

Court No. - 9

Case :- MISC. BENCH No. - 10026 of 2021

Petitioner :- Mohseen Saleem Sheikh

Respondent :- U.O.I. Thru Secretary,Min. Of Home Affairs,New Delhi & Ors.

Counsel for Petitioner :- Anurag.S.'Kaalesh',Aseem Chandra

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

Hon'ble Ramesh Sinha, J.

Hon'ble Mrs. Saroj Yadav, J.

- (1) This writ petition under Article 226 of the Consitution of India has been filed by the detenuer/petitioner, **Mohseen Saleem Sheikh**, through his next friend and relative brother Pathan Saeed, challenging the order of detention dated 02.07.2020 passed by the respondent no.4-District Magistrate, Lucknow (hereinafter referred to as “**detaining authority**”) in exercise of the powers conferred under Section 3 (2) of the National Security Act, 1980 (hereinafter referred to as “**N.S.A.**”) and the order dated 24.09.2020 passed by the respondent no.3-Under Secretary, Home (Confidential) Department, Government of Uttar Pradesh, approving the impugned order of detention dated 02.07.2020 and confirming the detention of the detenuer/petitioner for a period of three months tentantively in exercise of powers under Section 3(3) of the N.S.A. as well as the order dated 30.12.2020 passed by the respondent no.3-Under Secretary, Home (Confidential) Department, Government of Uttar Pradesh, extending the impugned detention order for a period of nine months from the date of detention i.e. w.e.f. 02.07.2020.

- (2) The impugned detention order and the grounds of detention dated 02.07.2020 was served on the detenu/petitioner on 02.07.2020 itself and their true copies have been annexed as annexure 2 to this writ petition.
- (3) The prejudicial activities of the detenu/petitioner impelling the respondent no.4 (District Magistrate, Lucknow) to issue the impugned detention order dated 02.07.2020 against him are contained in the grounds of detention (Annexure-1). Their perusal shows as under :-

“Under Section 8 of the National Security Act, you (detenu) are hereby informed that grounds of detention are as follows :-

On 18.10.2019, your (detenu) friends, Asfaq and Moinuddin alias Farid, came at Lucknow and committed ruthless murder of the National President of Hindu Samaj Party Kamlesh Tiwari in his house as per pre-planned manner. You (detenu) and co-accused Ashfaq, Moinuddin alias Farid, Faizan Member, Pathan Rashid Ahmad, Syed Ashim Ali, Mohd. Zafar Saddique Kuppelar, Yusuf Khan, made a plan to cause this dreadful criminal incident in Surat (Gujrat) from about 2-3 years ago. To execute this criminal conspiracy, you (detenu) had also arranged pistol and cartridges for your co-accused Yusuf Pathan to cause the incident and under this pre-planned conspiracy, your co-accused Ashfaq created a false Facebook account in the name of Rohit Solanki and with the help of Jaimin Babu alias Jaimin Darwe, who oversees the work of Hindu Samaj Party at Gujrat, also joined the National President of Hindu Samaj Party Kamlesh Tiwari and in respect of the aforesaid conspiracy made by all the above companions (detenu and co-accused), by making reservation in Udhyogkarmi Express for Ashfaq and Moinuddin alias Farid from Surat to Lucknow,

you (detenue) came at Surat Railway Station to board them in train and as per the plan, also gave them a sweet box, which could be given to Kamlesh Tiwari as a courtesy while going to meet Kamlesh Tiwari. As a result of the said conspiracy, Asfaq and Moinuddin alias Farid, in a planned manner, entered the house of Kamlesh Tiwari on 18.10.2019 and in the broad daylight, brutally murdered him by slitting his throat and shooting him and information of murder was given to you (detenue) and your companion by Asfaq and Moinuddin alias Farid and asked them to tell Syed Asim that they had completed kamlesh's work and he should help us. Syed Asim Ali asked Maulana Zafar Sadiq Kuppelar for help and after going to the place mentioned by him, Ashfaq and Moinuddin alias Farid escaped after getting help.

