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Court No. - 9

Case :- HABEAS CORPUS No. - 23475 of 2020

Petitioner :- Mohd. Faiyyaz Mansuri Thru. Brother Mohd. Siraj

Respondent :- Union Of India Thru. Secy. Min. Of Home N.Delhi & Others

Counsel for Petitioner :- Rajendra Kumar Dwivedi, Harish Pandey, Sushil Kumar Singh

Counsel for Respondent :- G.A., A.S.G., Pooja Singh

Hon'ble Ramesh Sinha, J.

Hon'ble Mrs. Saroj Yadav, J.

(Per Ramesh Sinha, J. for the Bench)

- (1) The instant writ petition under Article 226 of the Constitution of India has been filed by the detenu/petitioner, **Mohd. Faiyyaz Mansuri**, through his next friend/brother Mohd. Siraj, challenging the order of detention dated 17.09.2020 passed by the District Magistrate, Lakhimpur Kheri under Section 3 (2) of the National Security Act, 1980 (hereinafter referred to as “N.S.A.”), the order of approval dated 25.09.2020 passed by the Under Secretary, Home (Confidential) Department, Government of Uttar Pradesh under Section 3(4) of the N.S.A. and the order of confirmation dated 28.10.2020 passed by the Under Secretary, Home (Confidential) Department, Government of Uttar Pradesh under Section 12(1) of the N.S.A.
- (2) During pendency of the instant writ petition, the State Government has extended the detention of the detenu/ petitioner

for a further period of six months from the date of detention i.e. 17.09.2020, vide order dated 08.12.2020, which is also challenged by the detenu/petitioner by means of amendment.

- (3) The prejudicial activities of the petitioner/detenu impelling the third respondent (District Magistrate, Lakhimpur Kheri) to clamp the impugned detention order against him are contained in grounds of detention. Facts relating to the detention of the detenu/petitioner as given in the grounds of detention (Annexure 8) accompanying the impugned detention order 17.09.2020 are that one Sagar Kapoor, s/o Brijesh Kapoor, resident of Bazarganj, Police Station Mohammadi, District Kheri made a written report to the effect that on 05.08.2020, at 8:39 P.M., the detenu/petitioner had posted provocative post with the intention of provoking the sentiments of Hindu society through his Facebook I.D., to which one Samreen Bano made indecent comment on 5.8.2020, which was supported by Mohd. Arif, Mohd. Shadab and other three-four persons by attacking the Hindu religious sentiments and tried to increase religious fervor and threatened to kill and also tried to disturb the peace in the area. On the basis of the said written report, F.I.R. No. 0595 of 2020, under Sections 153A, 292, 505 (2), 506, 509 I.P.C. and 67 of the Information Technology (Amendment) Act, 2008, at Police Station Mohammadi, District Kheri was registered on 06.08.2020 at 12:46 P.M. During the investigation, Sections 292/509 I.P.C. were dropped, however, Section 295-A I.P.C. was added. On

08.08.2021, the detinue/ petitioner was arrested in connection with the aforesaid F.I.R. and sent to jail. The said incident was published in daily newspaper 'Hindustan' and 'Amar Ujala'. On account of the act of the detinue/petitioner in posting inflammatory post of offending material through his facebook, various Hindu organizations and local persons were angry and gathered in the area and raised slogans against the inflammatory post of offending material and also blocked the road, because of which, the flow of normal life, peace and discharge were disturbed and the atmosphere of the area was very tense. After deploying the additional police force and after serious efforts, the public order could be restored.

- (4) It has also been mentioned in the grounds that the detinue/ petitioner was confined to Jail but his Pairokars were trying for his release on bail and in this regard, a bail application on behalf of the detinue/petitioner was filed before the Additional Chief Judicial Magistrate, Outline Court, Mohammadi, Kheri, which was rejected by the Court on 08.09.2020. Subsequently, again a bail application on behalf of the detinue/petitioner was filed before the Sessions Court, Kheri, on which 18.09.2021 was fixed for hearing. Therefore, there was a possibility that the detinue/petitioner if released on bail, shall again indulge in similar crime, which shall be prejudicial to the maintenance of the public order. Further, there is strong possibility for violence between two communities, which could disturb the public order. It

has further been stated that on the basis of the aforesaid incident, the detaining authority felt satisfied that in order to prevent the detinue/petitioner from acting in any manner prejudicial to the maintenance of public order, it became necessary to pass orders for detention of the petitioner. The detinue/petitioner was also informed that he has a right to make a representation under Section 8 of the N.S.A. to the detaining authority and the State Government through the Jail Superintendent. In respect of Sections 9 and 10 of the N.S.A., he was also informed that he may also move a representation to the Chairman, U.P. Advisory Board (Detention) through Jail Superintendent. He was further informed that he may also make a representation to the Central Government through Superintendent of the Jail.

