

Fitrat Raza Khan

Vs

State of Uttar Pradesh and Others

Writ Petition (Criminal) No. 7587 of 1981

(A.P. Sen, Baharul Islam JJ)

01.12.1981

JUDGMENT

A.P. SEN, J. -

1. By this petition under Article 32 of the Constitution, the petitioner Fitrat Raza Khan challenges the validity of his detention by the order of the District Magistrate, Moradabad, under sub-section (2) of Section 3 of the National Security Act, 1980 (for short 'the Act'), on his being satisfied that the detention of the petitioner was necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.
2. The order of detention is based on two grounds, the first of which relates to an incident of August 13, 1980, relating to the communal riots that occurred in Moradabad City, and the second of July 24, 1981, when the petitioner is alleged to have incited Muslims to communal violence. The Grounds of Detention are as follows :

(i) That on August 13, 1980 at about 1.30 p.m. you along with your other 700-800 Musalman companion rioters armed with bricks, lathis, iron rods, sabbal, bottles, etc., under the impulse of communal feelings at Bazar Ganj, Neem ki Piyao within the territorial limits of P.S. Kotwali Moradabad from the side of the Kacha Bagh attacked Hindus, resorted to brickbatting and have thrown bottles on them which caused hurt to Hindus. When Shri Jagdish Singh S.H.O. of P.S. Kotwali along with other force challenged you with a view to preventing you from acting in such manner you and your companions resorted to brickbatting on police and under great police pressure you dispersed. In this connection a criminal case No. 863 of 1980 under Sections 147/148/336/436/395, IPC was registered on the FIR lodged by Shri Jagdish Singh, S.H.O. of Police Station Kotwali and the same is pending in the Court.

(ii) That on July 24, 1981 at about 9 p.m. at Sarai Hussaini Begum in Police Station Kotwali City and District Moradabad at Mohalla Thabboo ka Nala on the road leading to Deputy Ganj crossing you along with other eight Muslims assembled and you were inciting them with communal feelings against Hindus and were saying that during the last riots Hindus had committed great atrocities against Muslims and the forthcoming Id is reminding of the last Id. Now we would take revenge against Hindus. On our memory being afreshed with the approach of this coming Id our blood boils. Police too had committed atrocities on us during the last riots. Revenge has to be taken against the police also and has to be confronted boldly. I have made arrangements of better arms from outside. Money will be needed to purchase them.

You people should assist me for this work. This amount is to be collected from the important Muslims so that it may not come to the knowledge of the police and some young Muslims also be prepared so that bold confrontation may be staged. Your companions supported all of your proposals and promised to collect the money sooner to purchase the arms. When S.I. Shri Vidya Ratan and other policemen of Police Station Kotwali tried to prevent you from acting in a manner prejudicial to maintenance of public order and attempted to arrest, then you, with the intent to kill policemen fired on them with a pistol taken out from under the belt of your pants and they narrowly escaped. You were caught on the spot. On your personal search a 12-bore country-made pistol along with an empty cartridge and 2 live 12-bore cartridges were secured from your possession. In this connection a criminal case No. 631 of 1980 under Sections 307/153, IPC and under Sections 632/81 read with Section 25, Arms Act has been registered against you and the same is pending.

The two grounds set out are nothing but narration of facts bringing out the antecedent history of the petitioner. It is obvious therefrom that the ground for the making of the order for his detention is one and the same, viz., to prevent him from inciting communal violence in Moradabad City.

3. In challenging the impugned order of detention, learned counsel for the petitioner has mainly advanced two contentions. The first is that the grounds of detention besides being vague and lacking in particulars, did not furnish sufficient nexus for forming the subjective satisfaction of the detaining authority; it is further said that Ground (i) is stale and, therefore, could not be taken into account by the detaining authority while passing the order of detention, particularly when the petitioner is being prosecuted for the alleged offences committed by him in the communal riots. The second is that the undue delay on the part of the State Government in considering the representation made by the petitioner renders his continued detention bad. Neither of the contentions can be accepted.

4. As to the first contention, it seems to us that the order of detention cannot be challenged on the ground that the grounds furnished were vague or indefinite or lacking in particulars or were not adequate or sufficient for the satisfaction of the detaining authority. On the contrary, the grounds set out with sufficient degree of particularity all the basic and necessary facts on which the satisfaction of the detaining authority was based, or, for that matter, for the making of an effective representation. It is true that the order of detention is based on two grounds which relate to two incidents, one of August 13, 1980, and the other of July 24, 1981, i.e., the second incident was after a lapse of about a year, but both the incidents show the propensities of the petitioner to instigate the members of the Muslim community to communal violence. The unfortunate communal riots which took place in Moradabad City led to widespread carnage and bloodshed resulting in the loss of many innocent lives. The memory of the communal riots is all too recent to be a thing of the past. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order. Although there was a lapse of a year, but the incident of July 24, 1981, was just on the eve of the Id festival and the ground alleged is that the petitioner was trying to instigate the Muslims to communal violence by promise of better arms, with a view to an open confrontation between the two communities. It cannot be said that the prejudicial conduct or antecedent history of the petitioner was not proximate in point of time and had no rational connection with the conclusion that his detention was necessary for maintenance of public order. There is no substance in the contention that the incident of July, 24, 1981, related to law and order and not to public order. The act on the part of the petitioner squarely fell within the realm of public

order, as it was calculated to disturb public peace and tranquillity. It is needless to emphasise that the incitement of the members of a particular community to communal violence in a town like Moradabad, where the Muslim population predominates, pertains to public order and not merely to law and order.

5. As to the second contention, we are satisfied that there was no unexplained delay on the part of the State Government to consider the representation made by the petitioner. The petitioner made a representation dated August 8, 1981, through the Superintendent, Central Jail, Moradabad. It was actually handed over to the Superintendent, Central Jail, on August 10, 1981, and he, on the same day, sent it to the District Magistrate. The District Magistrate forwarded the representation together with his comments to the Home Secretary on August 13, 1981. The representation was received in the Home Department the next day. It could not be attended to on August 15, which was the Independence Day, and on the 16th, being a Sunday. The representation was scrutinised in the Secretariat for three days between the 17th and the 19th, and the notings on the file were made. The file was perused by the Joint Secretary, Home Department, on August 19. On August 20, the Law Department was consulted. The file was placed before the Home Secretary on August 21, who placed it before the Chief Minister. The Chief Minister took two days to study the file and ultimately, passed an order rejecting the representation on August 24. It would, therefore, appear that the representation made by the petitioner was considered by the State Government at all levels, and there was no undue delay in its consideration.

6. Accordingly, the writ petition must fail, and is dismissed.

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