

(2011) 09 AHC CK 0351

Allahabad High Court

Case No: Habeas Corpus Writ Petition No. 55446 of 2010

Kripanand Pandey

APPELLANT

Vs

Varishtha Adheekshak

Kendriya Karagar and

Others

RESPONDENT

Date of Decision: Sept. 16, 2011

Acts Referred:

- Constitution of India, 1950 - Article 21, 22, 22(1), 22(2), 32
- Criminal Procedure Code, 1973 (CrPC) - Section 107, 114, 117, 144, 151
- Explosive Substances Act, 1908 - Section 3, 5
- Penal Code, 1860 (IPC) - Section 120B, 143, 188, 302, 307
- Railways Act, 1989 - Section 122
- Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Section 2, 3(1)

Citation: (2011) 9 ADJ 486 : (2012) CriLJ 571

Hon'ble Judges: Ravindra Singh, J; Arvind Kumar Tripathi, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Arvind Kumar Tripathi, J.

Heard learned Counsel for the Petitioner Mr. D.S. Mishra, learned AGA and perused the record.

2. The present habeas corpus petition has been filed, challenging the detention of the Petitioner in Central Jail, Naini, with the prayer to declare the custody of the Petitioner at Central Jail, Naini, illegal and unconstitutional and to set him at liberty, forthwith. The solitary confinement during his judicial custody has also been challenged. The Petitioner is in judicial custody in Case Crime No. 327 of 2010, u/s 302, 307, 427, 429, 120B Indian Penal Code and Section 3/5 Explosive Substance Act

and Section 2/3(1) U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, P.S. Kotwali, District Allahbad at Central Jail, Naini, Allahabad. The first information report was lodged by informant Kamal Kumar on 12.7.2010.

3. According to the counsel for the Petitioner, Petitioner was innocent and he was not involved in the aforesaid criminal case. Further case of the Petitioner is that Petitioner was lifted from his house, by the police, without disclosing any reason on 13.7.2010 at about 7.00 P.M. The information was given through telegram on 14.7.2010 to the District Judge and D.M., Allahabad. The Petitioner was not produced before the Magistrate, concerned within 24 hours after arrest and his arrest was shown on 14.7.2010 at 10.00 P.M. near Malahara Railway Gate. However, the telegram has already been sent at about 1.10. P.M. regarding arrest of the Petitioner. The detention order has been challenged on the ground that:

i. the Petitioner has been confined in judicial custody, however, there is no separate remand order on the order-sheet.

ii. the Petitioner was not produced within 24 hours before the Magistrate, concerned after arrest.

iii. the Petitioner was not informed regarding reason and ground of his arrest.

iv. he has been kept in solitary confinement in view to harass and torture him mentally and physically and there is violation of Article 21 and 22 Constitution of India, Section 50 and Section 57 Code of Criminal Procedure hence his detention is illegal and he is entitled to be set at liberty.

4. The allegation made on behalf of the Petitioner was denied by learned AGA in counter affidavit filed by Deputy Jailer, Central Jail, Naini, Allahabad. The allegation regarding inhuman treatment and that he was deprived off basic immunities was denied. It was further stated that Petitioner was sent to jail in pursuance to the valid order of remand passed by the C.J.M., Allahabad. He was produced before the court as and when directed by the court. Copy of the custody warrant issued u/s 167 Code of Criminal Procedure, by the C.J.M. on 15.7.2010 has been filed as annexure No. 1 with counter affidavit. The Petitioner was being provided all the basic immunities for which he was entitled, including medical facilities. An application was also moved before the C.J.M. on 22.7.2010 on which a comment was called for and the direction was also issued to provide medical aid. The report was submitted before the C.J.M. It was informed that the Petitioner was being kept in high security barrak to avoid any mishappening in the jail. The Petitioner was also given in police remand in pursuance to the order passed by the C.J.M., Allahabad and the necessary direction etc. were given when he was again admitted on 28.7.2010. He was checked up by the jail doctor, who found him to be hail and healthy, his blood pressure was normal. The high security barracks are in an area of 1500 sq. feet and high security barracks exist opposite to each other. Other accused were also kept in high security barracks. In between the barracks there is a courtyard of 60" x 30" and during day

time the prisoners were being released from barrack and they use to assemble in the courtyard. The Petitioner is detained in pursuance to the valid order of remand hence the habeas corpus petition is not maintainable.