- (5) The detention order along with the grounds of detention dated 17.09.2020 was served to the petitioner/detinue on 17.09.2020. The true copy of the detention order and the grounds of detention have been annexed as Annexure no.1 and 8, respectively, to the writ petition. The impugned order of detention was approved by the State Government on 25.09.2020 under Section 3 (4) of the N.S.A. and communicated to the petitioner on 26.09.2020. On 25.09.2020, the order of detention, grounds of detention and all other relevant papers received from the District Magistrate, Lakhimpur Kheri were sent to the Central Government under Section 3 (5) of the N.S.A. by the State Government. On 28.10.2020, the State Government had confirmed the order of

detention dated 17.09.2020 under Section 12 (1) of the N.S.A for a period of three months tentatively from the date of his actual detention under N.S.A. i.e. w.e.f. 17.09.2020. On 28.09.2020, the case of the detenu/petitioner was referred to the U.P. Advisory Board (Detention), Lucknow. On 29.09.2020, the detenu/petitioner has submitted his representation to the District Magistrate, Lakhimpur Kheri, Secretary (Home), State of U.P., Lucknow and Secretary, Ministry of Home Affairs, Government of India, New Delhi and the U.P. Advisory Board (Detention), Lucknow, to the Superintendent, District Jail, Lakhimpur Kheri, who, vide letter dated 29.09.2020 forwarded the petitioner's representation dated 29.09.2020, to the District Magistrate, Lakhimpur Kheri. On 01.10.2020, the District Magistrate, Lakhimpur Kheri had sent the detenu/petitioner's representation dated 29.09.2020 along with para-wise comments to the State Government, which was received by the State Government on 05.10.2020. On 06.10.2020, the State Government has sent the petitioner's representation dated 29.09.2020 along with parawise comments to the Central Government, New Delhi and the U.P. Advisory Board (Detentions), Lucknow vide separate letters dated 06.10.2020, which was received by the Central Government, Ministry of Home Affairs, New Delhi on 12.10.2020. On 08.10.2020, the State Government rejected detenu/ petitioner's representation dated 29.09.2020, which was communicated to the detenu/petitioner on 09.10.2020. On 22.10.2020, the U.P. Advisory Board (Detention), Lucknow examined the matter and

also heard the detenu/petitioner in person. Opinion of the U.P. Advisory Board (Detention), Lucknow dated 23.10.2020 was received by the State Government on 26.10.2020. The State Government, thereafter, considered the matter again and confirmed the detention of the detenu/petitioner for a further period of three months tentatively by the order dated 28.10.2020, which was duly communicated to the detenu/petitioner on 28.10.2020. On 13.11.2020, the Central Government, Ministry of Home Affairs, New Delhi rejected the detenu/petitioner's representation dated 29.09.2020, which was communicated to the detenu/ petitioner on 17.11.2020 through wireless message.

- (6) Feeling aggrieved by the aforesaid, the detenu/petitioner has filed the instant habeas corpus petition through his next friend/brother Mohd. Siraj, with the prayer, as mentioned in paragraph-1 herein-above.
- (7) During pendency of the instant habeas corpus petition, the State Government, vide order dated 08.12.2020, extended the period of detention for a further period of three months, which has been challenged by the detenu/petitioner by means of the amendment in the instant habeas corpus petition. On 12.03.2021, the State Government again extended the period of detention for further three months and then on 03.06.2021 the State Government extended the period of detention for further three months, but it transpires from the record that the extension order dated

12.03.2021 and 03.06.2021 has not been challenged by the detinue/petitioner in the instant habeas corpus petition.

