

AFR**Reserved****Court No.40**

Case :- HABEAS CORPUS WRIT PETITION No. - 2843 of 2015

Petitioner :- Pankaj

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Vivek Kumar Singh, Mayank Yadav

Counsel for Respondent :- Govt. Advocate, A.S.G.I.

(2015/0084), Arvind Kumar Goswami, Jogendra Prasad

Hon'ble Bala Krishna Narayana, J.

Hon'ble Mrs. Vijay Lakshmi, J.

(Delivered by Hon'ble Bala Krishna Narayana, J.)

The petitioner Pankaj has filed this writ petition with a prayer to issue a writ, order or direction in the nature of habeas corpus commanding the respondents to release the petitioner from their illegal detention in pursuance of the order dated 15.11.2014 and set him at liberty forthwith. Further prayer has been made for quashing the impugned order dated 15.11.2014 passed by respondent no.3 in the exercise of his power under Section 3(3) National Security Act, hereinafter referred to as NSA.

We have heard learned counsel for the petitioner, learned AGA appearing for the respondents no. 1,3, 4 and 5 and learned counsel the Union of India/ respondent no.2 and perused the pleadings of the

parties.

The brief facts of this case are that upon receiving information from the police informer about the illegal activities of the petitioner who was a dare devil criminal and a liquor smuggler engaged in illegal activity of smuggling illicit liquor from Haryana to his village Phugana and selling the same to the residents of the nearby villages, consumption whereof had been endangering the health and lives of the villagers, S.O.- Ved Prakash Giri, S.I.- Sheetal Kumar Sharma, S.I.- Vinod, S.I. Yogendra Singh, Constable 882, Muzammil, Constable 1054 Yogesh Kumar, Constable 1144 Vikrant, Constable 1350 Nitin, Constable 1066 Amt, Constable 953 Pankaj Tomar, Constable Driver Giri Prasad and Head Constable Jaipal Singh of 1-1/2 Section 23 Battalion D Company left for petitioner's village Phugana in their government and contract vehicles respectively on 22.10.2014. On way to the petitioner's village they met Deepak son of Ram Singh, r/o Kokar pur, P.S. Chajlait, Moradabad and Sri Bobby, s/o of Rajendra, r/o Nirauli, P.S. Jaarja, District Noida who stopped their vehicles and who after introducing themselves as employees of government country made liquor shop informed them that a fresh consignment of country made liquor had been delivered to Pankaj (petitioner) in his house in village Phugana. Believing the aforesaid information to be true S.H.O. Phugana and other members of his force proceeded towards the petitioner's house in village Phugana, after the information given to

them by Deepak and Bobby Singh was confirmed by one Basant and and on reaching there they saw the petitioner pushing two plastic boxes into his house. When the members of the police force tried to apprehend him, he ran into his house leaving the boxes behind and started shrieking on which his wife Smt. Archana, and his mother Smt. Rajgiri came out of the house and prevented the police personnel from entering into the petitioner's house by closing its main iron door. From the search of the first box, the police personnel recovered 412 plastic bottles of country made liquor on each of which a label was pasted on which "Raseela Santara, Gram Badhauri, District Ambala, Harayana and for sale in Harayana only" was printed. The search of second box led to recovery of 21 bottles on which also labels of "Raseela Santara" was pasted. The recovered articles were kept back in the same boxes and sealed by the police personnel, who thereafter ordered the petitioner to come out of his house on which he climbed up to the third floor of his house and started hurling abuses at the members of the police force and when they requested him to stop abusing them, the petitioner, his wife and his mother started pelting stones and brick bats at them, exhorting them to go away. When the police again requested the petitioner to stop his activities, he started firing at the members of the police force from his country made pistol which forced them to take steps for saving their lives. In the meantime S.O., Phugana informed the higher police officers about the incident by his mobile phone

whereupon S.P. R.A. Sri Alok Priyadarshi, C.O., Budhana and C.O., Phugana, Incharge inspector, P.S. Bhorakalan, Sri Anil Kumar, Incharge Inspector, P.S.-Budhana, Sri Dhananjaya Mishra Incharge Inspector and S.I. Smt. Kusum Bhati along with lady constables arrived at the place of incident with their respective forces. The police officers present on the spot tried to persuade the petitioner through public address system to stop his activities but he was not in a mood to listen to anyone and continued to fire at the members of the police force along with his wife and mother and again exhorted them to go away otherwise they would loose their lives. As a result of firing by them, fear pervaded the village and there was commotion all over. Children and ladies on hearing the sound of the pistol shots got scared and hid themselves in their houses closing windows and doors thereof. As a result of the petitioner's activities public order was totally disturbed. The members of the police force, had to fire tear gas shells and rubber bullets in self defence. In the meantime upon hearing about the incident, S.P. Police (Crime) and S. P., City also reached the place of occurrence and tried to cajole the petitioner and his relatives to surrender but they continued to pelt stones and fire at the members of the police force. In the meantime Incharge Inspector, P.S.-Khatauli Sunil Kumar Tyagi and S.H.O., Mansoorpur, Yogesh Sharma along with their forces also reached the place of occurrence. The petitioner on realizing that his house had been surrounded by the members of the

