

Asfaq Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/472748

Court : Allahabad

Decided On : Jan-31-1984

Reported in : 1984CriLJ999

Judge : H.N. Seth and ;I.P. Singh, JJ.

Appellant : Asfaq

Respondent : State of U.P. and ors.

Judgement :

H.N. Seth, J.

1. By this petition under Article 226 of the Constitution, petitioner Asfaq alias Bhoore questions the validity of his detention under Section 3, National Security Act, authorised by the District Magistrate, Meerut, vide order dated 3.9.1983.

2. In connection with an offence under Section 307, I.P.C., said to have been committed on 2.4.1983, petitioner Asfaq was arrested on 28.8.1983 and was remanded to jail custody. While he was still in jail custody, District Magistrate, Meerut passed an order for his detention under Section 3, National Security Act, on 3.9.1983. The said order as well as the grounds on which it was based were served upon the petitioner the same day. On 18.9.1983, the petitioner made a representation against his detention which was forwarded to the State Government. In due course the matter was placed before the Advisory Board and

the State Government, after considering the report of the Advisory Board and petitioner's representation, confirmed his detention, vide its order dated 25.10.1983. Aggrieved, the petitioner has now approached this Court for relief under Article 226 of the Constitution.

3. Learned Counsel for the petitioner submitted that petitioner's continued detention under the provisions of Section 3, National Security Act, stands vitiated inasmuch as the representation made by him on 18.9.1983 was not placed before the Advisory Board within three weeks of his detention (3.9.1983). In the counter-affidavit filed on behalf of the State, it is mentioned that petitioner's representation along with the comments of the Detaining Authority, dated 22.9.1983 was received by the State Government on 23.9.1983. It was placed before the Advisory Board on the same day i.e., on 23.9.1983. This averment made in the counter-affidavit was sworn on the basis of record. The record produced before us by the State Counsel on 8/9th.1.1984, however, merely indicated that on 23.9.1983 an order had been made that the representation should be placed before the Advisory Board immediately but then it did not indicate that the said representation had actually been forwarded to the State Government on that very day. Accordingly we directed the Government Advocate appearing for the respondents to obtain a certificate from the Advisory Board mentioning the date on which the representation dated 18.9.1983 was actually received by the Advisory Board. Learned Government Advocate had produced D.O. No. 8/1984, dated 13.1.1984 written by the Registrar of the High Court acting as Secretary to U.P. Advisory Board (Detentions), High Court Building at Lucknow addressed, to Joint Secretary, Confidential Department-6, Lucknow according to which the said representation had actually been received by the Advisory Board on 23.9.1983. We have no reason to doubt the correctness of fact stated in the D.O. dated 13.1.1984. It thus appears that petitioner's representation dated 18.9.1983 had been placed before the Advisory Board within 21 days of petitioner's representation. We are accordingly not satisfied that petitioner's continued detention stands vitiated on this account.

4. Learned Counsel for the petitioner then invited our attention to the fact that, the only ground on which the order for petitioner's detention was based mentioned that

on 2.4.1983 at about 11.45 A.M. petitioner along with his companion Saleem alias Kana was moving about in the crowded locality near Filmistan Cinema armed with illicit arms with a view to rob New Bank of India. As a result of prompt information and vigilance of police, Sub-Inspector A.S. Sirohi along with his companions reached the spot and foiled his scheme to disturb public order. Being annoyed, his companion Saleem alias Kana fired at the police party with a view to kill them. Members of police party took cover and saved their lives and the petitioner succeeded in running away by firing gunshots and creating terror in the public, towards Bachcha Park. As a result of this incident, lot of confusion was created amongst the shop keepers and residents of the densely populated area. A terror was created and shops, started closing. Pedestrians also started running away with a view to save their lives. After a lot of effort, Saleem alias Kana was arrested along with the country-made pistol. Empty cartridge from that pistol and live cartridges were also recovered from his possession. After running away from the place of the incident, the petitioner absconded and remained outside Meerut When he came to Meerut on 28.8.1983, he was arrested as he was required in connection with the aforementioned case and there was apprehension of disturbance of public order on his part.

