

Jiwan Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-17-1998

Reported in : 1998(4)AWC146; 1999CriLJ1889

Judge : D.P. Mohapatra, C.J. and ;R.R.K. Trivedi, J.

Acts : [National Security Act, 1980](#) - Sections 3(2) and (4), 5A, 11(1) and 14 and 14(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302 and 506; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 161

Appeal No. : Habeas Corpus Writ Petition Nos. 8552, 10212 and 17024 of 1998

Appellant : Jiwan Singh

Respondent : State of U.P. and Others

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Jagdish Singh Sengar, Adv.

Judgement :

D.P. Mohapatra, C.J.

1. In these three writ petitions, the petitioners have prayed for quashing the orders passed by the District Magistrate. Kaushambi, directing their detention under Section 3. sub-section (2) of the [National Security Act, 1980](#) (for short the 'Act') on the purported satisfaction of the authority that the detention was necessary to

prevent the detenu from indulging in activities prejudicial to the maintenance of public order. The incidents referred to and the facts narrated in the detention order passed against the petitioners are similar. The main incident of 30th November, 1997, on the basis of which the detention orders were passed, is common. The questions of fact and contentions of law raised on behalf of the petitioners are also similar except in the case of Shyam Narain Karwaria, petitioner of Habeas Corpus Writ Petition No. 10212 of 1998, who has raised an additional point that the detention order is Invalid since it has been passed on the same set of facts after a previous order of detention passed against him was not approved by the State Government under Section 3(4) of the Act. In view of the similarity in the cases, it was agreed by learned counsel for the parties that they should be taken up together. Accordingly, we heard the three cases together and they are being disposed of by the common judgment. Writ Petition No. 8552 of 1998 is taken as the leading case.

Writ Petition No. 8552 of 1998.

2. On 31.12.1997, when the petitioner Jiwan Singh was in Central Jail. Naini, Allahabad in Case Crime No. 62 of 1997 under Section 302/201. I.P.C. of P.S. Mohabbatpur Painsa district Kaushambi, he was served with the detention order dated 31.12.1997 along with the grounds of detention and documents annexed to it. In the grounds of detention it was stated, inter alia, that on 30th November, 1997 at about 1.30 p.m. when Sri Shiv Singh, resident of Udhin Khurd was having a conversation with Moga Past near the betel shop of Lalloo Sonkar on Dhata Sirathu road in village Mogri Katra P. S. Mohabbatpur Painsa the detenu along with his companions came there in a Tata Sumo vehicle from the side of Dhata ; they surrounded Shlv Singh and fired at him from weapons held by them as a result of which he sustained serious injuries and fell down. The detenu and his companions took away the injured in the vehicle. It is also stated in the grounds of detention that due to the above incident an atmosphere of terror prevailed in the locality. Nobody tried to intervene nor gave a chase to the assailants of Shlv Singh. A sense of insecurity gripped the general public. People remained inside their houses out of fear. Confusion was created amongst the passers-by on the road. In this manner the even tempo of life in the locality was disturbed and public

order was breached. The incident was registered as Case Crime No. 62 of 1997 under Section 302/201. I.P.C. of P. S. Mohabbatpur Painsa district Kaushambi. Subsequently on 1.12.1997 at about 4.45 p.m. the body of deceased Shiv Singh was recovered from Mahrajpur Nala situate within village Arki, P. S. Rajapur, district Chatrapati Sahuji Maharaj. It is further stated in the grounds of detention that Raj Kumar, the brother of the deceased and other witnesses to the occurrence are being regularly threatened by the detenu and his companions asking them to file affidavits in Court in favour of the accused failing which they will be killed. A report to this effect has been lodged at P. S. Mohabbatpur Painsa as Case Crime No. 86 of 1997 under Section 506, I.P.C. It is further stated in the grounds of detention that at present, the detenu is detained at the Central Jail Naini. Allahabad after appearing in Court on 17.12.1997 and efforts are on by his pairokars to get him released on bail. There is every likelihood that after being released on bail the detenu will again indulge in such criminal activities which will affect public order.

3. On the basis of the facts noted above, the District Magistrate, Kaushambi. as stated in the grounds of detention, was satisfied that there is possibility of the detenu indulging in activities prejudicial to maintenance of public order and it is necessary to detain him with a view to prevent him from carrying on such activities.

4. In the grounds of detention, the detenu was informed that if he wishes to make a representation to the State Government against the order of detention then he should address it to the Home Secretary to the State Government and present it at the earliest through the Superintendent of Jail. The detenu was also informed that the matter will be referred under Section 10 of the Act to the Advisory Board within three weeks from the date of detention and his representation, if received late, will not be considered by the Advisory Board. The detenu was further informed that if He wishes to make a representation to the President of India or to the Central Government, then he may send it at the earliest to the Secretary. Government of India. Ministry of Home Affairs, Department of Internal Security, North Block. New Delhi through the Superintendent of Jail. The detenu was also informed in the grounds of detention that if he desires to have personal hearing before the

Advisory Board under sub-section (1) of Section 11 of the Act then he should mention that fact specifically in the representation or inform the State Government through the Superintendent Jail.