police force from all sides, agreed to surrender. However taking advantage of the on going talks between the petitioner and the members of police force, his wife and mother stealthily climbed down from the roof of their house and managed to escape. However, the petitioner was arrested by the members of police force on the spot. In the incident several police personnel received injuries. The personal search of the petitioner by the police lead to recovery of 12 bore country made pistol and four live cartridges of 12 bore and 6 live cartridges of 315 bore from the right and the left pockets of his shirt. The police force recovered another country made pistol of 315 bore from the roof of the petitioner's house apart from five empty cartridges of 315 bore and five live cartridges of 12 bore bullets. The recovered items were packed and sealed separately and recovery memo was prepared on the spot. On the basis of the First Information Report lodged by S.O.- Ved Prakash Giri, case crime no. 181 of 2014 under Sections 307, 504, 506, 323, 353, 336,34 IPC, case crime no. 182 of 2014 under Section 25 Arms Act and case crime no. 183 of 2014 under Section 60 of Excise Act were registered against the petitioner, his wife and his mother at P.S. Phugana, District Muzaffarnagar and the petitioner was sent to District Jail, Muzaffar Nagar.

While the petitioner was in District Jail, Muzaffar Nagar on account of his being accused in the aforesaid criminal cases, he was served with the impugned order dated 15.11.2014 passed by

respondent no.3 in the exercise of his power under Section 3(3) of the N.S.A. along with the grounds of detention under Section 8 of the N.S.A. on the same day.

The petitioner submitted detailed representations on 26.11.2014 to the State Government and Union of India through Superintendent, District Jail, Muzaffar Nagar (Annexure-7).

The detention order was approved by the State Government vide order dated 24.12.2014 (Annexure-8).

The petitioner appeared before the U.P. Advisory Board on 13.12.2014 in response to the letter of the State Government dated 03.12.2014. The detention order was approved by the U.P. Advisory Board as would be evident from the letter of Registrar, U.P. Advisory (Detention) letter dated 17.12.2014. Upon receipt of the report of the U.P. Advisory Board, the State Government again examined the petitioner's case afresh along with the opinion of the U.P. Advisory Board and took a decision to confirm the detention order and for keeping the petitioner under detention for a period of two months from the date of actual detention of the petitioner i.e. 15.11.2014 vide radiogram letter dated 24.12.2014. The representation dated 26.11.2014 made by the petitioner before the Central Government along with parawise comments of the detaining authority District Magistrate, Muzaffarnagar was forwarded by him to the Central Govt.

(Ministry of Home Affairs) along with his letter dated 28.11.2014 which was received in the concerned section of the Ministry of Home Affairs on 04.12.2014. The report envisaged under Section 3(5) of the NSA was received by the Central Government by the concerned section of Ministry of Home Affairs on 08.12.2014 vide State Government's letter dated 24.11.2014. On receiving the same, the petitioner's representation along with parawise comments was processed for consideration of the Union Home Secretary. The Union Secretary, NSA forwarded his comments to the Joint Secretary (Security) on 08.12.2014 and thereafter alongwith the comments of Joint Secretary (Security) file was sent to Union Home Secretary on 09.12.2014. The petitioner's representation was rejected by Union Home Secretary on 10.12.2014, information whereof was given to the petitioner on 11.12.2014 by post through Superintendent District Jail, Moradabad with the request to serve the copy of the same on the detenu.

Learned counsel for the petitioner submitted that the subjective satisfaction of the respondent no.3 (detaining authority) recorded in the impugned order is based upon insufficient non-existent and irrelevant grounds.

He next submitted that the District Magistrate, Moradabad has not applied his mind to the facts of the case and the material on record and he has passed the impugned order in a mechanical manner on the

basis of the reports submitted to him by the police authorities. The satisfaction recorded by the detaining authority in the impugned order that there was strong possibility of the petitioner being released on bail and after being released on bail, the petitioner shall again indulge in dare devil activities prejudicial to maintainance of public order and likely to disturb public order in the localities within the area of P.S. Phugana, which would further disturb the public order in District Muzaffarnagar is not based upon any material.

Learned counsel for the petitioner lastly submitted that the detention of the petitioner under the NSA only on the basis of a single criminal case in which no public order was involved and it was only a case relating to law and order is per-se illegal and unsustainable in the eyes of law.

