt was made to spread religious frenzy. The different political and social party have tried to disturb the social harmony. The atmosphere remained panic for about ten days. Extra forces and P.A.C. were also deployed to bring the situation under control.

On 05.10.2020, the petitioner applied for bail before the Court which was fixed for 27.10.2020 and there was possibility of release of the petitioner on bail and he would again indulge in such activities which were likely to affect adversely public order, therefore, his detention became necessary under the Act of 1980.

(9) In the aforesaid circumstances, Station House Officer, P.S. Tadiyawan, District Hardoi sent a report with relevant papers to

Superintendent of Police, Hardoi for detaining the petitioner under Section 3 (2) of the Act, 1980. Thereupon, the Superintendent of Police, Hardoi, after considering the matter became satisfied with the report sent by Station House Officer and submitted his report to the District Magistrate, Hardoi for detaining the petitioner under Section 3 (2) of the Act, 1980 to prevent him from indulging in such activities causing disturbance of public order.

(10) On the basis of material placed before him, as briefly referred to above, the Detaining Authority came to the conclusion that the activity of the petitioner are prejudicial to the maintenance of public order and his activities has disturbed the public tranquility, hence keeping in view his criminal record and activities, the Detaining Authority felt satisfied that there was every likelihood that just after his release from jail, he will again indulge in such type of activities which will adversely affect the maintenance of public order and peace and, therefore, to prevent him from committing similar activities prejudicial to the maintenance of public order, it became necessary to detain him with immediate effect under Section 3 (2) of the Act, 1980. Thus, the Detaining Authority passed the impugned order dated 25.10.2020 for detaining the petitioner under Section 3 (2) of the Act, 1980. The Detaining Authority communicated the grounds of detention to the petitioner on 25.10.2020. On 10.11.2020, the petitioner has sent his representation through

Superintendent of Jail, District Hardoi to the Detaining Authority, which was rejected by the Detaining Authority on 13.11.2020 and other representation, which was sent by the petitioner, to the State Government was also rejected on 25.11.2020 and the Central Government has rejected the representation of the detenu on 07.12.2020. The aforesaid order of rejection has also been communicated to the petitioner.

(11) The pleadings between the parties have been exchanged.

(12) While challenging the impugned detention orders, learned Counsel for the petitioner has argued that on account of taking active part in public agitation against the local police, the police personnel became annoyed with the petitioner and lodged 21 criminal cases against him. He argued that on the basis of the said criminal cases, the District Magistrate, vide order dated 25.10.2020, invoked the provisions of Section 3 (2) of Act, 1981 and detained the petitioner/detenu in jail. He argued that out of 21 criminal cases lodged against the petitioner/detenu, the petitioner /detenu was acquitted in five cases and enlarged on bail in eleven cases, whereas in three cases, final report has been submitted.

(13) Learned Counsel for the petitioner further argued that in Crime No. 353 of 2020, under Section 419, 420, 467, 468, 302, 120-B

I.P.C. and Section 3 (ii) (v) of the Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, Police

Station Tadiyawan, District Hardoi, the allegation against the petitioner is only to the effect that forged 'Will deed' was prepared by him in conspiracy with Rakshpal with regard to the properties of the Ashram of Heeradas in favour of accused Rakshpal but there is no allegation for killing the three deceased persons. He further argued that the petitioner has no connection with co-accused Rakshpal and only on the basis of call details of co-accused Rakshpal and his confessional statement, the petitioner has falsely been implicated in the aforesaid criminal case. Further, the petitioner has no connection with the said incident or property of Baba Heeradas. The aforesaid F.I.R. has been lodged against the petitioner due to political enmity with local M.L.A. In these backdrops, the submission is that the District Magistrate, while passing the impugned order dated 25.10.2020 under the Act of 1980, curtailed his personal liberty.

