

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

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Court : Allahabad

Decided On : May-09-2000

Reported in : 2001CriLJ309

Judge : R.R.K. Trivedi and U.S. Tripathi, JJ.

Acts : [National Security Act, 1980](#) - Sections 3(2), 3(4), 3(5), 8 and 12(1); Indian Penal Code (IPC) - Sections 395 and 397; [Constitution of India](#) - Article 226

Appeal No. : Habeas Corpus W.P. No. 54333 of 1999

Appellant : Saud

Respondent : State of U.P. and ors.

Advocate for Def. : A.K. Tripathi, ;S.M. Mishra, Advs. and A.G.A.

Advocate for Pet/Ap. : I.M. Khan, Adv.

Disposition : Petition dismissed

Judgement :

R.R.K. Trivedi, J.

1. This writ petition has been filed challenging order dated 25th June, 1999, passed by respondent No. 2 District Magistrate, Aligarh under Section 3(2) of the [National Security Act, 1980](#), hereinafter referred to as 'Act', under which petitioner

has been detained.

2. Along with impugned order of detention, petitioner was served the grounds on which basis detaining authority formed his subjective satisfaction for detaining petitioner under the Act. The allegations contained in the grounds against petitioner are that on 18-5-1999 at 1.25 P.M. he participated in dacoity in which 4 lakhs rupees of Palasallu branch of State Bank of India were looted, while it was being loaded on Jeep No. W.R.A. 2217, for being deposited in the main branch of the State Bank of India. In this incident, security guard of the bank and one Netra Pal Singh, another employee of the bank were injured and S.B.B.L. gun of the guard was also looted. It is stated that petitioner along with his 6, 7 companions armed with firearms, attacked the employees of the bank and after causing injuries, snatched the box containing cash and made their escape good on four motorcycles displaying the firearms. In respect of this incident, a first information report was lodged which was registered as Case Crime No. 136 of 1999, under Section 395/397 I.P.C. at Police Station Gabhhana, district Aligarh. It is also stated that on account of this incident, the bank employees, customers and the people in general were put under intense fear and terror. The bank employees and its customers persons present in nearby DHABAS (roadside hotel), out of fear ran helter-skelter and public order in the area was totally disturbed. On account of this broad day light incident of looting of the cash of the bank, after injuring the employees, the residents of the city at Aligarh also developed a feeling of insecurity. After serious efforts made by the police, petitioner was arrested on 1st June, 1999 with a country made pistol. On interrogation, he confessed his involvement in the aforesaid case of bank dacoity. At the pointing out of the petitioner, 20,000/- rupees belonging to the bank were also recovered.

3. In the ground, it has been further alleged that the petitioner is confined in District jail, Aligarh in connection with the aforesaid case. He has filed bail application and possibility of his being released on bail cannot be ruled out. It has been further stated that if petitioner is released on bail, he shall again indulge in similar activities, which shall be prejudicial to the maintenance of public order and in order to prevent petitioner from acting in any manner prejudicial to the maintenance of the public order, it is necessary to make an order that he be detained.

4. Petitioner was also informed that he has right under Section 8 of the Act to make representation to the State Government, Advisory Board and the Central Government against his detention. The representations may be submitted by petitioner through the Superintendent of the District Jail where he is confined. Petitioner was also informed that he has right of personal hearing before the Advisory Board and if he desires so, this fact may also be communicated within three weeks through jail authorities.

5. The order of detention was approved by the State Government on 1st July, 1999 under Section 3(4) of the Act. The order of detention together with the ground and all other connected papers received from the detaining authority were forwarded to the Central Government on 3rd July, 1999 under Section 3(5) of the Act. The papers were received by the Central Government on 9th. July, 1999.

6. The case of petitioner was referred to Advisory Board on 3-7-1999. His representation was also placed before the Advisory Board. On 2-8-1999, petitioner personally appeared before and was heard by the Advisory Board. Advisory Board considered the matter and gave its opinion on 7-8-1999, that there was sufficient cause for detention of petitioner. The State Government thereafter re-examined the entire matter and confirmed the order of detention under Section 12(1) of the Act for 12 months vide order dated 20-8-1999.

