Dharam Pal Yadav Vs Union of India (UOI) and Others

Court: Allahabad High Court

Date of Decision: Dec. 20, 1991

Acts Referred: Constitution of India, 1950 â€" Article 14, 226(2)
Criminal Procedure Code, 1973 (CrPC) â€" Section 161
Motor Vehicles Act, 1988 â€" Section 177, 180, 182, 5
National Security Act, 1980 â€" Section 10, 3(2), 9
Penal Code, 1860 (IPC) â€" Section 216, 353, 404, 506

Citation: (1992) 1 AWC 307

Hon'ble Judges: Palok Basu, J; Girdhar Malviya, J

Bench: Division Bench

Advocate: Prem Prakash, for the Appellant; Shivaji Misra, for the Respondent

Final Decision: Allowed

Judgement

1. By this Habeas Corpus Writ Petition the Petitioner Dharampal Yadav challenges the validity of his detention in pursuance of the order dated 21-

8-1991 passed by the District Magistrate, Bulandshahr u/s 3(2) of the National Security Act.

2. To begin with it may be mentioned that learned Advocate General Sri V.K.S. Chaudhary raised a preliminary objection about the maintainability

of the writ petition here at Allahabad High Court on the ground that this was a matter which could have been filed and entertained only by the

Lucknow Bench of the Allahabad High Court. The basis of objection to entertainment of the Habeas Corpus petition was the fact that the

detention order against the Petitioner stated that the Petitioner had to be detained at District Jail Sultanpur. The learned advocate General

contended that Sultanpur, being situated within the jurisdiction of Lucknow Bench, and as a Writ of Habeas Corpus has necessarily to go to the

Jailor where the Petitioner is confined, and that Jailor in this case being the Superintendent of the Sultanpur District Jail, the cause of action for the

Habeas Corpus arose only against the order directing detention of the Petitioner at Sultanpur, and hence the Lucknow Bench alone could issue a

writ to the Superintendent of Sultanpur Jail.

3. Apart from the fact that admittedly the Petitioner is now detained in the District Jail, Bulandshahr, the argument of the learned Advocate General

can not be accepted as the order for detention was passed by the District Magistrate Bulandshahr on the basis of the activities of the Petitioner

within the district of Bulandshahr. Bulandshahr being outside the jurisdiction of Lucknow Bench, and cases from Bulandshahr being filed here at

Allahabad in the High Court. It is clear that part of the cause of action for filing this Habeas Corpus petition arose within the jurisdiction of this

Court. In this connection it will be relevant to refer to Article 226(2) of the Constitution of India which reads as follows:

(2) The power conferred by Clause (1) to issue directions, orders or Ms to any Government, authority or person may also be exercised by any

High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such

power, notwithstanding that the seat of such Government authority or the residence of such person is not within those territories.

Consequently the preliminary objection raised by. The Advocate General is not acceptable.

4. It appears that the Petitioner was wanted in several cases which are mentioned in grounds of detention concerning his activities on 20-5-1991

during the polling in the district of Bulandshahr. These activities of 20th May, 1991 coupled with some activities of the Petitioner dated 16-7-1991,

21-7-1991, 22-7-1991, 3-8-1991 and 5-8-91 have been made the grounds for passing the order of detention against the Petitioner. The orders

of detention were passed on 21-8-1991 directing the Petitioner to be detained in district Jail Sultanpur where the Petitioner is alleged to have been

arrested earlier on the same day at 2.15 P.M. in connection with a case under Sections 353, 404, 506, 216 IPC read with Section 182 of the

Motor Vehicle Act and Sections 5/177/180 of the Motor Vehicle Act. As the present petition is not being disposed of on the question of relevancy

of the grounds of detention to the object of detention viz, the maintenance of the Public Order, we are not quoting the grounds of detention which

runs over almost 10 foolscape pages.

5. This petition was moved on 19-9-91 when the Respondents were granted time to rile affidavit. Number of Supplementary affidavits,

supplementary counter affidavit and rejoinder affidavits have been exchanged between the parties. Consequently despite the fact that there was no

formal order of admission of this petition, as agreed by the Learned Counsel for the parties, we have heard this petition for its disposal on merits at

the stage of admission itself.

6. We have heard Sri Prem Prakash, Learned Counsel for the Petitioner Sri V.K.S. Chaudhary, learned Advocate General and thereafter the

learned Govt. Advocate at some length on various points which were raised in this petition.

