

Wali Mohammad Vs. Superintendent, District Jail and ors.

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Court : Allahabad

Decided On : Nov-25-1998

Reported in : 1999CriLJ692

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

Acts : [National Security Act, 1980](#) - Sections 3(2), 3(4), 3(5) and 12; Arms Act - Sections 4 and 25; Gangsters Act - Sections 5A; ;Indian Penal Code (IPC) - Sections 307, 356, 366, 394 and 411

Appeal No. : Habeas Corpas Writ Petition No. 20098 of 1998

Appellant : Wali Mohammad

Respondent : Superintendent, District Jail and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Daya Shankar Mishra, Adv.

Disposition : Petition allowed

Judgement :

P.R.K. Trivedi, J.

1. Petitioner Wali Mohammad of this Habeas Corpus petition has challenged his detention under Section 3(2) of the [National Security Act, 1980](#) (hereinafter

referred to as the Act) under the order dated 30-11-1997 (Annexure I to the petition), passed by respondent No. 2 and also his continued detention under the aforesaid order. He has also prayed that the respondents may be directed to release the petitioner from detention forthwith.

2. Along with the order of detention dated 30-11-1997 petitioner was also served the grounds on which basis respondent No. 2 formed his subjective satisfaction for passing the order of detention against the petitioner. The grounds have been filed as Annexure II to the writ petition. The facts stated in the grounds are that the petitioner is a criminal and daring person and in order to get illegal financial benefits, commits heinous crimes in a planned manner, armed with illegal weapons with his accomplices on account of which residents of Bulandshahr area live under fear and terror of the petitioner and do not dare to open their mouth against the petitioner and accomplices and are not able to muster courage to lodge any report. The people at large suffer from ill effects of the criminal activities of the petitioner and his accomplices which also affects prejudicially the maintenance of the pub-He order. The petitioner and his accomplice Riyasat, on 11-9-1997, committed robbery in a daring manner and looted the amount of salary of Government employees in broad day light at pistol point by which an atmosphere of fear and terror prevailed in the locality, residents of which felt insecure and they ran helter skelter to save their life. There was a panic on the busiest road of the town- A short description of the criminal activities of the petitioner and his accomplice has also been mentioned therein as under:

1. That on 11-9-1997, at about 11-30 a.m., Shri Brij Bhushan Gupta, Junior Engineer (IV) and Shri Radha Kant Sharma, clerk of Anupshahr Branch of Ganga Canal Division, Bulandshahr, withdrew an amount of Rs. 82,550/- from State Bank of India, Bulandshahr as salary of the employees of the department and were coming back to their office. When they reached near the Kothi of Dr. S. P. K. Sharma, situate on Delhi Road, two criminals suddenly came from their front side; one of them was armed with a country-made pistol, he fired at the aforesaid employees and another criminal entered into a scuffle with them Both the employees felt nervous due to this sudden attack; the two criminals snatched the bag and ran away towards the Central School. On account of this activity in which

the Government money was looted in broad day light on the main road of the town, a panic was created, the shop keepers and passers by were stunned and were seen running for their security; some persons closed their doors, fear and commotion prevailed. At that time the Inspector in-charge Police Station Koiwali with police force on a jeep appeared at the place of occurrence. Brij Bhushan Gupta gave them information about the occurrence. The Inspector in-charge immediately gave signal to send more police force and he also entered into chase and search of the criminals. Report of this occurrence was lodged at Police Station Kotwali, Bulandshahr and was registered as case crime No. 679 of 1997, under Section 394, IPC.

