Ram Chandra Misra @ Lal Sanab Vs District Magistrate and Others

Court: Allahabad High Court

Date of Decision: Jan. 15, 1997

Acts Referred: Constitution of India, 1950 â€" Article 226
National Security Act, 1980 â€" Section 13, 3(2), 3(4)
Penal Code, 1860 (IPC) â€" Section 143, 144, 146, 147, 148

Hon'ble Judges: Kundan Singh, J; G.P. Mathur, J

Bench: Division Bench

Advocate: S.N. Misra, S.S. Bhatnagar, S.C. Chauhan, D.S. Misra and J.S. Upadhyaya, for the Appellant;

Final Decision: Dismissed

Judgement

G.P. Mathur, J.
An order of detention u/s 3(2) of National Security Act (hereinafter referred to as the Act) was passed against the

Petitioner on 20.3.1985 by the District Magistrate, Allahabad. Before the order could be executed the present writ petition was filed on 30.4.1985

praying that a writ in the nature of mandamus be issued directing the Respondents to refrain from taking any action against the Petitioner on the

basis of the aforesaid order and further to direct that the Respondents should not proceed to arrest or detain him.

2. A copy of the detention order dated 2,0.3.1985 and also the grounds of detention have been filed along with the supplementary counter-

affidavit of Sri P. K. Pandey, Addl. City Magistrate, Allahabad which was filed an pursuance of the order dated 30.7.1991 passed by this Court.

The order recites that the District Magistrate was satisfied that with a view to preventing the Petitioner Ram Chandra Misra alias Lal Sahab from

acting in any manner prejudicial to the maintenance of public order, it was necessary to make an order directing that he be detained u/s 3(2) of the

Act. The grounds of detention mention about three criminal cases in which the Petitioner was involved. It is alleged that at about 7.30 p.m. on

27.11.1984, the Petitioner along with his companions came to Saidabad on a Jeep and resorted to firing in which Deomani was injured and Brijesh

Kumar was killed and the body of the latter was also taken away on the Jeep. A case was registered as Crime No. 288 of 1984 under Sections

147, 148, 149, 302, 307 and 201, I.P.C. at P. S. Handia in which after investigation charge-sheet has been submitted in court. The second

ground is that on 5.3.i985 when the election for Legislative Assembly was going on, the Petitioner along with his companions fired upon a

candidate Rakesh Dhar Tripathi at a polling station in which Ram Sajiwan was killed on the spot. The body of Ram Sajiwan was then placed inside

a thatched hut which was set on fire. Due to the terror, the polling parties ran away from the polling Station and the process of election was

stopped. A case was registered as Crime No. 24A of 1985 under Sections 147, 148, 149, 302, 201, 435, 436, 307 and 404, I.P.C. at P. S.

Utraon and after investigation charge-sheet has been submitted in court. The third ground is that on 6.3.1985 repolling had to be done in eight

polling stations in Handia constituency. The Petitioner along with his companions kept big and heavy logs of Umber on the tri-junction of Sirsa-

Saidabad road and G. T. Road, due to which the traffic on the road was completely stopped and the polling parties which had to reach the polling

station could not do so. A case was then registered as Crime No. 49 of 1985 under Sections 143, 144, 146 and 341, I.P.C. at P. S. Handia in

which after investigation charge-sheet has been submitted. The order passed by the District Magistrate was approved by the State Government u/s

3(4) of the Act on 28.3.1985 (Annexure S.C.A 3).

3. It may be mentioned here that the writ petition was filed on 30.4.1985 even before the detention order had been executed or the grounds of

detention were served upon the Petitioner. Sri D. S. Misra, learned Counsel for the Petitioner has referred to three decisions of our court, namely,

Simmi v. State of U.P. 1985 ALJ 598, Writ Petition No. 6672 of 1982 Ram Kumar v. State of U.P., decided on 2.1.1986 and Writ Petition No.

