

## Virendra Singh Vs State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** March 24, 1998

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 302

**Citation:** (1998) 2 ACR 1321

**Hon'ble Judges:** S.K. Phaujdar, J; N.S. Gupta, J

**Bench:** Division Bench

**Advocate:** V.S. Singh, for the Appellant; S.C. Misra and A.G.A., for the Respondent

**Final Decision:** Allowed

### Judgement

S.K. Phaujdar, J.

The above two matters were heard together as common points of fact and law were involved in them, these two writ petitions are being disposed of by the present order.

2. Petitioner, Virendra Singh (in H.C.W.P. No. 2149 of 1997) has been detained under the provisions of National Security Act (in short, N.S.A.)

by an order dated 23.6.1997 recorded by the District Magistrate, Jhansi. The other Petitioner, Vijai Bahadur Singh has also been detained by

another order of the same District Magistrate of the same day under the provisions of the same Act.

3. The grounds of detention in relation to Virendra Singh indicated that on 16.4.1997 a religious procession was moving through the roads of

village Kadura, P. S. Samthar, District Jhansi, late in the night. It was a moonlit night and the processionists were also carrying on petromax lamps.

At about 11 p.m., the procession stopped near the door of Har Narain Dhobi and people kept engaged in bhajan. It is stated that the Petitioner

Virendra Singh came with an axe, Petitioner Vijai Bahadur came with lathi, their associates Bharat and Brij Bhushan were armed with fire-arms.

These persons caught hold of one Rati Ram and started abusing him for having taken a job under Rajendra Singh after leaving a job under them. It

was stated that these persons assaulted Rati Ram with lathis and fists and Ranjit and Bhushan took exception to this. At this, the Petitioners and

others abused them and declared that these persons should be taken to task. Vijai Bahadur assaulted Chandra Bhushan with lathis, Ranjit was shot

dead by Bharat, Rati Ram was caught hold of by these persons and was taken away while the people in general were threatened not to stand on

the way of the miscreants. In fear and panic, the assembled people did not dare to intervene as fire was also opened to threaten them. Rati Ram

was forcibly removed to a place outside the village. Some persons stealthily followed them and saw that Rati Ram was shot dead by Brij Bhushan

Singh while Virendra Singh also hurled axe blows on him.

4. It was further stated in the grounds that as a sequel to this incident, police reached the spot but the miscreants were not found in their houses.

Most of the houses in the locality were found locked as the people had fled the village. A few old persons had not gone away and they had

informed the police that the ghastly attack on Rati Ram and Ranjit made the villagers such panicky, that most of the people had run away from the

village. People were afraid of attacks on their lives and properties and on the honour of their women folk. Most of the villagers in Kadura,

especially the people of Scheduled Caste community, had not come back to the village despite posting of a police picket there. It was stated that

on the news of bail of the Petitioners and others the persons who stayed back in the village were also trying to sell off their properties and were

trying to leave the village. It was stated that the Petitioner had moved for bail in the sessions court and the very talk of their being released on bail

had again created an atmosphere of panic in the village. The District Magistrate opined that there was every possibility that by the acts of the

Petitioners, maintenance of the public order would be prejudiced. In the grounds in respect of the other detenu (Vijai Bahadur Singh), similar

words were used.

5. In their writ petitions the Petitioners urged that ante-dated reports were prepared by the Superintendent of Police, Jhansi and upon such forged

reports, the District Magistrate had recorded his order of detention. It was submitted that in fact the orders of detention were recorded on 23.6.97

and the materials supporting such detention were made thereafter and, apparently, with forged letters. It was further stated that there had been only

one case, albeit u/s 302, I.P.C. and there was no material before the District Magistrate to infer that the Petitioners were likely to continue with

acts prejudicial to maintenance of public order. The incident in question, even if believed in toto, spoke of a personal or political rivalry and could

not have created any prejudice to the maintenance of public order. In the course of arguments also the learned Counsel pressed these very points

to say that on 23.6.97 no material was there before the District Magistrate as the alleged materials originally bore dates after 23.6.97 which were

interpolated to make them of dates prior to the recording of the detention order. There was, thus, absolute non-application of mind. It was also

urged that no material was there to infer that the act complained of was likely to be repeated.

6. In reply to the averments, the District Magistrate submitted counter-affidavits. It was stated that the story of interpolation of the dates was

wrong and materials had been brought before him prior to the recording of the detention order. It was stated that change in dates was bona fide as

would be evident from the fact that all these materials were supplied to the Petitioner in jail on 24.6.97.

