
(2015) 01 CHH CK 0007

Chhattisgarh High Court

Case No: Writ Petition (Habeas Corpus) No. 29 of 2014

Rais Khan

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision: Jan. 15, 2015

Acts Referred:

- Constitution of India, 1950 - Article 22, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 107, 116, 116(3), 151
- National Security Act, 1980 - Section 13, 3, 8(1)
- Penal Code, 1860 (IPC) - Section 147, 148, 295A, 395, 427

Citation: (2015) 4 CGLJ 159 : (2015) 2 MPHT 79

Hon'ble Judges: Goutam Bhaduri, J.; Prashant Kumar Mishra, J.

Bench: Division Bench

Advocate: Rajeev Shrivastava, Counsel, for the Appellant; D.K. Gwalre, Govt. Advocate, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Prashant Kumar Mishra, J.

This petition under Article 226 of the Constitution for issuance of writ of habeas corpus and for quashing the impugned orders dated 11/03/2014 passed by the District Magistrate, Durg and dated 18/09/2014 passed by the State has been preferred by the detenu (through his brother) who has been directed to be detained for a period of 12 months from 11/03/2014 i.e. the date of order passed by the District Magistrate.

2. The Superintendent of Police, Durg submitted a report before the District Magistrate to the effect that the petitioner is a habitual offender and has done such pre-determined and well designed acts which has infuriated communal passion resulting in serious damage to communal harmony inasmuch as the petitioner has made objectionable comments concerning the deities of a particular religion in his facebook page. The Superintendent of

Police reported that such act of the petitioner had the design and there is fear of communal riots. Because of the communal tension the members of the petitioner's community also became afraid and people belonging to both the religion started assembling at different places of Durg town. Demonstration and procession were carried out in different localities of the town within the jurisdiction of PS Mohan Nagar, PS Kotwali, Durg, PS Bhilai Nagar, PS-Supela, PS-Jamul, PS-Bhilai Bhatthi, PS-Purani Bhilai, PS-Kumhari, PS-Chhawani and PS-Newai. The petitioner was involved in other criminal cases, viz. (a) under Section 395 of IPC, Crime No. 384/11, PS Mohan Nagar for an incident which happened on 06/07/2011, (b) under Section 147, 148, 427 of IPC, Crime No. 477/13, PS Durg for an incident which happened on 25/05/2013, (c) Istgasa No. 474/11 was filed in the Court of SDM, Durg for an incident which happened on 01/08/2011, under Section 107, 116 and 151 Cr.P.C., (d) Istgasa No. 149/12 was filed in the Court of SDM, Durg on 12/03/2012 for offence under Section 107, 116(3), 151 Cr.P.C., (e) vide Rojnamcha Sanha No. 1 registered on 5/3/2014 at 00.25 hours at PS-Mohan Nagar for an incident occurred on same day, (f) vide Rojnamcha Sanha No. 57, 58, 59 and 60 registered at PS-Mohan Nagar at the instance of complainants Acharya Nilesh Sharma, Vijay Agrawal, Rahul Pandit and Amit Soni for similar allegations, (g) vide Rojnamcha Sanha No. 69 registered on 05/03/2014 at PS-Bhilai Nagar wherein similar allegations have been leveled, (h) vide Rojnamcha Sanha No. 56 registered at Civic Center area of Bhilai Nagar, Sector 10, Sector 7, Sector 8, Sector 6 Market and Supela Market on 06/03/2014 concerning similar allegations, (i) Rojnamcha Sanha No. 30 was registered at PS-Newai on 7/3/2014 on the allegations that on account of posting of objectionable matters on social networking site, there was tension between Hindu and Muslim communities, (j) Rojnamcha Sanha Nos. 42 and 31 were registered at PS-Jamul concerning similar allegations, on 06/03/2014 and 07/03/2014, (k) on 5/3/2014 and 7/3/2014 Rojnamcha Sanha Nos. 62 and 39 were registered at PS-Chhawani for similar allegations, (l) on 5/3/2014 and 6/3/2014 Rojnamcha Sanha Nos. 30 and 27 were registered at PS-Kumhari for similar allegations,

3. For the incident which was the immediate cause for submitting report by the Superintendent of Police, Crime No. 118/14 was registered against the petitioner at PS-Mohan Nagar for offence under Section 295A of IPC and under Section 66A of IT Act on 04/03/2014 and the petitioner was arrested on 05/03/2014.