5. The documents in support of the detention order, including the first information report in the criminal cases noted in the grounds of detention, statements of witnesses recorded under Section 161, Cr. P.C. and other documents were annexed to the grounds of detention.

6. The detention order was approved by the State Government by order dated 7.1.1998. The Advisory Board heard the detenu on 6.2.1998 and submitted its report holding that the detention was justified on 13.2.1998. On receipt of the report on 13.2.1998. the State Government passed the order on 21.2.1998 confirming the order of detention with a direction that the detenu shall remain in jail for twelve months from the date of detention. The representations dated 12.1.1998 and 22.1.1998 submitted by the detenu to the State Government were rejected by the State Government by order dated 9.2.1998. Similarly, the representation submitted by the detenu on 12.1.1998 to the Central Government and received in the Ministry on 10.2.1998 was rejected by order dated 23.4.1998. The writ petition challenging the detention order was filed on 5.3.1998.

7. The main contention raised by Sri Jagdish Singh Sengar, learned counsel for the petitioner, is that from the averments made in the grounds of detention and the documents annexed to it. It is manifest that the incident at best can be said to be affecting law and order and cannot be said to affect public order. Elucidating his contention Sri Sengar submitted that the incident referred to in the grounds of detention merely shows a criminal act on the part of the detenu and his companions motive for which was long standing enmity between the two factions. In support of his contention Sri Sengar referred to the statement contained in the F.I.R. (Annexure-7 to the writ petition) which reads :

^esjs ifjokj ls o ekSyk ds chpiqjkuh jaft'k pyh vk jgh Fkh] blh ds dkj.k ekSyk o muds lkFkh esjs HkkbZ f'kofalag dks xksyh ls ekjdj yk'k dks VkVk lkseks esa ysdj Hkkx x;s gSa A

Sri Sengar also pointed out that the F.I.R. does not show that the even tempo of life in the locality or elsewhere was affected due to the incident. According to Sri Sengar even believing the case of the informant that murder of Shiv Singh was committed by the detenu and his companions in a gruesome and cruel manner and they tried to destroy the evidence by removing the dead body from the site of occurrence, such a case, can very well be tackled under the criminal law of the land and indeed a criminal case has been registered and investigation of the matter has been taken up. Sri Sengar also pointed out from the record that the detenu surrendered in Court and was remanded to judicial custody. As noted earlier, while he was in jail the order of detention was passed and served on him. In this connection it was further contended by Sri Sengar that the general diary report No. 19 of P. S. Dhata relating to the incident in question was made at 2.10 p.m. on 30th November, 1997 by one Purshottam Singh, son of Chandra Bhan Singh. In the said report, the assailants were not named. The said report reads as under :

^jiV ua- 19 le; 14&10 cts

fnukad 30-11-97 Fkkuk /kkrk

iq:'kksre flag oYn pUnzHkkuflag lkfdu mnfgu [kqnZ Fkkuk eksgCcriqj iblk us crk;k fd dVjk pkSjkgk ij f'koflag dks VkVk lkseks ij cSBs cnek'kksa us xksyh ekjh gS vkSj mls mBk ys x;s gSaA bl ij ,l- vks- bUlisDVj flag us Mh- lh- vkj-dks rqjUr voxr djf fn;k gS A**

Four hours later at about 6.10 p.m. on the same day, an F.I.R. was lodged in P. S. Mohabbatpur Painsa by Raj Kumar, brother of the deceased, in which the detenu and his companions were named. According to Sri Sengar the F.I.R, does not give a true version of the incident and it appears that the detenu and his companions have been falsely implicated due to past enmity between the two factions. The further submission of Sri Sengar was that neither the aforementioned general diary report was placed before the detaining authority nor was that fact noted by him nor was he aware of the fact while passing the order of detention. In this regard Sri Sengar further submitted that Moga Pasi, the person with whom the deceased Shiv Singh was having conversation at the time of incident filed an affidavit on

24.12.1997 disclaiming any knowledge about the incident, but the same was also not placed before the detaining authority. According to Sri Sengar this was a very relevant and vital piece of document non-consideration of which has vitiated the order of detention.

