
(2003) 01 AHC CK 0152

Allahabad High Court

Case No: Habeas Corpus Petition No. 19957 of 2002

Lalta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Jan. 31, 2003

Acts Referred:

- National Security Act, 1980 - Section 3

Citation: (2003) CriLJ 2739

Hon'ble Judges: S.K. Agarwal, J; R.S. Tripathi, J

Bench: Division Bench

Advocate: K.R. Singh, Viresh Mishra, S.K. Agarwal and Amit Misra, for the Appellant; Ajit Kumar Singh, SC and P.N. Pandey, A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

S.K. Agarwal, J.

The present petition was filed by the petitioner Lalta before this Court against his detention, vide Annexure "I", under the National Security" Act (hereinafter referred to as the "Act").

2. By this petition the detention order was challenged ipso facto on the grounds that there, is enormous delay in making the F. I. R., which constituted the basis for detention of the petitioner, in Crime No. 100 of 2002 u/s 143/377/323/500/504/ 506 I.P.C. registered at P.S. Mursan at the instance of one Bhudeo son of Atar Singh. He was a witness against the petitioner and his cohorts in the said criminal matter. Bhudeo son of Atar Singh lodged this F. I. R. on 20-1-2002. All the cases prosecuted against the petitioner and his companions were launched after registration of Crime No. 52 of 1997, the F. I. R. of which was lodged against Suresh Chaudhary. These cases were brought against the petitioner at the instance of Suresh Chaudhary who is an influential politician belonging to the ruling party. In the said crime number the petitioner was an eyewitness. It was alleged against Suresh Chaudhary that some

others were also accused with him therein. All these offences belong to P.S. Mursan. From these F. I. Rs. the message to be conveyed is that they were consequence of political rivalry between the petitioner and Suresh Chaudhary. The informant of all the cases, which were relied upon for detention of the petitioner by the detaining authority, were lodged by his close relatives or group-men. The next submission that was made by learned counsel for the petitioner against his detention is that the District Magistrate had not applied his mind properly to the facts and circumstances of the case and that none of these cases constitute sufficient basis for the employment of the provisions of the said Act since they are not concerned with the maintenance of public order. All these cases pertain to law and order and not the public order, as asserted by the detaining authority in his detention order dated 13-2-2002. Lastly, it was submitted by learned counsel for the petitioner that he has already served more than 11 months and, therefore, the object and purpose of the detention has by and large been accomplished.

3. In response to the said submissions, learned A. G. A. has impressed upon us that this Court cannot go into the first and second submissions as they are touching the subjective satisfaction of the detaining authority and, therefore, this court is precluded from going into its correctness ordinarily. These submissions could be examined by the criminal courts in those trials which the petitioner on account of his activities is facing. So far as non-application of mind or mala fide conduct of the detaining authority is concerned, there is no merit in the contention, according to learned A. G. A.

4. Coming to the grounds of detention we find that first incident exhibited most high-handed behaviour of the petitioner. Commission of unnatural offence upon Bhudeo son of Atar Singh, resident of Nagla Ani, P.S. Mursan district Hathras, dated 25-10-2001 formed the main plank for the detention of the petitioner. The informant, Bhudeo, was a witness against the petitioner. He had given evidence also in a Court of law and as a consequence to his daring to defy the petitioner he was assaulted and when he demanded water one of his companion made water in his mouth and the petitioner and other companions of his filled his mouth with excreta. He was made nude and was subjected to unnatural sex by these persons thereafter. The drama did not end here. He was paraded with a garland of shoes around his neck in the village. The report of the incident was lodged, no-doubt, 87 days after the incident but in the face of the said dare-devilry of the petitioner and his companions hardly anybody could have dared to lodge the F. I. R. The delay, therefore, is of no consequence and cannot be used as a weapon to quash the detention order. Moreover, the best forum for its evaluation is the trial court where charge-sheet was already submitted and the case is pending trial. This dare devilry punctuated upon poor Bhudeo by the petitioner was a beastly example of exhibition of power and force to subjugate the society and prevent the subjects from daring him. Such a conduct clearly poses a law and order problem for the administration. The second incident relating to the detention of the petitioner is dated 30-12-2001 at

5.00 p.m. Suresh Chaudhary's brother Gopal was on his field. He was assaulted by the petitioner and his companions with Dandas and was also extended threat to his life. Crime No. 190 of 2001 was registered on the report of Suresh Chaudhary at P.S. Mursan u/s 323/ 504/506 I. P. C. charge-sheet was also submitted in this case. The third case in this chain is dated 26-12-2001 at 5.00 p.m. It relates to the return of Rabindra Kumar son of Harcharan Singh from his field after ploughing. He was accosted by the petitioner along with two of his companions. His tractor was stopped. He was abused for lodging a F. I. R. against the petitioner. A sum of Rs. 50,000/- was demanded from him and he was threatened that if his demand will not be met within a month his family shall be exterminated. On his report Crime No. 179 of 2001 u/s 384/504/508 I.P.C. was registered at P.S. Mursan, In this case also a charge sheet came to be submitted in the court. The next case against the petitioner, which also formed the basis for his detention, was a report of Ishwari Singh son of Atar Singh. According to him, his house was attacked, licensed rifle was put upon his eyebrow and a threat was extended that if he would depose against him, he will be killed. His daughter-in-law Smt. Javitry Devi was fired upon but she escaped without any injury. Ishwari Singh abandoned the village with his family and was brought back by the police with great difficulty after assuring him of his security and safety. Of the same nature two other cases were also referred in grounds of detention. Crime No. 129 of 2001 u/s 147/342/504/506 I. P. C. relates to an assault of Bhuri Singh with Lathi and Danda. He tied him down and threatened that if his father deposed against them in court, his family shall be wiped of. When the people collected, the petitioner challenged the mob and said that if they had the courage they may secure the release of Bhuri Singh. The report of the incident was lodged by Mohan Singh son of Ishwari Singh and the charge-sheet was submitted under the abovesaid sections and Section 325 I. P. C. The case is pending trial. The last case in the chain is Crime No. 112 of 2001 u/s 435/504/506 I, P. C. and in this case also a charge-sheet against the petitioner and his companions was submitted. The victim of this case was Ashok Kumar son of Ramesh Chandra. The petitioner and his three associates hurled filthy abuses upon him publicly. This was done because he had taken, despite their threat, the field of Dharamveer on Batai. This was not the end. They had set afire his fodder room and extended threat to his life before departing from the scene of occurrence. In the nutshell these six cases constituted the subjective satisfaction of the District Magistrate (Detaining Authority) and culminated in the passage of the said detention order dated 13-2-2002.

