
(1998) 02 AHC CK 0117

Allahabad High Court

Case No: Habeas Corpus Writ Petition No. 33003 of 1997

Virendra Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Feb. 12, 1998

Acts Referred:

- National Security Act, 1980 - Section 12(1), 3(2), 3(5), 3(6), 8
- Penal Code, 1860 (IPC) - Section 302, 307

Citation: (1998) CriLJ 2873

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

Bench: Division Bench

Advocate: Sarvesh, for the Appellant; A.G.A., S.C. and U.N. Sharma, for the Respondent

Final Decision: Allowed

Judgement

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1. Through this writ petition the petitioner sought that he be set at liberty from detention in connection with a detention order dated 2-7-97 u/s 3(2) of the National Security Act recorded by the District Magistrate, Kanpur Nagar.

2. The detention order was recorded on 2-7-97 and the petitioner stood detained from 3-7-97. The impugned order simply stated that the District Magistrate, Kanpur Nagar was satisfied that the detention of Virendra Shukla for preventing him from acting in any manner prejudicial to maintenance of public order was necessary and accordingly the order u/s 3(2) of the National Security Act was passed. This order stood confirmed u/s 12(1) of the National Security Act on 27-8-97 authorising his detention for 12 months from 3-7-97.

3. The grounds of detention that were served upon the petitioner as required u/s 8 of the Act stated that on 12-6-97 the petitioner had shot at his tenant Sudheer Singh and his wife and others killing Sudheer Singh and injuring Srnt. Bhawna Singh and

Shiv Mangal Singh. This action was allegedly taken with a view to see that the tenanted premises be vacated and Case Crime No. 331 of 1997 for an offence under Sections 307 and 302 I.P.C. along with the other sections was started at police station Kalyanpur, Kanpur Nagar. The grounds further stated that the petitioner had taken the law in his own hand to get the tenanted premises vacated and as a result of the murder, peace in the locality was disturbed and a sense of fear and anxiety prevailed in the locality. It affected movement of the people and mohalla people were so terrified that public order was affected. People of neighbouring houses started fleeing their houses. One Vinod Kumar, a State Government employee and one Suman Kumar, a lekhpal, made written applications that they were tenants under the petitioner but did not propose to remain there in any further. They had also prayed for police protection. It was stated that people were terror-stricken for the actions of the petitioner and if he was allowed to roam freely, public order would surely be disturbed.

4. The grounds further stated that on the date of the order the applicant was already in custody in the aforesaid criminal case and he had presented bail application before the criminal court and there was likelihood of his being released on bail. The very possibility of his being released on bail had again put the mohalla people under a panic and they have started feeling insecure. The District Magistrate concluded that people were afraid of him and if he would move freely in the society certainly public order would be affected and for maintenance of the public order it was necessary to detain the petitioner in custody. Upon these grounds the District magistrate was satisfied that the petitioner was likely to act in such a manner which would affect maintenance of public order.

5. It was urged on behalf of the petitioner that even if the allegations be taken as true they did not make out a case of disturbance of public order as the offence was allegedly committed due to personal grudge and at the worst it could come within the ambit of disturbance of law and order only. It was further urged that the detention order was recorded without application of mind by the detaining authority and there were no materials for his subjective satisfaction for authorising a detention under the law. The petitioner has also indicated in his writ petition that his representation was not decided expeditiously and as such his continued detention was bad.

6. Counter-affidavits were filed by the District Magistrate and others and a rejoinder affidavit was also filed by the petitioner. The District Magistrate in his counter-affidavit had stated that the detention order was passed according to law and the representation of the petitioner was duly received on 15-7-97 and was duly sent to the Government on 16-7-97. A comment was also called for from the S. S.P. which was received on 1-8-97 and the representation was finally rejected on 6-8-97 and the communication was duly given to the petitioner, Central Government had also rejected representation on 12-9-97. The Station Officer of Kalyanpur, Police

station, indicated in his affidavit why the comments were delayed by about ten days. It appears that due to some mela and due to some V.I.P. duties the Station Officer was prevented from taking any action for about a week and thereafter there was no delay and the matter was pursued. On behalf of the Union of India an affidavit was filed. It was indicated that after receipt of a report u/s 3(6) of the National Security Act a decision was taken on 25-7-97 to call for the criminal records of the detenu and a message was sent to the State Government. The report was received on 12-8-97 and a decision was taken on 19-8-97 not to interfere with the detention order. There was no statutory obligation on the Central Government to inform the detenu about the result of the consideration of the matter received u/s 3(5) of the national Security Act. The representation from the detenu reached the hands of the Central Government on 24-7-97 further information was sought for on 29-7-97. The same were received by wireless message dated 27-8-97 and the matter was considered and the representation was rejected on 11 -9-97. The State Government in its affidavit did not speak anything about the delay in answering the two queries of the Central Government concerning disposal of the representation. A counter-affidavit was also put in by the Jailer to indicate the dates when the several orders were communicated to the detenu.