7. So far the allegations of overwritings in the original papers are concerned, Sri Mahendra Pratap on our request, had produced the original

papers and we had indicated in our order, dated 19.2.1998 in the order-sheet that the overwritings as alleged were there in the original papers and

the photocopies thereof were there on the record. The report of the Circle Officer, Moth, Jhansi, does not indicate the date wherein a blank has

been left (Dinank June....., 1997). However, there is a date under the signature of Sri Badri Singh, Circle Officer. This date palpably was

27.6.1997 and was subsequently made 23.6.1997. This report is addressed to the Superintendent of Police. It has been mentioned here that he

agreed to the proposal of the S.O. that the maintenance of the public order had been prejudiced by actions of the Petitioners and others, that they

were likely to be released on bail in near future and that if they are so released, they would again indulge in similar activities to the prejudice of the

maintenance of public order. The report of the Station Officer, addressed to the Senior Superintendent of Police was routed through the Circle

Officer. This report is under the signature of Sri Jag Mohan Pandey and under his signature the original date was 26.6.97 which was subsequently

made 22.6.97. In this report, the Station Officer indicated that the Petitioners and others were in District Jail, Jhansi, from different dates and Vijai

Bahadur and Virendra had moved for bail and were likely to get bail and it was further likely that after their release, they would again indulge in

activities prejudicial to the maintenance of public order. The report of the Sr. Superintendent of Police that was made to the District Magistrate,

however, bears the date 23.6.1997 and in that report the reference has been made to the reports of the Station Officer and the Circle Officer.

While it is possible that under his signature a person may by mistake put a wrong date, it is not likely that a similar mistake will be committed by

two officers at the same place. The report of the Station Officer bears a date 26.6.97 and it was made 22.6. The report reached the Circle Officer

the next date and it was initially marked with the date 27.6.97 and, subsequently, made 23.6.97 The possibility may not be ruled out that initially

some reports were sent to the S.S.P. and action was suggested on those reports, but to make the reports conform to the requirements of law, the

lower officers were directed to amend their reports and as such reports were made on 26th and 27th forgetting fully that those were meant to be

recorded on 22nd and 23rd only and these interpolations were, therefore, necessary. We are not recording any decision on the facts that such

situation had really arisen. What we propose to highlight is that there was no good reason for commission of similar mistakes by two officers

stationed at two places, Samthar and Moth. If the reports came to the District Magistrate in the form as placed before him, the District Magistrate

should have immediately reacted on the point of interpolations and should have hesitated to have acted upon the same. It is true that there are

allegations that copies of those papers were supplied to the Petitioner in the jail on 24th itself, but that could not wipe out the non-application of

mind by the District Magistrate towards these daring interpolations.

8. The fact may be looked into from another angle also. If really the report dated 22.6.97 from the police station reached the Circle Officer on

23rd, he made a report on that date itself to the S.S.P. The S.S.P., in his turn, made a report to the District Magistrate on that very date and the

District Magistrate in his turn made an order of detention on 23rd itself. The haste in the matter was proposed to be explained by the learned

A.G.A. on the ground that the detention order was to be passed looking to the immediate likelihood of release on bail of the Petitioner and, as

such, the haste was only expected in the circumstances of the case. Had the cuttings and interpolations seen not there, we could have accepted this

explanation by the learned A.G.A. In our view, in the circumstances of the case, the unusual haste suggests non-application of mind by the District

Magistrate.

9. The detention order may be seen from another angle as well. It is true that certain daring offence was committed in the presence of the villagers

under show of threat and the incident had made the local people panicky, but the allegations indicate that the murder of Ranjit was committed as he

objected to the highhandedness of the Petitioners while the murder of Rati Ram was committed over a grudge as he had left the services under the

accused persons. It was out and out a private dispute and a mere allegation that the Petitioners were likely to commit similar acts in future is too

bald to be accepted. While it is true that even a single act could give rise to a situation prejudicial to maintenance of public order, it is equally true

that materials must be thereto indicate possible repetition of similar acts by the Petitioners. In our view, the very nature of the offence suggests that

it was a private dispute and we are further of the view that from the nature of the incident itself, it may not be inferred that similar acts to the

prejudice of maintenance of public order were likely to be committed by the Petitioners.

10. It is true that it is the subjective satisfaction of the District Magistrate and once he has recorded such satisfaction, the same could not be struck

down, but this subjective satisfaction must, in our view, be based on some material and not a mere statement of the sponsoring authority. There

being no other criminal record, an inference of repetition, in our view, of such acts was not possible for one solitary incident, as alleged.

11. In view of the above, the detention orders of the two Petitioners in these cases are not sustainable and are quashed and the petition stands

allowed. The two Petitioners shall be released from custody forthwith if not required to be detained in any other case.