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(2016) 09 AHC CK 0201

ALLAHABAD HIGH COURT

Case No: Habeas Corpus Writ Petition No. 19992 of 2016.

Mayank Kumar Rana - Petitioner @HASH State of U.P. And 4 Others — APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 19, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- National Security Act, 1980 - Section 3(2)

Citation: (2016) 10 ADJ 498 : (2016) 6 AllLJ 458 : (2017) 1 AllWC 849

Hon'ble Judges: Ramesh Sinha and Shamsher Bahadur Singh, JJ.

Bench: Division Bench

Advocate: Arun K. Singh Deshwal and Arun K. Singh -I, Advocates, for the Petitioners; G.A. and Deepak Mishra, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Ramesh Sinha, J. - This petition has been filed by the petitioner with a prayer to direct the respondents to produce the petitioner before this Court and set him at liberty forthwith and also for quashing the order dated 27.1.2016 passed by respondent no.2, District Magistrate, Bijnor as well as order dated 16.3.2016 passed by respondent no.1.

2. The brief facts of the case are that an FIR was lodged by one Manoj against the petitioner on 22.12.2015 u/s 307 IPC which was registered as Case Crime No.1288 of 2015 at Police Station Kotwali City, District Bijnor at 20.10 hours for an incident which is said to have taken place on the same day at 14 hours. In the incident one person namely Nagesh Kumar received injuries, who was medically examined on 22.12.2015 and was discharged from the hospital on 2.1.2016.

3. It appears that on the basis of the said solitary case, the detention order was passed by the District Magistrate, Bijnor, respondent no.2 against the petitioner u/s 3(2) of National Security Act (hereinafter referred to as the NSA). The District Magistrate while passing the detention order has mentioned in the grounds of the detention that the petitioner is a man of criminal antecedents and because of his criminal personality, he disturbs the social harmony.

4. It has been stated by the detaining authority that on 22.12.2015, the District President of Uttar Pradesh Prathmik Shikshak Sangh, Bijnor namely Nagesh Kumar, S/o Lal Bahadur Singh who was the Headmaster of the Primary School, Haldaur and was also working on the post of A.B.R.C., Haldaur, had called a meeting in Indra Park, Bijnor. The petitioner in a public place at Indra Park where the said meeting of the teachers association was going on, reached there and in broad-day-light shot a fire at the temporal region of Nagesh Kumar who received serious injuries. Due to the said act of the petitioner, the teachers present at the Indra Park and people of the nearby area became panic and tension prevailed and there was a sense of insecurity and fear in the people due to which there was disturbance of public order for which an FIR was lodged by one Manoj Kumar against the petitioner.

5. After registration of the said case, the Investigating Officer started the investigation and made spot inspection and further recovered empty cartridge and other articles from the place of occurrence. The statement of the informant and eye-witness Manoj Kumar was recorded who has supported the prosecution case. The other eye-witnesses also in their statements have supported the prosecution case and from the medical report of the said injured, injuries of fire-arm were found. As per the statement of the Doctor who had examined the injured opined that due to the injuries received by the injured Nagesh Kumar he was not able to speak. The Investigating Officer of the case tried to arrest the petitioner but the petitioner could not be arrested and it was stated that he surrendered on 1.1.2016 before the Magistrate concerned. He was thereafter sent to jail and the petitioner was taken in the custody of the Investigating Officer on 12.1.2016 and on remand at his pointing out, a country-made pistol of 32 bore was recovered from the village Bakar from a Sugar Cane field and from the said pistol, a live cartridge was also recovered. The recovery memo of the pistol was prepared, on the basis of which the Investigating Officer has registered a case u/s 25/27 of the Arms Act which was registered as Case Crime No.30 of 2016 and the same was endorsed in the G.D of Police Station Kotwali City, district Bijnor at 12.30 hours on 12.1.2016.

6. When the detaining authority came to know that while being in judicial custody since 1.1.2016, the petitioner was trying to obtain bail for which he has filed bail application through his lawyer before the District & Sessions judge, Bijnor which was pending and there is every likelihood that he would be allowed bail and as soon as he is released on bail, he would again indulge in such anti-social activities which may disturb the public order and on the said satisfaction the detaining authority in order to prevent the petitioner from committing such anti-social activities, passed the detention order on 27.1.2016

against the petitioner informing him about his right to make representation against the same before the detaining authority (District Magistrate), State Government, U.P. Advisory Board, Lucknow and Central Government, New Delhi respectively. The said detention order was passed by the detaining authority on the basis of report submitted by the Superintendent of Police to him under the N.S.A. Act to prevent him from committing such anti-social activities which was prejudicial to the disturbance of public order. The detention order was served to the petitioner along with grounds of detention in District Jail, Bijnor on 27.1.2016 itself. The petitioner submitted his representation dated 9.2.2016 to the various authorities as mentioned in the detention order through Superintendent of District Jail, respondent no.4 who sent the same to the District Magistrate on the same day.