5. In counter affidavit filed by Station Officer, Police Station, Kotwali, Allahabad, it was mentioned that the Petitioner was detained in high security barrack for the purpose of security and safety and not with a view to harass or torture him mentally or physically. It was also mentioned that the Petitioner was languishing in judicial custody in connection with Section 302, 307, 427, 429, 120B Indian Penal Code, Section 3/5 Explosive Substance Act, 2/3(1) of U.P. Gangster & Anti Social Activities (Prevention) Act 1986, P.S. Kotwali, District Allahabad. The Petitioner is active member of the gang headed by one Dileep Mishra. Petitioner was named in the first information report registered as Case Crime No. 237 of 2010, P.S. Kotwali, in connection with attempt to kill an elected Representative of Public, who was a Cabinet Minister of the State of U.P. along-with other co-accused. In that incident one person succumbed to his injuries during treatment. During investigation, the facts mentioned in the first information report were found correct and it was found that the Petitioner was present on the spot and helped co-accused Rajesh Pilot, to achieve the goal. The allegations in the petition was denied. It was further stated that the FIR was lodged on 12.7.2010 and thereafter, Deputy Inspector General of Police, Allahabad constituted a police team to arrest the accused persons involved in the crime and right from 12.7.2010 police started raiding the house of suspected criminals to arrest them. In that connection the raid was also conducted at the house of the Petitioner on 13.7.2010 but he was not available and with a view to save the complicity of Petitioner from clutches of law the so-called telegram was sent in Peshbandi on 14.7.2010 at 1.10 P.M. In fact, Petitioner and his associates Rajesh Yadav were arrested on 14.7.2010 at 22.05 P.M. by the earlier Investigating Officer Sri A.V. Nigam, Station House Officer, Kotwali, Allahabad, Satendra Tiwari, Station House Officer, P.S. Naini, Allahabad and his team. The information regarding his arrest was immediately given to his son Anuj Kumar Pandey on the same day i.e. 14.7.2010 by the Station House Officer, P.S. Kotwali, Allahabad. In pursuance of the order of the Magistrate, concerned he was taken in police custody from 23.7.2010 to 28.7.2010 during interrogation he confessed the crime, However, no article relating to crime was recovered.

6. Learned AGA submitted that the Petitioner was named in the first information report. He is in judicial custody in the criminal case, registered against him, in pursuance to the custody warrant issued by the C.J.M., Allahabad. There is no violation of any provision as alleged on behalf of Petitioner. Since his custody is in accordance with law hence the present petition is liable to be dismissed.

7. Learned Counsel for the Petitioner relied the judgment of Madhu Limaye and Ors. AIR 1969 SC 1014. He submitted that in abovenoted case Supreme Court held that there was violation of article 22(1) and (2) of the Constitution of India and he was

released from judicial custody.

