

Vashisht Narain Karwaria vs State Of U.P. And Anr on 28 March, 1990

Equivalent citations: 1990 AIR 1272, 1990 SCR (2) 212, AIR 1990 SUPREME COURT 1272, 1990 (2) SCC 629, 1990 ALL. L. J. 296, 1990 (2) CURLJ(CCR) 197, 1990 (1) ALLCRILR 866, 1990 (2) CHANDCRIC 74, 1990 (2) CRILC 226, 1990 (1) ALL WC 558, 1990 (2) CRIMES 175, 1990 SCC(CRI) 372, 1990 CRIAPPR(SC) 201, 1990 ALLCRIR 325, 1990 (1) JT 566, 1990 (11) RECCRIR 681, 1990 MADLJ(CRI) 437, (1990) SC CR R 432

Author: S.R. Pandian

Bench: S.R. Pandian

PETITIONER:
VASHISHT NARAIN KARWARIA

Vs.

RESPONDENT:
STATE OF U.P. AND ANR.

DATE OF JUDGMENT 28/03/1990

BENCH:
PANDIAN, S.R. (J)
BENCH:
PANDIAN, S.R. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1990 AIR 1272 1990 SCR (2) 212
1990 SCC (2) 629 JT 1990 (1) 566
1990 SCALE (1) 604

ACT:

National Security Act, 1980: Section 3(3), 5A: Preventive Detention--subjective satisfaction--Copies of police reports? alleging that detenu is a hardened criminal and habitual offender against whom many criminal cases are registered, placed before the detaining authority while only one criminal case was registered against the detenu--Held Detention order is vitiated for taking into consideration extraneous material.

Constitution of India, 1950: Article 22(5)--Preventive Detention --Detention order--Grounds and documents communicated to detenu --No details or particulars .furnished

supporting allegations--Whether deprival of making an effective and purposeful representation.

HEADNOTE:

The petitioner was detained under section 3(3) of the National Security Act, 1980, under an order passed by the detaining authority after consideration of the documents placed before it by the sponsoring authority alleging that the detenu was a hardened criminal and habitual offender against whom many cases were registered. The documents placed before the detaining authority were also served on the detenu along with the ground of detention.

The appellant filed a writ of Habeas Corpus in the High Court challenging the validity of the detention which was dismissed. Hence this appeal. The appellant also filed a writ petition in this Court challenging his detention. In this appeal it was contended on behalf of the appellant that the detaining authority had acted on irrelevant and extraneous matters therefore the detention order is liable to be quashed. On behalf of the respondent it was contended that the order of detention was not invalid merely because some extraneous materials were placed before the detaining authority since the impugned order could be sustained on the material set out in the grounds of the detention itself. Allowing the appeal and disposing the Writ Petition, this Court,
213

HELD: 1. The averments made in the documents, 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 are against the detenu are registered in various police stations and that he is in the habit of committing offences. These 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 detenu. Had these extraneous materials not been placed before the detaining authority, he might or might not have passed this order. Therefore the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the order. detention order is therefore quashed. [217B-E]

Ram Krishna Paul v. The Government Of West Bengal & Ors., [1972] 1 SCC 570; Smt. Pushpa v. Union of India & Ors., [1980] Supp. SCC 391; Merugu Satyanarayana v. State of A.P. & Ors., [1982] 3 SCC 301 and Mehboob Khan Nawab Khan Pathan v. Police Commissioner, Ahmedabad & Anr., [1989] 3 SCC 568; followed.

2. Section 5A provides 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 grounds 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. In the instant case the impugned order has not been made on two or more grounds covering various activities of the detenu. but has been passed on the sole ground relatable to a single incident. The conclusion arrived at is only on the basis that the extraneous materials placed before the detaining authority might have influenced the mind of the detaining authority, but not on the ground that one of the grounds of the detention order has become invalid or inoperative for the reasons mentioned in Section 5(A)(a). Therefore the submission that 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 public order is not correct. [218B-D]

Prakash Chandra Mehta v. Commissioner and Secretary Government of Kerala & Ors., [1985] Supp. SCC 144; distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 219 of 1990.

WITH Writ Petition (Crl.) No. 92 of 1990.