7. The petitioner was heard by the U.P. Advisory Board, Lucknow on 4.3.2016 when he appeared in person in support of his representation filed against the detention order dated 27.1.2016 which took decision to confirm the detention order. The detention order passed by the District Magistrate was confirmed by the State Government on 16.3.2016 for detaining the petitioner for the period of 12 months from the date of passing of the detention order u/s 12(1) of N.S.A. The representation of the petitioner dated 9.2.2016 was rejected by the State Government on 19.2.2016.

8. The pleadings between the parties have been exchanged.

9. Heard Sri Arun Kumar Singh, learned counsel for the petitioner, Sri Deepak Mishra, learned counsel for the respondent no.6 and Sri Vikas Sahai, learned A.G.A. for the State and perused the record.

10. The sole ground which has been canvased and argued by learned counsel for the petitioner is that the representation dated 9.2.2016 of the petitioner against the detention order to the Central Government which was addressed to the Secretary Ministry of Home Affairs, New Delhi was forwarded by the District Magistrate, Bijnor to the Central Government on 11.2.2016. It was urged that the representation of the detenue-petitioner was rejected by the Central Government on 26.5.2016 and there has been gross delay in deciding the representation of the petitioner by the Central Government/respondent no.6 thus the detention order is liable to be set-aside on this ground alone. He pointed out that the explanation given by the Central Government/respondent no.6 in para no.4, 5 and 6 of the counter affidavit for the said delay does not appear to be a plausible one as the representation of the petitioner has been lying with the Central Government and was not attended promptly. It was stated that the further comments were called by the Central Government from the State Government on 22.2.2016 through Secretary Home, U.P. Lucknow and the District Magistrate, Bijnor and further reminder letters were sent on 11.3.2016, 4.4.2016, 26.4.2016 and 5.5.2016 respectively. The Government of U.P. Forwarded its report vide letter no.108/2/04/2016-Cx-7 dated 10.5.2016 and the same was received in the Ministry on 17.5.2016. Thereafter the representation and comments of the Secretary Home of the Government of U.P. were processed for considering the

Union Home Secretary on 17.5.2016. The Home Secretary Ministry of Home Affairs, New Delhi after duly considering the order of detention and grounds of detention rejected the same on 26.5.2016. Thus there has been a inordinate delay of about three and half months, hence the detention order is liable to be quashed. In support of his contention he has placed reliance on the judgement of this Court in the case of **Nandu @ Nand Kishore v. Union of India reported in 2012 (79) ACC 869**. He further submitted that in the said case also the detention order was quashed on the ground of delay in deciding the representation by the Central Government which was lying unattended and the explanation given by the Central Government was not found to be convincing.

11. Learned AGA has stated that there is no delay on the part of the District Magistrate, State Government in deciding the representation of the petitioner and they promptly attended and rejected the same.

12. Sri Arun Misra holding brief of Sri Deepak Misra, learned counsel for the respondent no.6, Union of India tried to justify the delay in deciding the representation of the petitioner dated 9.2.2016 by the Central Government which rejected on 26.5.2016 but could not dispute the fact that the explanation given for the delay is not a convincing one.

13. Considered the submissions advanced by learned counsel for the parties and examined the material brought on record. The representation of the petitioner dated 9.2.2016 which was received by the Central Government on 11.2.2016 was decided after a gross delay on 26.5.2016 i.e. after more than three and half months. The explanation which has been given in the counter affidavit of respondent no.6 in para nos.4, 5 and 6 is wholly unsatisfactory. Thus the detention order passed by the detaining authority and confirmed by the State Government are liable to be set-aside on this ground alone.

14. Accordingly, the detention order dated 27.1.2016 passed by respondent no.2 as well as order dated 16.3.2016 passed by respondent no.1 are hereby set-aside.

15. The present Habeas Corpus Writ Petition is allowed. No order as to cost.

16. The respondents are directed to set at liberty petitioner Mayank Kumar Rana forthwith, if he is not wanted in any other case.