8. The brief facts of the case in matter of Madhu Limaye is that he was a member of Lok Sabha and he was arrested along-with several other persons on 6.11.1968 at Lakhisarai Railway Station near Monghyr. On the same day a petition, in the form of a letter, was sent to the Apex Court, under Article 32 of the Constitution of India, mentioning that he along-with his companions had been arrested but had not been communicated the reasons and grounds for arrest and had been merely told that the arrest had been made under sections which were bailable. It was prayed that a writ of habeas corpus be issued, for restoring liberty, as the arrest and detention was illegal. On November 7, 1968 similar petition was sent from Monghyr Jail. The additional fact was given that the arrested persons had been produced before the Sub-Divisional Magistrate, who had offered to release them on bail but they had refused to furnish bail. The Magistrate had, thereupon, remanded them to custody upto November 20, 1968. The Apex Court issued a rule nisi to the Government of Bihar and Superintendent, District Jail, Monghyr to produce Madhu Limaye and Ors. whose names were given in the order on November 25, 1968. The State of Bihar has filed a return on November 25, 1968 but the hearing was adjourned to December 2, 1968. The Advocate-General of Bihar was directed to produce the relevant documents in connection with the recording of the first information report, the investigation made, the report to the Magistrate and order sheet etc. It was apparent from the documents and papers placed before the Apex Court that on November 2, 1968, the Sub-Divisional Magistrate, Monghyr issued an order u/s 144, Code of Criminal Procedure prohibiting assemblage of five or more persons, within the limits of 100 yards of Kiul and Lakhisarai Railway Stations, for a period of one week from November 5, 1968 to November 12, 1968. According to the report submitted by the Sub-Inspector in charge of the Government Railway Police Station Kiul to the Sub-Divisional Magistrate, Sadar, Madhu Limaye and Ors. had defied the prohibitory orders issued u/s 144, Code of Criminal Procedure, by holding and addressing a public meeting at the railway ground at Lakhisarai Railway Station between 4.30 P.M. and 6.30 P.M. on 5.11.1968 and some out of them had exhorted the public in provocative language to offer satyagraha at the Railway Station and to disrupt the railway communications as also to obstruct the normal functioning of the railway offices at Lakhisarai. It was prayed that their prosecution be ordered u/s 188, Indian Penal Code. Dharamraj Singh Sub-Inspector entered a report (Sanha) No. 109 on November 6, 1968, in the general diary. It was stated inter alia that Madhu Limaye and Ors. took out a procession at 3 O'Clock with a flag in violation of the order made u/s 144, Code of Criminal Procedure They had entered the Railway Station for launching a strike shouting slogans. This group had been followed by several other groups of persons the last being the 8th group (the names in each group were mentioned). All these persons had been arrested u/s 151, Code of Criminal Procedure and had been sent to the Sub-Divisional Magistrate, Sadar, Monghyr. These incidents happened in the presence of Shri Mathur, Magistrate, Ist

Class, Monghyr, Shri B.N. Singh, Railway Magistrate, Kiul, etc. It was stated that the report was being submitted "under Sections 107 and 117 of the Code of Criminal Procedure and u/s 188 of the Indian Penal Code". Admittedly no first information report was formally registered on that date which was done on November 19, 1968 at 23.30 hrs. In this report in which the date of occurrence is mentioned as November 6, 1968, it was stated that the accused persons had entered the Railway Station by illegally forming a mob disobeying the order u/s 144 Code of Criminal Procedure to disturb the normal functioning of the railways and had committed offences u/s 143, I.P.C. and Section 122 of the Railways Act.

9. In that case it was found that on November 6, 1968 when Madhu Limaye was arrested there was no allegation of commission of offence u/s 143 Indian Penal Code and Section 188 was also not mentioned so that there was no disclosure of cognizable offence for his arrest. Section 151 Code of Criminal Procedure in all likelihood was invoked for effecting the arrests but proceedings were initiated u/s 107 Code of Criminal Procedure which appears in Chapter VIII of the Code of Criminal Procedure and the Magistrate can require a person to show cause why he could not be ordered to execute a bond, for a period not exceeding one year, for keeping piece. u/s 117 Code of Criminal Procedure, which was also invoked, the Magistrate makes an inquiry as to the truth of information. The proceeding u/s 107 has to follow the procedure laid down in Chapter VIII and arrest cannot be effected unless a Magistrate issued a warrant for that purpose u/s 114. Section 151 which was repeatedly referred to in various documents is meant for arresting without a warrant and without orders from a Magistrate if a police officer knows of a design to commit any cognizable offence and if it appears to him that the commission of such offence cannot be otherwise prevented. In all the documents prepared, which were prepared before November 19, 1968 there was no mention of an offence u/s 143 Indian Penal Code having been committed by Madhu Limaye and other persons, who were arrested on November 6, 1968 and for that reason no formal first information report was recorded. The formal FIR was registered on November 19, 1968. In any of the papers or documents there was no reference regarding order passed by the Magistrate for arrest of detenu though it was accepted that there would have been some mention in the order in detailed mentioned in the general diary of the police station dated November 6, 1968. In that case Madhu Limaye and other arrested persons had already been ordered by the Apex Court to be released from jail. On the relevant date the documents of the custody warrant was not produced before the Apex Court and it was observed that-

