Allahabad High Court
Suresh Pal vs State Of U.P. And Ors. on 7 November, 1998
Equivalent citations: 1999 CriLJ 3365
Author: D P Mohapatra
Bench: D Mohapatra, R Trivedi
JUDGMENT D. P. Mohapatra, C.J.

1. The petitioner, Suresh Pal has filed this petition under Article 226 of the Constitution of India with prayers to issue a writ of certiorari quashing the order dated 6-2-1998 (Annexure 1 to the writ petition) passed by the District Magistrate, Ghaziabad (respondet No. 2) directing his detention under Section 3(2) of the National Security Act (hereinafter referred to as 'the Act') and the issue a writ of mandamus directing the respondents to set him at liberty forthwith.

2. The facts of the case, relevant for determination of the questions raised in the petition, may be stated thus:

The petitioner was arrested on 24-12-1997 in connection with Case Crime No. 346/97 under Sections 147/148/149/307/302/34, I.P.C. of Police Station Masoori, district Ghaziabad. While he was in custody, the detention order dated 6-2-1998 passed by the District Magistrate, Ghaziabad, was served on him on 8-2-1998 along with grounds of detention. In the grounds of detention it was stated inter alia, (1) that the detenu, who was a police official under suspension, was appointed as a security personnel of Virendra Singh. The detenu was involved in Case Crime No 92/84 under Section 147/148/149/307/302, I.P.C. of Police Station Kavinagar, district Ghaziabad, registered on 24-12-1984 on the allegation that he along with other persons had committed murder of four persons at a public place. On trial the detenu was acquitted of the charges on acceptance of his plea of alibi by the judgment dated 25-7-1991 in Sessions Trial No. 67 of 1987 by the III Additional District and Sessions Judge, Ghaziabad (Annexure 10 to the writ petition). Thereafter a history sheet was opened in the name of the detenu and he is assigned No. 7-A of the current history sheet; (2) that thereafter Case Crime No. 369/87 under Section 25 of the Arms Act of Police Station Loni, district Ghaziabad was registered against the detenu on 7-12-1987 in which a 315 bore pistol along with some cartridges was recovered from him. After investigation by the police charge sheet was submitted against the detenu; (3) it was further alleged in the grounds of detention that on 16-12-1997 the detenu along with his associates Rajkaran, Onkar, Surendra, Manoj, Rajveer and Kalu Ram at about 12.15 p.m. made murderous assault from automatic weapons and country made pistols on Dharampal, Surendra, Devendra, Babloo, Narendra alias Lala and Kanchi Singh when they were travelling in a Maruti Van bearing No. U.H.N. 3019 as a result of which Narendra alias Lala, Dharampal and Babloo died at the spot and Devendra, Surendra and Kanchi Singh were seriously injured. On the report lodged by Naresh Pal in Police Station Masoori Case Crime No. 346/97 under Section 147/148/149/307/302/34 was registered. It was also averred in the ground of detention that due to the incident, which happened in a public place, a sense of panic and terror was spread amongst the people present there, the people started running helter skelter, the laborers and vendors working nearby ran away from the place and later on being called by the police they came to the spot but out of fear did not disclose any thing about the incident. In this way public order at the place was disturbed. When news about the incident reached village Mahrauli, fear and terror spread

amongst the people as a result of which police administration had to make special arrangement to allay the fear of the residents. The incident was published in the local newspapers and on reading the news items an atmosphere of fear prevailed amongst general public of Ghzaiabad.

3. After commencement of investigation, the petitioner was arrested on 24-12-1997 in connection with the case and the associates of the petitioner Raj Karan, Onkar, Surendra and Manoj surrendered in Court and were remanded to custody. It is also stated in the grounds of detention that though the detenu is now in Central Jail, Bareilly in connection with the aforementioned case, efforts are being made for his release on bail on the plea of alibi and the posibility of his being so released is there. Considering his past criminal activities there is every likelihood that in case he is released on bail the detenu will indulge in activities endangering public order. It was further averred in the grounds of detention that in the circumstances the District Magistrate was satisfied that in order to prevent him from indulging in activities prejudicial to the public order it was necessary to pass an order of his detention under Section 3(2) of the Act.

