
(1998) 11 AHC CK 0127

Allahabad High Court

Case No: Habeas Corpus Writ Petition No. 6925 of 1998

Raju Bhatia

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Nov. 12, 1998

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Explosive Substances Act, 1908 - Section 4, 5
- National Security Act, 1980 - Section 10, 12(1), 3, 3(2), 3(4)
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307

Citation: (1999) CriLJ 1050

Hon'ble Judges: D.P. Mohapatra, C.J; R.R.K. Trivedi, J

Bench: Division Bench

Advocate: Suresh Singh, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

R.R.K. Trivedi, J.

This habeas corpus writ petition under Article 226 of the Constitution of India has been filed by petitioner Rajeev Bhatia challenging the order of detention dated 4-12-1997, Annexure 7 to the writ petition, passed by respondent No. 2, District Magistrate, Kanpur Nagar, u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act) and order dated 15-12-1998, u/s 3(4) of the Act and order dated 20-1-1997, u/s 12(1) of the Act, both passed by respondent No. 1. The petitioner has also prayed for a directions to the respondents to set him at liberty forthwith.

2. The impugned order dated 4-12-1997 was served on the petitioner in district jail, Kanpur Nagar on 5-12-1997. Along with the order of detention, petitioner was also served

with the grounds for passing the said order by respondent No, 2. In the grounds, inter alia, it has been stated that on 6-11-1997, at 2.00 p.m. Mohit Kumar Balmiki, Pappu and Vijai Dhobi came on a scooter to the tempo stand office, Sarsaiya Ghat, Kanpur Nagar, and were, talking to Prakash Narain Kureel. After five minutes, petitioner along with his companions Sushil Kumar, Jitendra alias Babua Tiwari Tala alias Uma Shankar Balmiki, and Sumit Tripathi came in a green Maruti van bearing registration No. UP-78 J-6795. All of them alighted from the Maruti van and fired from country made pistols and in order to kill Vijai Dhobi, hurled two bombs which exploded near room of Prakash Narain. Pappu received fire-arm injury in his hand. Pappu, Mohit and Vijai Dhobi along with Prakash Narain Kureel Went inside the room, petitioner and his companions fired indiscriminately and threw bombs on account of which panic prevailed in Mohalla Sarsaiya Ghat. People ran helter-skelter. Those who were on road turned back their vehicles and started running away, tempo drivers and rickshaw-pullers left their vehicles and started running, commotion and fear prevailed all around. At this point of time a police jeep arrived seeing which all the five persons including the petitioner left the place in the Maruti van and went towards Phoolbagh.

3. Prakash Narain Kureel lodged report of this occurrence in Police Station Kotwali which was registered as case Crime No. 343 of 1997, under Sections 147/148/307, I.P.C. 4. On 6-11-1997, at 5.15 p.m. Dinesh Kumar Sisodia, Inspector in-charge, Fazalganj Police Station, lodged report at Police Station Pheelkhana to the effect that on 6-11-1997 when he along with other police officials was deputed for V.I.P. duty and was proceeding from Police Lines to Sarsaiya Ghat crossing, they heard explosions of bombs and sound of fire from fire arms. Passers-by and children told that a little away from that place bombs are being thrown. On this information they chased the Maruti van of petitioner and reached the taxi stand via Phoolbag where a big crowd of persons from all walks of life had already assembled. The petitioner and his companions who were boarding the Maruti van, started firing at the police. The Inspector in-charge P.S. Fazalganj, and other persons in the police party narrowly escaped and without caring for their life, they proceeded towards the Maruti van. The culprits left the Maruti van and taking advantage of the crowd assembled there, successfully escaped. When they were chased, the petitioner and his companions fired at the police party again in which constable Kanhaiya Lal escaped narrowly. Sumit Tripathi, one of the companions of the petitioner, threw his.315 bore gun which was lying at the spot. However, the petitioner and his one companion Sushil Kumar were arrested at the spot with their illegal fire-arms, cartridges and bombs.

5. In respect of this occurrence, reports were lodged as case crime No. 238 of 1997, under Sections 147 148 149 307, I.P.C., case crime No. 239 of 1997, u/s 25 of the Arms Act and case crime No. 242 of 1997, u/s 4/5 of Explosive Substance Act. In respect of this occurrence a report was also lodged by Inspector in-charge Kotwali Shri R. S. Garbyal, in General Diary Report No. 63, dated 6- 11-1997 at about 11.00 p.m. He also narrated how the public order was disturbed on account of the aforesaid activities of the

petitioner and his companions. High Officers visited the spot which fact was also mentioned in the report.