7. While arguing this petition Sri Prem, Prakash Learned Counsel for the Petitioner urged that on 25-8-1991 the Petitioner gave an application

which has been termed by him to be a presentation to the District Magistrate, Bulandshahr, enumerating therein various documents as also the

informationÃ¯Â¿Â½s, which he claimed was needed by him to enable him to make an effective representation. The first contention of the Learned

Counsel for the Petitioner is that though these documents were demanded, these documents were never supplied.

8. The fact relating to this representation being made is not disputed. In para 17 of his petition the Petitioner stated that the detaining authority did

not bother to even communicate the Petitioner as to what decision had been taken upon the aforesaid application. In reply to this assertion made in

para No. 17 of the petition, Sri L.B. Tewari, District Magistrate Bulandshahr stated as follows:

16. As the documents mentioned in the application dated 25-8- 1991 are concerned most of the documents have been given to him at the time of

execution of the detention order only the report of two N.C. Rs. of police-station Gulawati were not given to the Petitioner, which however, rent to

him along with a letter on 10-9-1991. Some of the other documents demanded by the Petitioner have no bearing on the present detention. The

Petitioner however, was in a position to obtain these documents himself through his counsel as they all were public documents. This fact can further

be confirmation by a report of the Superintendent of District Jail Sultanpur in which he has intimated that the documents sent along with the letter

dated 10-9-1991 were received by the Petitioner and after going through the documents he refused to sign regarding the receipt of the same.

9. We also went through the application dated 25-8-1989 which has been annexed with the petition as Annexure-3. A perusal of that application

indicates that apart from various information which had been asked for the Petitioner demanded at least 32 other documents to be furnished to him

to enable him to make an effective representation. We asked the learned Advocate General to let us know the factual position whether any of

these documents have been really given to the Petitioner or furnished to him at any stage before the application for these documents was made by

the Petitioner. Learned Advocate General assisted by his other colleagues went through his record and informed us that barring the statement of

Ram Pal Dixit and the two N.C. Rs. dated 22-7-91 of Police-Station Gulawati made by Hari Pal and Krishnapal, no other documents had been

furnished to the Petitioner along with the grounds of detention or at any time either prior to the making of the application or thereafter.

10. The contention of the Learned Counsel for the Petitioner is that as these documents have not been furnished to him, his right to make an

effective representation against the order of detention has been materially affected. Learned Counsel for the Petitioner has relied upon the judgment

of the Supreme Court in the case of Ramchandra A. Kamat Vs. Union of India (UOI) and Others,

11. In the case of Ramchandra A. Kamat (supra) the Petitioner through his Advocate by a letter dated 7-9-1979 had written to the second

Respondent stating therein that detenu desired to make a representation against the order of detention but found that without the copies of

documents referred to in the grounds of detention order, it was not possible for him to make an effective representation.

12. The copy of these documents was demanded by the Petitioner through his counsel on 7-9-79. Admittedly the letter demanding the copies had

been received by the authorities concerned. The authorities while acknowledging the receipt of his letter advised the counsel to contact the Deputy

Director of Enforcement Bombay who was supposed to supply the copies of documents and the statements demanded by him. As the documents

were not received the counsel again wrote to the authorities concerned demanding those documents. Initially the counsel was asked to inspect the

record, but the copies were finally supplied to him on 26-9-1979, 28-9-79, and 29.9.79. Thereafter a representation was made by the detenue on

5-10-79.

13. Accepting the contention of the Petitioner in Ram Chandra A. Kamat"s case the Supreme Court found that it was the duty of the detaining

authority to satisfactorily explain the delay, if any, in furnishing even such documents which had been demanded. It will be relevant to quote para

No. 7 and 8 of the said judgment which reads as follows:

7. It is alleged by the detenue that there had been unreasonable delay in furnishing of the statements and documents referred to in the grounds of

detention. It is the duty of the detaining authority to satisfactorily explain the delay, if any, in furnishing of these documents.We are in this context

not referring to the statements and documents not referred to in the grounds of detention for it may be that they are not in the possession of the

detaining authority and that reasonable time may be required for furnishing copies of the relevant documents which may not be in his possession.

(Underlined by us)

8. If there is undue delay in furnishing the statements and documents referred to in the grounds of detention the right to make effective

representation is denied. The detention cannot be said to be according to the procedure prescribed by law. When the Act contemplates the

furnishing of grounds of detention ordinarily within five days of the order of detention, the intention is clear that the statements and documents which

are referred to in the grounds of detention and which are required by the detenue and are expected to be in possession of the detaining authority

should be furnished within reasonable expedition.

