Reserved

Case :- HABEAS CORPUS No**.** - 27130 of 2019

Petitioner :- Prem Narayan @ Prem Verma Throu.(Son) Amit Kumar Verma

Respondent :- Union of India Throu.Secy.Ministry of Home Affairs And Ors.

Counsel for Petitioner :- Anuj Pandey

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

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Hon'ble Shabihul Hasnain,J.
Hon'ble Mrs. Rekha Dikshit, J.

(Delivered by Shabihul Hasnain, J.)

Petitioner has made following prayers in the petition :

" (I) Issue writ, order or direction in the nature of Certiorari whereby producing the record in original and thereafter quash the impugned order dated 03.07.2019 bearing reference No.XX/Ra.Su.Ka-Prem Verma @ Prem Narayan/19/J.A, passed by the District Magistrate, Kheri whereby the petitioner has been directed to be detained with the respondent no.5 under the National Security Act, 1980 (contained as annexure No.1) and the impugned order dated 10.07.2019 bearing reference no.84/02/24/2019-CX-05, passed by the State Government (contained as Annexure No.2).

(II) Issue writ, order or direction in the nature of Habeas Corpus thereby directing the respondent no.5 to produce the petitioner before this Hon'ble Court and thereafter he be set at liberty by this Hon'ble Court.

(III) Issue any other remedy or relief as deemed fit and proper under the circumstances of the case to this Hon'ble Court.

(IV) Allow the petition with cost in favour of the petitioner."

Heard Sri Anuj Pandey, learned counsel for petitioner, learned Additional Government Advocate for State of U.P. and Sri Varun Pandey for Union of India.

The details of the alleged incident are mentioned that as per the report of Sri Shiddesh Verma, his brother Sri Yogesh Verma is a Member of the Legislative Assembly from Sadar Seat, District Lakhimpur Kheri and has initiated actions against the illegal mining and due to the aforesaid actions the illegal

mining mafia Prem Verma (petitioner) was having an inimical terms with the brother of the informant and threats were extended to him to face dire consequences. On 21.3.2019, on the day of Holi festival when the informant Sri Shiddesh Verma was returning after attending a party along with his gunner Mohit and his brother Sri Yogesh Verma and friend Pankaj Verma on different motorcycles, suddenly at about 3.30 p.m. the accused persons namely Prem Verma, Naseem, Pinki Saxena @ Pinku Saxena, who were already present at the culvert came in front of the motorcycles and asked the informant and others to stop the motorcycles and after hurling abuses, all the accused persons fired, due to which Sri Yogesh Verma, brother of the informant sustained injury on his right leg and thereafter all the accused persons ran away after firing, which caused hue and cry and general public started running after closing their respective shops and on the basis of the aforesaid incident, an FIR was registered on 21.3.2019 as Case Crime No.334 of 2019, under Sections 307,504,506 IPC and Section 7 Criminal Law Amendments Act, at P.S.Sadar, District Lakhimpur Kheri. Station House Officer prepared and forwarded its report on 1.7.2019 and the police authority i.e. Circle Officer, Sadar Kheri forwarded the same to the Superintendent of Police Kheri to the next day i.e. 02.07.2019. He forwarded the report to the District Magistrate and on the same day i.e. 03.07.2019 the District Magistrate has passed the order to detain the petitioner under the aforesaid Act.

Learned counsel for petitioner submits that perusal of the detention order shows that the same is based upon the fact that the fire was made upon a Member of the Legislative Assembly Shri Yogesh Verma by the petitioner and other accused-persons, due to which, Shri Yogesh Verma sustained injury and the incident caused hue and cry and disturbed the public order.

Learned counsel for petitioner submits that the impugned detention order is illegal and passed upon the extraneous, invalid and non-existent grounds. The Detaining Authority was misled by the report so forwarded by the Sponsoring Authority which contains non-existent, irrelevant and false facts.

Learned counsel for petitioner further submits that the impugned detention order is also based upon the political influence and subjective satisfaction of the Detaining Authority, which is vitiated.

As is evident from a perusal of the detention order that the grounds for passing the same is the incident regarding which an FIR was registered as Case Crime No.334/2019, under Sections 307, 504, 506 IPC and Section 7 Criminal Law Amendments Act, at Police Station Kotwali Sadar, District Lakhimpur Kheri, wherein three persons including the petitioner have been alleged to have stopped the informant and other persons and have fired resulting the injury sustained by the brother of the informant, who is a Member of the Legislative Assembly.

