

Rakshpal Singh and Etc. Vs. District Magistrate and ors.

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Court : Allahabad

Decided On : May-16-2000

Reported in : 2000CriLJ4567

Judge : J.C. Gupta and ;S.K. Agarwal, JJ.

Acts : [National Security Act, 1980](#) - Sections 3 and 3(2); Prevention of Corruption Act; Narcotic Drugs Psychotropic Substances Act; Gambling Act; Code of Criminal Procedure (CrPC) - Sections 161; Indian Penal Code (IPC) - Sections 147, 148, 149, 302 and 307

Appeal No. : Habeas Corpus Writ Petn. Nos. 54832 of 1999 and 558, 560 to 563 of 2000

Appellant : Rakshpal Singh and Etc.

Respondent : District Magistrate and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.D.N. Singh, Adv.

Disposition : Petition dismissed

Judgement :

S.K. Agarwal, J.

1. These are seven writ petitions filed by Rakshpal Singh, Budhi Singh, Shyam Mohan, Jaswant Singh, Puran, Guddu and Jaspal Singh against their detentions vide order dated 24-6-1999 under Section 3(2) of the National Security Act (in short called as the 'Act'). The District Magistrate, Mainpuri, passed the above said orders of detention on the basis of a solitary incident, vide case Crime No. 137 of 1999 under Sections 147, 148, 307 and 302/149, I.P.C., and as such all the above petitions are being dealt with by us by a common judgment.

2. The allegations, as contained in the grounds of detention, are that the petitioners in broad day light at about 4.00 p.m. on 16-5-1999, murdered Kallu alias Satyabeer, aged about 28 years, by resorting to fire at the turn of the road near the house of Sishupal Singh. They had also chopped his head. When the parents and the brother of the deceased, who were following him, tried to intervene to save him, they were also fired upon, but they managed to save their lives by hiding. The dead body of the deceased was dragged to Hanuman Temple, situate in front of Sishupal's house and there they shouted 'Jai Hanuman' repeatedly to celebrate their dastardly act. There was no end here. The body of Kallu was dragged to a distance of about 3 kms. up to the canal patri and it was cut into pieces and thrown in the canal to wipe off the evidence. As a result of the terror created by the petitioners, nobody came forward to save the deceased. People of the village bolted their doors and confined themselves inside their houses. Those, who were working in the fields and Khallhans. also moved away abandoning their jobs to places of safety. They succeeded in creating the terror psychosis which inevitably was their motto in the commission of this murder with such a brutality and barbarism. The body was searched in the canal, but nothing could be traced. Blood was found near the canal patri. A report of the incident was lodged at P. S. Aunchha, district Mainpuri and the case under the above said offences was registered against all these petitioners.

3. The witnesses came out of their houses after a considerable amount of persuasion by the police and the enquiry revealed the above said facts.

4. During the course of the investigation blood found at several places including the corner of the house of Sishupal and canal patri was recovered. The police also

took other articles belonging to the deceased, such as chappal, etc. into custody.

5. The Sub-Inspector, investigating the case, made an entry in the General Diary of the police station at G.D. No. 24 on 17-5-1999 at 18.30 that the incident has created extensive terror of the petitioners. A message was communicated on 18-5-1999 to all those police stations through whose jurisdiction the canal water flows for the search and recovery of the dead body of Kallu deceased. A photocopy of the above report and R.T. message was also appended along with the report. Newspaper cutting dated 18-5-1999 from Aaj and Amar-Ujala pertaining to the incident and its impact on the public mind was also available along with the report.

6. The Investigating Officer recovered a lower portion of the leg from the bushes standing near the canal in village Usneda. It was sealed and sent for post-mortem. The post-mortem report shows that a sharp cutting weapon was used in cutting the foot. The time of cutting of the foot from the parent leg was noted in the post-mortem report. A copy of the post-mortem report was also made available.

7. Statements under Section 161, Cr.P.C. of Dariyav Singh, informant, Virendra Singh, Chandrawati and Smt. Jaldhara, wife of Sishupal Singh, at the corner of whose house the deceased-Kallu was fired upon, were recorded. True copies of these statements were also made available.

8. Statements of independent witnesses, viz. Umesh Singh, Veerpal Singh, Rajveer Singh, Satyapal Singh, Gokul Singh, etc., all residents of village Usneda, P. S. Aunchha, were also recorded under Section 161, Cr.P.C. These statements are hearsay statements, but they establish very clearly the factum of amount of panic and terror the gruesome murder generated amongst them.