(14) Per contra, learned Additional Government Advocate appearing on behalf of the State, while supporting the order of detention, have submitted that the activities of the petitioner were prejudicial to the maintenance of public order; his

activities have disturbed the normalcy of the society; there was every possibility that just after his release from jail, he will again indulge in such activities, which will adversely affect the public order and peace, therefore, to prevent him from further committing similar criminal activities prejudicial to the

maintenance of public order, the detention order was passed by the Detaining Authority after its subjective satisfaction.

(15) Learned Additional Government Advocate has further argued that the activities of the petitioner were directed against the public at large and were sufficient to bring them within the ambit of public order. The satisfaction of the Detaining Authority is based on reliable and relevant material and that there was no illegality in the impugned orders. He further argued that if the Detaining Authority arrives at the subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of public order and passes the detention order, it cannot be interfered by this Court. The grounds of detention were promptly communicated to the petitioner. He further argued that the petitioner is a man of criminal antecedents and 21 criminal cases have been registered against the petitioner at different police stations of the district. He also pointed out that the State Government, vide order dated 08.12.2020, had extended detention period tentatively for three months and the same was also served upon the petitioner. Thereafter, the State Government, vide order dated 20.01.2021, had extended the detention period for six months tentatively w.e.f. actual date of detention i.e. on 25.10.2020 and the same was also communicated to the petitioner through radiogram on 20.01.2021. He argued that till date no representation against the extension of detention order has been filed by the petitioner.

(16) Having heard learned Counsel for the petitioner/detenu and learned AGA on behalf of the State, it transpires that the main question for consideration before this Court is whether the activities of the petitioner mentioned in the grounds of detention fall within realm of public order or law and order.

(17) The distinction between the two concepts of "public order" and "law and order" has been lucidly explained by the Apex Court in Ashok Kumar Vs. Delhi Administration : AIR 1982 SC 1143, wherein the Apex Court has observed that

the true distinction between the areas of "public order" and "law and order", being fine and sometimes overlapping, does not lie in the nature or quality of the act but in the degree and extent of its reach upon society. The Apex Court has further observed that the act by itself is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it "prejudicial to the maintenance of public order". If the contravention in its effect is confined only to a few individuals directly involved, as distinct from a wide spectrum of public, it would raise the problem of "law and order" only. It is the length, magnitude and intensity of the terror wave unleashed by a particular act or violence creating disorder that distinguishes it as an act affecting "public order" from that concerning "law and order". On the facts of that case the Apex Court held that whenever there is an armed hold up by gangsters in a residential area of the city and persons are

deprived of their belongings at the point of knife or revolver they become victims of organised crime and such acts when enumerated in the grounds of detention, clearly show that the activities of a detenu cover a wide field falling within the ambit of the concept of "public order".

(18) The Apex Court, to the aforesaid effect, has made observations in *Victoria Fernandes Vs. Lalma Sawma* : AIR 1992 SC 687, wherein, relying on its earlier decisions, including *Ashok Kumar Vs. Delhi Administration* (supra), it was reiterated that while the expression "law and order" is wider in scope, in as much as contravention of law always affects order, "public order" has a narrower ambit and public order would be affected by only such contravention which affects the community and public at large.

(19) The distinction between violation of 'law and order' and an act that would constitute disturbing the maintenance of 'public order' had also fallen for consideration of the Apex Court in *State of U.P. & Anr. Vs. Sanjay Pratap Gupta @ Pappu and others* : 2004 (8) SCC 591, wherein the Apex Court, after an extensive survey of authority on the issue brought out the distinction in fine detail, which reads as under :-

"12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might

affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well-defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State". (See *Kuso Sah v. State of Bihar* 1974 1 SCC 185, *Harpreet Kaur v. State of Maharashtra* 1992 2 SCC 177, *T.K Gopal Alias Gopi v. State Of Karnataka* 2000 6 SCC 168 and *State of Maharashtra v. Mohd. Yakub* 1980 2 SC 1158).

