

Suleman Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-21-1970

Reported in : 1970WLN544

Judge : B.P. Beri and; L.S. Mehta, JJ.

Appeal No. : Habeas Corpus Petition No. 1021 of 1970

Appellant : Suleman

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

L.S. Mehta, J.

1. This is a habeas corpus petition filed by Suleman, confined at present in the Central Jail, Jaipur. The averments in the application are that the petitioner is an Indian national and belongs to village Burhanka Tala, District Barmer. He had been convicted and sentenced by the Sub-Divisional Magistrate, Bhinmal, on April 15, 1907, under the Foreigners Act. He had been released from the Central Jail, Jodhpur, on February 3, 1968. On August 5, 1968, he was called by the Superintendent of Police, Barmer, from his house and was told that he was required to proceed to Jaipur in connection with some inquiry. The Circle

Inspector, Barmer, escorted him to Jaipur on August 7, 1968, and was kept at the Special Police Station Ramganj. The same day the Jaipur police arrested him under Section 3/9, of the Indian Official Secrets Act and was kept in custody upto August 23, 1968. On August 24, 1968, he was sent to the Central Jail Jaipur, as he was implicated in a false espionage charge, in which one Pak national Habibuddin was also involved. Since August 24, 1968, he has been in confinement in the Central Jail, Jaipur. Though more than two years have elapsed since then, the police has not yet put up a challan against him in the Court concerned. He, therefore, prays that he should be ordered to be discharged from the Central Jailor be enlarged on bail.

2. On receipt of the above petition a notice was given to the State Government. A reply has been filed on behalf of the State, wherein it is given that the petitioner Suleman invited Habibuddin, a Pak national, to come to India and work here as a Pak' spy. He indulged in the aspionage activities along with Habibuddin. The police registered a case under Section 3/9, Official Secrets Act, against him. He was taken in custody on August 7, 1968. He has been named as an abettor of the offence. After the investigation was completed the accused was committed to the judicial lock-up under the orders of the District Magistrate, Jaipur, on August 24, 1968. Relevent papers have been submitted by the police to the State Government for obtaining sanction for his prosecution from the Government of India. It has further been submitted on behalf of the State that Suleman has been kept in custody under due process of law i.e., pursuant to the orders of the District Magistrate, Jaipur, in accordance with the provisions of Section 344, Cr. P.C. The offence against the petitioner is a heinous, as it appertains to the security of the nation. It is, therefore, justifiable to keep such a person under custody pending the filing of a regular challan against him in a court of law. The State in the end, urged that Suleman's petition being mis-conceived and. malafide be dismissed.

3. We have heard learned Deputy Government Advocate. The history of the prerogative writ of habeas corpus is traced in Sir William Holds-worth's History of English Law, Vol. 9, P. 108-125. Whatever its origin, it appears to have served procedural uses in the court of Kings Bench from the time of king Edward I, but was eventually extended and developed so that it came to be the most efficient

protection ever invented for the liberty of the subject. During the time of Sir Edward Coke and the ensuing struggle between Parliament and common law on the one hand and the Sovereign in England on the other, its use was proclaimed to be in conformity with the principle of Magna Carta and its purpose to prevent or redress the use of arbitrary power. Its scope was not limited to England. It is clearly stated in Blackstone's commentaries, Vol. III P. 131 and Bacon's bridge's Vol. III, P. 424, that the writ ran into all parts of the King's dominions. That is how same principle has been adopted in this country.

4. The relevant provisions are found in Section 491, Cr.P.C. and Article 226 of the Constitution of India, Section 491. Cr. P. C, is in the terms following:

Any High Court may, whenever it thinks fit, direct

(a) ...

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty.