3. Both the aforesaid Government employees and the Inspector in-charge and the police force accompanying him, proceeded towards the side in which the criminals had run away. Additional police force also reached. Police made an elaborate arrangement for arresting the culprits and chased them from all the sides. When the police force reached All Saint Public School, some persons informed that two criminals with a bag have crossed the railway line and have run towards agricultural fields. The Inspector in-charge and the police force when reached near the grove of Pain Pal Singh, they located the two culprits; the Police cautioned, chased and surrounded them. The culprits fired at the police party but the police force kept their courage and arrested the culprits at 1-15 p.m. near a Juvar field where the two culprits had suddenly fallen down near the place where bricks were lying. Out of the two persons arrested, one was the petitioner Wali Mohammad and another was Riyasat. Brij Bhushan Gupta and Radha Kant identified them in presence of the Inspector in-charge and informed him that these two persons snatched the money kept in the bag. The bag was recovered from Riyasat with the entire money of Rs. 82550/ , An illegal knife was also recovered from him. From the possession of the petitioner a country made pistol of .315 bore with empty cartridges in its barrel and two live cartridges were recovered. The recovery memos were prepared separately in respect of the money recovered and the illegal fire-arms on which basis cases were registered as Case Crime No. 680 of 1907, under Section 307 IPC, Case Crime No. 681 of 1997, under Section 25 of the Arms Act against Wali Mohd. and case Crime No. 682 of 1997. under Section 4/25 of the Arms Act was registered against Riyasat After investigation charge

sheets were submitted, in and are under consideration of the Court. On account of the recovery of the amount in case Crime No. 679 of 1997, under Section 394, IPC, Section 411, IPC was also added. In this case also after investigation charge sheet has been submitted in Court which is under consideration.

2. On account of the criminal activities of (he petitioner and his companion during the police encounter, the persons who were working in fields and passers by were under fear and (error which affected the public order badly and there was serious breach of law and order.

3. On 2-9-1997, at about 9-15 a.m., an amount of Rs. 8500/- was forcibly snatched from Mukesh, son of Suresh Chand, resident of Mohalla Fatebganj, district Bulandshahr while he was proceeding on cycle to his shop in New Grain Mandi near Anup Shahr Adda, by three criminals who came in a blue scooter. As the criminals possessed fire-arms, the victim could not face them and they escaped successfully but the victim and the witness recognized the culprits. A report of this occurrence was lodged as case Crime No. .105/299/97, under Section 366, IPC.

4. After the arrest of the petitioner on 11-9-1997, Mukesh complainant identified the petitioner and Riyasat and also informed the police of New Grain Mandi Police outpost. He also claimed that he can identify the accused as they committed the offence or loot. On this information a case Crime No. 209/105/97, under Section 356, IPC was registered against the petitioner. On interrogation the petitioner admitted his involvement in the aforesaid crime which has been recorded in General Diary No. 50 of 11-9-1997 at Police Station Kotwali, Bulandshahr. The case is still under investigation with the police. The petitioner is in judicial custody in connection with case crime No. 679 of 1997, under Section 394/ 411, IPC and case crime No. 299/105 of 1997, under Section 356, IPC and presently confined in district Jail, Bulandshahr but the petitioner has filed bail applications and is trying to get himself released on bail. There is strong possibility that the petitioner shall be successful in his aforesaid object. If he is released on bail he shall again indulge in similar activities affecting the public order. He shall also pressurize the witnesses and the victims of their criminal activities and shall try to destroy the evidence which shall further enhance the tear and terror in the locality and shall

prejudicially affect the public order.

5. On the aforesaid facts, respondent No. 2 felt satisfied that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of the public order, it is necessary to pass an order directing the petitioner to be detained under Section 3(2) of the Act.

6. The petitioner was also informed that he has right to challenge his detention by making representations before the State Government, the Advisory Board and the Central Government. The representations may be submitted through Superintendent of Police immediately. The petitioner was also informed that his case shall be referred to the Advisory Board within three weeks and if his representation is not received within that period, it shall not be considered. The petitioner was also informed that if he desires a personal hearing before the Advisory Board, this fact may also be mentioned in the representation or by a separate representation which may be submitted through the Superintendent of Jail.

