

**2023 LiveLaw (SC) 301**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION  
SANJAY KISHAN KAUL; J., AHSANUDDIN AMANULLAH; J.  
Writ Petition(s)(Criminal) No(s). 16/2023; 11 April, 2023  
**YUSUF MALIK versus UNION OF INDIA & ORS.****

**National Security Act, 1980 - Supreme Court terms as "shocking and unsustainable" the invocation of NSA in a revenue recovery case - Says NSA is to control the anti-social and anti national elements including secessionist, communal and pro-caste elements, that affect the services essential to the community, thereby posing a grave challenge - Holds that there was no application of mind in ordering the detention of the petitioner under NSA.**

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*For Respondent(s) Mr. Ardhendumauli Kumar Prashad, A.A.G. Mr. Adarsh Upadhyay, AOR Mr. Ashish Madaan, Adv. Ms. Shreya Srivastava, Adv. Mr. Aman Pathak, Adv. Ms. Pallavi Kumari, Adv. Mr. Ananya Sahu, Adv.*

**ORDER**

Rule.

The writ petition has been filed under Article 32 of the Constitution of India on account of a detention order passed against the petitioner under the National Security Act, 1980 (hereinafter referred to as 'the Said Act') on 24.4.2022. The petitioner challenged the same by filing a Habeas Corpus petition in the Allahabad High Court but was not heard and was kept on being deferred. Not only that, the order was further extended on 22.7.2022 and 18.10.2022.

The controversy emanates from FIR dated 26.3.2022 under Section(s) 186/353/504/506 & 507 of the IPC and 27.3.2022 under Section(s) 188/211/353/447 of the IPC. The allegation is this that the petitioner did not allow the revenue officials to collect land revenue from one Jamal Hasan and has alleged to have threatened the officials for sealing the residence. The second FIR does not name the petitioner but was filed for opening the sealed property. In both the cases petitioner obtained regular bail before the Sessions Judge on 05.7.2022 and 06.7.2022.

However, on the basis of the aforesaid FIRs, the SHO Moradabad and Senior Superintendent made representations on 23.4.2022 for initiating proceedings against the petitioner u/S 3(2) of the National Security Act. The prayer made is for release of the petitioner and/or directions to hear the Habeas Corpus petition on an urgent basis.

The report of Incharge Civil Lines is a genesis of the proposal for detention of the petitioner under the said Act which was examined by the SSP, District Moradabad. The allegation was that on the mobile phone petitioner rang the Additional Municipal Commissioner and used abusive language and gave a threat to kill. It was alleged that because of this incident the atmosphere of fear and terror has been created in the officials of Nagar Nigam. The SSP thus recommended the case. District Magistrate passed an order dated 24.4.2022 exercising powers under Section 3(3) of the said Act for his detention and custody as a prisoner of general class under Section 2(3) of the said Act.

The aforesaid order is stated to have been forwarded to the U.P. Advisory Board in terms of Section 10 of the said Act and the Board opined in terms of Section 11 of the said Act that there is sufficient reason for detention of the person. The State of Uttar Pradesh vide order dated 01.6.2022 passed under sub-Section 3(3) gave direction to detain tentatively for a period of three months. However on 22.7.2022 another order was passed recommending that the apprehension of being involved again in such a situation could not be denied and thus by exercising powers as

provided under Section 12(1) of the said Act detention was extended for tentative period of six months commencing from the first date of detention.

We notice that though the matter was pending before the High Court, third extension was granted by order dated 17.1.2023 for a period of twelve months commencing from the date of actual detention which is the maximum period as per Section 13 of the said Act and is ending on 23.4.2023. It is the submission of learned counsel for the respondent(s) that thus the petitioner would be released on the said date subject to any other proceedings which may be initiated.

In order to appreciate the controversy we reproduce section 3(2) of the said Act:-

**3. Power to make orders detaining certain persons.-**

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained. Explanation.- For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act."

In the factual scenario all that happened was that the revenue officials went to the property to recover their dues. We in fact asked the counsel for the State that whether there is any such practice of the revenue officials going from one property to the other to recover their dues. Obviously, it is not so! The allegation against the petitioner was of endeavoring to obstruct locking of premises. However, what was subsequently added was that on a phone call he threatened the officers.

Even assuming all the aforesaid facts to be correct, the exercise of the said Act in respect of the incident is shocking and unsustainable. That such a proposal was made, received the imprimatur of the senior officer(s) and even of the Advisory Board does not reflect well on the manner in which the authorities exercise their mind by invoking the provisions of the said Act. A reading of the statement of object and reasons of the Act would show that it was to control the anti social and anti national elements including secessionist, communal and procaste elements, that affect the services essential to the community, thereby posing a grave challenge. This was particularly in respect of defence, security, public order and services essential to the community which have resulted in the National Security Ordinance, 1980 being promulgated and the Act was to replace the ordinance.

We find no element present in the case for exercise of this power of detention and extension of detention and have no hesitation in quashing the proceedings under the said Act as wholly without any basis. It is a clear case of non application of mind of all the authorities concerned. We have already noticed that petitioner had already obtained bail in respect of the offences charged. We thus allow the writ petition in the aforesaid terms directing that the petitioner should be set at liberty forthwith. Information be sent to the District Jail Rampur, Uttar Pradesh, immediately.

The writ petition accordingly stands allowed. IA No. 39293/2023 seeking additional prayer also stands allowed.