- (8) Heard Sri Sushil Kumar Singh, learned Counsel for the detinue/petitioner, Ms. Pooja Singh, learned Counsel for the Union of India/respondent no.1 and Sri S.N. Agnihotri, learned Additional Chief Standing Counsel for the State/respondents no. 2 to 4 and perused the material brought on record.
- (9) Challenging the impugned order of detention as well as consequential orders, Mr. Sushil Kumar Singh, learned Counsel for the detinue/petitioner has argued that it has been alleged in the F.I.R. No. 0595 of 2020 registered against the detinue/ petitioner at Police Station Mohammadi, District Kheri that the petitioner/detinue had posted one derogatory message on the Facebook wall through his I.D., on which one Samreen Bano had made indecent comment on God and Goddess of the Hindu community. It has also been alleged in the F.I.R. that some other people, namely, Mohd. Arif, Mohd. Shadab and 3-4 other persons have also hurt the sentiments of the Hindu Community. The detinue/petitioner was arrested in connection with the aforesaid F.I.R. on 08.08.2020. He argued that the police, while registering the F.I.R. and implicating the detinue/petitioner in the said incident, could not verify and identify the verification report from Facebook Company to ascertain the fact that by which mobile I.M.E.I. number, the offending material was uploaded on Facebook as mandated under Section 65-B of the Indian Evidence

Act. He also argued that the police has filed the charge-sheet against the detenu/petitioner in the aforesaid F.I.R without verifying the factum or collected evidence as mandated under Section 65-B of the Indian Evidence Act to connect a person with information technology crime. He also argued that in the F.I.R., four persons were named as accused and the main person, namely, Samreen Bano, who is allegedly said to have made abusive comments, has not been arrested till date and similarly, Mohd. Arif, Mohd. Shadab have also not been arrested by the police, which clearly establishes that it was not a stringent situation inasmuch as there was no reason to invoke the stringent provisions of N.S.A. by the District Magistrate solely against the detenu/petitioner. He argued that subjective satisfaction of the detaining authority is vitiated as the impugned order of detention has been passed on irrelevant facts which have been considered in the impugned order and there was no public order situation but it may be only a normal law and order situation, if any.

- (10) Learned Counsel for the detenu /petitioner has further submitted that the extension orders dated 08.12.2020, 12.03.2021, 03.06.2021 were passed on the basis of the beat report of the Constable, who manufactured and created it without any substantive piece of evidence that who were the persons feeling apprehensive about the release of the detenu /petitioner. His submission is that artificial beat report by Station House Officer dated 02.12.2020 has been made the basis for the grant of

extension, which is not sustainable in the eyes of law for want of basic material for extension. He pointed out that the first extension order dated 08.12.2020 was not supplied to the detenu/petitioner, hence the valuable right of the detenu /petitioner as guaranteed under Article 22 (5) of the Constitution of India has been infringed rendering the continued detention of the petitioner to be illegal. He submits that when the extension order dated 08.02.2021 has been filed by the District Magistrate, Lakhimpur Kheri through supplementary counter affidavit, then, the detenu/petitioner has challenged the second extension order by way of amendment application. He further submitted that the petitioner /detenu was detained under N.S.A on 17.12.2020 without being informed about any extension order, however, when the Court intervened in the matter, the order of extension dated 08.12.2020 was supplied to the detenu/petitioner on 19.02.2021 by the Jail Authorities and further the supplementary counter affidavit was filed by annexing the order on 22.02.2021.

- (11) Learned Counsel for the detenu/petitioner has argued that the proviso to Section 3 (2) of the N.S.A. provides that no order passed under Section 3 (2), shall, in the first instance, exceed six months and if the State Government is satisfied that the order is required to be passed for a further period, it may extend the period of detention by such period not exceeding three months at any one time and in no case, the period of detention would exceed the period of 12 months in total. He argued that in the present case,

perusal of the impugned order of detention dated 17.09.2020 passed by the detaining authority as well as impugned order of affirmation passed by the State Government dated 25.09.2020 reveals that it does not specify the period for which detention has been ordered and, therefore, in view of the ratio laid down by the Apex Court in **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others** : (2017) 13 SCC 519, the impugned detention order and consequential order are illegal and the same are liable to be quashed.

- (12) The next submission of the learned Counsel for the detinue/petitioner is that there was undue delay in the disposal of the representation of the detinue/petitioner on the part of the Central Government, Ministry of Home Affairs, New Delhi as the petitioner's representation dated 29.09.2020 was received by the Central Government on 12.10.2020 but it was rejected on 13.11.2020 i.e. after one month and the said order rejection dated 13.11.2020 was communicated to the petitioner through wireless message on 17.11.2020 i.e., after four days from the date of passing the order of rejection. He argued that there is no plausible explanation in deciding the petitioner's representation after one month and communicating the same to the petitioner after four days. He argued that delay and laches committed by the Central Government in considering the detinue/petitioner's representation has infringed fundamental rights of the detinue enshrined under Articles 21 and 22 (5) of the Constitution of India. He argued that

on this count alone, the impugned order of detention is liable to be quashed.