4. The petitioner was also informed in the grounds of detention that he has a right to submit representation against the detention order to the State Government, the Advisory Board and the Central Government and if he wants to submit any representation he may do so through the Superintendent of the Jail. The petitioner was also informed that if he wants a personal hearing before the Advisory Board he should state accordingly in the representation.

5. The order of detention dated 6-2-1998 was approved by the State Government on 12-2-1998. The petitioner submitted representations to the State Government as well as the Central Government on 21-2-1998. The State Government rejected his representation by an order dated 2-3-1998. The representation addressed to the Central Government was received in the Home Ministry on 27-2-1998. The Advisory Board submitted its report on 3-3-1998. A copy of the said report was sent by the State Government to the Central Government, on a requisition made by the latter on 24-3-1998. The Central Government rejected the petitioner's representation on 13-5-1998.

6. Sri D.S. Misra, learned counsel for the petitioner, raised three contentions:

1. That the order of detention is vitiated due to non-consideration of the relevant fact that case Crime No. 369/87 under Section 25 of the Arms Act had already been disposed of by the judgment dated 6-2-1996 (Annexure 11 to the writ petition) in which the petitioner was acquitted. The detaining authority does not appear to have taken into account the fact of acquittal nor a copy of the judgment in the case appears to have been placed before him.

2. That the first two incidents stated in the grounds of detention, that is, Case Crime No. 92/ 84 on the incident dated 24-4-1984 and Case Crime 369/87 on the incident dated 7-12-1987, which ended in acquittal of the petitioner, are not only stale but irrelevant for the purpose of coming to a reasonable subjective satisfaction for passing an order of preventive detention against the petitioner. Such irrelevant grounds have vitated the subjective satisfaction of the detaining authority and, therefore, the order is unsustainable.

3. That there has been inordinate and unexplained delay on the part of the Central Government in dealing with the petitioner's representation which has rendered continued detention of the petitioner illegal.

7. The learned Additional Government Advocate, refuting the contentions raised by Sri D.S. Misra, contended that on a fair reading of the grounds of detention it is clear that materials were placed before the detaining authority to show that the petitioner, who is a history sheeter of the police department, is involved in a series of serious crimes over several years. The last incident, which took place on 16-12-1997, was a case of gruesome murder of three persons by use of fire arms in broad daylight at a public place which naturally spread panic amongst the people present and disturbed the even tempo of life of the community. The learned Additional Government Advocate further contends that on the facts and circumstances of the case it cannot be said that the first two incidents referred to in the grounds of detention are wholly irrelevant merely because they happened few years before. In any case, reference to the same was made to. show the repetitive tendency on the part of the petitioner to commit such criminal acts which disturbed public order. Alternatively, submitted the learned Additional Government Advocate, assuming that the first two grounds are irrelevant and cannot be relied upon for any reason whatsoever, the third ground is sufficient to maintain the order of detention in view of the provisions in Section 5-A of the Act. Regarding delay in disposal of the petitioner's representation by the Central Government, the Additional Government Advocate, referring to the counter-affidavit filed by Bina Prasad, contended that the delay occurred because the Central Government sought a copy of the report of the Advisory Board, which was made available to the State Government on 23rd March, 1998 and was dispatched on 24th March, 1998 and was received by the Central Government in the Home Ministry on Ist April, 1998. According to the learned Additional Government Advocate the time taken in disposing of the petitioner's representation has been fully explained in the counter-affidavit.

8. The first two contentions of Sri D.S. Misra, as aforementioned, need not detain us long. As noted earlier, in the grounds of detention it is specifically stated that in Case Crime No. 92/84, the detenu was acquitted on his plea of alibi which shows that the detaining authority was aware of that fact. Regarding the second incident, Case Crime No. 369/87, it is noted that a charge sheet has been submitted in the case. No doubt the judgment dated 6-2-1996 in Criminal Case No. 1298 of 1994 acquitting the detenu has not been noticed in the grounds of detention. On perusal of the counter affidavit filed by the District Magistrate, Sri B.S. Bhullar, it appears to us that he was not aware of the fact of acquittal of the petitioner in Criminal Case No. 1298 of 1994. Indeed, in paragraph 7 of the counter-affidavit the deponent has averred that case Crime No. 92/84, P.S. Kavinagar district Ghaziabad and Case Crime No. 369/87 P.S. Loni, district Ghaziabad were merely incidents in which the petitioner was involved and the detention order was passed on the basis of the incident dated 16-12-1997 which was registered as Case Crime No. 346 of 1997, P.S. Masoori, district Ghaziabad. Be that as it may, the detention order cannot be said to have been vitiated on this count in view of provisions in Section 5-A of the Act. The section reads:

5-A. Gounds of detention severable-Where a person has been detained in pursuance of an order of detention whether made before or after the commencement of the National Security (Second Amendment) Act, 1984 under Section 3 which has been made on two or more grounds, such order

of detention shall be deemed to have been made separately on each of such grounds and accordingly;

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v)' invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government or Officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

9. On a fair reading of the section the position is clear that a detention order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are invalid for the reason stated in Clause (i) to (iv) of Section 5A or for any other reason whatsoever as provided in Clause (v) thereof. It is further laid down in the section that it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detentation. Thus, it is not possible to hold that the satisfaction of the Government or officer making the order of detention could be affected in any way in a situation where an order of detention is found invalid in respect of one or more of the grounds mentioned in the order for any reason whatsoever. Clause (b) of Section 5A further clarifies the position by providing a deeming clause that the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds. The resultant position is that the contention raised by Sri D.S. Misra that the order of detention is vitiated on account of the first two incidents being stale and relevant material relating to the second incident not having been placed before the detaining authority when he was passing the order of detention, is not sustainable and the detention order cannot be said to be invalid on that count. To prop our conclusion we may refer to the decision of the Constitution Bench of the Supreme Court in the case of, Attorney General of India v. Amratlal Prajivandas, 1994 SCC (Cri.) 1325 : AIR 1994 SC 2179 in which the Court interpreting Section 5A of the Conservation of Foreign Exchange and Preventior of Smuggling Activitie Act, 1974, which is in pari materia with Section 5A of the Act, held that Section 5A is in two parts; the first part says that where an order of detention is made on two or more grounds, "such order of detention shall be deemed to have been made

separately on each of such grounds", while the second part says that such order shall not be deemed to be invalid or inoperative merely for the reason that one or some of the grounds are either vague, nonexistent, irrelevant or unconnected, though the second part is merely a continuation of and consequential to the first part is evident from the connecting words "and accordingly". The second part goes further and says that the order of detention must be deemed to have been made on being satisfied with the remaining good ground or grounds, as the case may be, both the parts are joined by the word "and." Elucidating the point, the Court made following observations in 49 of SCC (Cri) : Para 48 of AIR of the judgment:-

49. Now, take a case, where three orders of detention are made against the same person under COFEPOSA. Each of the orders is based upon only one ground which is supplied to the detenu. It is found that the ground of detention in support of two of such orders is either vague or irrelevant. But the ground in support of the third order is relevant, definite and proximate. In such a case, while the first two orders would be quashed, the third order would stand. This is' precisely what the first part (the main part) of Section 5A seeks to do. Where the order of detention is based on more than one ground, the section creates a legal fiction, viz., it must be deemed that there are as many oders of detention as there are grounds which means that each of such orders is an independent order. The result is the same as the one in the illustration given by us hereinabove. The second part of it is merely clarificatory and explanatory, which is evident from the fact that it begins with the word "accordingly" - apart from the fact that it is joined to the first part by the word "and". In such a situation, we are unable to see how can the section be characterized as inconsistent with Article 22(5). Had there been no first part, and had the section consisted only of the second part, one can understand the contention that the section is in the teeth of Article 22(5) as interpreted by this Court - this was indeed the situation in K. Yadigiri Reddy v. Commr. of Police, ILR (1972) Andh Pra 1025, as we shall presently indicate. It is difficult to conceive any inconsistency or conflict between Article (5) and the first - the main - part of Section 5A. Parliament is competent to create a legal fiction and it did so in this case. Article 22(5) does not in terms or otherwise prohibit making of more than one order simultaneously against the same person, on different grounds. No decision saying so has been brought to our notice. Be that as it may, we do not see why Parliament is not competent to say, by creating a legal fiction, that where an order of detention is made on more than one ground it must be deemed that there are so many orders of detention as there are grounds. If this creation of a legal fiction is competent, then no question of any inconsistency between the section and Article 22(5) can arise.

