

Court No. - 9 WWW.LIVELAW.IN

Case :- HABEAS CORPUS No. - 23355 of 2020

petitioners :- Lalit Gupta

Respondent :- U.O.I. Thru. Secy. Ministry Of Home Affairs, New Delhi & Ors

Counsel for petitioners :- Raj Deepak Chaudhary, Aditya Upadhyay

Counsel for Respondent :- G.A., A.S.G., Mahendra Kumar Misra

along with

Case :- HABEAS CORPUS No. - 23358 of 2020

petitioners :- Atul Gupta

Respondent :- U.O.I. Thru. Secy. Ministry Of Home Affairs, New Delhi & Ors

Counsel for petitioners :- Raj Deepak Chaudhary, Aditya Upadhyay

Counsel for Respondent :- G.A., A.S.G., Mahendra Kumar Misra

with

Case :- HABEAS CORPUS No. - 23361 of 2020

petitioners :- Krishna Chandra Gupta @ Dheeru

Respondent :- U.O.I. Thru. Secy. Ministry Of Home Affairs, New Delhi & Ors

Counsel for petitioners :- Raj Deepak Chaudhary, Aditya Upadhyay

Counsel for Respondent :- G.A., A.S.G., Mahendra Kumar Misra

Hon'ble Ramesh Sinha, J.

Hon'ble Narendra Kumar Johari, J.

- (1) The above captioned Habeas Corpus Petitions under Article 226 of Constitution of India has been filed by the petitioners, challenging the validity and correctness of the order of detention dated 27.08.2020 passed by the District Magistrate, Raibareli (respondent no.3) (hereinafter referred to as “**Detaining Authority**”) under Sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as “**Act, 1980**”) contained in Annexure No.1 to the writ petition on being satisfied that the detention of the petitioners was necessary with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

- (2) It is relevant to mention here that though the petitioners of the above-captioned writ petitions have mentioned in para-4 that they have also challenged the order of confirmation dated 09.10.2020 passed by the Principal Secretary (Home), Civil Secretariate, Uttar Pradesh, Lucknow contained in Annexure no.2 to the writ petition, by which the detention order dated 27.08.2020 has been approved by the State Government, but from perusal of the relief clause, it transpires that no such relief as claimed in para-4 has been sought by the petitioners in the above-captioned writ petitions.
- (3) Since common questions of law and facts are involved in the above-captioned habeas corpus petitions, hence with the consent of the learned Counsel for the parties, they are being decided by a common order.
- (4) Heard Shri Raj Deepak Chaudhary, learned Counsel for the petitioners/detenuue, Shri S.P. Singh, learned Additional Government Advocate for the State/respondents no. 2 to 5, Shri Mahendra Kumar Mishra, learned Counsel for the Union of India/ respondent no.1 and perused the material brought on record.
- (5) The order of detention along with grounds of detention was served upon the petitioners on 27.08.2020 in jail, while he was in jail in a criminal case. The State Government, through the Radiogram dated 03.09.2020, approved the order of detention dated 27.08.2020 and the same was also served upon the petitioners on 03.09.2020. Against the said order of detention, the petitioners

made a representation dated 05.09.2020 to the Detaining Authority, the Secretary, Department of Home and an another representation to the Advisory Board constituted under Section 9 of the Act, 1981, which was forwarded by the Superintendent of Jail, District Jail, Raibareli vide letter dated 05.09.2020 to the Detaining Authority, the Secretary, Department of Home and to the Advisory Board. The Detaining Authority, vide order dated 08.09.2020, has rejected representation of the petitioners dated 05.09.2020, which was communicated to the petitioners on 08.09.2020. The State Government has rejected the representation of the petitioners dated 05.09.2020 on 18.09.2020, which was communicated to the petitioners on 18.09.2020. The Advisory Board, vide order dated 21.09.2020, has confirmed the order of detention and the same was also communicated to the petitioners. Thereafter, vide order dated 09.10.2020, the State Government, in exercise of powers conferred under Section 12 (1) of the Act, 1981, has confirmed the order of detention dated 27.08.2020 and directed that the petitioners be detained for a period of three months tentatively from the date of detention i.e. w.e.f. 27.08.2020, which was communicated to the petitioners on 09.10.2020. The Union of India, vide order dated 11.11.2020, considered the representation of the detenu and disposed of the same, which was communicated to the detenu/petitioners vide Wireless Message No. II/15028/128/2020-NSA dated 11.11.2020.

