

(2002) 09 AHC CK 0227

Allahabad High Court

Case No: Habeas Corpus Writ Petition No. 6988 of 2002

Israr Ahmad Kureshi

APPELLANT

Vs

State of Uttar Pradesh and
Others

RESPONDENT

Date of Decision: Sept. 5, 2002

Acts Referred:

- National Security Act, 1980 - Section 3, 3(3)

Citation: (2003) CriLJ 176

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

Bench: Division Bench

Advocate: P.P. Srivastava and Anil Srivastava, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

S.K. Agarwal, J.

Habeas corpus writ petition at hand was filed by Israr Ahmad before this Court challenging his detention u/s 3(3) of the National Security Act (hereinafter referred to as "NSA") dated 10-1-2002.

2. The brief facts of the case are that a F.I.R. came to be registered at P.S. Kotwali, District Muzaffarnagar, against the present petitioner vide Crime No. 1182 of 2001 under Sections 3/5/8 of the U. P. Prevention of Cow Slaughter Act. On an information received from the informer the godown of the petitioner was raided by the police of P.S. Kotwali at 4.00 p.m. on 28-12-2001. On a search of the godown 10 quintals of meat belonging to the family of cow was recovered from there. Weighing machine having cow's meat on one of its pangs was also found. The charge, therefore, was that he collected in large quantity cow's meat for being transported to other States. On coming to know of this huge recovery in the region of P.S. Kotwali social disharmony and anger between different communities was spread.

There was tension between different religious communities. Religious harmony between them was disrupted. Fear and terror gripped the area as a consequence of this recovery. Routine public life also came to be disrupted thereby public order of the area was adversely affected. The recovered cow's meat and the equipment of weighing were all taken into custody by the police, for which a memo was also prepared. As earlier discussed a case was registered under Sections 3/5/8 of the Prevention of Cow Slaughter Act, which was still under investigation when the impugned detention order came into existence. This meat was collected for being sent to Kolkata. Sample meat was sent for chemical analysis to Veterinary Hospital, Muzaffarnagar. On its examination it was revealed that the meat so recovered from the possession of the petitioner belong to cow's family.

3. It is further alleged in ground No. 2 that knowledge of this report further increased the tension between different communities. Public anger of one section of the society was animated further. Public order came to be disrupted promptly. According to ground No. 3 this recovery has created a sensation in the public religious tension and anger became the order of the day. People were apprehensive and terror stricken. The general public was afflicted by feeling of insecurity. The organisations who make use of such occasions became vigorously active. People of the area started feeling insecure in living in their houses. This disrupted their normal life and peace was also adversely affected. An exodus of the people from their abodes started. All these circumstances caused total infraction in maintenance of public order.

4. On 7-1-2002 Head Constable 27 Tej Pal Singh while he was on Gast duty for maintenance of peace and order came to learn that in Mohalla Yogendrapuri members of different organisations collected together and they were espousing tension on account of this enormous recovery of cow's meat. This Head Constable on his return got this report registered vide G.D. No. 51 at 10.10 p.m. at P.S. Kotwali. On an enquiry it was found true. By this meeting of different organisations fear, tension and anger assumed serious proportion amongst communities, due to which maintenance of public order became difficult.

5. Ground No. 4 suggests that the atmosphere was further polluted by the publication of this news in different newspapers. There grew a imminent possibility of any untoward incident which was likely to damage the public order effectively.

6. Ground No. 5 suggests that the petitioner was frantically trying to be out on bail. In that direction he already made an application before the competent Court. There is every possibility that he will be enlarged on bail and after coming out on bail there is every likelihood that he will again indulge in similar nefarious activity causing disturbances in the cordiality, harmony amongst the people of different walks of life. They will again indulge in cow slaughter for their personal gains. Therefore, it is apprehended that tension will increase and public order will further be affected.

7. On all these above grounds the District Magistrate constituted his subjective satisfaction and passed the abovesaid order on 10-1-2002 for detention of the petitioner under NSA.
8. Challenging the detention of the petitioner learned Counsel for him has raised following questions before us. According to him the act of the petitioner did not cause nor was likely to cause in future any infraction of public order and maintenance of public tranquillity in the area. It was purely, according to him, a law and order problem. This was the solitary incident from which the detaining authority and the sponsoring authority have tried to raise an imaginary horror of infraction of public order.
9. The second submission made by learned Counsel for the petitioner is that the copy of the bail application and the order granting bail passed by the Sessions Judge dated 9-1-2002 were not produced before the District Magistrate/detaining authority before the order dated 10-1-2002 was passed. Only bail application moved before the Chief Judicial Magistrate and the order of rejection passed by the C.J.M. were produced before him. The subjective satisfaction of the District Magistrate, therefore, on ground No. 5 was not based on any relevant material that the petitioner was likely to be released on bail. Its non-supply to the detaining authority as well as to the petitioner has prejudiced him seriously in defending himself.
10. Learned A.G.A. has seriously opposed the contentions raised by learned Counsel for the petitioner before us. He had cited before us the case of *Taukir v. State of U.P.* (2002) 44 All Cri C 1088 and *Abdul Hamid v. State* (1999) 39 All Cri C 3 (Hindi Section). The second case is a case of quashing the F.I.R. His contention is that the conduct of the petitioner, as reported in the grounds of detention, is sufficient to disturb the public tranquillity of the area. Non-production of the bail application and the bail order, passed by the Sessions Judge, before the detaining authority is not a relevant material. This could be the inference, which the authority could easily draw even if no bail application before the Court of Session was moved. The rejection of his prayer for bail by the Chief Judicial Magistrate furnishes enough evidence to the detaining authority about the attempts made by the petitioner.
11. We have perused very carefully the grounds of detention. In ground No. 2 it has clearly been mentioned by the detaining authority that the meat recovered from the petitioner belong to the family of cow, but there was no finding from the analyst that it was a cow's meat. Learned Counsel for the petitioner laid stress on this issue that when there was absolutely no evidence that it is cow's meat, there is no probability of any infraction of public tranquillity. Even tempo of the life of the society in the surrounding region of the place of recovery or in the area of P.S. Kotwali could not be disrupted. All the allegations made in the grounds of detention were not based upon any material evidence. The formation of the subjective satisfaction, therefore, was more in the form of ipse dixit. It was not based upon relevant material. Preparation of recovery memo etc. were the formalities in the