The family members, on seeing the blood soaked body of Kamlesh Tiwari, gave information to Dial 100 and the Dial 100 has reported the incident to Inspector-in-charge, police station Naka Hindola, Lucknow. Thereupon, on reaching the spot, blood soaked body of Kamlesh Tiwari was sent from the spot to Trauma Centre, KGMU, Lucknow, where he has been reported to be dead. Thereafter, the police, on calling Field Unit Team, recovered countrymade pistol, live cartridge, empty cartridge, one blood stained knife and receipt of Dharti Products Pvt. Ltd., Udainagar, District Surat, State Gujrat dated 16.10.2019 from the place of the incident. On the written report of the wife of Kamlesh Tiwari, First Information Report No. 319 of 2019, under Sections 302/120B I.P.C., Police Station Naka Hindola, Lucknow was registered in respect of the aforesaid incident.

The information about the brutal murder of the President of Hindu Samaj Party Kamlesh Tiwari spread all over Lucknow including the entire police station and the public order was disturbed; the normal life became disturbed; the public angered by the incident; blocked the road many places; started to make dharna; and also demanding the arrest and execution of the accused. On killing of Hindu leader took place in the broad

daylight, the agitated crowd gathered from police station Naka Hindola, Aminabad to Trauma Center. Immediately, RAF, PAC went from police headquarters in huge quantity and on the spot, the nearby stations in-charge, Aminabad, Kaiserbagh, Bazarkhala, Talkatora, Aliganj, Wazirganj, in-charge Inspector Alambagh, Hussainganj etc. were sent with adequate police force and the Circle Officers Kaiserbagh, Bazarkhala, Hazratganj, Alambagh, Krishnanagar, Mohanlalganj etc. and the Additional Superintendent of Police (West), Superintendent of Police (North), Superintendent of Police (crime) deployed at various sensitive places in order to try to control the situation. But the agitated crowd was not ready to listen to anything and the public order was completely disturbed, the general public order was completely disorganized. The Senior Superintendent of Police, Lucknow, District Magistrate, Lucknow, Inspector General of Police, Lucknow Zone, Lucknow and Additional Director General of Police, Lucknow Zone, Lucknow had also come on the spot to rectify the situation and to maintain public order. The family members of Kamlesh Tiwari and the general public demanded to arrest the accused immediately and they be punished severely. They (police authorities) kept trying to normalize the situation by assuring them of punishment of the accused, which was confirmed by the report of the Deputy Commissioner of Police, West Lucknow (City), Lucknow and Inspector-in-charge police station Naka Hindola attached with him.

There was a lot of anger and resentment in the general public due to this excessive criminal act committed by you (detenue). The people were present on the spot fearing the apprehension of unknown and the huge force coming from other police stations to convince the people and to control the situation and restore confidence in the people and such situation persisted for several days. It was only after the arrest of the accused that the situation became normal. Due to tension prevailing for several days, additional police forces had to be deployed at sensitive places. The entire incident was broadcasted prominently throughout the State by various news and electronic channels for several days. Since this incident was very sensitive from the Hindu Muslim point of view, the incident was being strongly opposed by the Hindu

Organizations and the arrest of the accused was being demanded. For 6-7 days, the situation was somehow brought under control by putting a large amount of police and PAC forces at the site of the incident at sensitive and probable places and after conducting marches from time to time, hard work and hard work. After arrest of the accused and going to jail and continuously patrolling the area by additional police force, the public order could be restored but even then tension would prevail for long period and till today, peoples on remembering it got scared and presently, at the place of incident, additional force was deployed.”