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- (6) It transpires from the grounds of detention that on 01.02.2020, a girl, who was B.Sc. III Year student of Mahaveer Degree College, Kathwara, Harchandpur, Raebareli, was called at Ram Naresh Hotel by the petitioners and other co-accused persons and after kidnapping her at Gangaganj was put in Maruti Omni and after putting anesthetic medicine in a handkerchief, snorted her and made her unconscious. Thereafter, her hands and feet were tied with a rope and in a state of unconsciousness, took her to eucalyptus orchard situated near Gopal Dhaba on the side of the road and burnt her alive by pouring petrol, on account of which she died. For this gruesome act of the petitioners, the area of the locality became frightened and anger spread among the people. The public order was disrupted on account of daylight brutal murder of the student. In this regard, the father of the deceased, namely, Sri Dilip Kumar Gupta, had lodged an F.I.R. on 02.02.2020, which was registered as case crime no. 17 of 2020, under Sections 302, 201, 323, 506 I.P.C., Police Station Harchandpur, District Raibareli. On account of the said incident, the public order was completely breached.
- (7) S.I. Anil Kumar Singh has conducted the investigation. After due investigation, the Investigating Officer has submitted the charge-sheet against the petitioners and four accused persons. In the said investigation, it was found that the petitioners and other co-accused persons had committed the said heinous offence. For the said act of the petitioners and co-accused persons, the public order

was disturbed and public was outraged due to murder of a young girl and parents of young daughter of the locality are adversely making statements against the Government and District Administration. As the petitioners had applied for bail before the Hon'ble High Court, there was possibility of release of the petitioners on bail and he would again indulge in such activities which were likely to adversely affect public order, therefore, his detention became necessary under the Act, 1980.

- (8) In the aforesaid circumstances, Station House Officer, P.S. Harchandpur, District Raibareli sent a report with relevant papers to Superintendent of Police, Raibareli for detaining the petitioners and other co-accused persons under Section 3 (2) of the Act, 1980. Thereupon, the Superintendent of Police, Raibareli, after considering the matter became satisfied with the report sent by Station House Officer and submitted his report to the District Magistrate, Raibareli for detaining the petitioners under Section 3 (2) of the Act, 1980 to prevent him from indulging in such activities causing disturbance of public order.
- (9) On the basis of material placed before him, as briefly referred to above, the Detaining Authority came to the conclusion that the activity of the petitioners are prejudicial to the maintenance of public order and his activities have disturbed the public tranquility, hence keeping in view his criminal record and activities, the Detaining Authority felt satisfied that there was

every likelihood that just after his release from jail, he will again indulge in such type of activities which will adversely affect the maintenance of public order and peace and, therefore, to prevent him from committing similar activities prejudicial to the maintenance of public order, it became necessary to detain him with immediate effect under Section 3 (2) of the Act, 1980. Thus, the Detaining Authority passed the impugned order dated 27.08.2020 for detaining the petitioners under Section 3 (2) of the Act, 1980. The Detaining Authority communicated the grounds of detention to the petitioners on 27.08.2020. On 05.09.2020, the petitioners sent his representation through Superintendent of Jail, District Raibareli to the Detaining Authority, which was rejected by the Detaining Authority on 08.09.2020 and another representation, which was sent by the petitioners, to the State Government was also rejected on 18.09.2020 and the Central Government has rejected the representation of the detenu on 11.11.2020. The aforesaid order of rejection has also been communicated to the petitioners.