As stated in [Ram Narayan Singh Vs. The State of Delhi and Others](#), this Court has often reiterated that those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law. Whenever that is not done the Petitioner would be entitled to a writ of Habeas Corpus directing his release.

It remains to be seen whether any proper cause has been shown in the return for declining the prayer of Madhu Limaye and other arrested persons for releasing them on the ground that there was non-compliance with the provisions of Article 22(1) of the Constitution. In [Ram Narayan Singh Vs. The State of Delhi and Others](#), it was laid down that the Court must have regard to the legality or otherwise of the detention at the time of the return.

10. Though Madhu Limaye and Ors. were released from custody, however, the Apex Court refused to express any opinion on the legality or illegality of the arrest made on November 6, 1968. Since the matters were sub-judice para 16 of the aforesaid judgment is quoted hereinbelow:

We would like to make it clear that we have ordered the release of Madhu Limaye and the other arrested persons with regard to whom rule nisi was issued on the sole ground of violation of the provisions of Article 22(1) of the Constitution. We desire to express no opinion on the legality or illegality of the arrests made on November 6, 1968 of these persons with reference to the first point, namely, that the police officers purported to have effected the arrests for the offence u/s 188, Indian Penal Code, and u/s 151 as also in respect of proceedings u/s 107 of the Code of Criminal Procedure, as these matters are sub judice. We may also proceed to add that any expression of opinion or observation in these proceedings shall not affect the course of the enquiry or trial of the arrested persons concerning the occurrences on November 5 and 6, 1968 which may be pending in the Courts in the State of Bihar and such proceedings shall be disposed of in accordance with law.

11. The protection for life and liberty has been provided under Article 21 of the Constitution of India

No person shall be deprived of his life or personal liberty except according to procedure establish by law.

12. Under Article 22 protection has been provided against arrest and detention in certain cases. According to Article 22(1) no person, who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest; not to be denied the right to consult and to be defended by a legal practitioner of his choice."

13. As per provisions of Section 22(2) every person, who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest, to the Court of the Magistrate and no such person shall be detained in custody, beyond the said period of twenty four hours, without the authority of a Magistrate.

14. There is identical provision like Article 22(1) and (2) of the Constitution of India, regarding communication of particulars, grounds of arrest and production of the arrested person within 24 hours, before the Magistrate concerned u/s 50 and 57

Code of Criminal Procedure Section 50 and 57 Code of Criminal Procedure are quoted herein below:

Section 50. Person Arrested to be informed of grounds of arrest and of right to bail-(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

15. 57. Person arrested not to be detained more than twenty-four hours-No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of Magistrate u/s 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

16. In the present case, the Petitioner was named in the first information report along-with other co-accused and the police team was searching the Petitioner and raid was also conducted at his residence. However, whether Petitioner was lifted from his house on 13.7.2010 or he was arrested on 14.7.2010, as stated on behalf of the State is a matter to be decided on the basis of evidence. If the raid was being conducted then this plea on behalf of the State that the telegram was given in Peshbandi cannot be ruled out. It is not a case that the Petitioner was not named in the first information report so he was lifted from his house and falsely implicated in the present case.

