

(2000) 05 AHC CK 0191

Allahabad High Court**Case No:** Habeas Corpus Writ Petition No. 45812 of 1999

Javed alias Ringbaj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: May 25, 2000**Acts Referred:**

- National Security Act, 1980 - Section 3(2)
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307
- Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Section 3(1)

Citation: (2000) 2 ACR 1525**Hon'ble Judges:** U.S. Tripathi, J; R.R.K. Trivedi, J**Bench:** Division Bench**Advocate:** Prem Prakash and A.K. Mishra, for the Appellant; S.M. Misra, A.K. Tripathi and K.N. Pandey and A.G.A., for the Respondent

Judgement

R.R.K. Trivedi and U.S. Tripathi, JJ.

By means of this petition, Petitioner has questioned the legality of the order dated 30.6.1999 passed by the District Magistrate, Kanpur Nagar, u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act), under which Petitioner has been detained.

2. Along with the impugned order of detention, Petitioner was also served the grounds on which basis detaining authority formed his satisfaction for detaining the Petitioner under the Act. There are total four grounds, which show that Petitioner was involved in criminal activities. The oldest case is of 30.5.1994 (ground No. 4) in which it has been alleged that Petitioner and his companions entered the police out-post and damaged the motor cycle of Sub-Inspector, A. R. Siddiqui and also looted Government property. In this connection, Case Crime No. 144 of 1994, u/s 395, I.P.C. was registered. Another criminal case registered against the Petitioner was Case Crime No. 74 of 1995, under Sections 147, 148, 149 and 307, I.P.C. (ground

No. 1) in respect of which allegation against the Petitioner is that Petitioner tried to kill one Babloo by throwing bomb on him. In this incident, passers-by and other persons present there were injured. In this case, Petitioner was convicted and sentenced for 7 years" R.I. by the Sessions Court on 4.12.1997. Against the judgment of learned Sessions Judge, appeal has been filed in this Court and Petitioner obtained bail.

3. In second ground, it is stated that on 18.9.1998 Petitioner and his companions asked one Syed Mohd. Usman to pay Rs. 10,000 but when he refused to pay, Petitioner and his companions at about 6 p.m. fired at him several rounds from their country-made pistols, on account of which public order was disturbed in the market and Syed Mohd. Usman was seriously injured. On 19.9.1998 Syed Mohd. Usman died on account of the aforesaid injuries. A case as Case Crime No. 186 of 1998, under Sections 147, 148, 384 and 302, I.P.C. was registered against the Petitioner at Police Station Colonelganj.

4. The last case registered against the Petitioner mentioned in ground No. 3 is of 25.10.1998, u/s 3(1) of the U. P. Gangsters and Anti Social Activities (Prevention) Act, 1986. It has also been mentioned in the grounds that Petitioner has applied for bail in the Court and Petitioner may be released on bail at any time and if he is allowed to come out on bail he shall indulge in similar activities, which shall be prejudicial to the maintenance of public order. On the aforesaid grounds the detaining authority recorded his satisfaction that in order to prevent the Petitioner from acting in any manner prejudicial to the maintenance of public order it is necessary that he may be detained under the Act.

5. Counter and rejoinder-affidavits have been exchanged between the parties. We have heard Shri Prem Prakash, learned Counsel for the Petitioner, Shri A. K. Tripathi, learned A.G.A. for Respondent Nos. 2 to 4 and Shri K. N. Pandey for Respondent No. 1.

6. Learned Counsel for the Petitioner has challenged the impugned order of detention on following grounds:

1. The first submission is that, the latest cases registered against the Petitioner were of the dates 18.9.1998 and 25.10.1998, however, the impugned order has been passed after more than eight months on 30.6.1999 and the link between the incidents and the object behind passing the impugned order snapped. The grounds are stale and old and the impugned order is liable to be quashed on this ground alone.

2. The second ground raised by the learned Counsel for the Petitioner is that father of the deceased filed affidavits on 2 and 4.1.1999 in the Court of C.M.M., Kanpur Nagar denying entire prosecution case and the involvement of the Petitioner in Case Crime No. 186 of 1998. Copies of the affidavits were handed over to the Assistant Public Prosecutor deputed in the Court of learned Magistrate and ultimately they

were sent to Police Station Colonelganj for comments but these affidavits were not placed by the sponsoring authority, namely, S.O., Police Station Colonelganj before the detaining authority. As the relevant material was withheld the satisfaction arrived at vitiated and Petitioner is liable to be released.

3. It has also been submitted by the learned Counsel for the Petitioner that the grounds are verbatim reproduction of the report of the sponsoring authority and the impugned order of detention has been passed in mechanical manner without applying mind.

7. Learned A.G.A., on the other hand, submitted that it is not correct to say that grounds served on the Petitioner are exact reproduction of the report of the sponsoring authority. The grounds mentioned are not stale. There is no pleading in the writ petition that grounds mentioned as 2 and 3 were stale and could not be used for passing the impugned order. About the affidavit filed before the Court of C.M.M., Kanpur Nagar it has been submitted that Petitioner has not filed copies of the affidavits filed in the Court of C.M.M., Kanpur Nagar, hence this Court is not in a position to ascertain the contents of the affidavits and Petitioner is not entitled for relief.