7., The aforesaid order dated 30-11 -1997 was approved by the State Government on. 10-12-1997, under Section 3(4) of the Act. The case of the petitioner was referred to the Advisory Board. A report about the detention of the petitioner was submitted to the Central Government on 11-12-1997 as required under Section 3(5) of the Act which was received by the Secretary, Ministry of Home Affairs, New Delhi, on 13-12-1997. The case of the petitioner was referred to the Advisory Board on 11-12-1997. The Advisory Board heard the petitioner personally on 7-1 - 1998. The Advisory Board found that there was sufficient cause to detain the petitioner. The report of the Advisory Board dated 13-1 -! 998 was received by the State Government on 14-1-1998. The State Government after consideration and examination of the entire matter, confirmed the detention of the petitioner for a period of 12 months by order dated 27-1-1998, under Section 12 of the Act

8. The petitioner submitted his representation on 11-12-1997 which was forwarded by the respondent No. 2 along with his comments to the State Government on 17-12-1997 which was received on 18-12-1997. The State Government examined the representation of the petitioner and rejected the same on 23-12-1997. The

representation of the petitioner addressed to the Central Government on 11-12-1997 was sent by the State Government to the Central Government 'on 22-12-1997. The Central Government on 26-12-1997 called for some information from the State Government. The required information was sent by the State Government on 27-1-1998 and 29-1-1998 which was received by the Central Government on 2-2-1998. The representation was examined by different authorities and ultimately rejected by the Minister of State, Home Affairs on 7-2-1998.

9. In this petition counter affidavits have been filed by Rajesh Kumar Singh, Deputy Jailor, District Jail, Bulandshahr, on behalf of respondent No. 1, by Rajnish Gupta, the then District Magistrate, respondent No. 2, by Shri R. S. Agarwal, Joint Secretary, Government of U.P., Home and Confidential Department, on behalf of respondent No. 3 and Bina Prasad, under Secretary, Ministry of Home Affairs, Government of India, on behalf of respondent No. 4.

10. We have heard Shri D. S. Mishra, learned counsel for the petitioner, Miss Nahid Munees, Additional Government Advocate, for respondents Nos. 1 to 3 and Shri K. N. Pandey, holding brief of Shri S. N. Srivastava, Senior Standing Counsel, Government of India, for respondent No. 4.

11. Learned counsel for the petitioner has challenged the impugned order of detention dated 30-11-1997 and the continued detention of the petitioner under the said order on the following grounds :-

1. The first submission is that in case Crime No. 299/105 of 1997, under Section 356, IPC which is ground No. 3 in the grounds of detention, petitioner was put to identification on 8-12-1997. However, the petitioner was not identified by the witnesses as culprit. Consequently, a final report was submitted by the police which has been accepted by the Court. Ground No. 3 thus became non-existent.

2. So far as case Crime No. 679 of 1997, under Sections 394/411, IPC is concerned, the bail application moved by the petitioner and the bail order passed thereon were not placed before the detaining authority and he was not made aware of the correct facts. The subjective satisfaction of respondent No. 2 for

passing the impugned order thus vitiated.

3. It has also been submitted that the petitioner was also detained under the Gangsters Act, in which neither bail application was pending nor was the bail granted. The petitioner could not be released from jail so as to indulge in the alleged criminal activities but this fact was also not placed before the detaining authority and he was not aware of the prevailing circumstances. The impugned order of detention thus stood vitiated.

4. Lastly, it has been submitted that the petitioner submitted his representation on 11-12-1997 which was received by the Central Government on 22-12-1997. The Central Government called for a report from the State Government on 26-12-1997. However, the State Government could send the required information on 27-1-1998 and 29-1-1998, i.e. after more than a month. Thereafter, the representation was rejected on 7-2-1998 by the Central Government, i.e. after 46 days' delay. The time taken between 26-12-1997 and 29-1-1998 has not been explained as to why the required information could not be sent by the State Government earlier. The continued detention of the petitioner thus has been rendered illegal on account of the inordinate and unexplained delay in deciding the representation. The learned counsel has placed reliance on the cases of Ram Prasad Chaudhary v. State of U.P. AIR 1987 All 169 : 1987 All LJ 916 and State of U.P. v. Kamal Kishore Saini 1988 SCC (Cr) 107 : AIR 1988 SC 208.