- (13) To strengthen his submission, learned Counsel for the detenu/petitioner has placed reliance upon **Rajammal Vs. State of Tamil Nadu and another** : (1991) 1 SCC 417, **Mohinuddin @ Moin Master Vs. District Magistrate, Beed** : AIR 1987 SC 1977, **Satyapriya Sonkar Vs. Superintendent, Central Jail** : 2000 Cr.L.J. Allahabad (D.B), **Kundanbhai Dulabhai Shaikh Vs. Distt. Magistrate, Ahmedabad** : 1996 (3) SCC 194, **K.M. Abdulla Kunhi Vs. Union of India** : (1991) 1 SCC 476 and **Harish Pahwa Vs. State of Uttar Pradesh & others** : A.I.R. 1981 SC 1126.
- (14) While supporting the impugned order of detention and the impugned consequential orders, learned Additional Government Advocate appearing on behalf of the State/respondents No. 2 to 4 has vehemently argued that the complete procedure as provided in the N.S.A. has been adopted. The detenu /petitioner was served the orders promptly. The State Government approved the detention order well within 12 days as provided under Section 3 (4) N.S.A. The State Government forwarded the copy of the detention order etc. to the Central Government within 7 days from the date of approval as required under Section 3 (5) of the N.S.A.. The State Government forwarded the detention order and ground of detention etc. to U.P. Advisory Board (Detentions), Lucknow

well within 3 weeks from the date of actual detention as required under Section 10 of the N.S.A. The U.P. Advisory Board heard the detinue in person and sent its report alongwith the opinion that there is sufficient cause for preventive detention of the petitioner well within 7 weeks from the date of detention of the petitioner as provided under Section 11 (1) of the N.S.A. The detention order was confirmed tentatively for 3 months from the date of actual detention and was served upon the detinue. Thereafter, the detention order was extended time to time in the manner as mentioned above.

- (15) Elaborating his submission, learned AGA has further submitted that in exercise of powers under Section 3 (3) of the N.S.A., the State Government is empowered to pass the detention order at the first instance for 3 months and if satisfied to extend such period from time to time by any period not exceeding 3 months at any one time. The maximum period of detention for which any person may be detained in pursuance of any detention order which has been confirmed under Section 12 of N.S.A. shall be twelve months from the date of detention (subject to the proviso). Thus, in view of Article 22 (4) of the Constitution of India read with Sections 3 (3) and Section 13 of the N.S.A., the detention of the petitioner for 12 months from the date of actual detention is completely justified and legal and there is no illegality in extending the period of detention time to time for a total period of 12 months.

- (16) Learned A.G.A. has further argued that the State Government has rejected the petitioner's representation without any delay. The act/offence committed by the detinue is in nature of effecting public order. The District Magistrate, after having gone through the report of Sponsoring Authorities and after being satisfied that to prevent the detinue from acting prejudicial to maintenance of public order, passed the order of detention after recording its subjective satisfaction. He also argued that a single act in the nature of effecting public order is sufficient for the Detaining Authority to exercise its power given under the NSA. It is not the number of acts matters but what has to be seen is the effect of the act on even tempo of life, the extent of its reach upon society and its impact as has been held by the Apex Court in *State of U.P. vs. Sanjay Pratap Gupta* :2004 (8) SCC 591.
- (17) Learned AGA has further argued that the Act/offence committed by the detinue/petitioner clearly violates the rights of other religion and is in the nature of insulting the religious sentiments of one community. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section. The act committed by the detinue/petitioner is in the nature of insulting the religion with deliberate and malicious intention of outraging the religious feelings of one class. He has placed reliance upon **Ramji Lal Modi vs. State of U.P.**: AIR 1957 (SC) 620 and argued that nobody can exercise the fundamental rights

by putting the public order in jeopardy. The maintenance of the public order is paramount in the larger interest of the society.