Per contra, learned AGA submitted that there is no illegality or irregularity in the impugned detention order which is evident from the perusal of the facts mentioned in the counter affidavits filed by the respondents. The satisfaction recorded by the detaining authority in the impugned order for passing an order of preventive detention against the petitioner is based on relevant materials. The incident totally disturbed the maintenance of public order and it is absolutely misconceived to plead that the present case is one relating to law and order. The impugned order was passed by the respondent no.3 only

after he was fully satisfied on the basis of the material produced before him that there was very strong possibility of the petitioner being released on bail and on his release, he would again commit dare devil act which would disturb the maintenance of public order, not only in the localities within the area of P.S. Phugana but also in the entire district of Muzaffarnagar.

We have heard learned counsel for the parties and perused the impugned order as well as the other material brought on record and the law reports cited before us to which we will refer as and when the context requires.

The Apex Court in the case of **Pebam Ningol Mikoi Devi Vs. State of Manipur and others** reported in **(2010) 9 Supreme Court Cases 618** has examined the scope of Judicial review of the subjective satisfaction of detaining authority. Paragraph 21 of its verdict rendered in the aforesaid case, which is relevant for our purpose is being reproduced herein below”

“21. To decide the correctness or otherwise of the detention order, two issues of importance arise before this Court. The first is, regarding the documents and material on which reliance was placed by the detaining Authority in passing the detention order. Secondly, with those materials, the detaining authority was justified in arriving at a finding that the detenu should be detained under the [National Security Act](#) without any trial. In matters of this nature, this Court normally will not go into the correctness of the decision as such but will only look into

decision making process. Judicial review, it may be noted, is not an appeal from a decision but review of the manner in which the decision was made. The purpose of review is to ensure that the individual receives a fair treatment.”

We now proceed to examine some of the decisions of the Apex Court which may have relevance in determining in what manner such subjective satisfaction of the Authority must be arrived at, in particular on [Section 3\(2\)](#) of the National Security Act. [In Fazal Ghosi v. State of Uttar Pradesh](#), (1987) 3 SCC 502, this Court observed that: "The District Magistrate, it is true, has stated that the detention of the detenus was effected because he was satisfied that it was necessary to prevent them from acting prejudicially to the maintenance of public order, but there is no reference to any material in support of that satisfaction. We are aware that the satisfaction of the District Magistrate is subjective in nature, but even subjective satisfaction must be based upon some pertinent material. We are concerned here not with the sufficiency of that material but with the existence of any relevant material at all." (emphasis supplied) (Para 3).

[In Shafiq Ahmed v. District Magistrate, Meerut](#), (1989) 4 SCC 556, the Apex Court opined :- "Preventive detention is a serious inroad into the freedom of individuals. Reasons, purposes and the manner of such detention must, therefore, be subject to closest scrutiny and examination by the courts." (emphasis supplied) (Para 5).

This Court further added:

"...there must be conduct relevant to the formation of the satisfaction having reasonable nexus with the action of the petitioner which are prejudicial to the maintenance of public order. Existence of materials relevant to the formation of the satisfaction and having rational nexus to the formation of the satisfaction that because of certain conduct "it is necessary" to make an order "detaining" such person, are subject to judicial review." (emphasis supplied) (Para 5).

[In State of Punjab v. Sukhpal Singh](#), (1990) 1 SCC 35, the Apex Court held:

"...the grounds supplied operate as an objective test for determining the question whether a nexus reasonably exists between grounds of detention and the detention order or whether some infirmities had crept in." (emphasis supplied) (Para 9).

[In State of Rajasthan v. Talib Khan](#), (1996) 11 SCC 393, the Apex Court observed that:

"...what is material and mandatory is the communication of the grounds of detention to the detenu together with documents in support of subjective satisfaction reached by the detaining authority." (emphasis supplied) (Para 8).

The legal position that emerges from these rulings is that, there must be a reasonable basis for the detention order, and there must be

material to support the same. The Court is entitled to scrutinize the material relied upon by the Authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. The subjective satisfaction must be two fold. The detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent from so acting.

In order to determine the validity of the impugned detention order in the light of the principles laid down in the aforesaid decisions, it will be necessary to examine the materials relied by the detaining authority while passing the impugned detention order.

The impugned detention order as also the grounds of detention under Section 8 do not indicate the documents which were supplied to the petitioner along with the order of detention and the grounds of detention under Section 8 of the N. S. A. on the basis of which the detaining authority had formed its opinion for passing an order of preventive detention against the petitioner who was already in judicial custody on account of his being accused in three criminal cases, namely, case crime no. 181 of 2014, under Sections 307, 504, 506, 333, 353, 34 and 336 IPC, case crime no. 182 of 2014, under Section

25 Arms Act and case crime no. 183 of 2014, under Section 60 Excise Act, which arose from the same incident, we find that the petitioner has also not stated in the writ petition that he was not supplied with the documents upon which the detaining authority had recorded its subjective satisfaction in the impugned order.