The petitioner moved a representation dated 16.08.2019 against the detention order, a copy of which has been annexed as Annexure No.8 to the petition. In the said representation, the petitioner gave specific details that the day of the incident mentioned in the Case Crime No.334/2019 was admitted a day on which the festival of Holi was being celebrating. The informant and his brother Shri Yogesh Verma and his numerous supporters were dancing in an inebriating condition and it was the petitioner, who was assaulted by Shri Yogesh Verma and his supporters. The petitioner in his representation specifically

stated that the entire incident has been recorded in a C.C.T.V. footage and a perusal of the same unleashed the truth. The petitioner also brought to the notice of the authorities that he filed a writ petition before this Hon'ble Court, registered as Writ Petition No.9098 (M/B) of 2019, wherein this Hon'ble Court directed the State Authorities to investigate the matter in accordance with the Regulation 107 of the U.P. Police Regulation taking into consideration the averments made in the writ petition, specifically in light of the Paras-11, 12, 13 and 14 of the writ petition. This Hon'ble Court on 02.04.2019, passed the following order :-

> *"Heard Shri Anuj Pandey, learned counsel for the petitioner and the learned A.G.A.*
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> *The impugned First Information Report No. 0334 of 2019 against the petitioner under Sections 307, 504 and 506 I.P.C. and Section 7 of Criminal Law Amendment Act, Police Station Kotwali Sadar, District Kheri.*
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> *Learned counsel for the petitioner has taken the attention of the Court towards paragraph 11 of the writ petition to contend that the petitioner was neither present nor involved in the dispute, but has wrongly been implicated in the F.I.R., which is evident from the CCTV footage. It is further submitted that the allegations are totally false and the facts are otherwise. In fact, the co-accused was being assaulted by the complainant himself.*
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> *In view of above facts and circumstances, we hereby direct that petitioner shall not be arrested until incriminating evidence is found against him. It is further directed that the police shall investigate the matter in accordance with Regulation 107 of the U.P. Police Regulations taking into account the averments made in the writ petition, specifically in light of paras 11, 12, 13 and 14 of the writ petition.*
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> *With these directions, the petition is disposed of."*

It is important to mention here that the aforesaid directions of this Hon'ble Court was deliberately overlooked by the authorities and the C.C.T.V. Footage was not examined and

was not a part of the record of the investigation of the Case Crime No.334/2019.

Learned counsel for petitioner submits that instead of investigating the crime specifically in light of paras 11,12,13 and 14 of writ petition as directed by this Hon'ble Court in the above writ petition, the district administration working under the dictate of Sri Yogesh Verma, arrested the petitioner on 16.05.2019 detailing the false and absurd grounds i.e. the petitioner was hidden in the car when the alleged offence was committed.

Now the changed version gives a picture which at the most can be said to be a law and order problem. The day of the incident was admittedly a festival of Holi where all the shops are generally closed during afternoon. The version of the Sponsoring Authority that the people closed their shops cannot be believed.

At this juncture, it is pertinent to elucidate the proposition of law which has been laid down by the Hon'ble Supreme Court over a period of years distinguishing "law and order" from "public order". In the judgment of the Hon'ble Apex Court in ***Mustakmiya Jabbarmiya Shaikh vs M.M.Mehta, Commissioner Of Police and Others, reported in (1995) 3 SCC 237*** held as follows :

> "9……. A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the main-tenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of 'acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be for such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his

> subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which deter-mines whether the disturbance caused by such activity amounts only to a 'breach of law and order' or it amounts to 'public order.' It the activity falls within the category of disturbance of 'public order' then it becomes essen-tial to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of Arun Ghose v. State of West Bengal, [1970] 1 SCC 98 this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or eves a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public transquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different, Again in the case of Piyush Kantilal Mehta v. Commissioner of Police, [1989] Supple. 1SCC322, this Court took the view that b order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The com-mission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land."

In ***Commissioner of Police & Others v. C.Anita (Smt.)***, reported in (2004) 7 SCC 467, the Hon'ble Supreme Court again examined the issue of "public order" and "law and order" and observed thus :

> *"7……..The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order, 'Public order' has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or*

even a specified locality. 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 of 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.”

The afore-quoted observations of the Hon’ble Apex Court make it amply clear that the administrative authorities have remained confused as to what constitutes a “law and order problem” and what constitutes a “public order problem” and have time and again erroneously passed preventive detention orders for acts falling within the category of law and order problem. For an act to fall within the category of public order problem it should be of the nature to disrupt the ordinary tempo of public life. Also, it should be beyond the capability of ordinary law to deal with the alleged activities; in other words, if recourse to ordinary criminal law could have efficaciously dealt with the alleged activities the need to take recourse to preventive detention law does not arise. The facts and circumstances of the present case, especially, the changed version of the detaining authorities fall to establish that the alleged act was one threatening public order.