4. On the basis of report submitted by the Superintendent of Police, Durg the District Magistrate passed the impugned order on 11/03/2014 in exercise of powers under Sub-section (2) read with Sub-section (3) of Section 3 of the National Security Act, 1980 (henceforth, "Act, 1980") directing the petitioner's detention for a period of one year. The District Magistrate, on the basis of report submitted by the Superintendent of Police, was satisfied that his acts are prejudicial to maintenance of public order, therefore, his act deserves to be controlled for which he deserves to be kept in preventive detention for a period of one year. The order passed by the District Magistrate was approved by the State Govt. vide Annexure R-1. The Advisory Board also approved the petitioner's

detention on 10/04/2014 finding that there exists sufficient grounds for his detention under the Act, 1980. Petitioner submitted a Writ Petition (Criminal) No. 116/2014 which was disposed of with direction to the appellate authority to consider petitioner's representation under Section 8(1) of the Act. Such representation of the petition has also been rejected on 18/09/2014 (Annexure P/2).

5. Learned counsel for the petitioner has assailed the legality, validity and correctness of the impugned orders and has prayed for issuance of writ to habeas corpus on submission that the grounds for proceeding under the Act, 1980 was not available as the petitioner has never been involved in committing any heinous crime. He would submit that there is no conclusive evidence or prove that it was the petitioner who had posted objectionable publication on the facebook page. He would also submit that there is no clinching proof that it was the petitioner who created the facebook page and posted the matters which have been found objectionable. He would further submit that the order is otherwise illegal because an order of preventive detention cannot be passed for a period of more than 3 months, at the first instance.

6. Learned State counsel would submit that there is enough material warranting petitioner's detention under the Act, 1980. He would submit that prima facie there was sufficient evidence to proceed against the petitioner. According to him, proceedings under the Act, 1980 are not in the nature of recording conviction against an individual, therefore, the law does not warrant availability of proof beyond reasonable doubt. He would next submit that this Court, under Article 226 of the Constitution, may not sit on appeal over the order passed by the detaining authority which has been affirmed by the State Government while considering petitioner's application under Section 8(1) of the Act as also by the Advisory Board. His submission is also to the effect that when the order is passed by the District Magistrate, there is no such limitation that it cannot be passed for a period more than three months at the first instance.

7. Judicial review of the order passed by the detaining authority is permissible on very exceptional and limited grounds. The Supreme Court in [Subramanian Vs. State of Tamil Nadu and Another](#), has reiterated the said principles in para 14 and 15 thus:--

"14. It is well settled that the court does not interfere with the subjective satisfaction reached by the detaining authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the court but for the detaining authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an

exhaustive manner. The satisfaction of the detaining authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.

15. The next contention on behalf of the detenu, assailing the detention order on the plea that there is a difference between "law and order" and "public order" cannot also be sustained since this Court in a series of decisions recognised that public order is the even tempo of life of the community taking the country as a whole or even a specified locality. [Vide [Pushpadevi M. Jatia Vs. M.L. Wadhavan, Addl. Secretary, Government of India and Others](#), ; [Dr. Ram Manohar Lohia Vs. State of Bihar and Others](#), ; [Union of India and Others Vs. Arvind Shergill and Another](#), ; [Sunil Fulchand Shah Vs. Union of India and Others](#), ; [The Commissioner of Police and Others Vs. Smt. C. Anita](#), "].

8. This Court has already mentioned the details of the petitioner's criminal activity. It has also discussed the immediate necessity of the petitioner's detention which are precise, pertinent, proximate and relevant. Since detaining authority is only required to arrive at subjective satisfaction based on material and such material are available in the present case, we are not inclined to accept the argument raised by the learned counsel for the petitioner that there exists no material so as to warrant petitioner's detention under the Act, 1980.

9. This leaves the Court to consider the other argument of the petitioner that the detaining authority has no jurisdiction to pass an order of detention for more than three months at the first instance.