14. The Learned Counsel relied on the above mentioned passage of the Supreme Court and said that even those documents which were not

referred to in the grounds of detention when demanded the detaining authority was required to furnish their copies, although they were not in his

possession. In this connection Learned Counsel relied further on para No. 10 of the aforesaid judgment, the relevant portion whereof reads as

under:

It may not be necessary for the detaining authority to supply copies of all the documents relid upon in the grounds of detention at the time when the

grounds of detention at the time when the grounds are furnished to the detenue butonce the detenue states that for effective representation it is

necessary that he should have copies of the statements and documents referred to in the grounds of detention, it is the duty of the detaining

authority to furnish them with reasonable expedition. The detaining authortiy cannot decline to furnish copies of the documents on the ground that

the grounds were sufficiently detailed to enable tne Petitioner to make an effective representation. In this case, the attaining authority should nave

taken reason-able steps to provide the detenue or his advocate with the statements and documents as early as possible.

(Underlined by us)

A perusal of the above mentioned case leaves no room for doubt that the detaining authority could not decline to furnish copies of the documents

to the Petitioner once they were demanded.

15. The Learned Counsel for the Petitioner has also relied upon the observations of the Supreme Court in the case of Haridas Amarchand Shah of

Bombay Vs. K.L. Verma and Others, . In which case of Ashok Kumar v. Union of India of the Supreme Court has been referred to in para 10 of

the said judgment. A perusal of the judgment indicates that the detenue had demanded Bank Pass Books of the detenue and his wife seized in the

course of search of some house from where foreign currency as well as primary gold in foreign markings had been recovered. The judgment further

goes to indicate that the detenue in that case had made an application for furnishing the pass book to enable him to make an effective

representation against the order of detention alleging that the house from where the recovery was alleged did not belong to or owned by the

detenue. The Court in the case of Ashok Kumar had found that non-supply of the pass book infringed the detenu"s right to make an effective

representation.

16. It will also be relevant to quote the following passage from the judgment of Justice Sawant, as he then was, in the case of Mohd. Hussain Vs.

Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay and others, , wherein, after referring to various judgments of the

Supreme Court, the law in this connection was summarised as follows:

(a) the copies of all the documents which are relied upon in or which form the basis of the grounds of detention must be supplied to the detenue

along with the grounds of detention;

(b) the documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually or

incidentally as and by way of narration of facts in the grounds of detention need be supplied to the detenu;

(c)however, even such document if the detenu requests for the same, have to be supplied to him, for whether they are relevant to his defence or

not is for the detenu to decide and not for the detaining authority to Judge.

(Underlined by us)

17. A Division Bench of this Court in the case of Bhawani Shankar Pandey Vs. State of U.P. and Others, , also found that inspite of detenu''s

demand to supply to him the copies of the judgment acquitting the detenu, the copy being not supplied to him, affected the detenu''s right to make

an effective representation which rendered the continued detention of the Petitioner bad in the eyes of law. Similar view has been taken by two

Division Bench cases of this Court in the case of Daya Shankar Singh Vs. Union of India (UOI) and Others, and in the case of Sanjeev Kumar

Jain v. State of U.P. 1980 AU 488.

18. The learned Advocate General, however, contended that non-supply of these documents really did not affect the right of representation to the

detenu, more so as the detenu in fact did make a representation letter on 3-9-91. In this connection learned Advocate General relied on the

judgment of Qamrun-nisha v. Union of India AIR 1991 SC 1646. Relevant passage on which the learned Advocate General relied is at page 1649

(Second Column) and the same reads as under:

It is not sufficient to say that the detenus not supplied the copies of the documents in jail on demand but it must further be shown lhat the non-

supply has impaired the detenu''(s right to make an effective and purposeful representation. Demand of any or every document, however irrelevant

it may be for the concerned detenu, merely on the ground that there is a reference there to in the grounds of detention cannot vitiate an otherwise

legal detention order. No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to

supply the documents before the meeting of the Advisory Board and impaired or prejudiced his right however slight or insignificant it may be.