In the case of ***Pebam Ningol Mikoi Devi vs. State of Manipur & Ors., reported in (2010) 9 SCC 618***, the Hon’ble Supreme Court has been pleased to consider a detention under

the National Security Act and it has been held by the Hon'ble Supreme Court that if one of the grounds are non-existent, misconceived or irrelevant, a detention order will be invalid. The Hon'ble Supreme Court has also held that if actual allegations were vague and irrelevant, the detention would be rendered irrelevant. The relevant portion of the aforesaid judgment are reproduced as under:-

> *"**28.** We are conscious of the fact that the grounds stated in the order of detention are sufficient or not, is not within the ambit of the discretion of the court and it is the subjective satisfaction of the detaining authority which is implied. However, if one of the grounds or reasons which lead to the subjective satisfaction of the detaining authority under the NS Act, is non-existent or misconceived or irrelevant, the order of detention would be invalid.*
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> ***29.** Keeping in view these well-settled legal principles, we have perused the grounds of detention and the documents relied on by the detaining authority while passing the order of detention. In our considered view, the grounds on which the detention order is passed has no probative value and were extraneous to the scope, purpose and the object of the National Security Act. This Court in Mohd. Yousuf Rather v. State of J&K [(1979) 4 SCC 370 : 1979 SCC (Cri) 999 : AIR 1979 SC 1925] has observed that under Article 22(5), a detenu has two rights*
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> *(1) to be informed, as soon as may be, of the grounds on which his detention is based and*
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> *(2) to be afforded the earliest opportunity of making a representation against his detention.*
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> *The inclusion of an irrelevant or non-existent ground among other relevant grounds is an infringement of the first right and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second right. No distinction can be made between introductory facts, background facts and "grounds" as such; if the actual allegations were vague and irrelevant, detention would be rendered invalid."*

Also in the reports so forwarded by the Sponsoring Authority, the petitioner has been referred as a hardened criminal and a mining mafia having a gang. The petitioner is a businessman and has never been booked under the Gangsters (Anti Social Activities) Act. The aforesaid facts mentioned by the Sponsoring Authority had the tendency of influencing the

mind of the detaining authority and as such the same has rendered the impugned detention order invalid.

In the case of ***Vashisht Narain Karwaria vs. State of U.P. & Anr, reported in (1990) 2 SCC 629***, the Hon'ble Supreme Court has been pleased to observe in Para-10 and 11, which are reproduced as under:-

> *"**10.** The above averments made in the above two letters, the copies of which are furnished to the detenu along with grounds of detention unequivocally and clearly spell out that the detenu is a hardened criminal, having a gang under his control often committing heinous crimes, that many cases against the detenu are registered in various police stations and that he is in the habit of committing offences. No doubt, these averments are not made mention of in the grounds of detention. But can it be said that these materials placed before the authority might not have influenced the mind of the detaining authority in taking the decision of detaining the detenu? In our view, the above averments which are extraneous touching the character of the detenu though not referred to in the grounds of detention, might have influenced the mind of the detaining authority to some extent one way or other in reaching the subjective satisfaction to take the decision of directing the detention of the detenu. As rightly pointed out by Mr Jain, had these extraneous materials not been placed before the detaining authority, he might or might not have passed this order. Therefore, we have to hold that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the order. There are several pronouncements of this Court, on this point, of which we will make mention of the following decisions : Ram Krishna Paul v. Government of West Bengal [(1972) 1 SCC 570 : 1972 SCC (Cri) 334] ; Pushpa v. Union of India [1980 Supp SCC 391 : 1979 SCC (Cri) 1015] ; Merugu Satyanarayana v. State of A.P. [(1982) 3 SCC 301 : 1983 SCC (Cri) 18] ; Mehboob Khan Nawab Khan Pathan v. Police Commissioner, Ahmedabad [(1989) 3 SCC 568 : 1989 SCC (Cri) 655].*
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> ***11.** Mr Dalveer Bhandari relying on Section 5-A of the Act urged that the order of detention should not be deemed to be invalid or inoperative merely on the ground that some extraneous materials were placed before the detaining authority since those alleged extraneous materials have no bearing on the validity of this impugned order which can be sustained on the material set out in the grounds of detention itself. Placing reliance on decision of this Court in Prakash Chandra Mehta v. Commissioner and Secretary, Govt. of Kerala [1985 Supp SCC 144 : 1985 SCC (Cri) 332] wherein it has been observed that the 'grounds' under Article 22(5) of the Constitution do not mean mere factual inferences but mean factual inferences plus factual material submitted that*

> *in the present case the factual material set out in the grounds of detention alone led to the passing of the order with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. We are unable to see any force in the above submission. What Section 5-A provides is that where there are two or more grounds covering various activities of the detenu, each activity is a separate ground by itself and if one of the ground is vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention.*"

Thus, it is evident that the detention order is based upon false facts and on this ground alone, the impugned detention order deserves to be quashed.