1241 of 1987 Mohd. Hashim v. State of U.P., decided by a Full Bench on 20.7.1990, wherein the extent and scope of power of interference

while exercising jurisdiction under Article 226 of the Constitution at pre-execution stage has been considered. In my opinion, it is not necessary to

refer to the decisions of this Court as the precise question has been considered threadbare by the Supreme Court in Additional Secretary to the

Government of India v. Smt. Alka Subhash Gadia JT 1991 (1) 549 and after dealing with the matter exhaustively, the court ruled as follows:

...The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few

and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz.,

where the courts are prima facie satisfied (i) that the Impugned order is not passed under the Act under which it is purported to have been passed,

(ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and

irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of

judicial review to interfere with the detention order prior to their execution on any other grounds does not amount to the abandonment of the said

power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

The decision has been subsequently followed in N.K. Bapna v. Union of India JT 1992 (4)49; State of Tamil Nadu v. P.K. Shamsuddin JT 1992

(4)179 and Subhash Muljimal Gandhi Vs. L. Himingliana and Another, . Thus the power under Article 226 of the Constitution can be exercised at

the pre-execution stage on very limited grounds enumerated by the Apex Court and not on all the grounds which are available after the detention

order has been served and the person has been taken into custody.

4. It is not the case of the Petitioner that the detention order has not been passed under National Security Act or that the District Magistrate who

passed the order or the State Government which approved it had no authority to do so or that the impugned order had not been passed against

him and it is sought to be executed against a wrong perron. It is also not the ease of the Petitioner that the impugned order is passed on vague,

extraneous and irrelevant grounds. The only ground urged is that the detention order has been passed for a wrong purpose. It is urged that though

the detection order was passed on 20.3.1985 but the arrest of the Petitioner was stayed on 28.8.1985 and as the detention order had not been

executed for over five months, it showed that the same was passed for a wrong purpose.

5. The main question which requires consideration is that if there is delay in executing the detention order, can it be held that the same had been

passed for a wrong purpose. The dictionary meaning of the word "purpose" is a result which it is desired to obtain and is kept in mind in

performing an action. Section 3(2) of the Act provides that the Central Government or the State Government may. if satisfied with respect to any

person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make

an order directing that such person be detained. The impugned detention order dated 20.3.1985 recites that the District Magistrate was satisfied

that in order to prevent the Petitioner from acting in any manner prejudicial to the maintenance of public order it was necessary to detain him u/s

3(2) of the Act. The grounds of detention show that the Petitioner resorted to firing upon a candidate at a polling Station in which one person was

killed and his body was set on fire due to which terror spread in the area and the polling parties ran away resulting in the election process being

stopped. The third ground shows that the Petitioner blocked the main road due to which the Government officials and others could not reach the

polling station to perform their duty in connection with the repoll. These grounds show in unmistakable terms that the Petitioner was acting in a

manner prejudicial to the maintenance of public order. The first ground which related to the firing done by the Petitioner and his companions in

which one person died and one was injured in Saidabad town and the body of the deceased was taken away could also lead to disturbance of

public order. Thus there was sufficient material with the District Magistrate on which he could arrive at a satisfaction that with a view to preventing

the Petitioner from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain him, and he could very well pass

a detention order u/s 3(2) of the Act. Therefore, it cannot be held that the order has been passed for a wrong purpose.

6. The contention that if there is delay in execution of a detention order, the same would be for a wrong purpose is, in my opinion, wholly

fallacious. The effect of delay in executing a detention order was considered in Sk. Serajul Vs. State of West Bengal, and it was held as follows:

There was delay, both at the stage of passing the order of detention and in arresting him, and this delay, unless satisfactorily explained, would

throw considerable doubt on the genuineness of the subjective satisfaction of the detaining Magistrate recited in the order of detention. It would be

reasonable to assume that if the detaining Magistrate was really and genuinely satisfied after proper application of mind to the materials before him

that it was necessary to detain the Petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater

promptitude both in making the order of detention as also in securing the arrest of the Petitioner, and the Petitioner would not have been allowed to

remain at large for such a long period of time to carry on his nefarious activities.