12. Miss Nahid Munees, learned Addl. Govt. Advocate, on the other hand, submitted that the petitioner was involved in case Crime No. 679 of 1997, under Section 394/411, IPC in which the public money was looted in a daring manner in broad day light from a busy road in full view of the general public. On chase, the petitioner and another accused Riyasat were arrested same day with the entire money. Such occurrence had sufficient potential and reach to disturb the public order. The validity of the order of detention is not affected in any manner on the ground that the bail application and the bail order were not placed before the detaining authority. The fact that the petitioner had applied for bail is not denied and the awareness of this fact was sufficient for the detaining authority to pass the order of detention. Learned counsel has further submitted that the delay has been

daily explained in paragraph 15 of the counter-affidavit filed by Shri R. S. Agarwal and reasons have been mentioned as to why the information could not be communicated to the Central Government earlier. It is submitted that in fact the report of the Advisory Board was received on 14-1-1998 and then only the complete information could be forwarded to the Central Government on 27th and 29th of January, 1998. The learned Addl. Govt. Advocate has placed reliance on the following cases in support of her contention :

Veeramani v. State of Tamil Nadu 1994 (1) JT SC 350, Abdul Sattar Ibrahim Nayak v. Union of India AIR 1991 SC 2261 : 1991 Cri LJ 3291, Jokhu Lal v. Superintendent, Central Jail, Naini 1994 Cri LJ 3466 (All), State of Tamil Nadu v. C. Subramani 1992 (Suppl.) SCC 35 (SC) : AIR 1992 SC 2161 and Smt. Kamla Bai v. Commissioner of Police, Nagpur 1993 (3) JT SC 666 : 1993 AIR SCW 2305.

13. We have carefully considered the submissions made by the learned counsel for the parties. The first submission of the learned counsel for the petitioner that in an identification held on 8-12-1997 as the petitioner was not identified by the witnesses, ground No. 3" became nonexistent and the satisfaction arrived at by the detaining authority stands vitiated, it has also been submitted that in any case the continued detention of the petitioner became illegal as this fact was not considered by the appropriate government or by the Central Government. However, the submission of the learned counsel for the petitioner cannot be accepted, It is not disputed that on the date the impugned order was passed, the material on record was sufficient for having a satisfaction regarding involvement of the petitioner in the case. The detention order could not be held to be illegal on the basis of the subsequent event about which the detaining authority could not be aware in any manner Further, even assuming for the sake of argument that ground No. 3 became non-existent, the order of detention could not be affected in view of the provisions contained in Section 5A of the Act which provides that the order of detention shall be deemed to have been passed separately on each ground. In such circumstances even if ground No. 3 became non-existent, the validity of the order on other ground/grounds is not, affected in any way. It can also not be disputed that the cases shown in ground No. 3 and grounds Nos. 1 and 2 are separate and independent incidents. Thus the petitioner cannot claim any benefit

on the basis of the case of Ram Prasad Chaudhary relied on by him.

14. So far as the second and third submissions that the petitioner's bail application and the order passed thereon were not placed before the detaining authority and the detaining authority was not informed that the petitioner has been detained under the Gangsters Act in which neither bail application was moved nor bail was granted it is claimed that the facts were not placed before the detaining authority, thus the impugned order is vitiated as the prevailing facts and circumstances were not taken into account. We are not impressed by this submission of the learned counsel for the petitioner, The fact which was not placed before the detaining authority cannot be made a ground for attack, if detention of the petitioner under the Gangster Act was not part of the material placed before the respondent No. 2, it has to be ignored. The Court has to examine whether the order of preventive detention could be legally passed on the basis of the material placed before the detaining authority. We have no doubt that the material which was made available to the detaining authority was sufficient for passing the order of detention. In the case of Veeramani (supra), Hon'ble Supreme Court held in para 6 as under :

From the catena of decisions of this Court it is clear that even in the case of a person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of the reliable material that there is a possibility of his being released on bail and that on being so released, the detenu would in all probabilities indulge in prejudicial activities and if the authority passes an order after recording his satisfaction the same cannot be struck down.