7. Petitioner submitted his representations against the order of detention on 13th July, 1999 which was forwarded by the detaining authority along with his comments on 14th July, 1999 which was received by the State Government on 15th July, 1999. The representation was taken for consideration on 17th July, 1999 by the Under Secretary. It was then placed before the Joint Secretary on the same day, who with his comments placed it before the higher authorities of the State Government. The representation was considered and rejected on 21st July, 1999, which was communicated to the petitioner on 24th July, 1999.

8. The representation of the petitioner dated 13th July, 1999 was received by the Central Government on 19th July, 1999 through District Magistrate, Aligarh vide letter dated 14th July, 1999. The representation was considered and rejected on 20th July, 1999 by the Home Secretary.

9. Counter affidavits have been filed by R.S. Agarwal, Joint Secretary, Home and Confidential Department on behalf of State of U.P., by Kishan Singh Aauria, the then District Magistrate, Aligarh as respondent No. 2. Prem Sagar Shukla, Deputy Jailor, Aligarh on behalf of respondent No. 3. Shri Sushil Kumar, Under Secretary, Ministry of Home Affairs, Government of India has filed counter affidavit on behalf of respondent No. 4 Union of India.

10. We have heard Sri Samir Jain holding brief of Sri I.M. Khan, learned counsel for petitioner, Sri A.K. Tripathi, learned A.G.A. for respondents No. 1 to 3 and Sri S.M. Mishra, learned counsel appearing for respondent No. 4.

11. Learned counsel for petitioner has submitted that the petitioner was not named in First Information Report and only on basis of the alleged recovery of the amount of 20,000/- the order of detention is not justified, learned counsel has submitted that marriage of the petitioner was solemnised on 24th May, 1999. The amount of Rs. 1,20,000/- was withdrawn by his father from the bank to meet the expenses of his marriage and the amount of Rs. 20,000/- allegedly recovered was raised and had no connection with the property looted in the incident of 18th May, 1999. Learned counsel for the petitioner placed before us the copy of the bank account and the marriage card annexed with the writ petition. Learned counsel has further submitted that the order of detention on basis of the solitary incident is not justified. The incident at the most related to the disturbance of the law and order and had no potential to disturb the public order and even tempo of life of the society. Learned counsel has further submitted that in the grounds involvement of the petitioner in several other criminal activities has also been alleged, however no details have been given. Learned counsel has also submitted that continued detention of the petitioner has been rendered illegal as there is no explanation as to why the representation of the petitioner could not be considered and decided on 18, 19, and 20th July, 1999. learned counsel has placed reliance on the following judgments of Hon'ble Supreme Court in support of his submissions:-

Rajmal v. State of Tamil Nadu 1998 (8) JT, SC 598 1999 AIR SCW 139. Harish Pahwa v. State of U.P. AIR 1981 SC 1126, 1981 SCC (Cri) 589 and Ahmad Nassar v. State of Tamil Nadu, 1999 (8) JT SC 252 : AIR 1999 SC 3897.

12. Learned A.G.A., on the other hand, submitted that the incident in question took place in broad day light in full view of the public and the manner in which the bank employees were injured and the amount of the bank was looted outside the bank while it was loaded in the Jeep, had sufficient potentiality to disturb the public order. It has been further submitted that from the reports submitted before the detaining authority contained facts, how the public order in the area was disturbed and there was sufficient credible material before the detaining authority for forming, subjective satisfaction. Learned counsel has further submitted that the amount of 20,000/- recovered from petitioner was in two packs of notes of Rs. 100/- denomination. Both the packs bore the seal of the State Bank of India and was signed by the Cashier on 17th May, 1999. Thus the identity of the notes that they were part of the stolen property relating to the incident dated 18th May, 1999 was sufficiently established. It has also been submitted that father of petitioner withdrew the amounts on 10-5-1999 and 21-5- 1999 from Branch of Syndicate Bank situated in Aligarh Muslim University. Thus the amount was received from different bank. Learned A.G.A. has further submitted that the representation of the petitioner dated 13th July, 1999 was decided on 21st July, 1999 i.e. within eight days, there was no delay. For 18, 19 and 20th July, 1999, learned A.G.A. has submitted that 18th was Sunday and the authority took only two days i.e. 19th and 20th July, 1999 for consideration and deciding the representation of petitioner which was rejected on 21st July, 1999. Learned A.G.A. has submitted that two days is the minimum reasonable time required for passing order on such matters and there was no delay. Petitioner is not entitled for any relief.