8. The learned Additional Government Advocate, refuting the contention raised by Sri Sengar, submitted that from the averments and statements made in the grounds of detention it is amply clear that the ghastly incident in which a person was gunned down and killed at the spot happened in broad daylight at a public place which disturbed the even tempo of life in the locality. Keeping in view the serious nature of the incident, the manner in which the criminal act was committed and the place at which the incident took place, it is clear that the incident had such potential and reach which could affect the public at large. The position is further reinforced by the general diary reports recorded on 8.12.1997 (Annexure-15), 11.12.1997 (Annexure-16), 11.12.1997 (Annexure-17) and 12.12.1997 (Annexure-18). wherein it has been clearly stated that the detenu and his companions are constantly pressurising and threatening the witnesses asking them to file affidavits in Court supporting the accused persons failing which they will be killed. In the circumstances, submitted the learned Additional Government Advocate, the incident relates to one of disturbance of public order and not merely law and order.

9. Regarding other contentions raised by Sri Sengar, the learned Additional Government Advocate, submitted that neither the affidavit filed by Moga Pasi nor the general diary report of police station Dhata are relevant materials and, therefore, non-consideration of the same by the detaining authority does not affect the validity of the detention order.

10. In support of his contention, he placed reliance on the case of Smt K. Aruna Kumari v. Government of Andhra Pradesh and others, 1988 (Cri) 116 ; Abdul Sathar Ibrahim Manik v. Union of India and others, AIR 1991 SC 2661 : Kamarunissa v. Union of India and others. AIR 1991 SC 1640 and District Magistrate and another v. G Jathishankar, AIR 1993 SC 2133.

11. We have carefully considered the contentions raised by Sri Sengar and the learned Additional Government Advocate. It is our considered view that the

contention of Sri Sengar that on the materials available on record the incident alleged to have taken place on 30th November, 1997 in the manner as appears from the F.I.R. and other documents annexed to 'the grounds of detention, may make out a case of breach of law and order and not one of public order has ample substance. It is stated in the F.I.R. itself that the incident happened due to the past enmity between the families of the two parties. Regarding the manner in which the incident is alleged to have taken place, it appears from the record that 4 or 5 persons, who came to the spot in a vehicle, surrounded Shiv Singh and fired at him ; when he fell down, they put the body in the vehicle and left the spot. Such an incident can reasonably be said to have disturbed law and order at the place but does not have the potential and reach to affect the even tempo of life of the community and the public at large. Further, our attention is not drawn to any material on record to show that the place of incident was a crowded public place where large number of persons gather in connection with their work or that a large number of persons had in fact gathered at the place when the incident took place. As noted earlier, the incident took place in front of a betel shop where the deceased was having a chat with two persons. We are conscious of the position that even a single incident taking place at a crowded public place may, in the facts and circumstances, affect public order but in our considered view, the facts of the case in hand do not make out such a case. Considering the statement contained in the grounds of detention that the detenu and his companions were threatening the witnesses about which reports were lodged at P. S. Mohabbatpur Painsa from time to time, in our view the same is not sufficient to take out the case from the category of law and order to one of public order. It is relevant to note here that during the period in question, the detenu was already in jail on being remanded by the Court to judicial custody. Even if these allegations are believed, it only amounts to threat being given to witnesses who are either members of the family of the informant or witnesses of the occurrence likely to depose in favour of the prosecution. Such threats do not in any way concern public order. It follows, therefore, that the detaining authority committed error in Invoking the provisions of the Act to deal with the case of law and order. The order of detention is liable to be quashed on this ground.

12. In view of the findings recorded above, there is no necessity to consider the question whether omission to consider the affidavit of Moga Pasi and the general diary report No. 19 of police station Dhata would vitiate the order of detention.

Writ Petition No. 10212 of 1998

13. In the case, the petitioner Shyam Narain Karwarla alias Mauia Maharaj was served with the order of detention dated 24.2.1998 (Annexure-2) along with the grounds of detention and the documents annexed to it on the same day in Central Jail, Naini, Allahabad. The contentions raised in the case of Jiwan Singh, discussed in the preceding paragraphs, were also raised by the counsel for both the parties in this case. In addition. Sri Sengar, learned counsel for the petitioner, raised two contentions :

1. That on the same set of facts previously the order of detention passed on 7.2.1998 against the petitioner was not approved by the State Government and, therefore, withdrawn by the order dated 23.2.1998 of the District Magistrate, Kaushambi (Annexure-1). According to Sri Sengar without any fresh materials the subsequent order of detention (Annexure-2) could not be passed on the very next day, that is, on 24.2.1998. Sri Sengar submitted that withdrawal of the previous detention order for want of approval of the State Government was neither brought to the notice of the detaining authority nor was a copy of the said order placed before him as appears from the documents served on the detenu. This omission vitiates the order of detention.

2. The other contention raised by Sri Sengar was that the incidents other than that of 30.11.1997 are stale inasmuch as they took place in 1990, 1993. 1995 and 1996 and. therefore, Irrelevant.