10. A similar view was taken by a Full Bench of this Court in the case of, Ram Prasad Chaudhary v. State of U.P., 1986 All LJ 916, wherein, on the analysis of the provisions of Section 5A of the Act, this Court held Para 10 of AII LJ :-

If we analyse the provisions of S. 5A of the Act in the light of the interpretation placed on the word 'deemed' it appears that although a detention order made on two or more grounds is one detention order but for the purposes of the statute it shall be deemed to be an order of detention made separately on each of such grounds. Normally, if a detention order contains two or more grounds, it is treated as one order having several grounds. The Legislature enacts a legal fiction whereby although two or more grounds are incorporated in one detention order, in the eye of law it will be

taken that a separate detention order has been passed in respect of each ground. The effect of the deeming clause is that if one of the grounds contained in the detention order fails, the detention order can be justified on other grounds contained in the detention order. Prior to the amendment in the National Security Act Act No. 6 of 1984, the Legal position was that if the order of detention was bad on one out of several grounds the whole detention order failed as it could not be said to what extent the invalid ground influenced the mind of the detaining authority. On the coming into force of the Amendment Act on 31 -8-1984. It is apparent that if several grounds of detention are contained in one detention order, it would be taken that separate detention order has been passed in respect of each of the grounds.

11. In this connection our attention had been drawn to a Division Bench decision of this Court in Writ Petition No. 87 (H/C) of 1998 Shanavaz alias Sanna v. Superintendent District Jail Bareilly, decided on 4-9-1998 reported in 1998 UP Cri R 738 in which a somewhat contrary view has been taken. In view of the Full Bench decision of this Court and the Constitution Bench of the Apex Court referred to above, this decision must be taken to be confined to the facts of that case and cannot be said to have laid down the correct position of law.

12. Coming to the question of delay in disposal of petitioner's representation addressed to the Central Government, the representation dated 21-2-1998, was received in the Ministry of Home Affairs on 27-2-1998, were received in the Ministry of Home Affairs on 27-2-1998 and it was rejected by the Home Minister on 13-5-1998. Thus, the representation was kept pending with the Central Government for 75 days. The explanation purportedly offered for the inordinate delay is stated in paragraphs 6, 7 and 8 of the counter-affidavit of Bina Prasad. The averments therein are quoted hereunder:-

6. The allegations made in the Para No. 3, 4, 5 and 7 of the petition are denied being incorrect. It is stated that a representation dated 21-2-1998 from the detenu was received by the Central Government in the Ministry of Home Affairs on 27-2-1998 through District Magistrate, Ghaziabad. This representation was immediately processed for consideration and it was found that certain vital information (i.e. opinion of the Advisory Board) required for its further consideration was needed to be obtained from the State Government through a crash wireless message dt. 3-3-1998 and subsequent reminder dated 31-3-1998.

7. That the required information was received by the Central Government in the Ministry of Home Affairs on 1-4-1998 vide the State Government's wireless message dated 24-3-1998. On receiving the said information on 1-4-1998, the case of the detenu was put up before the Deputy Secretary, Ministry of Home Affairs on 7-4-1998 who carefully considered the same and with his comments put up the same before the Special Secretary, Ministry of Home Affairs on 16-4-1998. The Special Secretary considered the case and with his comments put up the same before the Home Minister Government of India on 17-4-1998. The Home Minister himself duly considered the case of the detenu and rejected the representation of the detenu on 13-5-1998.

8. That the detenu was informed on the decision of the Central Government through the quickest modes of communication availableviz. a crash wireless message of 15-5-1998 through the Home

Secretary, Government of Uttar Pradesh and Superintendent Central Jail, Bareilly. This message was being followed by a letter 26-5-1998.