process of investigation. Registration of a case against the petitioner under Sections 3/5/8 of the U. P. Prevention of Cow Slaughter Act is a part of investigation. Once it is not established that meat recovered from the premises of the petitioner was cow's meat but belongs to its family, no such inferences were permissible in law nor any such inference flows. There is absolutely no evidence that any incident of violence occurred as a consequence of this recovery. There are provisions in the Cow Slaughter Act itself which permits slaughter of a member of cow's family under certain conditions which were necessary to be complied with.

12. Ground No. 3 too in this direction has been referred to for our serious consideration. Taking up ground No. 3 of the grounds of detention, it was contended before us that there is no material provided by the detaining authority that any member in these localities left his house or that so-called tension created any adverse effect upon local peace and tranquillity. So far as the activities of opportunist organisations who always wait for such opportunities to encash is concerned, that is to be cared for by the administration. The petitioner was engaged in business activity and had licence for transportation of meat. We have carefully examined this ground of detention. We are of the opinion that discovery of meat belonging to the family of cow by itself could not generate any such situation which may disturb the public tranquillity of the area and cause tension between the two communities following different religions. It has further been contended that there may be tension but that will be due to rumour mongering and withholding of proper information by the local administration from public.

13. As is evident, the meat recovered from the premises (godown) of the petitioner was not straightway found to be cow meat. Medical opinion was that it belong to the family of cow. The family of cow consists of bull, oxen and calf. We are of the considered opinion that unless there was positive evidence before the detaining authority that it was cow's meat, inference drawn by him in grounds Nos. 1 to 4 were not fairly available. Generally when any offence of this nature occurs in a locality, it normally, for the time being, surcharges the atmosphere and public tranquillity may have been endangered for a while. But we do not see any possibility that any persistent danger to the public tranquillity if the report of the analyst or medical opinion that it belong to the family of a cow would have been given due publication by the local administration. In our opinion, it was more or less a matter concerning law and order. The petitioner was arrested on the spot and was brought to the police station. Any temporary infraction of the public tranquillity is always a consequence of any offence if it is heinous. Collection of meat of animals belonging to the family of a cow is not so heinous an offence as contemplated by the sponsoring authority and acknowledged by the detaining authority. A law and order problem was blown out of proportion though there were hardly any reasonable foundation for such an inference. Seeds of dissension are always sown by interested people who are always active amongst both the communities. This is an act of the administration, according to us, to keep a vigil on them if any such situation arise,

but in every case these facts do not give rise to a danger of infraction of the public order or public tranquillity. Any slackness on the part of the administration to check and curb publication of such news in local newspapers further aggravates the danger to even tempo of the life of the society which comprises of people of both the religions however its onus cannot be placed upon this petitioner.

14. We are of the opinion that there is some force in the contentions raised by learned Counsel for the petitioner that the acts referred to in grounds Nos. 1 to 4 of the detention order constitute only breach of law and order and not public order or public tranquillity or even tempo of the life of the society. Offence was committed on 28-12-2001 and the detention order saw the light of the day on 10-1-2002. Except report of the policemen on Gust duty, there was no other material brought before the detaining authority to show that the activities of the petitioner have caused any stir in the society. Therefore, we find it only a case of law and order alone.

15. So far as the second contention regarding non-production of bail application and bail order which was passed on 9-1-2002 in favour of the petitioner by Sessions Court is concerned, we are of the opinion that its non-production is not of any consequence. The detention order came into existence on 10-1-2002. It was served on the same day on the petitioner. Rejection of his bail application by the Chief Judicial Magistrate furnished enough proof of his attempts to come out on bail to the detaining authority. Therefore, any such satisfaction drawn by the detaining authority cannot be said to be without any material on record before him. However, there is no evidence besides the bald allegation in ground No. 5 that on being released the petitioner is likely to indulge in similar activity again. This was the only case against the petitioner of storing meat of the animals of the family of a cow for transportation outside the State. Therefore, the inference drawn contrary to it, in our opinion, to the effect that it will damage the peace and tranquillity of the society and the petitioner will again indulge in such activities is unfounded. The detaining authority failed to draw a distinction between cow's meat and meat of an animal of its family. The act envisages slaughter of an animal of cow's progeny, bull, bullock under certain conditions. It means the law does warrant a blanket prohibition. Once slaughter of certain category of animals of cow's family is permissible, it is necessary for the administration to foreclose all such probabilities before slapping any under-trial prisoner with any such detention. If this requirement is not realised while passing an order u/s 3(3) of N.S.A. it tends to border on non-application of mind.

16. In the light of above discussions we allow the petition and quash the detention order dated 10-1-2002 passed against the petitioner. He, being involved in case Crime No. 1182 of 2001 under Sections 3/5/8 of the U. P. Prevention of Cow Slaughter Act, P.S. Kotwali, District Muzaffarnagar, is in jail. He shall be set at liberty forthwith if otherwise not wanted in any other case.