5. According to the learned Counsel, the incident mentioned in the grounds for detention of the petitioner merely related to law and order problem. It has no nexus with the disturbance of public order. He, therefore, contended that the District Magistrate was not justified in concluding on the basis of said incident that the petitioner was likely to indulge into an activity which could affect public order and the order for petitioner's detention, therefore, stands vitiated. We are unable to accept this submission. No doubt there is a difference between law and order and public order. An activity which adversely affects even tempo of public life certainly has, apart from law and order, a nexus with public order as well. In the instant case, the recitals made in the grounds for petitioner's detention clearly aver that as a result of petitioner's activity, even tempo of public life was disturbed. Accordingly it cannot be said that the activity mentioned in the grounds of petitioner's detention did not have any nexus with public order. On the material contained in the grounds, the District Magistrate could come to the conclusion that petitioner was likely to act in a manner that was prejudicial to maintenance of public order and

the impugned detention order does not stand vitiated on this account.

6. Learned Counsel for the petitioner invited our attention to the order passed by the State Government under Section 12(1), National Security Act, confirming petitioner's detention which mentioned that the State Government was proceeding to confirm the order for petitioner's detention and directing that he be detained for a period of 12 months with effect from 3.9.1983 after considering the report submitted by the Advisory Board (Annexure 'VII' to the writ petition) and contended that the order of confirmation for petitioner's detention is based solely upon the report of the Advisory Board and without taking into account the representation made by the petitioner. This, according to the learned Counsel, renders petitioner's continued detention illegal. Counter-affidavit sworn by Nem Chandra Sharma, Section Officer in the Confidential section of the U.P. Secretariat, Lucknow shows that the case of the petitioner had been referred to the Advisory Board on 13.9.1983. The representation of the petitioner, dated 18.9.1983 was received in the Secretariat on 22.9.1983 and it was placed before the Advisory Board on 23.9.1983. However, the representation of the petitioner was examined by the office in the Secretariat on 24.9.1983 and was rejected by the Chief Minister on 28.9.1983. In due course, intimation of rejection of the said representation was sent to the District Magistrate and the Supdt. Jail concerned on 28.9.1983. Eventually the report of the Advisory Board was received by the Government on 21.10.1983 and the order regarding confirmation of petitioner's detention was issued on 27.10.1983. It thus appears that the State Government had already considered the petitioner's representation and rejected the same before the report from the Advisory Board was received by it on 21.10.1983. It was in these circumstances that the State Government while confirming the order of petitioner's detention on 27.10.1983 did not advert to petitioner's representation dated 18.9.1983. In view of clear averment made in the counter-affidavit that petitioner's representation had been considered and rejected by the State Government, it cannot be said that the State Government did not, while confirming petitioner's detention, take into consideration the representation made by him. In our opinion, once, the State Government had rejected petitioner's representation it was not obliged to reconsider the same after receipt of the report of the Advisory Board. It may be that if the Advisory Board's report had contained some material facts the

State Government may, notwithstanding that it had already rejected petitioner's representation, not have confirmed the detention order of the petitioner, but then in the circumstances of this case, it cannot be said that merely because the State Government did not advert to petitioner's representation in its order dated 27.10.1983, it either did not consider the same or that it did not apply its independent mind to the question before it.

7. Learned Counsel then submitted that apart from the representation dated 18.9.1983 made by the petitioner, his father also had made another representation on 17.10.1983. A copy of the representation made by petitioner's father has been filed as Annexure 'VI' to the writ petition. According to the petitioner, the representation made by the father was never considered by the State Government and this omission on the part of the State Government renders his continued detention invalid. In the case of *Awadh Kumar Shukla v. Adhikshak, Kendriya Karagar, Naini, Allahabad* 1983 All LJ 545, a Division Bench of this Court has, after noticing the scheme underlying the National Security Act, 1980 observed that the provisions contained therein do not carry any such implication that the Central or the State Government, as the case may be, is bound to take into consideration the representation made by any person other than the detenu and to dispose of the same expeditiously. Reading of any such implication in the section is likely to make the task of the Government difficult and it may be flooded with all types of representations made by so many unconnected persons and the detenu would get an advantage even if there is some delay on the part of the Government in considering any of such representations. It was, however, clarified that for the purposes of the Act a representation can be said to have been made by a detenu not only when he makes the same personally but also when somebody makes it under his instructions and on his behalf. In the instant case, there is nothing in the representation made by petitioner's father to show that the said representation had been made by him either under instructions from the petitioner or on his behalf. In the circumstances, petitioner's continued detention does not get vitiated merely because the State Government has not proceeded to dispose of the said representation expeditiously.