Article 226 of the Constitution of India confers analogous powers,

5 A 'habeas corpus', said Coleridge J , in the King v. Cresnhill (1836) 111 E.R. 922 'proceeds on the fact of an illegal restraint.' The very object of issuing a habeas corpus is to have it ascertained whether the person who is sought to be is under duress or imprisonment and whether his detention is illegal. The High Court will not, therefore, under Article 226 of the Constitution of India or clause (b) of Sub-section (1) of Section 491, Cr.P.C., interfere and order a person to be set at liberty unless his detention in public or private custody is illegal or improper (See Kartar Singh v. Imperator AIR 1946 Lah. 103.. In the case of an arrest under the Official Secrets Act, it is not the duty of the High Court, while hearing the petition of habeas corpus, to ascertain whether a prima facie case exists against the accused against whom a Chilian is shortly to be filed by the police in a court of law. The High Court cannot, in that situation, go into the question whether or not the police was justified in concluding that a prima facie case under the Official Secrets Act was made out against the accused. It is true that the petitioner can challenge the

bonafides of the executive machinery of the Government. In the present case no such bonafide has been assailed and, therefore, it is not within the province of the High Court to embark upon an inquiry as to the malafide or bonafide intention of the Government. In this connection, we may usefully quote below the observation of Lord Atkin in a Privy Council case. *Eshgbayi Eleko v. Officer Adminstrating the Government of Nigeria* (1931) All E.R. 44:

In accordance with the British jurisprudence, no member of the executive can interfere with the liberty or property of a British subject except on the condition that he should support the legality of his action before a court of justice & it is the tradition of British justice that Judges should not shrink from deciding such issues in the face of the executive.

In *R. v. Officer Commanding Depot Battalion*, (1949) 1 All E.R. 373. the Court held that if a person is arrested and is brought before the Court, charged with an offence, the Court has no power, once that person is in lawful custody, to go into the question of circumstances in which he is to be tried and, therefore, no habeas corpus lies. In para 62 of Halsbury's Laws of England, V.II, 3rd Edition, it is given:

Writ will not be granted to persons committed for felony or treason plainly expressed in the warrant of commitment.

It is the English jurisprudence which has been followed in this country, on the basis of which the courts here exercise jurisdiction. It has been shown in this case by the reply filed by the State Government, duly supported by an affidavit of Mahima Nand Maindole, Inspector Police, 1/c. Special Police Station, Rajasthan, Jaipur, that the petitioner has been detained under lawful authority, exercised by the District Magistrate in a case which is going to be submitted for trial in a court of law and, therefore, it cannot be said that his detention is improper or illegal.

6. The alternative prayer of the petitioner is that he should be enlarged on bail. In this connection it may be stated that where the offence is not bailable, certain considerations do arise and the court has to decide the question in the light of these consideration?, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a

reasonable possibility of the presence of the accused before the trial court, reasonable apprehension of the witnesses being tampered with; the larger interest of the State or the public and similar other facts. It is correct that under Section 498, Cr.C:P., the powers of the High Court in a matter of granting bail are wide, even so where the offence is non-bailable, various considerations such as those mentioned above have to be kept in view. As the prima facie case against the accused falls under Section 3/9 of the Official Secrets Act and if the accused is convicted, he would be liable upto 14 years' imprisonment under Section 3. In such circumstances, considering the nature of the indictment, it is not a fit case where, discretion, which no doubt vests in this Court under Section 498, Cr. P.C., should be exercised in favour of the accused: See. The State v. Captain Jagjit Singh : [1962]3SCR622 . His prayer for granting bail, therefore, is rejected.

7. Before we part with this case, we are inclined to make some observations in regard to the detention of the petitioner under Section 344, Cr.P.C, in the jail. The petitioner has been in jail since August 7, 1968. He was committed to the judicial custody by the order of the District Magistrate on 24.8.68. A postponement or adjournment of the proceedings sine die is not in consonance with the provisions of Section 344. Cr. P.C. A postponement or adjournment can only be 'from time to time'. An accused is entitled to have the evidence recorded against him as early as possible & the fact that the sanction of the Central Govt. is pre-requisite for launching prosecution is not a good ground for his detention for an indefinite or inordinate period. The State Government. therefore, is directed to make steps to put up a challan, if it thinks proper to do so, in a court of law as far as possible within two months of the date of this order.

8. In the result, the petition filed by Suleman is dismissed, subject to the observations made in para 7 above.