14. The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. It is not the number of acts that matters. What has to be seen is the effect of the act on the even tempo of life, the extent of its reach upon society and its impact."

(20) The issue has also been dealt with in the case of *Sant Singh vs.*

*District Magistrate, Varanasi* : 2000 Cri LJ 2230, wherein in paragraph 7 of the report, while dealing with the point, the Apex Court has held as under :-

"7. The two connotations 'law and order' and 'public order' are not the words of magic but of reality which embrace within its ambit different situations, motives and impact of the particular criminal acts. As a matter of fact, in a long series of cases, these two expressions have come to be interpreted by the apex Court. It is not necessary to refer all those cases all over again in every decision for one simple reason that they have been quoted and discussed in earlier



decision of this Court dated 14-10-1999 in Habeas Corpus Writ Petition No. 33888 of 1999- Udaiveer Singh v. State of U.P. and the decision dated 1-12- 1999 in Habeas Corpus Writ Petition No. 38159 of 1999 Rajiv Vashistha v. State of U.P. (Reported in 1999 All Cri R 2777). The gamut of all the above decisions in short is that 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. Sometimes the distinction between the two concepts of law and order' and 'public order' is so fine that it overlaps. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore, touch the problem of 'law and order', while in another it might affect 'public order'. The act by itself, therefore, is not determination of its own gravity. It is the potentiality of the act to disturb the even tempo of the community which makes it prejudicial to the maintenance of 'public order'".

(21) The scope of expression "acting in any manner prejudicial to the maintenance of public order" as appearing in Sub-Section 2 of Section 3 of the Act, 1980 also came up for consideration of the Apex Court in Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, (1995) 3 SCC 237; Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat, (1999) 5 SCC 613 and Hasan Khan Ibne Haider Khan Vs. R.H. Mendonca, (2000) 3 SCC

511. The Apex Court held that the fallout, the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with the person concerned or to prevent his subversive activities affecting the community at large or a large section of the society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activities amounts only

to a breach of "law and order" or it amounts to a breach of "public order". In Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat (supra), the Apex Court has held that the activities involving extortion, giving threat to public and assaulting businessmen near their place of work were sufficient to affect the even tempo of life of the society and in turn amounting to the disturbance of the "public order" and not mere disturbance of "law and order".

(22) While dealing with the question as to whether one solitary instance can be the basis of an order of detention, the Apex Court in *Smt. Bimla Rani Vs. Union of India* : 1989 (26) ACC 589 SC, observed that the question is whether the incident had prejudicially affected the 'public order'. In other words, whether it affected the even tempo of the life of the community. In *Alijan Mian v. District Magistrate Dhanbad*, 1983 (3) SCR 930 AIR 1983 SC 1130 it was held that even one incident may be sufficient to satisfy the detaining authority in this regard, depending upon the nature of the incident. Similar view has been expressed in the host of other decisions. The question was answered more appropriately and with all clarity in the case of *Attorney General of India v. Amratlal Prajivandas* : AIR 1994 SC 2179, wherein the Apex Court ruled that it is beyond dispute that the order of detention can be passed on the basis of a single act. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in

similar prejudicial activities. It cannot be said as a principle that one single act cannot be constituted the basis for detention. Thus, the argument of learned counsel for the petitioner that since it is solitary incident of the petitioner, he deserves sympathy, is rejected. Now the law, as it stands, is that even one solitary incident may give rise to the disturbance of 'public order'. It is not the multiplicity but the fall out of various criminal acts. Though there is consistency in the various decisions of the apex Court about the interpretation of the expressions of 'law and order' and 'public order' undue insistence on the case law is not going to pay any dividend as each case revolves round its own peculiar facts and has to be viewed in the light of the various attending factors. It is difficult to find a case on all fours with the case in hand.