From the Judgment and Order dated 12.12.1989 of the Allahabad High Court in Habeas Corpus W.P. No. 13644 of 1989.

A. Jaitley, Additional Solicitor General, R.K. Jain, Yogeshwar Prasad, Gaurav Jain, Abha Jain, D. Bhandari, Ms. A. Subhashini and R.B. Misra for the Appearing Parties. The Judgment of the Court was delivered by S. RATNAVEL PANDIAN, J. Leave granted in the Special Leave Petition.

This appeal is against the judgment and order dated 12.12.89 in Habeas Corpus Writ Petition No. 13644/89 passed by the High Court at Allahabad dismissing the writ petition filed by the appellant, Vashisht Narain Karwaria, the detenu herein.

The District Magistrate, Allahabad, in exercise of powers conferred on him under Section 3(3) of the National Security Act 1980 (hereinafter referred to as 'Act') passed the impugned order of detention on 31.3.88 against the detenu on reaching his requisite subjective satisfaction on consideration of the materials placed before him that it had become necessary to pass the detention order with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order.

The salient and material facts which necessitated the detaining authority to pass the impugned order, as set out in the grounds of detention are as follows:

On 30.3.1988 at about 3.30 P.M. the auction of liquor shops for the sale of Indian made foreign liquor was held in the campus of Collectorate at Allahabad. A large number of bidders were present. Among them, the detenu along with his three other associates also participated in the auction. At about 3.30 P.M. the auction of the liquor shop within the area of Mooratganj took place. For this shop the first bid was from one Ajai Kumar for Rs. one lakh. The next bid for the same shop was of Chedi Lal for Rs. one lakh and ten thousand. The moment the said two persons made their bid, the detenu along with his associates stood UP in the presence of all prospective bidders and told Ajai Kumar, Chedi Lal and others that the above said shop fell within his area and, therefore, if anybody dared to bid the shop in the auction he would shoot him and also the entire members of his family. So saying the detenu along with his associates advanced towards Ajai Kumar and Chedi Lal threatening them with dire consequences. This created terror and panic among all the bidders. As the situation was becoming worse, Shri Rana Pratap Singh, Station House Officer along with other police officials advanced towards the detenu and his associates to apprehend them. On seeing the police party advancing, the detenu fired at the police party with his country made pistol. Fortunately, no body was hurt. The detenu, however, escaped on being chased by the police party. The detenu fired another two shots and hurled bombs on the police party while fleeing away. His repeated firing and explosion of bombs created further panic and the people assembled for bidding the auction started running away and the nearby shopkeepers pulled down their shutters of their shops. The vehicles parked there fled away. Thus the public order was completely disrupted. In connection with this incident, a case was registered in crime No. 221/88 in the Colenolganj Police Station under Section 307 and 506 of Indian Penal Code. The case is still under investigation. On the basis of the above material the detaining authority on being satisfied that there was apprehension of commission of act of violence at the hands of the detenu, which would be prejudicial to the maintenance of public order, passed this impugned order and directed the detenu to be kept under detention.

Admittedly, along with his ground of detention 4 documents were enclosed and served on the detenu. Those documents are:

(1) Report of S.S.P. Allahabad dated 31.3. 1988. (2) Report of the S.H.O. Colenolganj Police Station. (3) Copy Chik No.199, Crime No. 221 of 1988 under Section 307/506 I.P.C. in Colenolganj Police Station, Allahabad. (4) Copy of G.D. No. 37 relating to the aforesaid offence.

The detenu challenged the validity of this order before the High Court, but became unsuccessful. Feeling aggrieved by the impugned judgment, this appeal is now preferred.

Mr. R.K. Jain, the learned Sr. counsel appearing on behalf of the appellant made a number of submissions at the hearing, one of which being that the sponsoring authority had placed certain irrelevant and extraneous matters before the detaining authority which should have influenced the mind of the detaining authority and stealthily crept into the decision of the said authority directing detention of the detenu and as such the impugned order is liable to be quashed. This argument was resisted by Shri Dalveer Bhandari, the learned counsel appearing on behalf of the respondents that the detaining authority had not considered any other material save the material referred to in the grounds of detention'. Therefore, the short question for our consideration is whether the sponsoring authority has placed before the detaining authority any extraneous and irrelevant materials which might have influenced the mind of the detaining authority. It cannot be disputed--indeed there is none that the four documents referred to above, copies of which were furnished to the detenu have been placed before the detaining authority. It follows that the detaining authority passed this order only on consideration of the above said materials. In the confidential letter dated 31st March 1988 sent by the Senior Superintendent of Police, Allahabad to the detaining authority it is stated thus:

"It is stated that the accused is a hardened criminal and has a gang. Such persons are committing heinous crimes often which adversely affects the public order. There are many cases/offences against accused Vashistha narayan registered in various police stations. It has become his habit to commit offences Hence I recommend that an order for atleast 12 months detention be passed against Shri Vashisht Narayan Karwaria alias Bhukkhal son of late Shri Jagat Narayankarwaria, the aforesaid accused under Section 3(2) of the above mentioned Act."

The preamble of the letter submitted by the Station House Officer of Colenolganj, Allahabad dated 31.3. 1988 to the Senior Superintendent of Police, Allahabad reads as follows:

"It is submitted that Shri Vashisht Narayan Karwaria alias Bhukkal, the aforesaid accused is a hardened criminal and has a gang. In his gang his son Kapil and two other big offenders Ram Chandra Tripathi and Santosh Kumar Tripathi son of Gaya Prasad, resident of Ganspur, P.S. Poormufti, District Allahabad, are included. These people often used to commit heinous crimes, by which terror and fear prevails in the people. Many crimes are registered against Vashisht Narayan Karwaria in many Police Stations."

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 to the following decisions:

Ram Krishna Paul v. The Government of West Bengal & Ors., [1972] 1 SCC 570: Smt. Pushpa v. Union of India & Others, [1980] Supp. SCC 39 1; Merugu Satyanarayana v. State of Andhra Pradesh & Ors., [1982] 3 SCC 30 1 and Mehboob Khan Nawab Khan Pathan v. Police Commissioner, Ahmedabad and Another, [1989] 3 SCC 568.

Mr. Dalveer Bhandari relying on Section 5A of the Act urged that the order of detention should not be deemed to be invalid or inoperative merely on the ground that some extra- neous 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 Chan- dra Mehta v. Commissioner and Secretary, Govt. of Kerala and Others, [1985] Supp. SCC 144 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 submis- sion. What Section 5A 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 grounds is vague, nonexistent, not relevant, not con- nected or not proximately connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention.

It is not the case that this impugned order has been made on the two or more grounds covering various activities of the detenu, but on the other hand the order has been passed on the sole ground relatable to a single incident. The conclusion arrived at by us is only on the basis that the aforesaid extraneous materials, placed before the de- taining authority might have influenced the mind of the detaining authority, but not on the ground that one of the grounds of the detention order has become invalid or inoper- ative for the reasons mentioned in Section 5(A)(a). The next submission made by Mr. Jain on behalf of the detenu is on the basis of Ground Nos. VII & VIII of the Special Leave Petition in which the appellant has expressed his grievance that he had been deprived of making an effec- tive and purposeful representation as envisaged under Arti- cle 22(5) of the Constitution of India since no particulars or details are given in documents I & H enclosed with the grounds of detention in regard to the alleged 'many cases/offences' said to have been registered in various police stations against him and in regard to the allegations that he was a hardened criminal

and had a gang often committing heinous crimes and that it had become the habit of the detenu to commit offences. In support of this contention reference was made to the decision in Mehboob Khan Nawab Khan Pathan's case (ibid). No denial is made in the counter filed on behalf of the first respondent. This latter submission, in our opinion, cannot be rejected as having no force. In the result, we without going into the merits of the other contentions allow this appeal, quash the detention order and direct the detenu to be set at liberty forthwith.

ORDER The Writ Petition is connected with the Criminal Appeal No. 219 of 1990 arising out of SLP (Crl.) No. 2473/89. The detention order under challenge in both the proceedings is the one passed by the District Magistrate, Allahabad on 31.3.1988 under Section 3(.3) of the National Security Act 1980. As we have now set aside the order of detention in the Criminal Appeal, no order is necessary in this Writ Peti-

tion. The Writ Petition is disposed of accordingly.

T.N.A.

Appeal allowed and
Petition disposed of.