8. In the end, learned Counsel for the petitioner contended that petitioner's detention stands vitiated inasmuch as there was no material before the District Magistrate in support of the grounds for his detention or if there was any such material, the same was not supplied to him so as to enable him to make an effective representation. The grounds on which the petitioner had been directed to be detained indicate that requisite satisfaction of the District Magistrate was founded on following facts:

(i) That the petitioner was involved in an incident of 2.4.1983 when he along with Saleem alias Kana armed with a country-made pistol was moving about in a crowded locality with a view to loot New Bank of India.

(ii) When on receiving the information the police party reached the place of the incident, the petitioner along with Kana tried to escape from the place after firing gun shots at the police party and while Kana was arrested, the petitioner succeeded in making good his escape.

(iii) The petitioner absconded and remained away from Meerut and the apprehension that he was likely to act in a manner prejudicial to maintenance of public order revived as soon as he returned to Meerut on 28.8.1983.

9. It is significant to note that while serving the ground on which the order for petitioner's detention was based, a copy of the report dated 29.8.1983 (Annexure II to the writ petition) submitted by the Station Officer, Kotwali to the District Magistrate (listing various criminal activities of the petitioner) for taking action against the petitioner under the provisions of National Security Act, was also supplied to him.

10. A perusal of the said report shows that after referring to the incident, dated 2.4.1983, the Station Officer went on to say that as a result of the said incident public order was disturbed. The petitioner was arrested and sent to jail in that connection on 28.8.1983 and that there was every likelihood that he may be released on bail. It is not the case of the respondents, that any material other than that contained in the report submitted by the Station Officer (Annexure 'II' to the writ petition) was taken into consideration by the District Magistrate. The report

nowhere indicates that the petitioner had, after 2.4.1983, absconded and remained away from Meerut or that he was arrested on 28.8.1983 as soon as he returned to Meerut.

XI. In para '13' of the petition, the petitioner very clearly stated that he was in connection with various cases of Police Station, Kotwali, present before various Criminal Courts in Meerut on 11.7.1983, 21.7.1983, 30.7.1983, 8.8.1983, 12.8.1983 and 29.8.1983 and that it was absolutely wrong to state that he was absconding and had gone out of Meerut. This averment made in the petition, has not been controverted in any of the counter-affidavits filed on behalf of the respondents. It thus appears that the District Magistrate while passing the order for petitioner's detention had somehow formed an opinion that petitioner had, immediately after the incident of 2.4.1983, run away from Meerut and had appeared on the scene only on 28.8.1983 when he was arrested by the police in connection with that incident. Clearly this impression of the District Magistrate was not supported by any material before him. In the circumstances of this case, the fact that after the incident of 2.4.1983 the petitioner remained in Meerut and had been attending various Criminal cases to the knowledge of police of Police Station, Kotwali and that during a period of about five months thereafter he did not indulge in any prejudicial activity was a material and relevant fact which ought to have been considered by the District Magistrate before coming to the conclusion that it was necessary to direct petitioner's detention. It is difficult to visualise what orders the District Magistrate would have made had he been made aware of the fact that soon after the incident, the petitioner did not run away from Meerut and that he had continued to reside there for a period of about five months without indulging in any activity prejudicial to maintenance of public order. It, therefore, follows that subjective satisfaction of the District Magistrate that the petitioner was likely to indulge in some activity prejudicial to maintenance of public order was reached under misapprehension of facts and was based on material which in fact did not exist. The order for petitioner's detention stands vitiated accordingly.

12. In the result, the petition succeeds and is allowed. The respondents were directed not to keep the petitioner under detention in pursuance of the order under Section 3, National Security Act, dated 3.9.1983 passed by the District Magistrate,

Meerut, as confirmed by the State Government, vide its order dated 27.10.1983 and to release him from custody forthwith unless his detention is otherwise required in connection with some other case.

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