10. Section 3 of the Act confers power on the Central Government or the State Government to make orders detaining certain persons. Sub-section (3) of Section 3 provides for the maximum period of detention. The said provision, with which we are concerned, is reproduced hereunder:--

"(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section.

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time."

11. According to learned State counsel, the requirement of the order at the first instance to not exceed for a period of three months, would apply when the order is passed by the State Government, whereas in the present case, the order has been passed by the

District Magistrate, therefore, the order is unassailable on this ground. He would also argue that the order having been approved by the State Government and the Advisory Board, even that flaw, if any, stands removed and the writ petition deserves to be dismissed on this count also.

12. In the matter of *Cherukuri Mani v. The Chief Secretary, Government of Andhra Pradesh and Others*, [Special Leave Petition (Crl.) No. 2531 of 2014], the Supreme Court had an occasion to consider the similar issue under the *pari materia* provision of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986. It has held thus in para 12 and 13:--

"12. A reading of the above provisions makes it clear that the State Government, District Magistrate or Commissioner of Police are the authorities, conferred with the power to pass orders of detention. The only difference is that the order of detention passed by the Government would remain in force for a period of three months in the first instance, whereas similar orders passed by the District Magistrate or the Commissioner of Police shall remain in force for an initial period of 12 days. The continuance of detention beyond 12 days would depend upon the approval to be accorded by the Government in this regard. Sub-section (3) makes this aspect very clear. Section 13 of the Act mandates that the maximum period of detention under the Act is 12 months.

13. Proviso to Sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, not exceeding three months, at a time. It means that, if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time" assumes significance in this regard.

14. The requirement to pass order of detention from time to time in the manner referred to above, has got its own significance. It must be remembered that restriction of initial period of detention to three months, is nothing but implementation of the mandate contained in Clause (4)(a) of Article 22 of the Constitution of India. It reads as under:

Clause 4 : No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless--

(a) an Advisory Board consisting of persons who are or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under Sub-clause (b) of Clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of Clause (7)."

13. Learned State counsel would draw attention of this Court to the orders Annexure R-1 and R-2 whereby, while approving the detention order, the State Government has approved the same, at the first instance, for three months and thereafter the same was extended for further period of three months each on 17/06/2014, 12/09/2014 and 11/12/2014. He would, therefore, submit that requirement under the proviso to Sub-section (3) is fully complied with and the detention order does not call for any interference.

14. We have thoughtfully considered the submission made by learned State counsel, however, we are unable to agree with the submission because, even though the proviso to Sub-section (3) provides that the State Government can amend the order to extend the period of detention for three months at one time, for a maximum period of 12 months, such order has to be on the basis of satisfaction of the State Government. If the provision requires satisfaction of the authority, the same presuppose existence of further material, based on which the order of detention would be extended. In the extension orders issued by the State Government on different dates, each for further period of three months, it is nowhere mentioned that either there was any reference by the District Magistrate requiring further detention of the petitioner, nor the State Government has called for any such report and thereafter reached to satisfaction requiring extension of period of detention.

15. A reading of the State Government's order extending the detention of the petitioner would manifest that the State Government has not referred to any material in the form of report, much less recording of any satisfaction. It appears to us that the extension orders have been issued mechanically without any basis, therefore, the order of extension straightway passed by the State Government fails to satisfy the requirement of the proviso to Sub-section (3) of Section 3 of the Act 1980.

16. In the case in hand the District Magistrate has, at the first instance, passed an order directing petitioner's detention for a period of 12 months. Once it is found, on the strength of law laid-down by the Supreme Court in *Cherukuri Mani* (supra), that the order at the first instance cannot direct detention for a period more than three months, its approval by the State Government or the Advisory Board would not clothe the authority with the power to direct detention in the manner contrary to law. It is settled principle that where the law prescribed a thing to be done in a particular manner, it shall be done in the same manner or not at all.

17. In view of the foregoing, although the order of detention is not assailable on merits, the same having been passed directing petitioner"s detention for a period exceeding three months at the first instances is bad in law.

18. The order of detention exceeding the period of three months is quashed. The petitioner be set at liberty forthwith.

19. Registry is directed to do the needful in accordance with Rules.