In Sk. Nizamuddin Vs. State of West Bengal, , there was no satisfactory explanation for delay in arresting the detenu. The habeas corpus petition

was allowed with the observation that it could not be held that the District Magistrate applied his mind and arrived at a real and genuine satisfaction

that it was necessary to detain the Petitioner. Thus, where there is delay in executing the detention order, it is the subjective satisfaction of the

detaining authority which gets vitiated rendering the detention order invalid. The delay cannot lead to the inference that the detention order has been

passed for a wrong purpose.

7. It is important to emphasise that there is no inflexible rule that whenever there is a delay in executing a detention order. it must necessarily be

held that the satisfaction of the detaining authority was vitiated rendering the detention order invalid. It will depend upon the facts and

circumstances of each case and if there is satisfactory explanation for delay in executing the order, the same cannot be held to be illegal or invalid.

This view has been taken in Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, ; Yogendra Murari Vs. State of U.P. and Others, ;

Smt. K. Aruna Kumari Vs. Government of Andhra Pradesh and Others, and Abdul Salam alias Thiyyan Vs. Union of India and others, . A

conspectus of the authorities cited above would show that if there is a delay in executing the detention order and the same has not been

satisfactorily explained, it will vitiate the subjective satisfaction of the detaining authority rendering the detention order invalid but the delay alone

cannot lead to the inference that the order has been passed for a wrong purpose. The submission that the impugned detention order has been

passed for a wrong purpose being based solely upon the alleged delay in execution thereof, has thus no merit and is liable to be rejected.

8. In State of Tamil Nadu v. P.K. Shamsuddin JT 1992 (4) 479, the detention order dated 8.3.88 was challenged by filing a writ petition in

Calcutta High Court after nearly 13 months on 5.4.1989 wherein an order was passed staying the arrest of the Petitioner. The stay order was

vacated on 12.4.91 and after nearly three months, another writ petition was filed in Madras High Court which was allowed and the detention order

was quashed. In appeal, the Supreme Court reversed the judgment and held that the case did not fall within the parameters outlined in the case of

Alka Subhash Gadia (supra) justifying interference with the detention order at the pre-execution stage, though the detention order had not been

given effect to for a long period even when there was no stay order by any court.

9. Learned Counsel has next urged that on almost identical grounds, a detention order had been passed against the Petitioner"s son Premchandra

Misra alios Babbu on 26.3.1985 and after he had been detained, he filed Habeas Corpus Petition No. 6083 of 1985 which was allowed by this

Court on 15.10.1985. That apart, the Petitioner was tried in Crime No. 49 of 1985 under Sections 143, 144, 146 and 341, I.P.C. of Police

Station Handia which is ground No. 3 in support of the detention order but he was acquitted by J. M. City Allahabad by the judgment and order

dated 30.9.1988. A copy of the judgment of the criminal case has been brought on record by means of a supplementary affidavit which was sworn

by Prem Shanker Misra on 30.1.1990. The Petitioner was also tried with regard to Crime No. 288 of 1984 under Sections 147, 148, 149, 302,

307 and 201, I.P.C. of P. S. Handia (ground No. 1 in support of detention order) in S.T. No. 370 of 1993 but he was acquitted by VIIIth Addl.

Sessions Judge, Allahabad on 23.8.1996. A copy of this judgment has been annexed along with the supplementary affidavit of Prem Chandra

Misra which was sworn on 26.11.1996 and was filed in court on 19.12.1996. It is thus urged that the Petitioner having been acquitted in two

criminal cases which were mentioned in the grounds of detention, the same have become non-existent and, therefore, the detention order is liable

to be set aside. Reliance in support of this proposition is placed upon Ram Prasad Chaudhary Vs. State of U.P. and Another, .

10. In order to examine the submission made by the learned Counsel for the Petitioner, it is necessary to mention certain facts. The writ petition

was filed on 30.4.1985 when a Division Bench passed the following order.

Put up for admission on Friday. In the meantime, learned standing counsel may obtain instructions.