In view of the contention of the learned Advocate General we went through the application dated 25-8-91 to be satisfied whether the documents

which the detenu had demanded were in any case relevant for making an effective representation against the order of detention or not. On perusing

the said application we are satisfied that the document which are demanded were relevant for making the representation by the detenu. Without

adverting to all such documents it would suffice if we may mention a few documents which the Petitioner demanded.

19. The case of the Petitioner in the said representation was that he had been arrested in the morning of 21-8-91 at 6 A.M. and that his arrest and

been communicated to the District Magistrate Bulandshahr in the morning itself. The Learned Counsel asserts that the version given in the counter

affidavit that the Petitioner was in fact detained at 2.15 P.M. was incorrect. Accordingly the Petitioner''s contention is that if he could demonstrate

by cogent evidence that the fact about the Petitioner''s arrest was already known to the detaining authority before he had passed order of detention

then viewed with the fact that he was wanted in so many criminal cases at that time and he had not applied apply for bail in any of these cases, the

passing of the detention order by the detaining authority could be shown to have been an exercise in futility, particularly, without any application of

his mind to the question, whether in view of the Petitioner being already in jail it was still necessary to pass an order of detention or not. In this

connection the Petitioner had demanded the copy of G.D. entry of departure of the Station Officer Doshtpur in district Sultanpur by which the

Petitioner wanted to demonstrate that the fact about arrest of the Petitioner had come into existence much before 2.15 P.M. on 21-8-1991. Yet

another document demanded by the Petitioner was the G.D. entry of the departure of the Station Officer of police station Khurja Dehat Distt.

Bulandshahr by which the Petitioner alleged that the Station Officer had moved an application before judicial Magistrate, Bulandshahr at 12 noon

for obtaining ''B'' warrant alleging therein that as the Petitioner had been arrested at Sultanpur and the said warrant should be immediately sent to

Sultanpur to procure his presence in a case which was pending in the Court of Judicial Magistrate, Bulandshahr at the relevant time. These are

clearly the documents by which the Petitioner could have agitated before the detaining authority or the Advisory Board that thee was no necessity

to pass any order of detention by the detaining authority for preventively detaining the Petitioner, as he was already in custody at the time when the

order of detention was being passed by the District Magistrate. These are only few of the documents which we have referred to, to indicate that

the contention on behalf of the State that the documents demanded were wholly irrelevant and, as such their non-supply to the Petitioner could not

in any manner affect his right to make an effective representation, cannot be sustained. Consequently we are satisfied that non-supply of the

documents to the Petitioner demanded by his application/representation dated 25-8-1989 has rendered his continued detention bad in the eyes of

law.

20. In this connection, Learned Counsel for the Petitioner has urged that his application dated 25-8-1991 was in fact as representation and this

representation having not been placed before the Advisory Board, when the Government referred the case of the Petitioner to the Board, has also

rendered the continued detention of the Petitioner bad in the eyes of law. In this connection, it would be relevant to quote the portion of Section 10

of the National Security Act which reads as follows:

place before the Advisory Board constituted by it u/s 9, the grounds on which the order has been made and the representation, if any.

21. In reply to this contention of the Learned Counsel for the Petitioner, learned Advocate General has stated that the application dated 25-8-

1991 cannot be treated to be a representation, as the representation has to be made not to the District Magistrate but to the Government and this

representation having not been addressed to the Government, cannot be treated as representation within the meaning of Section 10 of the National

Security Act. Learned Advocate General relied on the judgment of the Supreme Court in the ease of State of Maharashtra and Another Vs.

Sushila Mafatlal Shah and Others, . Although the Supreme Court in the aforesaid judgment did hold that the detaining authority was the

Government itself and not an officer of the Government, yet the following passage in the said judgment would certainly demonstrate that even if the

detaining authority is the Government, it was necessary for the officer concerned, to place the representation before the Government, which, in

turn, would have required the Government to place the representation before the Advisory Board as is demonstrated by Section 10. It would be

relevant to quote the following observation of the Supreme Court in the case of Shushila Mafat Lal (supra) from para 10 of the report which is as

follows:

The only further duty to be performed thereafter is to place the representation made by the detenu before the concerned officer or the Minister

empowered under the Rules or Business of the Government to deal with such representationif the detenue addresses his representation to the

officer himself.