- (10) The pleadings between the parties have been exchanged.
- (11) While challenging the impugned detention orders, learned Counsel for the petitioners has argued that the petitioners has no criminal history except the present alleged incident dated 01.02.2020. He argued that the Detaining Authority, vide impugned order of detention dated 27.08.2020, invoked the

provisions of Section 3 (2) of Act, 1981 and detained the petitioners/detenu in jail. He argued that the impugned order of detention has been passed by the Detaining Authority on the basis of circumstantial evidence and without considering the fact that no identification parade has been carried out despite the alleged eye-witnesses. He argued that the petitioners has falsely been implicated in the instant case. In these backdrops, the submission is that the Detaining Authority, while passing the impugned order dated 27.08.2020 under the Act of 1980, curtailed his personal liberty.

- (12) Per contra, learned Additional Government Advocate appearing on behalf of the State, while supporting the order of detention, have submitted that the activities of the petitioners were prejudicial to the maintenance of public order; his activities have disturbed the normalcy of the society; there was every possibility that just after his release from jail, he will again indulge in such activities, which will adversely affect the public order and peace, therefore, to prevent him from further committing similar criminal activities prejudicial to the maintenance of public order, the detention order was passed by the Detaining Authority after its subjective satisfaction.
- (13) Learned Additional Government Advocate has further argued that the activities of the petitioners were directed against the public at large and were sufficient to bring them within the ambit of public

order. The satisfaction of the Detaining Authority is based on reliable and relevant material and that there was no illegality in the impugned orders. He further argued that if the Detaining Authority arrives at the subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of public order and passes the detention order, it cannot be interfered by this Court. The grounds of detention were promptly communicated to the petitioners. He further argued that the petitioner is a man of criminal mentality. He also pointed out that the State Government, vide order dated 19.11.2020, had extended detention period for six months tentatively w.e.f. actual date of detention i.e. on 27.08.2020 and lastly on 28.05.2021, the detention order was extended for twelve months from the date of detention. The same was also communicated to the petitioners. He argued that till date no representation against the extension of detention order has been filed by the petitioners.

- (14) Having heard learned Counsel for the petitioners/detenu and learned AGA on behalf of the State, it transpires that the main question for consideration before this Court is whether the activities of the petitioners mentioned in the grounds of detention fall within realm of 'public order' or 'law and order'.
- (15) The distinction between the two concepts of "*public order*" and "*law and order*" has been lucidly explained by the Apex Court in **Ashok Kumar Vs. Delhi Administration** : AIR 1982 SC 1143,

wherein the Apex Court has observed that the true distinction between the areas of "*public order*" and "*law and order*", being fine and sometimes overlapping, does not lie in the nature or quality of the act but in the degree and extent of its reach upon society. The Apex Court has further observed that the act by itself is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it "*prejudicial to the maintenance of public order*". If the contravention in its effect is confined only to a few individuals directly involved, as distinct from a wide spectrum of public, it would raise the problem of "*law and order*" only. It is the length, magnitude and intensity of the terror wave unleashed by a particular act or violence creating disorder that distinguishes it as an act affecting "*public order*" from that concerning "*law and order*". On the facts of that case the Apex Court held that whenever there is an armed hold up by gangsters in a residential area of the city and persons are deprived of their belongings at the point of knife or revolver they become victims of organised crime and such acts when enumerated in the grounds of detention, clearly show that the activities of a detenu cover a wide field falling within the ambit of the concept of "*public order*".

- (16) The Apex Court, to the aforesaid effect, has made observations in *Victoria Fernandes Vs. Lalmal Sawma* : AIR 1992 SC 687, wherein, relying on its earlier decisions, including **Ashok Kumar Vs. Delhi Administration** (supra), it was reiterated that while the

expression "law and order" is wider in scope, in as much as contravention of law always affects order, "public order" has a narrower ambit and public order would be affected by only such contravention which affects the community and public at large.