6. Aforesaid activities were committed by the petitioner and his companions in public place and broad daylight at the busiest cross-road of Sarsaiya Ghat; 150 yards away from this place there is a place of pilgrimage and temple, tempo stand, civil courts, collectorate, treasury, office of collector, Kanpur Dehat, officers and residence of Commissioner, Kanpur Division, and Deputy Inspector General of Police of the region and there is a V.I.P. road. From the aforesaid criminal activities of the petitioner and his companions, panic prevailed among persons visiting the temple and school going children and people present there. On account of the firing on Vjjai Dhobi, fear and commotion prevailed all around and even tempo of life of the community was disturbed.

7. The Investigating Officer prepared a sketch map of the place of occurrence. The occurrence was also widely covered by the Press people and news was published in Hindi daily "Dainik Jagaran" and "Aaj" of 7-11-1997. High ranking officers visited the spot and in their inspection reports all of them had mentioned about the fear, commotion and terror prevailing in the locality. It has also been stated that the petitioner has turned criminal as he is close associate of dreaded criminals Sumit Tripathi and Uma Shankar alias Lala. They have five persons in their gang and quite often they indulge in committing offences of dacoity, murder and robbery. The other persons of this gang are Jitendra alias Babua and Sushil Kumar. The criminal record of Sumit Tripathi and Lima Shankar alias Lala has also been mentioned. The Dy. S. P. Kanpur Nagar informed the Senior Superintendent of Police that confidential report has been received that the petitioner and his companions are again planning to kill Vijai Dhobi in public place by similar attacks by bombs and bullets and if police come in way, it shall also be tackled with better preparation. It is clear from the confidential report received that the petitioner and his companions have already made preparations to disturb the public order in large scale and to meet such an eventuality administration has to take effective steps and should keep adequate vigilance.

8. The Investigating Officer of the aforesaid occurrence has recorded statements of the witnesses u/s 161, Cr.P.C. who have all mentioned in their statements in detail that on account of the aforesaid criminal activities of the petitioner and his companions, the atmosphere had vitiated, the even tempo of life of the community was disturbed and people ran helter-skelter to save their lives fear and terror prevailed all around, people closed their doors and windows, vehicles passing through that place turned their direction and ran away from the place. It is manifest that from the aforesaid activities of the petitioner and his companions, public order had been disturbed. It has also been mentioned that presently the petitioner is in judicial custody and confined in District Jail, Kanpur Nagar. He has already been granted bail on 18-11-1997 by the Court in case Crime No. 238 of 1997, under Sections 147 148 307, I.P.C. and the petitioner has also moved bail application in case crime No. 343 of 1997 and 5-12-1997 was fixed for hearing and there was every likelihood that the petitioner will be granted bail. In case the

petitioner was released on bail, there was strong possibility that he shall again indulge in similar criminal activities prejudicial to the maintenance of the public order.

9. On the aforesaid grounds, Respondent No. 2 felt satisfied that with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of the public order, it is necessary to make an order that the petitioner be detained.

10. In the grounds, the petitioner was also informed that against the order of detention, he has right to make a representations to the State Government, Advisory Board and the Central Government. Such representations may be submitted through the Superintendent of Jail. If he desires a personal hearing before the Advisory Board, this fact should also be mentioned in the representation.

11. The impugned order of detention served on the petitioner on 5 -12-1997 was approved by the State Government u/s 3(4) of the Act on 12-12-1997. The fact of approval was communicated to the petitioner on 15-12-1997. Same day, the Central Government was also informed about the detention of the petitioner u/s 3(5) of the Act. The case of the petitioner was referred to the Advisory Board on 15-12-1997, u/s 10 of the Act with all the papers. The Advisory Board examined the representation of the petitioner and also heard him personally on 8-1-1998. The report of the Advisory Board was received on 14-1-1998 indicating that there was sufficient cause to detain the petitioner under the provisions of the Act. The State Government after examining all the papers and the report of the Advisory Board confirmed the order for keeping the petitioner under detention for 12 months by order dated 20 -1-1998.

12. The petitioner submitted his representations addressed to the State Government and the Central Government on 18-12-1997 which was received by the State Government on 22-12- 1997. Petitioner"s representation was examined and rejected by the State Government on 9-1-1998. Representation dated 18-12-1997 addressed to the Central Government was received on 29-12-1997. On this representation certain vital information was called for from the State Government through crash wireless message on 31-12-1997. The requisite information was received by the Central Government in the Ministry of Home Affairs on 21 -1 -1998. On receiving the said information the representation was considered by the officers and it was put up before the Ministry of State for Home Affairs on 28-1-1998. The Ministry after consideration rejected the representation on 3-2-1998.