The order sheet shows that the petition was taken up on 21.8.1985 when It was ordered to be listed after two days along with the record of

another writ petition. On 28.8.1985, a Division Bench passed the following order.

List it on Monday next. Until further orders of the court, the Petitioner shall not be arrested.

Though the petition was ordered to be listed on Monday which means within a few days, it was not so listed and came on the list after more than

three years on 12.9.1988 when It was adjourned at the request of the learned Counsel for the Petitioner, thereafter it was listed on 15.12.1988

and then on 1.3.1989 when the Petitioner took time for filing rejoinder-affidavit. After one year and nine months, it was listed on 28.11.1990

before a Division Bench when it was directed to be placed before another Bench. After nomination by Hon''ble the Chief Justice, it was listed on

12.12.1990 and then on 8.7.1991 but was adjourned on both the dates on the request of learned Counsel for the Petitioner. The case was then

listed on 12.7.1991 when it was ordered to be posted on 29.7.1991. On 30.7.1991 the standing counsel was directed to file counter-affidavit

which was filed in court on 12.8.1991. The case was then adjourned on the request of learned Counsel for the Petitioner. Thereafter the case was

not listed for a long time and in the meanwhile, the Hon''ble Judge to whom the case had been nominated retired. The Hon''ble the Chief Justice

then passed an order on 9.9.1992 that the case be listed before a Bench presided over by myself (G. P. Mathur, J). However, this order was

neither brought to my notice nor the case was listed for almost three years. The order-sheet shows that after the order of Hon''ble the Chief

Justice, the case was listed for the first time on 3.4.95 when it was passed over. Then after more than nine months, it was listed on 9.1.1996 when

no one appeared and thereafter it was listed on 14.11.1996. Even on that day, an oral request for adjournment was made at 10 a.m. in

accordance with the practice of this Court and it was granted. It may be mentioned here that in the cause list, the case was shown to be of the year

1995. After some time when on perusal of file, it was revealed that the writ petition was of the year 1985 and had not even been admitted, learned

Counsel was called and was asked to argue the matter. However, on his request, the case was posted for 21.11.1996. Since no one appeared on

that day, an order for dismissing the writ petition for want of prosecution was dictated which was transcribed on the writ petition but before the

order could be signed, learned Counsel appeared. On his request, the case was then posted for 26.11.1996 but the arguments could not be

completed on that day. In normal course, the case should have continued on the next day, i.e., on 27.11.1996 but as the learned Counsel was in

some personal difficulty, it was posted for 9.12.1996. The Bench could not be formed on that date and then the case was listed on 16.12.1996

when again an adjournment application was moved and a request was made that the matter be posted in January 1997. The case was, however,

adjourned but 19.12.1996 was fixed on which date the arguments were concluded. It may be mentioned here that the judgment of the sessions

trial relating to Crime No. 288 of 1984, which is ground No. 1 in support of the detention order, has been placed on record on the last date of

hearing, i.e., on 19.12.1996 by means of a supplementary affidavit.

11. The facts mentioned above would show that after the order dated 28.8.1985 staying the arrest of the Petitioner had been passed, inspite of a

clear direction that the case be listed on Monday next, it was listed after more than three years. The order passed by Hon"ble the Chief Justice on

9.9.1992 that the writ petition should be listed before a Bench presided over by me was never brought to my notice by the office and even after

passing of the said order, the case seems to have been listed for the first time on 3.4.1995. Sometimes the petition was printed in the cause list

showing its year as 1995. The oral request for adjournment made at 10 a.m. in accordance with the practice of this Court were apparently granted

under an impression that the writ petition is of the year 1995. Every possible attempt has been made by the Petitioner so that the hearing of the

petition may not take place. It is in the aforesaid background that the second submission made by learned Counsel has to be examined. As

mentioned earlier, the Supreme Court has laid down the grounds on which a court can interfere with the detention order at pre-execution stage

Alka Shubhash Gadia"s case (supra). The grounds urged by the learned Counsel which are based upon the decision in habeas corpus petition of

the Petitioner"s son who had also been detained and the acquittal of the Petitioner in two criminal cases do not come within the parameters of the

law laid down by the Apex Court That apart, I am also of the opinion that the facts and events; which occurred or happened subsequent to the

filing of the petition cannot be taken into consideration. The petition was filed on 30.4.1985 with a prayer that the Respondents may be restrained

from taking any action against the Petitioner on the basis of the detention order dated 20.3.1985. The acquittal in Crime No. 49 of 1985 took

place on 30.9.1988 and the judgment of the learned Magistrate was brought on record by means of an affidavit which was sworn on 21.1.1990.