However, our attention was drawn by the learned AGA to the report of S.H.O., P.S. Phugana, District Muzaffarnagar dated 12.11.2014, copy where of has been brought on record by the petitioner as Annexure-2 to the writ petition, which was forwarded by him to the sponsoring authority, namely, S.S.P. Muzaffarnagar which mentions as many as 45 documents which were forwarded by him to the S.S.P., Muzaffarnagar on the basis of which he had recommended that order of preventive detention should be passed against the petitioner in order to prevent him from coming out of jail and indulging in activities prejudicial to the maintenance of public order in the area.

From the perusal of the report of the S. S. P., Muzaffar Nagar / Sponsoring Authority dated 14.11.2014 recommending for passing of an order of preventive detention against the petitioner (Annexure-5 to the writ petition), it transpires that the report of the S.H.O.,P.S. Phugana, District Muzaffarnagar dated 12.11.2014 was also forwarded by the S.S.P., Muzaffarnagar to the District Magistrate, Muzaffarnagar/ detaining authority along with his report. Thus the submission of

learned counsel for the petitioner that there was no material before the detaining authority for recording his subjective satisfaction that there was strong possibility of the petitioner being released on bail and after coming out of jail he would again indulge in activities prejudicial to the maintenance of public order is not based upon any material or on irrelevant and insufficient material does not have any merit specially in view of the fact that the petitioner has not cared to bring on record the documents which find mention in the report of the S.H.O., P.S. Phugana, District Muzaffarnagar dated 12.11.2014 which were forwarded to the District Magistrate, Muzaffarnagar by the sponsoring authority S.S.P., Muzaffarnagar along with his letter dated 14.11.2014 nor he has denied in the writ petition that the aforesaid documents were not supplied to him.

We now proceed to examine the next submission of the learned counsel for the petitioner that the present case was one of law and order and not public order and the detention of the petitioner under NSA on the basis of single criminal case is illegal.

What is public order has been explained by Hon'ble Apex Court in paras 7 to 15 in the case of **State of U.P. and another Vs. Sanjai Pratap Gupta @ Pappu and others, (2004) 8 SCC 591**, which is quoted here as under:-

"The distinction between the areas of 'law and order' and 'public

order' is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public order' from that concerning 'law and order'. The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed" This question has to be faced in every case on its facts.

"Public order" is what the French call 'ordre publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed (See Kanu Biswas v. State of West Bengal (AIR 1972 SC 1656).

There is no such bar that a person can not be detained under the National Security Act only for a single criminal case. In **State of Punjab Vs. Sukhpal Singh, (1990)1 SCC 35** the Apex Court has observed as under:-

"Preventive order 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 so doing. The justification of such detention is suspicious or reasonable probability and not criminal conviction which can only be warranted by legal evidence. Thus, any preventive measures even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the state.

When power is given to an authority to act on certain facts and if that authority acts on relevant facts and arrives at a decision, which cannot be described as either irrational or unreasonable, then the order is not bad and the court cannot substitute the decision or opinion in place of the decision of the authority concerned on the necessity of passing the order.

Considering the relevant facts and circumstances including the time and place, the contents of detention order and the allegations in the grounds of detention in this case, we are of the view that non-registration of any criminal case is no bar to an order of preventive detention and it does not reflect non-application of mind or absence of subjective satisfaction on the part of detaining authority.

Thus what follows from the above is, that a person can be detained under the NSA for a single criminal case alone and even if no criminal case is registered. In the present case the detaining authority has already recorded his subjective satisfaction for detaining the petitioner on the ground that the solitary incident in which he was involved had disturbed the current life of the community which had disturbed the public order.

The impugned order also shows that the detaining authority has recorded its' subjective satisfaction for detaining the petitioner on the ground that the incident had totally disturbed the public order in the area and that the petitioner who was in judicial custody had moved his bail application and there was real possibility of his being released on bail and on his coming out of the jail he will again indulge in activities which will disturb public order not only with the area of P. S. Phugana but also in the whole district of Muzaffarnagar. Hence it cannot be said that the order has been passed without application of mind.

Learned counsel for the petitioner has failed to demonstrate that the aforesaid satisfaction recorded by the detaining authority in the impugned order is unwarranted or vitiated in any manner.

For the aforesaid reasons, we do not find any reason to quash the impugned order. The writ petition fails and is accordingly dismissed.

There shall however be no order as to costs.

Order Date: 15.10.2015
Abhishek Sri / HR.