13. In this petition counter-affidavits have been field by Shri R.S. Agarwal on behalf of respondent No. 1, Shri Prabhat Kumar, the then District Magistrate, respondent No. 2, has filed his own counter-affidavit, Shri Nagesh Singh, Dy. Jailor, District Jail, Kanpur Nagar, has filed counter affidavit on behalf of respondent No. 3 and Bina Prasad has filed counter-affidavit on behalf of respondent No. 4 Union of India.

14. We have heard Shri O.P. Singh, learned counsel appearing for the petitioner, learned Additional Government Advocate Shri M.P. Singh for respondents Nos. 1 to 3 and Shri Tej Prakash Mishra, Additional Standing Counsel, for Union of India.

15. Learned counsel for the petitioner challenging the impugned order of detention, made the following submissions :-

(1) The first submission was that the impugned order of detention was passed by respondent No. 2 on the basis of a single incident which was not more than a scuffle between two groups and could only be termed a problem relating to law and order. On the basis of such a single incident public order could not be disturbed.

(2) It was further contended that the relevant papers mentioned in the grounds on which basis the order of detention was passed were not supplied to the petitioner. Thus he could not make effective representation and the impugned order vitiated for non-compliance of Section 8 of the Act.

(3) Lastly, it has been submitted that there was inordinate and unexplained delay by the Central Government in deciding the representation of the petitioner which has rendered the continued detention of the petitioner illegal.

16. Learned Additional Government Advocate, on the other hand, submitted that from the narration of the two incidents of 6-11 -1997 mentioned in the grounds and also in the first information reports lodged in respect of the incidents and from other material on record, it is clear that on account of the criminal activities of the petitioner and his companions public order and even tempo of life of the community was badly disturbed. The fact was fully corroborated by the witnesses of the incident examined u/s 161, Cr.P.C. by the Investigating Officer. The confidential report of the Local Intelligence Unit also proved that as the petitioner and his colleagues failed in their attempt to kill Vijai Dhobi, they were engaged in serious planning for a second attempt with better preparations. Learned counsel also submitted that there is no bar that an order of preventive detention cannot be passed on the basis of single incident. Passing of the order depends on the nature of the incident and its reach and effect on the people residing in that locality. Learned counsel has also submitted that the contention raised on behalf of the petitioner that he was not supplied the documents mentioned in the grounds is not correct. In fact, he signed acknowledging the receipt of each and every paper served on him along with the order of detention on 5-12-1997. Learned counsel has further submitted that there is no delay in deciding the representation of the petitioner and the short delay involved has been fully explained in the counter affidavit filed by Bina Frasad on behalf of respondent No. 4.

17. Learned counsel for the parties also relied on certain authorities which shall be dealt with at the appropriate place.

18. The first submission of the learned counsel for the petitioner was that the impugned order of detention could not be legally passed on the basis of the single incident which at the most related to law and order and it could not be said that it could affect the public order in any way. For the aforesaid submission, learned counsel for the petitioner has placed reliance on the cases : [Anil Dey Vs. State of West Bengal](#), [Anant Sakharam Raut Vs. State of Maharashtra and Another](#), [State of U.P. Vs. Hari Shankar Tewari](#), [Shashi Aggarwal Vs. State of U.P. and Others](#), [Ahmedhussain Shaikh Hussain @ Ahmed Kalio Vs. Commissioner of Police, Ahmedabad and Another](#), and [Abhay Shridhar Ambulkar Vs. S.V. Bhave, Commissioner of Police and Others](#).

19. We have considered the submissions of the learned counsel for the petitioner and in our considered opinion none of the aforesaid cases help the petitioner in the facts and circumstances of the present case. In case of Smt. Shashi Agarwal (supra), Hon"ble Supreme Court in Para. 9 held as under at page 598; of AIR :

Section 3 of National Security Act does not preclude the authority from making an order of detention against a person while he is in custody or in jail but the relevant facts in connection with the making of the order would make all the difference in every case. The validity of the order of detention has to be judged in every individual case on its own facts. There must be a material apparent disclosed to the detaining authority in each case that the person against whom an order of preventive detention is being made, is already under custody and yet for compelling reasons his preventive detention is necessary.