7. To elaborate his point the learned counsel for the petitioner relied on a decision of a Division Bench of this High Court as reported in [Ram Autar alias Om Prakash Vs. State of U.P. and Others](#), , here was a delay in disposal of the representation of the petitioner and the detention order held vitiated due to the delay. A similar view was taken by that very Division Bench in another case as reported in [Javed Akhtar Vs. Union of India \(UOI\) and Others](#), were also continued detention was a question raised before the court no explanation was given by the State Government to justify the delay and the court had declined to give time for supplementary affidavit to explain the delay. Due to absence of explanation of the delay in sending comments by the District Magistrate the detention order was held vitiated.

8. On the point whether it was a question of disturbance of law and order or of public order reliance was placed on a decision of a Division Bench of the Lucknow Bench of the Allahabad High Court as reported in [Anil Vs. State of U.P. and Others](#), it was a case where the detenu had committed murder of a child after hatching up a criminal conspiracy. It was held that the act of the detenu was directed against an individual and not public in general and the detention order had no nexus to public order and as such was bad in law. A similar view was taken by the Supreme Court as early as in 1970 in the case of [Arun Ghosh Vs. State of West Bengal](#), . The Supreme Court indicated in this case "That the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Similar acts in different contexts affect differently law and order on the one hand and public order

on the other. It is always a question of degree of the harm and its effect upon the community. Individual act can be a ground for detention only if it leads to disturbance of the current of life of the community so as to amount to disturbance of the public order and not if it affects merely an individual leaving the tranquillity of the society undisturbed." Reliance was placed on a decision of the Supreme Court in the case of [Smt. Victoria Fernandes Vs. Lalmal Sawma and others, : Smt. Victoria Fernandes Vs. Lalmal Sawma and others,](#), here was a case of solitary incident of assault on a journalist coupled with two acts of threats to journalists. The Supreme Court held that these acts did not constitute acts relating to public order and the order of detention was held not justified.

9. On the question of future recurrence of activity prejudicial to maintenance of public order, reliance was placed on a decision of the Supreme Court as reported in [Fazal Ghosi and Others Vs. State of U.P. and Others,](#) . The petitioners in the case before the Supreme Court were held u/s 3(2) of the National Security Act on the ground that they had addressed members of a community in a language inciting them to beat the police and PAC men as a result of which the crowd commenced pelting stones and discharged firearms on the government officials and the police personnel assembled there causing injuries. It was contended that there was no material before the District Magistrate on the basis of which he could form the opinion that the detenus would act in future in a manner prejudicial to the maintenance of public order. The writ petition was allowed and the detenus were directed to be set at liberty.

10. In the case at our hands, we may begin from the last mentioned case law. As indicated in the grounds of detention only one incident has been alleged against the petitioner for having committed murder of his tenant with a view to get the premises vacated. The effect thereof was breach of peace, anxiety and panic in the locality. The grounds indicated that the people were so panicky that the very free movement of the petitioner would lead to acts prejudicial to the maintenance of public order. A careful reading of the grounds indicate that the District Magistrate was deeply influenced with the fear that had prevailed in the local people and it was his impression that the very free movement of the petitioner would be prejudicial to the maintenance of public order. There is no definite allegations as to what the detenu was likely to commit after his release on bail. It could be true that the people were terror-stricken but there were no materials before the detaining authority that the petitioner was likely to do something in future. They mere panic of the people would not make it a case for preventive detention as the provisions under the National Security Act are never meant for punishing a past act. If somebody is released on bail he would have every right to move freely and in if mere movement of him causes terror without any further overt act on his behalf, it may not be a case for a preventive detention. On the question of delay in decision of the representation of the petitioner by the Central Government there is unexplained delay on the part of the State Government to send the comment to the Central

Government which were called for. The affidavits on record made it clear that the Central Government had sent a crack wireless message to the State Government on 29-7-97 after the receipt of the representation from the detenu on 24-7-97. The further information sought for was received through a wireless message dated 27-8-97 and there was thus a delay of four weeks to supply the requisite information by the State Government to the Central Government and there is no explanation of this delay in the affidavit of the State Government. This delay is also a factor which vitiates the continued detention of the petitioner.

11. There was yet another question raised by the petitioner on the point of law and order and public order. In view of the decision on the earlier two points, it is not necessary to go to the present question any further as the absence of materials for subjective satisfaction on the part of the District Magistrate that there was chance of repetition of the similar offences by the petitioner and for the delay in deciding the representation of the petitioner the detention order has been held to be bad in law.

12. For the reasons stated above, the writ petition stands allowed. The detention order dated 2-7-97 recorded by the District Magistrate, Kanpur Nagar, against the petitioner Virendra Shukla u/s 3(2) of the National Security Act is hereby quashed. It is directed that the petitioner must be set at liberty forthwith unless required to be detained in any other matter.