17. In the present case, there was an attempt to commit murder of a Cabinet Minister of this State, in which one person succumbed to his injuries, during treatment. Whether the implication of the Petitioner is false or correct, the matter has to be decided by the trial court, on the basis of evidence adduced before the court, and that factual dispute will not be decided here in the Habeas Corpus petition. The Petitioner was wanted in criminal case and raid was also conducted and when the raid was conducted he was not available at his residence. In the present case, he was aware that he was wanted in the criminal case lodged against him. The FIR was lodged on 12.7.2010. According to counter affidavit filed on behalf of the State, it appears that the Petitioner was arrested on 14.7.2010 and not on 13.7.2010. However, according to Petitioner he was shown to have been arrested, after the telegram was sent. According to State he was arrested on 14.7.2010 at 10.05 P.M. and was produced before the Magistrate on 15.7.2010 hence in view of the fact, there is no delay, in producing before the Magistrate and he was not in police custody beyond 24 hours of such arrest. He was absconding and was aware regarding his involvement. During police remand he has accepted his guilt.

According to counter affidavit, when the Petitioner was arrested on the same day the information was given to his son regarding his arrest. Next day Petitioner was produced before the Magistrate, concerned and he was remanded to judicial custody. The custody warrant was issued and the Petitioner was confined at Central Jail, Naini in pursuance of the custody warrant issued by the C.J.M., Allahabad. All the basic facilities including medical aid, for which he was entitled as prisoner, were provided to the Petitioner and he has been kept in high security barracks for his security and safety since other accused were also detained there.

18. In case of Urooj Abbas, 1973 Cri. L.J.1458, full Bench of our High Court held that "no specific order for remand of the accused is necessary to be passed by the Court on the order-sheet or the court file."

19. According to full Bench if the Magistrate signs the warrant of custody then the same is sufficient compliance of Section 309 Code of Criminal Procedure. The aforesaid view was affirmed by the larger Bench consisting of 5 Hon"ble Judges of our High Court in Habeas Corpus Writ Petition No. 236 of 1992, Deepak Som v. Superintendent, District Jail, Lucknow and Ors. connected with other habeas corpus writ petitions decided on 7.9.2000.

20. In case of Surjeet Singh v. State of U.P. 1984 ALL. L.J. 375 full Bench of our High Court held that custody includes illegal custody. The Court is competent to remand the accused to custody u/s 309(2) Code of Criminal Procedure, even if he was in illegal imprisonment. Subsequently, the court can rectify the mistake and if the subsequent order is passed regarding custody then the detention would not be illegal. The Court can rectify its mistake and transform his illegal imprisonment into legal imprisonment.

21. In case of Bal Mukund Jaiswal v. Superintendent, District Jail, Varanasi ACC 1998 (36) 542 it was held:

Where an accused person is under judicial custody on the basis of a valid remand order passed under Sections 209 or 309 Code of Criminal Procedure by the Magistrate or by any other competent court then such accused person can not be set at liberty by issuing a writ of Habeas Corpus solely on the ground that his initial detention was violative of Constitutional guarantee enshrined in Article 21 and 22 of the Constitution of India.

22. In the aforesaid full Bench case, the earlier judgements of the Apex Court including the case of Madhu Limaye were considered.

23. In view of the fact of this case and considering the facts and circumstances in case of Madhu Limaye, the judgment of the Apex Court in that case is not applicable in the present case. When Madhu Limaye was arrested there was no FIR in existence, he was not wanted in any cognizable and non bailable offence. There was no warrant of arrest. He was a Member of Parliament. Proceeding was initiated u/s

107 Code of Criminal Procedure under that section the Magistrate can require a person to show cause why he should not be ordered to execute a bond for a period not exceeding one year for keeping peace. u/s 117 Code of Criminal Procedure the Magistrate can make an enquiry regarding the correctness of an information. In the present case, Petitioner was named in the FIR, raid was conducted for his arrest and subsequently, he was arrested. There was information to the Petitioner and after his arrest his son was also informed. Apart from that custody warrant was issued and signed by the C.J.M. and subsequent date for appearance was mentioned. It may be advisable and appropriate to pass remand order on order sheet, for record, but since there is valid custody warrant hence custody is legal.

24. In view of aforesaid discussion, there is no merit in the present petition. The detention of the Petitioner is in accordance with law hence the present Habeas Corpus petition being devoid of merit, is hereby dismissed.