Hon"ble Supreme Court in the above case was considering the validity of the order of detention passed while the detenu was in jail. In the present case no such question was argued before us. As Seen above, validity of the order of detention has to be judged in every individual case on its own facts. Therefore, this Court has to see the facts of the present case as to whether the detaining authority could reasonably have a subjective satisfaction for passing the order of detention. The major determining factors are the place and time of incident, the nature of the incident and its effect and reach on the residents of the locality. From the narration of the incident mentioned in the earlier part of this judgment it is clear that the incident took place in the busiest cross-road of town Kanpur Nagar known as Sarsaiya Ghat crossing. The occurrence took place at 2.00 p.m. while the activities of the people of the (own could be at the peak. As alleged in the grounds the detenu and his companions continued hurling bombs at such a busy place until a police party in jeep arrived there and they left the place only thereafter. The effect and reach" of such an incident on the people of the locality can be well imagined. Again, same day in the evening the petitioner and his companions indulged in similar activities and fired at the police party but they were chased and arrested. The incidents were of such a serious nature that high officers visited the place. Their reports and statements of the witnesses u/s 161, Cr.P.C. made it apparent that even tempo of life of the community and the public order was badly disturbed. It is well established that we are not required to go into the correctness of the allegations made. The Court is only required to see as to whether on such allegations, if accepted true, the subjective satisfaction for passing an

order of preventive detention under the Act could be justified. We have no doubt that the order of detention in the fact and circumstances of the case is perfectly justified. The confidential report of the Local Intelligence Unit that the petitioner and his companions are planning to repeat similar activity with better preparations was very relevant. On record there is ample material to justify the order of detention against the petitioner. The cases relied on behalf of the petitioner are distinguishable on facts and do not help the petitioner in any way.

20. The second submission of the learned counsel for the petitioner was that relevant papers relied on in the grounds were not supplied to him. Reference was made to averments made in paras 25 and 26 of the writ petition and para 14 of the representation addressed to the Central Government and the State Government. Learned Addl. Government Advocate filed supplementary counter affidavit on 28-10-1998. Along with the supplementary counter affidavit filed by Shri O.P. Singh, Deputy Jailor in District Jail, Kanpur Nagar, copies of all the documents have been filed which were signed by the petitioner on 5-12-1997, acknowledging receipt of the copies. In the writ petition as well as in the representation petitioner did not say a word about the signatures on these papers. Though by filing a supplementary rejoinder affidavit an attempt has been made to explain but, in our opinion, the petitioner was not correct in saying that the documents were not supplied to him. The petitioner in his representation dated 17-12-1997 has mentioned his version of the case with reference to the annexures supplied to him. The manner in which the averments have been made in the reply leaves no doubt that the petitioner was in possession of the papers at the times of preparing his representation. In para. 14 of the representation in a vague manner it has been said that in respect of cases crime No. 278 of 1997 and 242 of 1987, no papers, site plan and statements u/s 161, Cr.P.C. were annexed along with the order of detention which renders the alleged incident doubtful. Thus from the facts and circumstances and the material available on record, the submission of the learned counsel for the petitioner that the documents were not supplied cannot be accepted.

21. The last submission of the learned counsel for the petitioner was about delay in deciding the representation of the petitioner by the Central Government. We have carefully examined this aspect of the case also. The representation dated 18-12-1997 addressed to the Central Government was received in the Ministry of Home Affairs on 29-12-1997 through the District Magistrate, Kanpur Nagar. The representation was processed for consideration and it was found that certain vital information was required from the State Government for which a crash wireless message was sent on 31-12-1997. The requisite information was received on 21-1-1998. On receiving the said information the case was put up before the under Secretary, Ministry of Home Affairs, on 27-1-1998 who same day after examination placed the matter before the Joint Secretary, Minister of Home Affairs. The Joint Secretary placed the representation with his comments before the Minister of State for Home Government of India, on 28-1-1998. The Minister considered the representation of the petitioner and rejected the same on 3-2-1998. Thus,

the representation was decided within 13 days after receipt of the information from the State Government. During this period of 13 days. 24th, 25th, 26th, 30th and 31st of January, 1998 and 1st of Feb. 1998 were holidays. Thus, if these six days are excluded, the representation was promptly decided within reasonable time. The time taken in deciding the representation has been fully explained in paras. 6, 7 and 8 of the counter affidavit of Bina Prasad. In our opinion, this submission of the learned counsel for the petitioner has also no force.

22. For the reasons stated above, we do not find any merit in this petition. The writ petition is accordingly dismissed. There will be no order as to costs.