- (18) Learned AGA has also placed reliance upon **Gulam Abbas and others vs. State of U.P. and others** : 1984 (1) SCC 81) and argued that the tweet/post and the comments of different persons against Hindu Goddess cannot be said to be any religious right of the petitioner and others rather it is an offence provoking the sentiments of another religion. The petitioner is seeking his right given under Article 21 of the Constitution of India, who himself is not having faith in the Constitution and the judicial system of the country. He argued that after the verdict of the Hon'ble Supreme Court in respect of Ram Janam Bhumi dispute, it is law of land and that giving an open challenge to the verdict of the Hon'ble Supreme Court by posting a tweet, clearly shows the deliberate and malicious intention against one religion and against the highest Court of the Nation. The intention is very clear that the petitioner does not have faith in the laws of the land. He also argued that the extension of detention period is well within the jurisdiction of the Detaining Authority/State Government. At the time of further extension of detention order, it is not necessary to furnish the grounds of extension to the detenu, each and every time. The detention period was extended on the grounds, which were already communicated to the petitioner and no prejudice was likely to be caused to the petitioner. In support of his submission,

he has placed reliance upon **Rakesh Singh Vs. Union of India and 3 others** : 2021 Law Suit (All 159).

- (19) Learned AGA has further argued that there is no illegality in the order of detention. The petitioner's activities are prejudicial to the maintenance of the public order. The subjective satisfaction of the Detaining Authority is well founded, based on clinching material on record. Hence, the writ petition is liable to be dismissed.
- (20) Ms. Pooja Singh, learned Counsel for the Union of India/respondent no.1 has submitted that the representation of the detinue/petitioner was considered with all promptness and there was no negligence or delay in this regard.
- (21) Having heard the learned Counsel for the parties and gone through the impugned order of detention as well material brought on record, the main thrust of arguments of the learned Counsel for the detinue/petitioner while challenging the impugned order of detention and consequential impugned orders are as under :-
- (1) The sponsoring authority, without ascertaining the fact from the Facebook Company that the alleged material is posted with the petitioner's I.D. or not as mandated under Section 65 B of the Indian Evidence Act, has recommended to slap N.S.A. upon the detinue/petitioner.
 - (2) The Detaining Authority i.e. District Magistrate, Lakhimpur Kheri has passed the impugned detention order in a routine manner without application of mind on the report submitted to him by the sponsoring/police authority and that the District Magistrate has failed to record any real subjective satisfaction in the impugned order of detention;

- (3) The first extension order dated 08.12.2020 was not supplied to the detinue/petitioner but after the order passed by this Court, the order of extension dated 08.12.2020 has been supplied to the detinue/petitioner on 19.02.2021;
- (4) In the impugned order of detention dated 17.09.2020 passed by the detaining authority as well as impugned order of affirmation passed by the State Government dated 25.09.2020, the period for which detention has been ordered, does not specify, hence, in view of the ratio laid down by the Apex Court in **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others (Supra)**, the impugned order of detention and consequential affirmation order are illegal.
- (5) There was undue delay in the disposal of the representation of the detinue/petitioner on the part of the Central Government, Ministry of Home Affairs, New Delhi.
- (22) With regard to first and second point of challenge by the detinue/petitioner, learned Additional Government Advocate has placed reliance upon the judgment of the Apex Court in **Ramji Lal Modi Vs. State of Uttar Pradesh (Supra)** and **Gulam Abbas and others Vs. State of U.P. and others (Supra)** and has contended that the act/offence committed by the detinue clearly violates the right of other religion and is in the nature of insulting the religious sentiments of one community. Thus, the calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the act committed by the petitioner is in the nature of insulting the religion with deliberate and malicious intention of outraging the religious feelings of one class. He argued that the Detaining Authority has considered the entire material placed before him by the sponsoring authority, particularly the fact that the material posted by the detinue/petitioner through his Facebook I.D. has

absolutely disturbed the communal harmony of the society and more so the statement recorded under Section 161 Cr.P.C., the detinue/petitioner has himself admitted the fact that he has posted the alleged material from his facebook I.D., rightly satisfies that after being released on bail, the detinue/petitioner shall again indulge in activities prejudicial to the public order. Hence, there is no illegality or infirmity in passing the impugned order of detention by the Detaining Authority.

- (23) A perusal of the grounds of detention reveals that a provocative post '*Babri masjid ek din dubara banai Jayegi, jis tarah Turki ki Sofiya masjid banai gai thi*' alleged to have been posted by the detinue/petitioner on his Facebook Wall on 5.8.2020 was taken into consideration by the detaining authority while coming to the subjective satisfaction that the petitioner should be detained under the N.S.A. On careful perusal of the grounds of detention dated 17.09.2020, particularly para-1, it would indicate that the detinue/petitioner had been charged for posting aforesaid provocative message/tweet on his Facebook Wall on 17.09.2020, which amounts to causing fear or alarm in the public, or to any section of the public whereby any person may be induced to commit offence against the State and also disturb the communal harmony. For that offence, one Sri Sagar Kapoor lodged an FIR, which was registered as F.I.R. No. 595 of 2020, under Sections 153A, 292, 505 (2), 506, 509 I.P.C. and Section 67 of the Information Technology (Amendment) Act, 2008, at Police Station