5. We have examined the submissions made by learned counsel for the petitioner carefully. So far as the submission with regard to delayed lodging of the F. I. R. in Crime No. 112 of 2001, we find, as earlier discussed no force in the submission. A person who has been subjected to such an inhuman and barbaric treatment would take considerable length of time to measure his courage and go to lodge any report. It all differs from person to person. One person may be courageous enough to lodge the report within no time or may take a few days, but there may be another

person who may take much longer a time to go to lodge the report. Therefore, such a delay in making a report by the victim of this case cannot be treated as a ground for quashing of the detention order. It in fact exposes the fear psyche of the people of his area. So far as the next submission of Suresh Chaudhary being instrumental in the lodging of all the reports against the petitioner and that these reports were false and fabricated is concerned, the matters are pending in the courts of law and they are the best arbiters of these facts. We cannot go into the merit of these facts. For quashing the said detention order such facts are wholly irrelevant. The next submission that there is no application of mind is also, in our opinion, not worthy of our consideration.

6. We have examined the counter affidavit filed by the District Magistrate and Superintendent, District Jail, Aligarh, and the Deputy Secretary, Home and Confidential Department, U. P. Civil Secretariat, Lucknow. From the facts averred in these counter affidavits we are satisfied that non-application of mind is not discernible. It is the subjective satisfaction of the District Magistrate which is material in the detention of any person under the said Act. This court cannot supplant or superimpose its own satisfaction. This is beyond the purview of this Court. In a case of preventive detention what is required to be seen or examined by the Court is likely post-incident conduct of the detenu and reach of his activity. It is this conduct which is to be evaluated in the light of the arm and reach of the incidents, facts and circumstances reported in the grounds of detention. It is a preventive exercise. It has nothing to do with the punishment. Punishment is the realm of the courts of law. Therefore, this court has only to look into the fact whether the detaining authority has applied its mind to the facts brought to him. From the grounds of detention and the material that was supplied to the detenu, it is absolutely clear that there is an application of mind and beyond it this Court cannot go into its correctness. The law requires from the detaining authority a fair application of mind to the facts and circumstances brought forth before him for the said purpose by the sponsoring authority. This is the only legal obligation put upon him by this enactment, subjective satisfaction is that password which connotes that the authority for the detention has applied himself to all the relevant facts and circumstances that were presented before him before he passes the order under the said Act. Examining carefully the ground of detention we are of the opinion that it cannot be said that there is no application of mind by the detaining authority. So far as mala fide alleged by learned counsel for the petitioner is concerned, we find no substance in it.

7. Learned counsel for the petitioner has cited some decisions of the Apex court before us. They are 1984 All LJ 898 (Nanha Singh v. Superintendent, District Jail, Kanpur). We have perused this judgment. In our opinion it has no application to the facts of the present case. The second Judgment referred to by Learned counsel for the petitioner is [State of Punjab and Others Vs. Jagdev Singh Talwandi](#), This judgment no-doubt lays down the basic features of the detention and has held that

"While passing orders of detention, great care must be brought to bear on their task by the detaining authorities. Preventive detention is a necessary evil but essentially an evil. Therefore, deprivation of personal liberty, if at all, has to be on the strict terms of the Constitution. Nothing less." It means that the detention order should be passed after a thorough application of mind. We have already held that this court cannot blame the detaining authority in passing the impugned detention order on this count. Another case cited is [Teka Bahadur Vs. The State of West Bengal](#), This was an order under the Maintenance of Internal Security Act, 1971. This case, in our opinion, is wholly inapplicable to the present case. The next case also does not apply to the facts of the present case. It is [G.K. Ohab Vs. State of West Bengal and Others](#), This case also in our opinion is wholly inapplicable to the present case. The last case cited is [Mohd. Salim Khan Vs. Shri C.C. Bose and Another](#), This case also does not apply to the facts of the present case in our opinion.

8. The last submission made by learned counsel is that more than 11 months have already elapsed since this petitioner was detained. The purpose by and large of this detention seems to have been realised. No useful purpose would be served by detaining him for the remaining few days. We are reluctant to accept this submission as well.

9. In the circumstances adverted to above, we find no material infirmity in the impugned detention order. The detention order, therefore, is affirmed. The petition accordingly is dismissed.