14. Replying to the contentions of Sri Sengar. the Additional Government Advocate drew our attention to the averments made in paragraph 3 of the counter-affidavit filed by Sri R. S. Agarwa!, Joint Secretary, Home and Confidential Department, Government of Uttar Pradesh, in which it is clearly averred that the District Magistrate. 'Kaushambi passed the detention order against the petitioner on 7.2.1998 which was not approved by the State Government as it was received

from District Magistrate. Kaushambi along with the grounds of detention and other papers by the State Government on 23.2.1998 after 12 days from the date of detention order. He contended that as provided in Section 3. sub-section (4) no order of detention shall remain in force for more than 12 days after the making thereof, unless, in the meantime, it has been approved by the State Government. Therefore, the detention order had lost its force by the date of its receipt by the State Government and the question of approving such an order did not arise. The Additional Government Advocate further submitted that in Section 14(2) of the Act, a provision has been made that the expiry or revocation of a detention order shall not bar the making of another detention order under Section 3 against the same person. In the proviso to the said section. It is laid down that in a case where no fresh, facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order. According to the learned Additional Government Advocate, in view of the clear provisions of the Act, it cannot be said that the detaining authority has committed any error in passing the second order of detention on the same grounds even without any fresh material. The Additional Government Advocate pointed out that in the confirmation order passed by the State Government on 1.4.1998 it is clearly stated that the period of twelve months will commence from 8.2.1998, that is. the date on which the previous detention order was served on the detenu.

15. Regarding the contention of Sri Sengar that the order of detention is vitiated having been based on stale incidents referred to in the grounds of detention, the contention of the Additional Government Advocate was that the incidents have been narrated in the grounds of detention in order to show the repetitive tendency on the part of the detenu to indulge in such activities and these incidents do not form the basis for the detention order. In this connection, he referred to paragraph 8 of the counter-affidavit of Sri Ram Sahai Lal Srivastava, the then District Magistrate, Kaushambi. which reads as under :-

'That in reply to the contents of paras 7 to 12 of the petition, it is respectfully submitted that the detention order was passed after considering the effect and impact of the incident dated 30.11.1997 regarding which an F.I.R. was registered as Case Crime No. 62 of 1997 at the concerned police station. It is wrong to say that the detention order was passed on stale, irrelevant and non-existent grounds. All the relevant materials were placed before the deponent, considered by the deponent and on which basis the detention order was passed and all those materials were served upon the petitioner along with the grounds of detention, detention order and other relevant documents.'

We have carefully considered the two contentions raised by Sri Sengar. We are not persuaded to accept any of the contentions. The previous order of detention passed on 7.2.1998 ceased to have effect after expiry of twelve days. In the absence of an order of approval, by operation of law as laid down in sub-section (4) of Section 3 of the Act. Therefore, the question of the State Government approving or disapproving the detention order received by it on 23.2.1998 did not arise. Indeed, it was not necessary for the detaining authority to withdraw the order of detention which had lost its life by efflux of time as provided in law. The clear and specific provision in Section 14 of the Act, which enables the detaining authority to pass an order of detention subsequently even without any fresh material subject to the limitation as laid down in the proviso makes the position totally clear.

16. The contention of Sri Sengar relating to stale grounds is also without substance. As noted earlier, the detaining authority has. In his affidavit, made it clear that all the relevant materials were placed before him and he considered the same but he passed the detention order on the basis of the incident dated 30.11.1997. Even assuming that the other incidents stated in the grounds of detention, which had taken place in the years 1990. 1993. 1995 and 1996. had influenced the detaining authority in arriving at the subjective satisfaction, the provisions of Section 5A of the Act make it clear that the order of detention cannot be held to be vitiated on that ground. The said provision of the Act mandates that the detention order is to be deemed to have been made separately on each of such grounds. In other words, as many detention orders as the grounds must be

deemed to have been passed. Therefore, even if it is held that some of the grounds stated in the order were stale or Irrelevant, the order in its entirety cannot be said to be invalid on that ground.

Writ Petition No. 17024 of 1998

17. In this case, the petitioner Lakhpatt Singh, was detained in Central Jail. Naini, Allahabad in Case Crime No. 62 of 1997 under Section 302/201. I.P.C. of police station Mohabbatpur Painsa, district Kaushambi when the detention order dated 6.3.1998 was served on him. The contentions raised by the learned counsel for parties are same as in the previous two writ petitions which have been discussed in detail in the foregoing paragraphs. No new contention was raised in this case.

18. On the analysis made and the reasons stated in the foregoing paragraphs, the orders of detention passed against the petitioners on 1.12.1997, 24.2.1998 and 6.3.1998 are quashed and the respondents are directed to release the petitioners forthwith if their detention in jail is not required in any other case.

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