- (4) Apart from the aforesaid, it has also been stated in the grounds of detention that for the speedy investigation of the incident, the then Director General of Police, Uttar Pradesh constituted Special Investigating Team under the Chairmanship of Inspector General of Police, Lucknow Zone, Lucknow, upon which supervision, the Incharge-Inspector, Police Station Naka Hindola, after due investigation, prepared the charge-sheet against the detenu and other co-accused and forwarded it to the competent Court. Further, it has been stated in the grounds of detention by the detaining authority that the detenu was aware that the detenu was in District Jail, Lucknow in connection with Case Crime No.319 of 2019, under Sections 302/120-B I.P.C., Police Station Naka Hindola; was making effort to get himself released on bail; there is imminent likelihood that he would be released on bail; in case he was released on bail, he would go on committing similar criminal offences; there is every possibility that fear psychosis would be created amongst the people and public order would be

disturbed; hence there is compelling necessity that he should be detained; and from the aforesaid grounds he was fully satisfied that in order to prevent him from committing similar prejudicial acts and to maintain public order, it was imperative to detain him under Section 3 (2) of the N.S.A.

- (5) A perusal of the grounds of detention would also show that the detenu has been apprised of his right of making a representation to him (detaining authority), the State Government, the Advisory Board and the Central Government.
- (6) Heard Sri Aseem Chandra, assisted by Sri Anurag Srivastava 'Kaalesh', learned Counsel for the detenu/petitioner, Sri Anand Dwivedi, learned Counsel for the Union of India/respondent no.1, Sri S.P. Singh, learned Additional Government Advocate for the State/respondents no.2 to 7 and perused the impugned orders of detention as well as material brought on record.
- (7) Learned counsel for the petitioner has submitted that on 21.12.2019, the police has filed charge-sheet in Case Crime No. 319 of 2019 against thirteen persons including the petitioner under Sections 302, 120-B, 34, 212, 216, 201, 419, 420 I.P.C. and Section 3/4/25/27 of the Arms Act and Section 66/66D of the Information Technology Act at Police Station Naka, District Lucknow before the Chief Judicial Magistrate, Lucknow and vide order dated 18.01.2020, the Chief Judicial Magistrate, Lucknow was pleased to commit the trial to the Court of

learned Sessions Judge, Lucknow and in the meanwhile, co-accused Mohd. Naved, Mohd. Asif Raza, Kaifi Ali, Rais Ahmad and Mohd. Kamran Ashraf were released on bail vide orders dated 25.02.2020, 02.12.2019, 25.2.2020, 23.12.2019, respectively. Furthermore, as the detenu/petitioner including co-accused were regularly threatened/assaulted during Court production, as such, they filed transfer petition, bearing Transfer Petition (Crl.) No. 126 of 2020, before the Apex Court, wherein notice was issued by the Apex Court vide order adted 05.03.2020. Thereafter, on 04.04.2020, State of U.P. also filed F.I.R. under Gangster Act against the petitioners. On 23.06.2020, the pitotner has filed bail application, bearing No. 2491 of 2020, which was dismissed for want of prosecution vide order dated 21.07.2020. Thereafter, application for bail has been filed by the petitioner before the Hon'ble High Court and the same is pending adjudication.

- (8) Learned Counsel for the detenu/petitioner has further submitted that Inspector In-charge, P.S. Naka, Lucknow, vide letter dated 24.06.2020, submitted a dossier against the petitioner to the Commissioner, Lucknow with recommendations of preventive detention of the petitioner on the ground that the petitioner is trying to get bail in Crime No. 319 of 2019 and further requested to forward the same to the District Magistrate, Lucknow so that detention order under Section 3 (2) of the N.S.A. be passed. In this regard, the

concerned Assistant Commissioner of Police, Kaiserbagh, Lucknow, Additional Deputy Commissioner of Police (Central/Western Zone), Lucknow and Deputy Commissioner of Police (West), Police Commissionerate Lucknow, were also concurred with the recommendations of Inspector In-charge, P.S. Naka, Hindola, Lucknow. Thereafter, vide letter dated 26.06.2020, the Police Commissioner, Lucknow requested the District Magistrate, Lucknow to issue detention orders under Section 3 (2) of the N.S.A. against the petitioner on the ground that the petitioner is trying to be released on bail and if the petitioner is released on bail, then, it will have an adverse impact on public order. The District Magistrate, Lucknow, vide order dated 02.07.2020, in exercise of powers under Section 3 (2) of the N.S.A. passed the detention order dated against the petitioner. The impugned order of detention along with the grounds of detention dated 02.07.2020 was served upon the detenu/petitioner on 02.07.2020 itself but due to the pandemic COVID-19, the detenu/petitioner could not consult his lawyer and, therefore, representation against the impugned detention order dated 02.07.2020 could not be filed by the detenu/petitioner.