9. Arrest of petitioner-Jawant Singh was effected on 20-5-1999 at 2.30 p.m. General Diary entry No. 22, made at 3.10 p.m. on the same day, was made available to the District Magistrate Jaswant Singh, during his examination under Section 161, Cr.P.C. by the police, revealed the names of his associates as Budhi Singh, Rakshpal Singh, Shyam, Mohan, Puran, Guddu and Jaspal Singh. He has also admitted the offence in its entirety. This accused, in the presence of witnesses, got recovered the weapon of offence, chopper. True copy of the

recovery memo of the weapon was also made available by the police to the District Magistrate.

10. On receiving the information with regard to the presence of Budhi Singh and Shyam Mohan at their houses the I.O. effected their arrest and detained in jail from 22-5-1999. It is further alleged that Budhi Singh, Shyam Mohan and their other associates extended threats to the villagers that if any one revealed their names, they shall also be dealt with in the same manner as Kallu was dealt with.

11. The villagers, through Pradhan, had given an application for immediate action against these persons to the I.O. True copy of this application was also made available to the District Magistrate.

12. It is alleged finally that Rakshpal Singh, petitioner, is a desperate person having criminal mentality. He had links with criminals and had committed murder of Kallu at a public place in broad day light in the presence of his family members and village people by firearm and also had indulged into chopping of the neck, shouting 'Jai Hanuman' repeatedly and resorting to fire upon the family members when they attempted to save the deceased. He along with others had also dragged the dead body to a distance of about 3 kms. up to the canal Patri, where it was cut into pieces and thrown in the canal. Complete act of petitioners created a sense of fear and terror in the mind of the people living in the vicinity, who, due to fear and terror of the petitioners, moved to places of safety and could not muster courage to save the victim from the wrath of the petitioners. The entire act of the petitioners had given rise to complete disruption of the public order. It also gave rise to an atmosphere of insecurity and terror in the mind of the people.

13. The petitioners were already detained in jail in connection with the above said offence since the following dates :

Name of the petitioner	Date of detention
1. Rakshpal Singh	22-5-1999
2. Budhi Singh	22-5-1999
3. Shyam Mohan	22-5-1999
4. Jaswant Singh	22-5-1999
5. Purari	22-5-1999
6. Guddu	22-5-1999
7. Jaspal Singh	22-5-1999

14. It has also been reported that family members of the petitioners are making attempts to procure their bail. They are also putting pressure and extending threats to the witnesses and informant for not giving evidence, reference of which is available in G.D. No. 22 at 5.30 p.m. on 30-5-1999, true copy of which was also made available to the detaining authority.

15. It is further reported that if the petitioners are released on bail, they are likely to repeat commission of such heinous offences which will further embolden them and strengthen the feeling of insecurity already aroused by their above said act in the minds of the public. In order to maintain a sense of security in the public mind and also to maintain public order it was found necessary to detain the petitioners under Section 3 of the Act. In this background the detention orders came to be passed against the petitioners on 24-6-1999 under Section 3(2) of the Act by the District Magistrate, Mainpuri. All these facts are present in the grounds of detentions.

16. In order to assail the above said detention orders the learned counsel for the petitioners has raised serious challenges to the said orders on the following grounds :

1. None of the petitioners had any past criminal antecedents.
2. There is no evidence that they acted as a gang.
3. There is also nothing on record except G.D. No. 22 dated 30-5-1999 showing that any threat was extended to the eye-witnesses or the relatives of the deceased from their side.
4. There is no individual complaint by any of the eye-witnesses or the informant.
5. Movement of any applications for bail is not borne out from the record and in the absence of it the assertion that there is likelihood of any grant of bail to the petitioner is absolutely non-existent.
6. The main contention is that the detention orders were passed purposefully to frustrate the statutory remedy available to the petitioners by way of bail. Code of Criminal Procedure recognises right to bail to all offenders.

17. Now in the light of the facts, discussed above from the grounds of detention, the above arguments, raised by the learned counsel for the petitioners, are to be examined and scrutinised.

18. Learned State Counsel pointed out that a detention order against any detenu who is already in judicial custody in connection with an offence can still be validly passed provided there are compelling reasons for their detention. He agreed to the law that the detention order and the grounds of detention must reveal those compelling reasons for any such detention of a person, who is already confined in jail in connection with any offence how so ever heinous it may be.