Mohammadi, District Kheri on 06.08.2020, at 12:46 P.M. During the investigation, Sections 292/509 I.P.C. were dropped, however, Section 295-A I.P.C. was added. On 08.08.2020, the petitioner was arrested in connection with the aforesaid F.I.R. and was sent to jail. After his arrest, confessional statement of the detinue/petitioner was recorded and in his statement, the detinue/petitioner has confessed his guilt in posting the aforesaid provocative message on his Facebook. The grounds of detention further shows that in view of communal tension and enmity, people at different places gathered and raised slogans against the said message, by which communal harmony was disturbed and, therefore, additional police force was deployed and after serious efforts, the public order could be restored. It has also been mentioned in the grounds of detention that after arrest of the petitioner, he has moved an application for bail, which was rejected by the Court concerned and thereafter, the detinue/petitioner has moved an application for bail before the Sessions' Court. Therefore, the Detaining Authority, after considering the entire material on record, satisfied that in order to prevent the detinue/petitioner from acting in a any manner prejudicial to the maintenance of public order, it became necessary to pass order of detention of the petitioner.

- (24) Observing that aim of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing so, the Supreme Court in the case of **Naresh Kumar**

Goyal v. Union of India and others, (2005) 8 SCC 276, and ingeminated in **Union of India and another v. Dimple Happy Dhakad**, AIR 2019 SC 3428, has held that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent antisocial and subversive elements from imperilling welfare of the country or security of the nation or from disturbing public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so.

- (25) To sum up, a law of preventive detention is not invalid because it prescribes no objective standard for ordering preventive detention, and leaves the matter to subjective satisfaction of the Executive. The reason for this view is that preventive detention is not punitive but preventive and is resorted to with a view to prevent a person from committing activities regarded as prejudicial to certain objects that the law of preventive detention seeks to prescribe. Preventive detention is, thus, based on suspicion or anticipation and not on proof. The responsibility for security of State, or maintenance of public order, or essential services and supplies, rests on the Executive and it must, therefore, have

necessary powers to order preventive detention. Having said that, subjective satisfaction of a detaining authority to detain a person or not, is not open to objective assessment by a Court. A Court is not a proper forum to scrutinize the merits of administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not. It is often said and held that the Courts do not even go into the question whether the facts mentioned in grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the Courts and that is not the object of law of preventive detention. This matter lies within the competence of Advisory Board. While saying so, this Court does not sit in appeal over decision of detaining authority and cannot substitute its own opinion over that of detaining authority when grounds of detention are precise, pertinent, proximate and relevant.

- (26) It is apt to mention here that our Constitution undoubtedly guarantees various freedoms and personal liberty to all persons in our Republic. However, it should be kept in mind by one and all that the constitutional guarantee of such freedoms and liberty is not meant to be abused and misused so as to endanger and threaten the very foundation of the pattern of our free society in which the guaranteed democratic freedom and personal liberty is

designed to grow and flourish. The larger interests of our multi-religious nation as a whole and the cause of preserving and securing to every person the guaranteed freedom peremptorily demand reasonable restrictions on the prejudicial activities of individuals which undoubtedly jeopardize the rightful freedoms of the rest of the society. Main object of Preventive Detention is the security of a State, maintenance of public order and of supplies and services essential to the community demand, effective safeguards in the larger interest of sustenance of peaceful democratic way of life.

- (27) In the instant case, on examining the grounds of detention, briefly referred to herein-above, on the touchstone of the legal position as emerging from the aforementioned decisions, we are of the considered view that the activities relied upon by the Detaining Authority to come to the conclusion that in order to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, it became necessary to pass order for detention of the detenu/petitioner, cannot be said to be mere disturbance of law and order. As mentioned in the ground of detention, the activities of the detenu/petitioner pertains to disturb the communal harmony of the Society. The posting of the provocative message through his Facebook wall, as referred to herein-above, strikes at the root of the State's authority and is directly connected to 'public order'. This act of the detenu/petitioner was not directed against a single individual, but

against the public at large having the effect of disturbing the even tempo of life of the community and thus breaching the 'public order'.