(underlined by us;

22. Therefore, it is not possible to contend that neither the detaining authority was required to place this representation before the Government, or

that this application could not be termed as a representation. In any case, the question whether such an application could be treated to be a

representation or not, seems to have been finally settled by the judgment of the Supreme Court in the case of Kubic Darusz Vs. Union of India

(UOI) and Others, , This judgment clearly indicates that although the Respondents wanted an application moved by the detenu to be treated as

only a request for translated copies of the grounds, the Supreme Court had found such an application as a representation. In para 15 of the said

judgment, the Supreme Court clearly held as follows:

Therefore, the detenu''s representation asking for copies of documents must be held to have amounted to a representation and it was mandatory on

the part of the appropriate government to consider and act upon it at the earliest opportunity and failure to do so would be fatal to the detention

order.

23. Hence, apart from the fact that failure to act upon the said representation was fatal to the detention order, it has to be held that this was also a

representation made by the Petitioner and since admittedly this representation was not placed before the Advisory Board, hence the continued

detention of the Petitioner has to be held to be not in accordance with law. In connection with the same presentation of the Petitioner dated 25th

August, 1991, it has been contended by Learned Counsel for the Petitioner that by the said application, the Petitioner had clearly made a request

for his order of detention to be revoked. Accordingly the contention of the Learned Counsel for the Petitioner is that this was clearly a

representation for revocation of the order and it could not lie in the mouth of the Respondents to say that this was merely an application for supply

of the documents.

24. We have perused the said representation dated 25-8-1991 and find that both in its opening para as also in its last para, there was an specific

request made by the Petitioner to the District Magistrate that his detention order should be revoked.

25. Learned Advocate General strenuously contended that since by this representation only the copies were demanded so that the Petitioner could

make an effective representation and since the Petitioner did make a representation subsequently, hence this application, merely because at two

places a simple request was added to revoke his detention order, can not be treated to be an application for the revocation of the detention order.

We do not agree. In para 6 of the said representation, the Petitioner had made a categorical assertion that although the names of his associates

were not mentioned in the grounds, but it was obvious that the activities as assigned to the Petitioner were also the activities of the associates.

While making an inquiry whether the detention order had been passed against his colleagues also on the basis of the same activities, the Petitioner

had categorically asserted that if the detention order was not passed against the persons similarly situate, then the order against the Petitioner was

violative of Article 14 of the Constitution rendering the order of detention only against him bad in the eyes of law. Similarly in para 13 of the said

representation, the Petitioner has said that in respect of the incident dated 20th May, 1991 at Sarai Ghasi a cross-report had been lodged by his

agent Sri B. Section Sharma, at P.S. Kotwali, Bulandshahr in which three of his associates were shown to have not returned till the lodging of the

report in the evening. The Petitioner had clearly stated that this was the cross version of the incident which it appeared, the sponsoring authority

had not placed before the detaining authority and, had the sponsoring authority placed the said cross version before the detaining authority, then his

satisfaction to detain the Petitioner could have been otherwise. Even here in the High Court, the Petitioner had categorically stated that the

statements of Suresh Yadav and Rewati Saran in support of his cross-version had been recorded by the investigating officer u/s 161 Code of

Criminal Procedure and these statements had not been placed before the detaining authority. This assertion made in para 77 of the petition has not

been denied by the detaining authority in para 69 of his counter-affidavit. Thus there was a specific assertion made in the representation of the 25th

August, 1991 that there was a cross-version which having not been placed before the detaining authority, the satisfaction of the detaining authority

had been vitiated. This fact coupled with the prayer at the end of the representation made to the detaining authority to revoke the order of

detention, clearly makes this application of the 25th August, 1991 a representation and the detaining authority having not placed the same before

the Government and the Government in turn having not placed the same before the Advisory Board the continued detention of the Petitioner is

rendered bad in the eyes of law. Sri Prem Prakash had also argued before us that he had handed over representations to the Chairman of the

Advisory Board and the -aid representation had not been considered by the Government. He also argued that satisfaction of the detaining authority

was vitiated due to his considering some extraneous and irrelevant materials. His further contention that certain relevant materials affecting

satisfaction of the detaining authority were not supplied to the detenu and that materials referred to and relied upon in the grounds were not

supplied to him rendered that detention order viliated, need not be gone into by us in view of the fact that we have held earlier that the continued

detention of the Petitioner has been rendered baa on account of the non-consideration of the representation of the Petitioner dated 25th August,

1991, as well as on account of the non-supply of the materials and documents demanded by the Petitioner by the said representation.

26. The result is that this Habeas Corpus petition is allowed. The Petitioner shall be set at liverty forthwith, unless he is, wanted in any other case.