From the statement on the counter-affidavit quoted above, it is mainfest that no attempt whatsoever has been made to explain the delay in disposing of the representation. No averment is made why the Central Government felt it necessary to call for the report of the Advisory Board. It is relevant to State here that the Central Government is to consider the representation independently on due application of mind to the relevant material and dispose of the same expeditiously and with reasonable dispatch. The relevance of the Advisory Board's report is not stated in the counter-affidavit. Even assuming that the document was necessary or relevant, it was received in the Ministry of Home Affairs on 1-4-1998. Even thereafter 42 days elapsed before the order of rejection of the representation was passed for which no explanation whatsoever has been offered in the counter-affidavit. The file was pending with the Home Minister for about a month between 17-4-1998 to 1-5-1998. Even no attempt has been made to explain this inordinate delay. We are constrained to observe that the manner in which the file has been dealt with, as evident from the averments in the counter-affidavit, it gives an impression of casual approach and total unawareness of the importance of the matter involving the personal liberty of a citizen. The position of law is well settled that prompt disposal of the representation of the detenu is not only a fundamental right under the Constitution but also a statutory right under the provisions of the Act. If there has been inordinate unexplained delay in disposing of the representation by the appropriate authority continued detention of the detenu is rendered illegal. If any authority in support of this view is necessary, we may notice the case of Mahesh Kumar Chauhan v. Union of India, 1990 SCC (Cri) 434 : AIR 1990 SC 1455 : 1990 Cri LJ 1507, in which the Apex Court succinctly put the position in the following manner (Para 18 of AIR): "The next question is should or can the Court in the absence of any explanation wink at or skip over or ignore such an infringement of the constitional mandate and uphold an order detention merely on the ground that the enormity of allegations made in the grounds of detention is of serious nature as in the present case? Our answer would be 'Not at all'.

The Court, with approval, quoted the following observations made by Mathew, J". in Prabhu Dayal Deorah v. District Magistrate, Kamrup, (1974) 1 SCC 103 : AIR 1974 SC 183 : 1974 Cri LJ 286, Para 67 :

We say and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the law. The history of personal liberty is largely the history of insistence on observance of procedure. And observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law.

13. A similar view was taken by the Supreme Court in Kundanbhai Dulabhai Shaikh v. District Magistrate, Ahmedabad (1996) 2 JT (SC) 532 : AIR 1996 SC 2998 : 1996 Cri LJ 1981, in paragraph 25 whereof it was observed as follows Para 25 of AIR :

Black-marketing is a social evil. Persons found guilty of economic offences have to be dealt with a firm hand, but when it comes to fundamental rights under the Constitution Court, irespecti ve of enormity and gravity of allegations made against the detenu, has to intervene as was indicated in Mahesh Kumar Chauhan's case AIR 1990 SC 1455 : 1990 Cri LJ 1507 (supra) and in an earlier decision in Prabhu Dayal Deorah v. District Magistrate, Kamrup, AIR 1974 SC 183 : 1974 Cri LJ 286, in which it was observed that the gravity of the evil to the community resulting from anti-social activities cannot furnish sufficient reason for invading the personal liberty of a citizen, except in accordance with the procedure established by law particularly as normal penal laws would still be available for being invoked rather keeping a person in detention without trial.

14. A similar view was taken by a Full Bench of this Court in the case of Raj Bahadur Yadav v. State of U.P., 1997 All Cri 33 : 1997 All LJ 1975 : 1998 Cri LJ 103, in paragraph 17 whereof it has been observed as follows at P. 1991, Para 17 of All LJ :

Coming to the question of delay in disposing of the detenu's representation, the position is clear that the Advisory Board, the appropriate Government and the Central Government are required to act with promptitude and reasonable dispatch in dealing with the representation of the detenu and to consider whether his further detention is legal. Inordinate and unexplained delay on the pat of the authorities in dealing with the matter will render further detention of the, detenu illegal." It follows, therefore, that in the facts and circumstances of the case the conclusion is inescapable that continued detention of the petitioner has been rendered invalid due to the inordinate and unexplained dealy in deciding his representation by the Central Government.

15. Accordingly, the writ petition is allowed. The continued detention of the petitioner under the order dated 6-2-1998 (Annexure-1 to the writ petition) is held to be illegal. The respondents are directed to release the petitioner forthwith, if his detention in jail is not required in any other case.