

**Alla Mehar Vs. Rex**

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**SooperKanoon Citation :** [sooperkanoon.com/452233](http://sooperkanoon.com/452233)

**Court :** Allahabad

**Decided On :** Jun-30-1948

**Reported in :** 1949CriLJ69

**Judge :** Raghubar Dayal J.

**Appellant :** Alla Mehar

**Respondent :** Rex

**Judgement :**

ORDER

**Raghubar Dayal, J.**

1. Alla Mehar applied under 8, d9i, Criminal P. C, against his detention under the orders of the District Magistrate, Bulandshahr, under Section 3 (1)(a), U. P. Act IV [4] of 1917. That order was passed on 22nd February 1948 and was to continue for six months.

2. The counter-affidavit filed for the Crown States in para. 6:

That the detention of the applicant has been revoked under Section 4 of the aforesaid Act on 10th May 1948, and he has been ordered to enter into a personal bond of Rs. 2000 and two sureties in the same amount for not taking part in any communal activity likely to disturb the public peace under Section 3 (3) of the

aforesaid Act, and he remains in custody only because he has failed to furnish either the personal bond or the sureties required.

3. The subsequent order requiring the petitioner to enter into a personal bond is not before the Court. It cannot, therefore, be said as to who passed it, the Provincial Government or the District Magistrate. The District Magistrate has been delegated the power to pass orders under Section 3 (l) (f) of the aforesaid Act and in all probability it is he who passed this order on 10th May.

4. Once the detention order of 22nd February 1948 had been revoked, the further detention cannot be on its basis. We have, therefore, to see whether further detention of the petitioner after the 10th May is legal or not. I am of opinion that the detention on account of the petitioner's not furnishing the personal bond and sureties as required is not according to law.

5. Section 3 (1)(f) of the aforesaid Act provides that the Provincial Government, if satisfied with respect to any person in a certain manner, may make an order regulating his conduct in any such manner as may be specified in the order.

6. Section 3 (3) of the Act provides:

An order made under sub section (1) may require the person in respect of whom it is made to enter into a bond with or without sureties for the due performance or for the enforcement of such restriction or condition as may be specified in the order.

7. Section 3 (7) of the Act is:

If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to one year or with fines or with both, and if such person has entered into a bond in pursuance of the provisions of subs. (3), his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, unless he shows cause to the satisfaction of the convicting Court why such penalty should not be paid.

8. It would appear from the various provisions quoted above that the Provincial Government or any other authority making the order under Section 3 (1) (f) and

further requiring the person to furnish security has not been given any power to keep a person in detention if he does not furnish the necessary security. Sub-section (7) provides that if he contravenes the order, he may be convicted and sentenced and that besides Such conviction and sentence, his bond shall be forfeited in case the person concerned had entered into a bond. When there is no definite provision empowering the authority to keep a person in confinement on a failure to furnish the required bond, the detention on account of the failure of the person to furnish the bond must be held to be illegal.

9. The learned Government Advocate has, however, argued that the Provincial Government has the power under Section 3 (l) (c) to require any person, which can include the person against 'Whom orders have been issued under Section 3 (l) (f) of the Act, to reside or to remain in such place or within such area in the United Provinces as may be specified in the order, and if he is not already there, to proceed to that place or area within such time as may be specified in the order, and that therefore the Government could have ordered that in case of the petitioner's not Complying with the order of furnishing a bond, he should remain in jail, which is not excluded by the words 'place' or 'area' used in this sub-section. I do not agree. Section 3 (1) (c) does not contemplate the confinement or detention of the person. It contemplates his remaining at large with a restriction about his place of residence or the area in which he can move freely. Jail is not a place of residence. It is a place of confinement. Further the latter portion of the provisions of Section 3 (1) (c) indicates that the person so ordered is himself to proceed to the appointed place or area within the time specified in the order. One does not walk to the jail as a free person in compliance with any directions of whatever authority they may be. He is taken to the jail and put in there as a person in detention.

10. Even if by any stretch of imagination this provision of Section 3 (l) (o) can be said to apply to the case of requiring a person to remain in confinement till he furnishes a bond, in this particular case it is not even clear as to who had ordered and what were the terms of the order. This order under Section 3 (l) (c) can be passed by the Provincial Government and it does not appear that powers to act under this provision have been delegated to the District Magistrate under whose

orders in all probability the petitioner has been required to enter into a bond for not taking part in any communal activity likely to disturb the public peace .

11. In view of the above I consider the detention of the petitioner to be illegal and order that he be released from custody forthwith if not required to be detained under any other process of law.

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