- (9) It has been argued by the learned Counsel for the detenu/petitioner that the detaining authority forwarded the copies of the detention order along with the ground of detention and other concerned papers to the State Government and the

State Government has placed the matter before the U.P. Advisory Board (Detention) under Section 10 of the N.S.A. and the U.P. Advisory Board (Detention) has further submitted a report to the State Government for confirmation of the detention order and the State Government, vide impugned order dated 24.09.2020, confirmed the impugned detention order dated 02.07.2020 and extended the detention of the petitioner for a period of six months. Thereafter, the said detention was further extended vide impugned order dated 30.12.2020 for a further period of nine months from the date of the impugned detention order dated 02.07.2020.

- (10) It has also been submitted by the learned counsel for the petitioner that the petitioner has already completed his detention period on 01.07.2021 but he is confined in jail because of criminal case against him.
- (11) Elaborating his submission, learned counsel for the petitioner has argued that the premise of the detention order is that due to the murder of Kamlesh Tiwari, public order and normal course of life in the area was disturbed and the public created traffic jams in several areas. It was only after the arrest of the accused persons, the situation was normalized. Further, a bail application has been filed by the detenu/petitioner and there is a possibility of him being released on bail which would create a public order situation and therefore, grounds are made out for detaining the detenu under the provisions of NSA and further

apprehension was expressed that the detinue may again indulge in similar activity. His submission is that authorities have failed to appreciate that the detinue/petitioner has no criminal antecedents and therefore, there was nothing on record which might lead the competent authority to conclude that he could indulge in the same kind of activities which are alleged to have been committed if the petitioner is released on bail. He also argued that the offence, which has been alleged to have been committed, is a solitary occurrence/offence against the detinue/petitioner. Furthermore, similarly placed co-accused persons despite being released on bail did not indulge in any untoward action, which could have prejudicial impact on public order and security. He also argued that there was no material available with the detaining authority to issue the impugned order of preventive detention of the detinue and also draw a conclusion that the detinue/petitioner would again indulge in activities prejudicial to the public order after enlargement of bail. His submission is that the preventive order has been passed in mechanical manner without application of mind.

- (12) Learned Counsel for the detinue/petitioner has next argued that the impugned order of detention is also patently punitive and not preventive as the impugned order of detention fails to address the issue as to why no such order was issued against any other co-accused, who has already been enlarged on bail before the detinue. He further argued that the legal position

which emerges from various pronouncement of the Apex Court that there must be a reasonable basis for the detention order, and there must be material to support them and the Court is entitled to scrutinize the material relied upon by the authorities in coming to its conclusion and accordingly determine, if there is an objective basis for the subjective satisfaction. But in the instant case, without having any subjective satisfaction, the detaining authorities has passed the impugned orders merely on the basis of presumption that the petitioner is likely to act in any manner prejudicial to security of the State or from acting in any manner prejudicial to the maintenance of the public order.