(23) In the instant case, after examining the grounds of detention, briefly referred to above, on the touchstone of the legal position as emerging from the aforementioned decisions, we are of the view that the activities relied upon by the Detaining Authority to come to the aforementioned conclusion, cannot be said to be mere disturbance of "law and order". As noted in the grounds of detention, the activities of the petitioner pertains to engage into conspiracy to get a persons assassinated who being the Mahant of the Hulasi Bagiya Ashram, namely, Baba Heeradas, his disciple Meeradas and his son Netram and so creating a menace in the society at large. There is material on record to

show that petitioner, being the friend of main accused Rakshpal and Rakshpal has treated him as elder brother, engaged into conspiracy to get the forged 'Will deed' and on the advise of the petitioner, the main accused Rakshpal, Sanjay and Shafiq, brutally murdered the deceased Baba Heeradas, his disciple Meeradas and his son Netram, which created panic in the public affecting the normal tempo of life. On getting information of triple brutal murder, thousands of villagers of village Kuamau and nearby villagers were gathered there. In the village, fear and panic atmosphere were prevailed. The children and women closed their doors due to said panic. On account of murder of Mahant, the religious fanaticism had erupted. The normal life in the village was paralysed, which resulted in disturbance of public order and public tranquility. To assassinate a religious persons, while sleeping in night, strikes at the root of the State's authority and is directly connected to 'public order'. This act of petitioner was not directed against a single individual, but against the public at large having the effect of disturbing even tempo of life of the community and thus, breaching the "public order". Thus, we are unable to hold that there was no material before the Detaining Authority to come to the conclusion, it did, to say that the activities of petitioner can be construed as activities prejudicial to the maintenance of "public order," within the meaning of Sub-Section (2) of Section 3 of the Act, 1981. We have, therefore, no hesitation in holding that the instances of petitioner's activities, enumerated in the grounds of

detention, clearly show that his activities cover a wide field and fall within the contours of the concept of "public order" and the Detaining Authority was justified in law in passing the impugned order of detention as its confirmation order against the petitioner.

(24) So far as the plea of learned counsel for the petitioner that the impugned orders are vitiated because it has been passed with a mala fide intention to frustrate the bail likely to be allowed to the petitioner, we are of the view that there is no substance in the contention. The Detaining Authority has reason to believe, on the basis of material placed before him, that there is imminent possibility of his being released on bail and that on being so released, he would in all probability indulge in prejudicial activities and to prevent him from doing so, it is necessary to detain him. A detention order cannot be struck down on the ground that the proper course for the authority was to oppose the bail application and if bail is granted notwithstanding such opposition, to question it before a higher Court, as is sought and pleaded by learned counsel for the petitioner. In

this regard, criteria was laid down by the Apex Court in the case of Kamarunnissa and others vs. Union of India : (1991) 1 SCC 128 also fortified in Champion R. Sangma vs. State of Meghalaya : (2015) 16 SCC 253, wherein the Apex Court was held :-

"13. In 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 believe on the basis of reliable material placed before him (a) that there is a 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."

(25) It is not the case of the petitioner that the grounds of detention while extending the period of his detention has not been supplied to the petitioner or any particulars in regard to slapping detention order upon him has not been supplied to him.

(26) However, needless to mention here that the grounds of detention were communicated to the petitioner along with the detention order dated 25.10.2020. It was further extended by the State which was communicated to the petitioner in due time.

(27) For the reasons aforesaid, we are of the considered view that the apprehension entertained by the Detaining Authority, to the effect that petitioner's activities are prejudicial to the maintenance of public order, is genuine and well founded. Thus, we do not find any illegality in the impugned orders, warranting our interference in extra ordinary jurisdiction under Article 226 of the Constitution of India.

(28) The instant Habeas Corpus Writ Petition lacks merit and is, accordingly, dismissed.

(29) For the facts and circumstances of the case, there will be no order as to costs.

(Narendra Kumar Johari, J.) (Ramesh Sinha, J.) Order Date :- 12.07.2021

Ajit/-