The preventive detention is an encroachment upon the personal liberty of an individual and cannot be said to be encroached in a casual manner as has been done in the instant case.

In the case of ***Kamlesh Kumar Ishwardas Patel vs. Union of India & Ors., reported in (1995) 4 SCC 51***, the Hon'ble Supreme Court has been pleased to hold that the safeguard provided under Article 22 Clause (4) and (5) of the Constitution of India provides safeguard which are required to be "zealously watched and enforced by the Court". The relevant portion of the aforesaid judgment in the case of Kamlesh Kumar (supra) are reproduced as under:-

> *"**49.** At this stage it becomes necessary to deal with the submission of the learned Additional Solicitor General that some of the detenus have been indulging in illicit smuggling of narcotic drugs and psychotropic substances on a large scale and are involved in other anti-national activities which are very harmful to the national economy. He has urged that having regard to the nature of the activities of the detenus the cases do not justify interference with the orders of detention made against them. We are not unmindful of the harmful consequences of the activities in which the detenus are alleged to be involved. But while discharging our constitutional obligation to enforce the fundamental rights of the people, more especially the right to personal liberty, we cannot allow ourselves to be influenced by these*

> *considerations. It has been said that history of liberty is the history of procedural safeguards. The Framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be "zealously watched and enforced by the Court". Their rigour cannot be modulated on the basis of the nature of the activities of a particular person. We would, in this context, reiterate what was said earlier by this Court while rejecting a similar submission: (SCC para 4)*
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> *"Maybe that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus."*
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> *(See: Rattan Singh v. State of Punjab [(1981) 4 SCC 481 : 1981 SCC (Cri) 853] , SCC at p. 483)*
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> ***50.** We have, therefore, no hesitation in rejecting this contention."*

Another important aspect of the instant matter is that the possibility of the political influence leading to the passing of the detention order cannot be ruled out. Admittedly, the injured of the Case Crime No.334/2019 is a Member of Legislative Assembly.

Learned counsel for petitioner submits that the bail application of the petitioner was rejected by the Sessions Judge, Lakhimpur Kheri on 26.7.2019.

The impugned detention order dated 03.07.2019 shows that there is no application of mind by the detaining authority and there is no subjective satisfaction and the detaining authority has merely acted on the basis of the reports of the Sponsoring Authority which admittedly contains false, irrelevant and non-existent facts.

Case of the prosecution is that on 21.3.2019, Yogesh Verma, the Sitting MLA along with his Gunner Mohit and

friend Pankaj Verma was coming back home at 3.30 p.m. It is further alleged that near Gurunanak Nahar Puliya one Prem Verma, Naseem Khan and Pinku Saxena came in front of the motorcycle and stopped it, they abused Yogesh Verma and thereafter all the accused persons with the intention to kill, started firing, It is further alleged that because of the firing, Yogesh Verma suffering gunshot injury on his right leg and fell down. Thereafter the complainant namely Siddhesh Verma, Gunner and Pankaj Verma challenged the accused persons, who ran away. FIR was registered on 21.3.2019. The police recorded the statements of the complainant, who repeated the story mentioned in the FIR.

In view of what has been discussed above, the petition is **allowed.** The Impugned Order No.-XX/Ra.Su.Ka-Prem Verma @ Prem Narayan/19/J.A. dated 03.07.2019, passed by the District Magistrate, Lakhimpur Kheri, contained as Annexure No.1 as well as order dated 10.07.2019, Annexure No.2, bearing reference no.84/02/24/2019-CX-05, passed by the State Government and all subsequent/consequential detention orders passed thereafter in this regard are hereby quashed. Detenue shall be set at liberty forthwith by the respondents, if not wanted in any other criminal case.

Let a copy of this judgment be forwarded to the Chief Judicial Magistrate, Lakhimpur Kheri and the Station House Officer, Kotwali Sadar, District Lakhimpur Kheri for compliance.

Order Date :-19.12.2019.
Irfan