- (13) To strengthen his submission, learned Counsel for the petitioner has relied upon the judgment of the Apex Court in **Smt. Shashi Aggarwal Vs. State of U.P. and others** : (1988) 1 SCC 436, **Binod Singh Vs. District Magistrate, Dhanbad, Bihar and others** : (1986) 4 SCC 416 and the judgment of this Court rendered in **Shahzad Vs. Union of India and others** : 2019 (2) JIC 528 (All) and **Parvez Vs. State of U.P. and others** (Habeas Corpus No. 412 of 2020, decided on 5.8.2021)
- (14) On the other hand, learned Counsel for the respondents has argued and contended that it would depend on the facts and circumstances of each case whether a detention order is to be passed or not in case of a person who was already in custody. An order of detention can be validly passed against a person in custody where the detaining authority was already aware of

such facts and if it is satisfied that the detenu is likely to be released from custody in the near future. The detaining authority can take into account the nature of the antecedent activities of the detenu in order to arrive to the conclusion that it is likely that after his release from custody, he would indulge in criminal activities and it was necessary to detain him in order to prevent him from engaging in such activities. In the present case, there was complete awareness in the mind of the detaining authority about the detenu being in custody and that if he is released on bail, he is likely to indulge in the criminal activities. The detaining authority was not only aware that the detenu was in jail but also noted the circumstances on the basis of which he was satisfied that the detenu was likely to come out on bail and continue to engage himself in the criminal activities. He further argued that there is no ground or justification for interfering in the impugned orders of detention.

- (15) We have considered the rival submissions of the learned Counsel for the parties and also gone through the material on record.
- (16) In **Sanjeev Kumar Aggarwal v. Union of India & Ors.** : 1991 SC 2261, the ratio laid down by the Apex Court in **Smt. Shashi Aggarwal Vs. Sate of U.P. and others (Supra)** and **Binod Singh Vs. District Magistrate, Dhanbad, Bihar and others (Supra)**, on which reliance has been placed by the learned counsel for the detenu/petitioner, has been considered. It was

observed in **Sanjeev Kumar Aggarwal v. Union of India & Ors. (supra)** by the Apex Court that no decision of the Apex Court has gone to the extent of holding that no order of detention can validly be passed against a person in custody under any circumstances. Therefore, the facts and circumstances of each case have to be taken into consideration in the context of considering the order of detention in the case of a detenu who is already in jail. The counsel for the detenu in the aforesaid case strongly relied on **Smt. Shashi Aggarwal v. State of U.P. & Ors. (Supra)** and **Ramesh Yadav v. District Magistrate, Etah & Ors. : [1985] 4 SCC 232** and contended that the bail application could be opposed if moved or if enlarged the same can be questioned in a higher court and on that ground the detention order should be held to be invalid. The Apex Court negated the above contention by observing that in **N. Meera Rani v. Government of Tamil Nadu & Anr.:** [1989] 4 SCC 418, the Apex Court noted the above observations in **Smt. Shashi Aggarwal v. State of U.P. & Ors. (Supra)** and **Ramesh Yadav v. District Magistrate, Etah & Ors. (Supra)** and has held that they were made on the facts of those particular cases. The Apex Court has further held in the above case that on the material relied upon by the detaining authority, it could not be said that there was no awareness in the mind of the detaining authority about the detenu being in custody and that if he is released on bail he is likely to indulge in the prejudicial activities.

- (17) In the instant case, it transpires from the grounds of detention that the detenu/petitioner has made conspiracy with the association of co-accused in committing the brutal murder of the President of the Hindu Samaj Party Kamlesh Tiwari in the broad daylight. The specific allegation has been levelled against the detenu/petitioner that it is the detenu/petitioner, who has made conspiracy of the murder of president of the Hindu Samaj Party Kamlesh Tiwari as he has arranged the pistol and cartridges for co-accused for the murder of Kamlesh Tiwari and also gave a box of sweet to co-accused so that when co-accused went to commit the murder of Kamlesh Tiwari in his house, no one be doubted about his intention and further the detenu/petitioner has also arranged railway tickets of co-accused who committed the murder of Kamlesh Tiwari. The series of the allegations made in the grounds of detention makes it clear that the detenu/petitioner is the main person, who made conspiracy in the murder of the Kamlesh Tiwari.
- (18) According to the learned Counsel for the State, deceased Kamlesh Tiwari was the renowned hindu leader and on account of his brutal murder in a broad daylight, the normal life of the area was completely deteriorated and public order was disturbed. The Detaining Authority, after going through the reports of the sponsoring authority, has minutely considered the matter and has rightly passed the impugned order of detention and has rightly recorded subjective satisfaction that if

the detenue will release on bail, there is every possibility to disturb the communal harmony as well as public order in the area and as such, there was necessity to detain the detenue/petitioner under N.S.A.