- (28) This Court, therefore, has no hesitation in holding that the instance of petitioner's activities enumerated in the grounds of detention, clearly show that his activities cover a wide field and fall within the contours of the concept of 'public order' and the Detaining Authority was justified in law in passing the impugned order of detention. Hence, there is no substance on the plea of the petitioner in this regard.
- (29) So far as the argument relating to non-supply of the first order of extension dated 08.12.2020 to the detenu/petitioner is concerned, it transpires from the record that the order of extension dated 08.12.2020 has been challenged by the detenu/petitioner by means of amendment and further as per own submission of the petitioner that the order of extension dated 08.12.2020 has been supplied to the detenu on 19.02.2021, therefore, it is immaterial at this stage to raise the issue of non-supply of the first order of extension dated 08.12.2020. Moreover, there was no such requirement to furnish grounds of extension to the detenu because the grounds of detention were the same, so no any prejudice was likely to be caused to the petitioner.
- (30) So far as the argument of the learned Counsel for the petitioner that the detention order does not specify the period for which

detention has been ordered, hence in view of the law laid down by the Apex Court in **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others** (supra), the impugned detention order is illegal, it is relevant to mention here that this Court, while adjudicating this issue in Habeas Corpus No. 24213 of 2020 : *Kanhaiya Awasthi Thru Next Friend Shivangi Awasthi Vs. Union of India Thru Secy. Home Affairs New Delhi & Ors*, decided on 16.08.2021, has taken note of the ratio laid down by the Apex Court in **T. Devaki Vs. Government of Tamil Nadu and others** : 1990 (2) SCC 456, which has subsequently been followed in **State of Maharashtra & others vs. Balu S/o Waman Patole** (Criminal Appeal No. 1681 of 2019, decided on 13.11.2019) as well as the ratio laid down by the Apex Court in **Secretary to Government of Tamil Nadu Public (Law and Ordre) Revenue Department and others Vs. Kamala and others** : (2018) 5 SCC 322 and held that there is no substance in the plea of the detinue/petitioner that the impugned detention order and the impugned order confirming the detention order, both are bad in law as they do not mention the period of detention at the first instance. Hence, the plea of the detinue/petitioner in this regard has no force and the same is rejected.

- (31) The next submission of the learned Counsel for the detinue/petitioner is that there is undue delay in the disposal of the representation of the detinue/petitioner on the part of the Central Government, Ministry of Home Affairs, New Delhi.

(32) For appreciating the aforesaid submission of the detinue/petitioner, we deem it appropriate to reproduce para-4 of the supplementary counter affidavit filed by Smt. Meena Sharma, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, in which details of dealing of the petitioner's representation have been narrated. Para-4 of the aforesaid affidavit reads as under :-

“That, in addition to para 4 of the counter affidavit dated 07.01.2021, it is further submitted that a copy of the representation dated 29.09.2020 of the detinue along with parawise comments of the detaining authority was forwarded by the Under Secretary, Government of Uttar Pradesh to the Central Government in the Ministry of Home Affairs vide letter no. 84/2/59/2020-C.X-5 dated 06.10.2020. The same was received in the section concerned in the Ministry of Home Affairs on 12.10.2020. It is pertinent to mention that after relaxation of few COVID norms, the section received 72 nos. of receipts including 12 nos of representations from various State Governments. Also, as per guidelines of DOPT, a roaster system was there as preventive measures to contain the spread of Novel Coronavires (COVID-19). Unfortunately, the dealing hand fell ill on 14th and was on leave on 15th October, 2020. On 16th, he somehow manages to come to office for dealing urgent receipts. There was an intervening period of two holidays i.e. Saturday and Sunday on 17th and 18th October, 2020. After that on 19th and 20th, the facts were consolidated and a note was prepared after going through records received from the detaining authority and State Government. Thereafter, the file was put up for the consideration of Union Home Secretary on 21.10.2020. The file reached the Under Secretary (NSA) on 21.10.2020. The Under Secretary (NSA) with her comments forwarded the same to the Deputy Legal Advisor (DLA) on 22.10.2020. The Deputy Legal Advisor (DLA) forwarded the same to the Joint Secretary (IS-II) on 22.10.2020. The file reached the office of