- (17) The distinction between violation of '*law and order*' and an act that would constitute disturbing the maintenance of '*public order*' had also fallen for consideration of the Apex Court in **State of U.P. & Anr. Vs. Sanjay Pratap Gupta @ Pappu and others** : 2004 (8) SCC 591, wherein the Apex Court, after an extensive survey of authority on the issue brought out the distinction in fine detail, which reads as under :-

"12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

*13. The two concepts have well-defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State". (See *Kuso Sah v. State of Bihar* 1974 1 SCC 185, *Harpreet Kaur v. State of Maharashtra* 1992 2 SCC 177, [T.K Gopal Alias Gopi v.](#)*

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[State Of Karnataka](#) 2000 6 SCC 168 and *State of Maharashtra v. Mohd. Yakub* 1980 2 SC 1158).

14. *The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. It is not the number of acts that matters. What has to be seen is the effect of the act on the even tempo of life, the extent of its reach upon society and its impact."*

- (18) The issue has also been dealt with in the case of **Sant Singh vs. District Magistrate, Varanasi** : 2000 Cri LJ 2230, wherein in paragraph 7 of the report, while dealing with the point, the Apex Court has held as under :-

"7. The two connotations 'law and order' and 'public order' are not the words of magic but of reality which embrace within its ambit different situations, motives and impact of the particular criminal acts. As a matter of fact, in a long series of cases, these two expressions have come to be interpreted by the apex Court. It is not necessary to refer all those cases all over again in every decision for one simple reason that they have been quoted and discussed in earlier decision of this Court dated 14-10-1999 in Habeas Corpus Writ Petition No. 33888 of 1999- Udaiveer Singh v. State of U.P. and the decision dated 1-12-1999 in Habeas Corpus Writ Petition No. 38159 of 1999 Rajiv Vashistha v. State of U.P. (Reported in 1999 All Cri R 2777). The gamut of all the above decisions in short is that the true distinction between the areas of 'public order' and 'law and order' lies not in nature and quality of the act, but in the degree and extent of its reach upon society. Sometimes the distinction between the two concepts of 'law and order' and 'public order' is so fine that it overlaps. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore, touch the problem of 'law and order', while in another it might affect 'public order'. The act by itself, therefore, is not determination of its own gravity. It is the potentiality of the act to disturb the even tempo of the community which makes it prejudicial to the maintenance of 'public order'."

- (19) The scope of expression "*acting in any manner prejudicial to the maintenance of public order*" as appearing in Sub-Section 2 of

Section 3 of the Act, 1980 also came up for consideration of the Apex Court in **Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta**, (1995) 3 SCC 237; **Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat**, (1999) 5 SCC 613 and **Hasan Khan Ibne Haider Khan Vs. R.H. Mendonca**, (2000) 3 SCC 511. The Apex Court held that the fallout, the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with the person concerned or to prevent his subversive activities affecting the community at large or a large section of the society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activities amounts only to a breach of "law and order" or it amounts to a breach of "public order". In **Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat (supra)**, the Apex Court has held that the activities involving extortion, giving threat to public and assaulting businessmen near their place of work were sufficient to affect the even tempo of life of the society and in turn amounting to the disturbance of the "*public order*" and not mere disturbance of "*law and order*".

- (20) While dealing with the question as to whether one solitary instance can be the basis of an order of detention, the Apex Court in **Smt. Bimla Rani Vs. Union of India** : 1989 (26) ACC 589 SC, observed that the question is whether the incident had

prejudicially affected the 'public order'. In other words, whether it affected the even tempo of the life of the community. In **Alijan Mian v. District Magistrate Dhanbad**, 1983 (3) SCR 930 AIR 1983 SC 1130 it was held that even one incident may be sufficient to satisfy the detaining authority in this regard, depending upon the nature of the incident. Similar view has been expressed in the host of other decisions. The question was answered more appropriately and with all clarity in the case of **Attorney General of India v. Amratlal Prajivandas** : AIR 1994 SC 2179, wherein the Apex Court ruled that it is beyond dispute that the order of detention can be passed on the basis of a single act. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activities. It cannot be said as a principle that one single act cannot be constituted the basis for detention. Thus, the argument of learned counsel for the petitioners that since it is solitary incident of the petitioners, he deserves sympathy, is rejected. Now the law, as it stands, is that even one solitary incident may give rise to the disturbance of 'public order'. It is not the multiplicity but the fall out of various criminal acts. Though there is consistency in the various decisions of the apex Court about the interpretation of the expressions of 'law and order' and 'public order' undue insistence on the case law is not going to pay any dividend as each case revolves round its own peculiar facts and has to be viewed in the light of the various attending factors. It is difficult to find a case on all fours with the case in hand.