13. We have carefully considered the submissions of the learned counsel for the parties. Learned counsel for the petitioner laid much emphasis on the fact that the petitioner's involvement in the incident dated 18th May, 1999 on the basis of recovery of Rs. 20,000/- is wholly unjustified. He has placed before us the Invitation Card which shows that a dinner was organised on 24th May, 1999 at 7.00 P.M. in connection with the marriage of petitioner. Learned counsel has also placed before us the account slip issued by Branch of Syndicate Bank, Aligarh Muslim University, which shows that father of petitioner withdrew Rs. 70,000/- on 10-5-1999 and Rs. 50,000/- on 21st May, 1999. It is claimed that the amount of 20,000/- was saved from the aforesaid amount and it was not part of the property

looted in the alleged incident dated 18-5-1999. However, we are of the opinion that the submissions of the learned counsel for the petitioner cannot be accepted for more than one reason. The first reason is that in the present proceedings under Article 226, it is not possible for this Court to appreciate evidence of the parties and record a positive finding on such a complicated question of fact. This Court has only to see, whether before detaining authority there was credible and relevant material for passing the order of detention. For this purpose, in our opinion, the memo of recovery contained credible and relevant material to show connection of two packs of notes with the amount looted on 18th May, 1999. Petitioner before the police confessed his involvement and at his pointing out the amount was recovered from his bed. Two packs bore the seal of State Bank, Palasallu and also the date 17th May, 1999. The packs were signed by the Officer who counted the notes and also by the examiner. Cashier Sri Mahendra Sharma of the State Bank identified his signatures on both the packs. Thus it is difficult to accept the contention of the learned counsel for petitioner that merely on basis of the recovery of notes, involvement of the petitioner could not be established. Petitioner was also identified, by the witnesses/employees of the bank as one of the miscreants involved in looting. In these circumstances, we do not find any substance in the contentions raised by the learned counsel for the petitioner.

14. Learned counsel for the petitioner next submitted that the incident dated 18th May, 1999 was a problem of law and order and it could not have sufficient reach and potentiality to disturb the public order and even tempo of the life of the community. We do not find substance in the submission of the learned counsel for the petitioner. The incident dated 18th May, 1999 took place in broad day light and in front of the Palasulla branch of the State Bank of India while the amount of Rs. 4 lacs was being loaded in the Jeep. Such incident of looting of the amount of bank cannot be equated with a simple incident of looting of an individual. The dacoity committed for looting the amount of a bank is a very serious matter. The public confidence is totally shaken and a sense of insecurity is bound to take place among general public as a consequence of the incident of this nature. Such incident is viewed by the public from a different angle, it is not mere loss of money but much more than that as a loss of the authority of State in the area, which is the foundation of public order. From perusal of the reports submitted, it is clear that

the firearm were used by miscreants openly to scare the public. The bank employees were injured. The incident took place at 1.25 P.M. which are normally peak hours of the business activities in the bank and other establishments. It has also come that persons present in DHABAS situated nearby, the employees of the bank and customers out of fear ran helter-skelter and hide themselves in the safer places. In our opinion, these facts fully demonstrate that the public order in the area was disturbed and the order of detention could be legally passed.

15. The last submission of the learned counsel for the petitioner was that the continued detention of petitioner has been rendered illegal on account of delay in deciding the representation by the State Government. Undisputed dates relevant in this connection are that the petitioner submitted his representation on 13th July, 1999 which was forwarded by the detaining authority with his comments on 14th July, 1999 and was received by the State Government on 15th July, 1999. The representation was examined on 17th July, 1999 i.e. one day after its receipt and was rejected on 21st July, 1999. 18th July, was Sunday. The authority competent to decide the representation thus took two days in deciding the representation. We do not see that the time taken was unreasonable. The representation was decided within eight days from the date it was handed over to the jail authorities. The judgments relied on by the learned counsel for the petitioner are distinguishable and do not, in any way, support the petitioner in the facts, stated above.

16. For the reasons stated above, we do not find any merit in submissions made for petitioner and the writ petition is, accordingly, dismissed.