The acquittal In Crime No. 288 of 1984 took place on 23.8.1996 and the judgment of the said case has been brought on record by means of a

supplementary affidavit which has been filed on the last date of hearing i.e., on 19.12.1996. It may be noticed that the incident In this case took

place on 27.11.1984 and the sessions trial has been decided almost after twelve years in August, 1996. The judgment runs in just three pages and

it shows that every witness including the injured witness who sustained gunshot injury turned hostile. I do not want to make any comment on the

acquittal of the Petitioner. However, it is well-known that influential or powerful accused or bullys do not allow a sessions trial to proceed till every

witness has been won over and it is made certain that no one would depose against them. There is no reason why a sessions trial in normal course

should have taken twelve years for its decision. If benefit of subsequent events is given to persons like the Petitioner against whom a detention

order has been passed, it is likely to set a bad precedent. Petitions would be filed and efforts would be made to secure an order of staying arrest

and once that is done, the petition would not be allowed to be heard till the criminal cases which form the basis of grounds of detention are decided

and in these cases acquittal can be secured by pressurizing the witnesses not to give evidence, who out of fear of their lives may desist from

speaking the truth. Therefore, in such type of petitions which are filed for quashing of the detention order at pre-execution stage, benefit of

subsequent events should not be allowed to be taken by the Petitioners. The contentions raised by the learned Counsel being based upon

subsequent events Is, therefore, rejected.

12. Lastly Sri Misra has urged that u/s 13 of the Act, the maximum period of permissible detention is one year and the said period having expired

long back, no useful purpose would be served by sending the Petitioner to Jail at this stage and on this ground alone, the petition deserves to be

allowed. In support of this submission, reliance is placed on State of Maharashtra v. Manik 1994 SCC 1492. In my opinion, the contention raised

has no substance. The Petitioner wants to take advantage of his own act, namely, of the stay order which he got on 28.8.1985 and then delaying

the hearing of the petition. Similar contention raised in Subhash Mujimal Gandhi v. L. Himingliana 1994 SCC 14 was not accepted. There the

detention order was passed on 23.8.1990 and the Supreme Court dismissed the appeal after four years on 26.8.1994. in State of Tamil Nadu v.

P.K. Shamsuddin 1992 SCC 698, the detention order was passed on 8.3.1988 and the Supreme Court reversed the judgment of the High Court

which had issued a writ of mandamus restraining the authorities from executing the detention order, after more than four years on 21.7.1992. In

Alka Subhash Gadia, the detention order was passed on 13.12.1985 and the Supreme Court allowed the appeal of the Government after five

years on 20.12.1990. Even in the authority cited, it was observed in Para 2 that the High Court was not at all Justified in entertaining such an

application at a very premature stage. I am, therefore, clearly of the opinion that in a petition like this, no advantage can be given to the Petitioner

of the fact that the original period of detention mentioned in the detention order has expired.

13. For the reasons mentioned above, there is no merit in this petition which is hereby dismissed. All interim orders passed in favour of the

Petitioner are hereby vacated.

14. The Registrar is directed to hold an inquiry and submit a report as to why this petition which was filed in April, 1985 and which had not even

been admitted, was not listed in its normal turn and also under what circumstances it was printed in the cause list showing it to be of the year 1995.

He shall also take action against those who are responsible for non-listing of the petition. The report may be submitted within one month from the

date of the order.

Kundan Singh, J.

15. I entirely agree.