- (21) In the instant case, after examining the grounds of detention, briefly referred to above, on the touchstone of the legal position as emerging from the aforementioned decisions, we are of the view that the activities relied upon by the Detaining Authority to come to the aforementioned conclusion, cannot be said to be mere disturbance of "*law and order*". As noted in the grounds of detention, the activities of the petitioners and other co-accused persons pertain to engage into conspiracy to get a young girl murdered who being the B.Sc. III year student and so creating a menace in the society at large. It appears that the petitioners and other co-accused persons, not only made a young girl unconscious but also killed her in the orchard of eucalyptus and in order to destroy the evidence, they had also burnt her when she was unconscious. On account of this heinous crime, public order was disturbed and parents living in the area had stopped the children from going to school specially, the daughters were forbidden. The manner in which the incident took place and the petitioners are also the accused in the brutal murder of a young girl, goes to show that their activities were of such a nature which definitely disturb the tempo of the society and public tranquility. Thus, we are unable to hold that there was no material before the Detaining Authority to come to the conclusion, it did, to say that the activities of petitioners can be construed as activities prejudicial to the maintenance of "public order," within the meaning of Sub-Section (2) of Section 3 of the Act, 1981. We have, therefore, no

hesitation in holding that the instances of petitioners's activities, enumerated in the grounds of detention, clearly show that his activities cover a wide field and fall within the contours of the concept of "public order" and the Detaining Authority was justified in law in passing the impugned order of detention as its confirmation order against the petitioners.

- (22) So far as the plea of learned counsel for the petitioners that the impugned orders are vitiated because it has been passed with an apprehension that the accused might get bail and as a result of might jump bail to evade from criminal prosecution, we are of the view that there is no substance in the contention. The Detaining Authority has reason to believe, on the basis of material placed before him, that there is imminent possibility of his being released on bail and that on being so released, he would in all probability indulge in prejudicial activities and to prevent him from doing so, it is necessary to detain him. A detention order cannot be struck down on the ground that the proper course for the authority was to oppose the bail application and if bail is granted notwithstanding such opposition, to question it before a higher Court, as is sought and pleaded by learned counsel for the petitioners. In this regard, criteria was laid down by the Apex Court in the case of **Kamarunnissa and others vs. Union of India** : (1991) 1 SCC 128 also fortified in **Champion R. Sangma vs. State of Meghalaya** : (2015) 16 SCC 253, wherein the Apex Court was held :-

"13. In case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing."

- (23) It is not the case of the petitioners that the grounds of detention while extending the period of his detention has not been supplied to the petitioners or any particulars in regard to slapping detention order upon him has not been supplied to him.
- (24) However, needless to mention here that the grounds of detention were communicated to the petitioners along with the detention order dated 27.08.2020. It was further extended by the State which was communicated to the petitioners in due time.
- (25) Learned Counsel for the petitioners has failed to point out any infirmity on the part of the respondents in deciding the representation on any count and also failed to point out that detention order is vitiated. No other point has been raised by the learned Counsel for the petitioners.
- (26) For the reasons aforesaid, we do not find any illegality in the impugned orders, warranting our interference in extra ordinary jurisdiction under Article 226 of the Constitution of India.
- (27) The Habeas Corpus Writ Petitions lack merit and are, accordingly, **dismissed.**

(28) For the facts and circumstances of the case, there will be no order as to costs.

(Narendra Kumar Johari, J.) (Ramesh Sinha, J.)

Order Date :- 20.7.2021

ML/Ajit/-