15. In the present case from perusal of the grounds, it is clear that there was material before the respondent No. 2 for all the ingredients which required to be satisfied before passing the order of detention against the person already in detention. In our opinion, the impugned order of detention does not suffer from any illegality.

16. The last submission is regarding the delay in deciding the representation of the petitioner. The learned counsel has submitted that the representation of the petitioner was submitted on 11-12-1997 which was received by the Central

Government on 22-12-1997. However, the representation was decided on 7-2-1998, For this inordinate and unexplained delay, the continued detention of the petitioner has been rendered illegal. The learned counsel has submitted that there is virtually no explanation for the period 26-12-1997 to 29-1-1998 which was taken by the State Government in supplying the required information to the Central Government. In this connection we have perused the counter affidavits of Bina Prasad, filed on behalf of respondent No. 4 and Shri R.S. Agarwal, filed on behalf of respondent No. 3. In para 5 of the counter-affidavit filed by Shri R. S. Agarwal, delay has been tried to be explained in the following words :.It is further stated that the Ministry of Home Affairs, New Delhi vide their telex message dated 26-12-1997 asked the opinion of Advisory Board. The report of Advisory Board received by the State Government on 14-1-1998. Thereafter the State Govt. on 27-1-98 & 29-1-98 intimated to Secretary, Ministry of Home Affairs, New Delhi that the Advisory Board found sufficient cause for the detention of the petitioner...

17. The counter-affidavit filed by Bina Prasad on behalf of respondent No. 4, on the other hand, does not say that the report of the Advisory Board was called for from the State Government. Para 6 of the counter-affidavit reads as under :

The allegation made in the para Nos. 32 and 33 of the petition are denied being incorrect. It is stated that a representation dated 11-12-1997 from the detenu was received by the Central Government in the Ministry of Home Affairs on 22-12-1997 through State Government of Uttar Pradesh, This representation was immediately processed for consideration and it was found that certain vital information required for its further consideration was needed to be obtained from the State Government through a crash wireless message dated 26-12-97.

18. From the aforesaid averments it is clear that there is no material on record to show that the report of the Advisory Board was at all required by the Central Government. No material has been filed to establish this fact in absence of which it appears that the State Government dealt with the matter very casually and carelessly. This Court as well as the Apex Court repeatedly in number of judgments have expressed the view that the State Government and the Central Government must act swiftly and with reasonable despatch while dealing-with

these matters which involve the question of liberty of a person. However, the State Government in the present case has utterly failed to act swiftly as required under the law. We have no hesitation in saying that on account of this delay of more than a month caused in sending information to the Central Government, the representation filed by the petitioner could not be decided within reasonable time which was rendered the continued detention of the petitioner illegal and he is liable to be released forthwith. Even if it is accepted that report of the Advisory board was required from the State Government, the report was admittedly received on 14-1-1998, there is no explanation on record as to why it was kept for fifteen days and not sent to Central Government immediately. The Central Government could also not postpone the decision on the representation of the detenu for indefinite period. The Central Government was bound to discharge its legal obligation promptly on the basis of the material before it, and non-receipt of any paper from the State Government could not afford a valid excuse for the long delay. Thus, judged from any angle, conclusion is same that there was inordinate delay in deciding the representation.

19. For the reasons stated above, this petition is allowed. The continued detention of the petitioner is found illegal and the respondents are directed to release him forthwith if his detention is not required in any other case. There will be no order as to costs.