- (19) A bare perusal of the material placed before the detaining authority and the facts mentioned in the grounds of detention clearly go to show that the detaining authority was fully aware that the detenue/petitioner was in jail in Case Crime No. 319 of 2019 and has made every efforts to enlarge on bail. The detaining authority was also conscious of the fact that some of the co-accused, who were arrested, has already been released on bail. The detaining authority after taking into consideration the above materials placed before him, arrived to the conclusion that the detenu being in judicial custody may under the normal law of the land be granted bail and be in a position to continue to pursue his criminal activities. The detaining authority in these circumstances consider it necessary to invoke the law of preventive detention under the Act to prevent the detenu from indulging in his prejudicial activities in future. In these circumstances, it cannot be said that the order of detention was illegal on the ground that it was passed while the detenu was already in custody.
- (20) So far as judgments of this Court, which have been relied upon by the learned Counsel for the petitioner are concerned, this Court is of the view that the same are not applicable in the facts

and circumstances of the case as in the instant case, there is specific allegation in the ground of detention against the detenu that the detenu was the person who made conspiracy in the murder of the President of Hindu Samaj Party Kamlesh Tiwari.

(21) The question as to whether a single incident is enough warranting the application of detention law has been considered by the Hon'ble Apex Court time and again. In **Ali Jan Milan v. District Magistrate, Dhanbad** : AIR 1983 SC 1130, the Hon'ble Apex Court held that a solitary incident if it has prejudicially affected the public order, i.e, affected even the tempo of life of the community, it may be sufficient to satisfy the detaining authority in that regard to invoke the provisions of detention and depending upon the nature of the incident.

(22) In **State of U.P v. Sanjai Pratap Gupta** : 2004 AIR SCW 5314, the Apex Court held as under:—

“The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. It is not the number of the acts that matters. 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.”

(23) The Full Bench of this Court in **Suresh Pandey Vs. State of U.P. and others** : (2005) CriLJ 1383 (FB) has held that the detention order can be passed on a single/solitary incident, if it is an organized crime and having a serious effect on public life.

- (24) From the aforesaid, there is no hesitation to say that a solitary incident is enough to invoke the detention order if it affects the public tranquillity, public peace or adversely affects the tempo of life. However, it will depend upon the fact of an individual case as to whether it warrants the detention of the detenu under the preventive law.
- (25) It transpires from the record that the detenu/petitioner is the main culprit in making conspiracy in the brutal murder of the President of the Hindu Samaj Party, Kamlesh Tiwari. The grounds of detention has clearly shows that the detaining authority has considered the series of the events said to have been committed by the detenu and also the reports of the sponsoring authority that as a result of offence committed by the detenu/petitioner, fear and sense of insecurity was generated in the minds of the public of the area and the detenu has tried to enlarge on bail and if the petitioner will release on bail, he would create a public order situation, hence the grounds are made out for detaining the detenu under the provisions of N.S.A.
- (26) In view of the above, the submissions of the learned Counsel for the petitioner that there is no material before the detaining authority to come to the subjective satisfaction and only on the basis of the solitary incident, the impugned detention order was

passed and also that his activities are not prejudicially effecting the mainenance of public order, are not tentable.

- (27) Considering the aforesaid, we are not inclined to interfre in the matter. As the period of detention is already over and no order is required to be passed but it cannot be held on the facts of the case that the detention order could not have been passed or the order so passed was not valid or not in accordance with law.
- (28) The writ petition lacks merit and is, accordingly, **dismissed**.
- (29) For the facts and circumstances of the case, there is no order as to cost.

Order Date : 23.09.2021
Ashish/Ajit/-