8. (Both the learned Counsel have cited number of authorities in support of their submissions, which shall be mentioned at the relevant places.) We have carefully considered the submissions of the learned Counsel for the parties. We are not impressed by the submissions of the learned Counsel for the Petitioner that the grounds served on the Petitioner along with the order of detention are exact and verbatim reproduction of the report of sponsoring authority. With the help of learned A.G.A., we compared the report of the sponsoring authority with the grounds and we are convinced that it cannot be termed a case of verbatim reproduction. On close scrutiny, lot of differences in formation of sentences and words used can be easily noticed. The submission cannot be accepted.

9. Learned Counsel for the Petitioner, however, seriously challenged that incidents of the dates 18.9.1998 and 25.10.1998 are stale and could not be used for passing the order of detention against the Petitioner. There is no doubt about the legal position that delay by itself cannot vitiate the order of detention, however, if there is delay it should be explained by the detaining authority. In the present case, learned A.G.A. has submitted that as ground Nos. 2 and 3, which relate to incidents dated 18.9.1998 and 25.10.1998 respectively, have not been pleaded to be stale in the writ petition, the explanation could not be given by the detaining authority in his counter-affidavit. It has been submitted that without pleading, Petitioner cannot be allowed to agitate this question. He has placed reliance on the judgment of this Court in the case of Chandresh Paswan v. Superintendent, District Jail and Ors. XXXVIII 1999 ACC 721 (FB). We have perused the pleadings and there is no doubt that Petitioner in para 16 of the writ petition has only alleged that ground Nos. 1 and 4 are stale. Nothing has been said about ground Nos. 2 and 3. Learned Counsel

for the Petitioner, however, relied on the judgment of Hon"ble Supreme Court in the case of K.P.M. Bashir v. State of Karnataka AIR 1993 SC 1353, and submitted that question of delay in passing the order is the question of law and can be agitated without there being any pleading. However, we do not find any substance in the submission of the learned Counsel for the Petitioner. The legal position about delay in passing the order of detention has been well settled in view of the judgments of Hon"ble Supreme Court that delay by itself is not sufficient to vitiate the order of preventive detention. However, the detaining authority must explain the delay before the Court. Occasion for explaining the delay can only arise when it is alleged by the Petitioner in his writ petition that particular ground is stale and there is no proximity with the impugned order of detention. Full Bench of this Court in the case of Chandresh Paswan (supra), after considering at length ruled that pleading is necessary in Habeas Corpus Writ Petition, which are filed in this Court under the Rules of the Court. The facts before Hon"ble Supreme Court in the case of K. P. M. Bashir (supra) were different. It has been stated by the detaining authority that as Petitioner was in jail, the order of detention was not required to be passed against him and occasion to pass the order only arose when it was learnt that he was trying to come out on bail. In our opinion, in absence of sufficient pleading, the aforesaid explanation is sufficient and submission made on behalf the Petitioner cannot be accepted.

10. The last submission made on behalf of the Petitioner is that on 2 and 4.1.1999 affidavits were filed by the father of deceased denying involvement of the Petitioner in Case Crime No. 186 of 1998. However, both these affidavits were sent to sponsoring authority by Assistant Public Prosecutor and he was fully aware of this development, but he did not place copies of the affidavits before the detaining authority, which vitiated the satisfaction for want of relevant material. Reliance has been placed in the case of [Ahamed Nassar Vs. The State of Tamil Nadu and Others](#), . Pleadings to this effect are in para 10 of the writ petition. The detaining authority filed counter-affidavit, para 8 whereof contains reply of paragraph 10 of the writ petition, which reads as under:

8. That in reply to the contents of para 10 of the writ petition, it is stated that affidavit as referred in para under reply were not placed before the deponent as such there is no question of considering the same by the deponent.

11. From the aforesaid reply, it is clear that the existence of the affidavits has not been disputed. The sponsoring authority was under legal obligation to place before detaining authority entire relevant material including affidavits, which could affect the satisfaction of the detaining authority about involvement of Petitioner in the incident dated 18.9.1998. The submission of the learned A.G.A. that Petitioner cannot claim benefit, as copies of the affidavits have not been filed along with the writ petition, has not impressed us. In para 10 of the writ petition, sufficient indication has been given about the contents of the affidavits filed on 2 and

4.1.1999, which were relevant with regard to the involvement of Petitioner in the said case. They ought to have been placed before the detaining authority. Since the sponsoring authority failed to place the aforesaid relevant material before detaining authority, we conclude that non-placement of the aforesaid two affidavits vitiated the impugned order of detention. For the aforesaid view, we find support from the judgment of Apex Court in the case of Ahmad Nasar (supra), and Full Bench judgment of this Court in case of Munni Lal v. Superintendent of Central Jail 1985 AWC 641 (FB).

12. For the reasons stated above, the writ petition is allowed. The impugned order dated 30.6.1999 (Annexure-1 to the writ petition) is quashed. Respondents are directed to set the Petitioner at liberty forthwith, if his detention is not required in any other case.