Joint Secretary (IS-II) on 23.10.2020. It is pertinent to mention that the officer of Deputy Legal Advisor is at Major Dhyan Chand National Stadium and the office of Joint Secretary (IS-II) is at North Block. The Joint Secretary (IS-II) with his comments forwarded the same to the Union Home Secretary on 24.10.2020. Thereafter, it was felt that an independent report from the Central Agency is also needed to ascertain detenu's involvement in the case and as to whether his release has the potential to further disturb the peace and public order in the area. There was an intervening period on 25th October, 2020 being Sunday. The file reached the section concerned from aforesaid level of officers on 27.10.2020. Accordingly, the same report was sought on 27.10.2020. The report from the Central Agency was received in the section concerned on 06.11.2020. Thereafter, there was an intervening period of 2 holidays on 07th and 8th November, 2020 being Saturday and Sunday. After receiving input from the Central Agency, the case was again processed for consideration of the Union Home Secretary on 09.11.2020. The Under Secretary with her comments forwarded the same to the Deputy Legal Advisor on 10.11.2020. The Deputy Legal Advisor forwarded the same to the Joint Secretary (IS-II) on 11.11.2020. The file reached the Joint Secretary on 12.11.2020. The file was further examined by the Joint Secretary (IS-II) and then he, with the comments; forwarded the file to the Union Home Secretary on 13.11.2020. The Union Home Secretary having carefully gone through the material on record, including the order of detention, the grounds of detention, the representation of the detenu, the comments of the detaining authority thereon and the input from central agency concluded that the detenu had failed to bring forth any material cause or grounds in his representation to justify the revocation of the order by exercise of the powers of the Central Government under Section 14 of the National Security Act, 1980. He, therefore, rejected the representation on 13.11.2020. The file reached the section concerned through aforesaid level on 17.11.2020. During the intervening period, 14th and 15th November were holidays being Saturday and Sunday. Accordingly, the detenu was informed vide Wireless Message No. II/15028/163/2020-NSA dated 17.11.2020. It is

further submitted that the representation was examined with utmost care and caution with promptitude. Hence, there was no bonafide or deliberate delay in disposal of the representation on part of the Respondent No. 01 i.e. the Union of India.”

- (33) From the affidavit submitted by the Under Secretary, Ministry of Home Affairs, Government of India, it transpires that the petitioner’s representation dated 29.09.2020, which was forwarded by the State Government vide letter dated 06.10.2020, has been received in the second concerned of the Ministry of Home Affairs on 12.10.2020 but it could not be processed between 13.10.2020 to 20.10.2020 due to 72 numbers of receipts including 12 numbers of the representations from various State Governments have been received after relaxation of few Covid norms and further the dealing hand fell ill on 14th October, 2020 and was on leave on 15th October, 2020 and on 17th and 18th October, 2020 were Saturday and Sunday. We have given out anxious consideration whether this could have been a proper explanation for withholding the representation. In our considered opinion, the Central Government were at fault. It appears that the Central Government though has received the petitioner’s representation on 12.10.2020 but it could only be processed on 21.10.2020 when it has been placed before the Under Secretary and day-to-day process of the file w.e.f. 13.10.2020 to 21.10.2020 has not been properly explained in the affidavit. Moreso, the file relating to the petitioner’s representation had reached to the office of Joint Secretary (IS-II) on 23.10.2020 and the same was

forwarded by the Joint Secretary (IS-II) to the Union Home Secretary on 24.10.2020. Thereafter, report was sought from Central Agency and the required report of Central Agency was received by section concerned on 06.11.2020. It transpires that the report of the Central Agency was received on 06.11.2020 but it only processed for consideration of the Union Home Secretary on 09.11.2020. The day-to-day explanation while dealing with the petitioner's representation between 25.10.2020 to 05.11.2020 have not been made by the Central Government. Furthermore, the petitioner's representation was rejected on 13.11.2020 but it was communicated to the detenu/petitioner on 17.11.2020 only via wireless message. Again, there is no day-to-day explanation between 14.11.2020 to 16.11.2020 on behalf of the Central Government. Thus, there was delay in disposal of the representation of the petitioner by the Central Government and having regard to the nature of detention and rigor of law, we are of the view that there was disproportionate delay at the end of the Central Government.

(34) For the reasons aforesaid, we are of the view that the plea of the detenu/petitioner that there is delay in forwarding the petitioner's representation on the part of the respondent no.1 (Union of India), has substance and on this count alone, the impugned detention order is liable to be quashed.

(35) In the result, the instant Habeas Corpus Petition is **allowed**. The impugned order of detention dated 17.09.2020 and the

consequential orders are hereby quashed. The detenu/petitioner is ordered to be set at liberty by the respondents forthwith unless required in connection with any other case.

(36) For the facts and circumstances of the case, there is no order as to costs.

(Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date :- 07.09.2021

Ajit/-