19. It is common knowledge that the remedy for bail is recognised by the statutes, such as Code of Criminal Procedure and various other Acts like Prevention of Corruption Act, N.D.P.S. Act, Gambling Act, etc. Thus, it goes without saying that the right to be released on bail has a statutory sanction and in the ordinary circumstances this right cannot be frustrated except by the Courts which are entitled to hear a bail application of such accused persons. They definitely can thwart the attempt to be on bail by passing a reasoned order. This further signifies clearly that the denial to be on bail is to be reasonable one. The principle deducible from these facts and circumstances clearly is that no doubt the person already in judicial custody or in jail can be detained using the provisions of National Security Act, but only in the presence of compelling reasons. The presence of compelling reasons, therefore, is thereupon a pre-requisite and, therefore, is justiciable by the Courts. What is not justiciable is the subjective satisfaction of the detaining authority. It lays down a heavy burden upon the Government as well as upon the authority to exercise this power by way of delegation with utmost caution and proper application of mind. If these principles are adhered to then no such detention order can be gone into by the Courts of law. So we endeavour to examine not the sufficiency of the subjective satisfaction of the Magistrate but existence of the material on which such a subjective satisfaction was founded.

20. A perusal of the grounds of detention clearly reveals that the District Magistrate was made available by the police (recommending authority) copy of the

F.I.R., copies of recovery memos of blood and simple earth from different places, and also copy of recovery memo of the Chappal belonging to the deceased, site map, copy of G.D. No. 24 dated 17-4-1999 made at 18.30 by the I.O. on his return from the spot to the same effect that is contained in the F.I.R. copy of R.T. messages to various police stations through whose jurisdiction the canal passes, copy of the newspaper cutting from Aaj and Amar Ujala containing the details about the incident, copy of post-mortem examination reports, copies of the statements of the informant, Dariyav Singh, Virendra Singh, Chandrawati and Smt. Jaldhara recorded under Section 161, Cr.P.C. as eye-witnesses of the incident and copy of the G.D. pertaining to arrest of accused-petitioner, Jaswant Singh. A copy of the confessional statement of Jaswant Singh to the police accepting his guilt, and a copy of the memorandum submitted by the village Pradhan against the threats extended and for necessary action against Shyam Mohan, Budhi Singh and their associates immediately were also provided.

21. From a perusal of the grounds of detention the facts that would constitute the satisfaction of the District Magistrate or from compelling reason clearly appear to be (a) the manner in which the murder was committed by the petitioner, (b) the chopping of the head in full public view, and (c) the fact that they raised slogans of 'Jai Hanuman' at the temple and (d) dragging of the body in full public view to a distance of about 3 kms. Up to the canal patri and (e) cutting of the body into pieces and throwing them into the canal in order to cause disappearance of evidence of murder. Apart from these facts and circumstances, (f) the memorandum submitted by the villagers for taking action against the petitioners/culprits of the murder expeditiously otherwise the villagers are likely to confine themselves to their houses. This memorandum also contains the fact of threats being extended by the culprits to the villagers for not naming them (g) the confession to the police by one of the culprits, viz. Jaswant Singh, (h) publication of news in detail about this murder in the newspapers 'Amar Ujala' and 'Aaj,' (i) submission of report on 30-5-1999 by the informant expressing concern on extension of threat to him and the witnesses for not making any statement.

22. Learned counsel for the petitioners has cited before us a judgment of the Apex Court reported in 1994 All Cri C 765 : 1995 All LJ 777 (Surya Prakash Sharma v.

State of U.P.) and also another judgment which had been noted in this judgment, as reported in AIR 1990 SC 1196 (Dharmendra Suganchand Chelawat v. Union of India). Apart from it a latest judgment reported in (1999) 8 JT 252 : AIR 1999 SC 3897 (Ahamad Nassar v. State of Tamil Nadu has also been placed before us.

23. It is available to us from the material placed with the detention order that the petitioners were in Jail on 22-5-1999 and were attempting to come out on bail through their family members. They were also extending threats to the informant and other eyewitnesses not to appear or depose against them. An entry to that effect was made in G.D. No. 22 at 5.30 p.m. on 30-5-1999. As a matter of fact it appears to be an F.I.R. lodged by the informant against the accused persons. Thus, the fact that the petitioners were in Jail was within the notice of the District Magistrate, the detaining authority, and the fact that if released on bail they will repeat such offenders in future is also mentioned therein.

