

Ramesh Yadav

Vs

District Magistrate, Etah and Others

Criminal Writ Petition No. 37 of 1985

(Ranganath Misra, A. N. Sen JJ)

13.09.1985

JUDGMENT

RANGANATH MISRA J. -

1. This application under Article 32 of the Constitution is directed against the order of detention of the petitioner under section 3(2) of the National Security Act, 1980. The order is dated September 16, 1984, and was made at a time when the petitioner had already been in Mainpuri Jail as an under-trial prisoner in connection with certain pending criminal cases. The grounds of detention were served on the petitioner along with the order of detention. Petitioner asked for certain papers with a view to making an effective representation but when the request was rejected, the petitioner made a representation. The Board did not accept the petitioner's plea. The petitioner's detention was confirmed by the state Government. Thereupon the writ petition has been filed.

2. A return has been made to the rule nisi and the detaining authority has justified his order. It may be pointed out that the petitioner has been detained under the same provision by an earlier order dated December 7, 1981. That detention was quashed by the Allahabad High Court by the order dated May 27, 1982 in Writ Petition 1649 of 1982.

3. Five grounds were advanced in support of the order of detention. They are :

(1) An incident of April 16, 1980, when the detenu and the members of his gang came armed with dangerous weapons and committed a dacoity in the house of one Bhudev Sharma on the basis of which Crime No. 72 of 1980 under Section 395/197. IPC was registered and the trial was pending;

(2) On May 10/11, 1980, the detenu along with members of his gang armed with dangerous weapons committed a dacoity at the house of one Munna Lal and a case under Section 396, IPC was pending;

(3) On July 4, 1980, the detenu along with others opened fire on a police party with the intention to kill them. When the police finding the detenu and the gang of dacoits accosted them, a Kidnapped boy was recovered from the gang of dacoits and a prosecution under Section 147, 148, 149, 307 and 364, IPC is pending;

(4) The detenu is an active member of the inter-district gang enlisted as No. I.D. 64;

(5) On January 8. 1983, information was received by the police that a gang of dacoits

were present in village Kapreta. When the police accosted there was an exchange of fire as a result of which three dacoits of the gang of the detenu died. Though the detenu was identified he escaped. A criminal case was instituted for offences under Sections 147, 148, 149, 307, IPC read with Section 25 of the Arms Act and Section 5/7 of the Explosives Act but the detenu was acquitted after trial for want of evidence.

4. In the grounds of detention apart from specifying the above five grounds reference was made to the fact that the detenu creates public terror an account of his criminal activities which are absolutely prejudicial to the maintenance of the public order. It was further mentioned therein;

At this time you were detained in the District Jail Mainpuri and you have filed an application for bail in the court of law which is fixed for hearing on September 17, 1984, and there is positive apprehension that after having bail you will come out of the jail and I am convinced that after being released on bail you will indulge in activities prejudicial to the maintenance of public order.

5. Five grounds were indicated of which four are referable to specific incidents. Of these four, three are of 1980, prior to the making of previous order of detention. They are certainly state and not available to be used in an order of detention of 1984. The only other incident which was subsequent to the quashing of the previous detention is of 1983. Admittedly, a trial had taken place and there has been acquittal. That ground therefore was not available to be used.

6. On a reading of the grounds, particularly the paragraph which we have extracted above it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true the bail application had to be opposed and in case bail was granted challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed. We are inclined to agree with counsel for the petitioner that the order of detention in the circumstances is not sustainable and is contrary to the well settled principles indicated by this Court in a series of cases relating to preventive detention. The impugned order, therefore has to be quashed.

7. We allow the writ petition and direct that the petitioner be set at liberty unless he is in lawful detention otherwise.

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