24. It was contended by the petitioners' counsel that there is no evidence with regard to the efforts made by the family members of these petitioners to take them out on bail applications on their behalf had been moved in any Court until the time the detention orders were passed and since no bail application was moved or pending in any Court of law, there could not be any apprehension in the mind of the detaining authority that the detenus were likely to be released in near future or could indulge again in any prejudicial activity. It has further been urged that the absence of these materials clearly indicate that the satisfaction of the detaining authority in passing these impugned orders was exercised without any cogent material. In this context it shall be relevant to quote the passage quoted in Apex Court's judgment in the case of Surya Prakash Sharma 1995 All LJ 777 (supra) in its entirety :

The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression 'compelling reasons' in the context of making

an order for detention of a person already in custody implied that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

25. The expression 'compelling reasons' implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that the detenu is likely to be released from custody in the near future and taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in activities prejudicial to the maintenance of public order and it is necessary to detain them in order to prevent him from engaging in such activities, i.e. repetition of such offence.

26. It is true that there is nothing on the record to indicate that any bail application had been moved on behalf of the petitioners in any Court of law. But there are materials available in this case from the grounds of detention itself that the family members and other associates of the petitioners were extending threats to the informant and other eyewitnesses not to give evidence. This fact is available to us from the report by the informant and G.D. Entry No. 24 dated 17-5-1999 at 8.30 by the I.O. on his return, true copy of which was also supplied to the petitioners. Apart from that there is an entry made as early as on 30-5-1999 in this connection in the G.D. by the I.O. The statements recorded under Section 161, Cr.P.C. of witnesses Daryab Singh, Virendra Singh, his son, and his wife, Smt. Chandrawati clearly show that threats are being extended to them. Over and above all the report of the informant that he and his witnesses are being threatened regularly by the accused persons of the offence is also available on the record. There is also a memorandum submitted by the village Pradhan to the police, which clearly shows that the people of the village are afraid in going to their fields and Khalihans. These accused persons are threatening the people of the area that if any one of them opened his mouth or attempted to appear as witness they will also be dealt with in the same manner as Kallu was. All the people of the area are terrorised

and if these people are not arrested immediately they will be compelled to leave the village. There is evidence in the nature of life history of Rakshpal Singh in the form of entry made by the S.H.O., P.S. Aunchha that this petitioner is only educated upto Intermediate. He had started practising medicine. The financial condition of the family is in bad shape and is having no immovable property. In the course of medical practice he had developed relations with the known criminals of the area as also criminals of far off places. After coming in contact with Budhi Singh the fear and terror of this man has been seriously felt in the village. No person in the vicinity of the village is daring to raise his voice against him. Apart from this the barbarism that was practised by these petitioners in the commission of murder was also purposive. It cannot be denied that the gruesomeness of the offence was in itself sufficient enough to give rise to their terror in the minds of the people. As a matter of fact the manner in which this offence was committed was certainly with this end in mind by these petitioners. Their chopping of the head then raising slogans of Jai Hunuman, dragging the body upto canal patri and then cutting it into pieces, all in full public view, cannot have any other purpose in mind except the one elaborated above. In view of the above said discussions it will not be possible to hold that there was no sufficient material with the detaining authority to arrive at the satisfaction that there was compelling need to detain these persons. The reasons discussed above were more than sufficient to pass the above said orders against these petitioners.

27. In the light of the above facts and circumstances, though there is no material with regard to the fact that any of these petitioners had made any application in Court or had obtained bail, still it cannot be said that the detention order was passed without compelling reasons. The District Magistrate would have been justified in his assumption that attempts for bail are being made or shall be made by the family members and associates of these accused persons (petitioners). This is a logical corollary that is to follow in the normal circumstances. Every person accused of an offence is always likely to make positive efforts in order to come out on bail. The averment to the effect in the grounds of detention that the family members of these petitioners were making sincere efforts to obtain bail cannot be judged only from the fact that bail applications are not moved. Filing of bail application is the culmination of that effort, but procuring the papers for the

purpose of moving the bail application is an attempt to prepare itself in that direction. It can safely be inferred from the averment made in the grounds of detention that the family members may have procured necessary papers and may have contacted Advocates. No such evidence can be brought on record by the police (recommending authority), papers can be had surreptitiously also. The police may learn about all these efforts. In the circumstances, it cannot be said that this averment in their grounds of detention was wholly without any basis or material.

28. In the result, we find no merits in these petitions. These petitions are accordingly dismissed.

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