

Court No. - 1

Case :- HABEAS CORPUS WRIT PETITION No. - 2844 of 2018

Petitioner :- Chandrashekhar Alias Ravan

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Deba Siddiqui, Gopal Swaroop, R.K. Jain, Sri Gopal Swaroop Chaturvedi, Sri Ravi Kiran Jain

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha, J.

Hon'ble Dinesh Kumar Singh-I, J.

1. Heard Sri Ravi Kiran Jain, learned Senior Advocate assisted by Ms. Deba Siddiqui, learned counsel for the petitioner, Sri Vikas Sahai, learned A.G.A. appearing for the State and perused the record.

2. By means of the present Habeas Corpus Petition the petitioner has sought quashing of Notifications dated 2.11.2017 issued by the State Government in purported exercise of its power under section 3(3) of the National Security Act, 1980 (in short to be referred as the Act) detaining the petitioner, on the basis that the District Magistrate of all the districts of this State have been conferred powers to pass order of detention under section 3 (2) of the Act in contravention of section 3(3) of the Act. Further, it is prayed that a direction be issued to the State Government to pay compensation for violation of the fundamental rights of the petitioner under Article 21 of the Constitution which should at least be Rs.10,00,000/-. It is further prayed that a direction be issued quashing the confirmation order of the State Government dated 21.12.2017 and also order dated 23.1.2018 extending the period of detention from three months to six months.

3. The contentions of the learned counsel for the petitioner as narrated in the writ petition are that the petitioner has been detained by the District Magistrate, Saharanpur under section 3(2) of the Act vide order dated 2.11.2017, **the grounds of detention were supplied to him as required under section 8 of the Act along** with as many as 17 annexures. The power of the District Magistrate, Saharanpur under section 3(2) of the Act cannot be exercised by him **unless he is empowered to do so by the State Government by issuing a notification under section 3(3) of the Act having regard to the circumstances prevailing in a local area at some point of time as mentioned in the aforesaid section.** In the State of U.P. all the District Magistrates have been empowered to exercise that power which is being challenged by the petitioner. It is noteworthy that the Government of U.P. promulgated the National Security Ordinance, 1980 on 21.8.1980 whereafter the National Security Act (Act No.65 of 1980) was enforced on 27.12.1980 replacing the ordinance. The first notification of the State Government in purported exercise of its power under section 3(3) of the Ordinance No. 11 of 1980 was promulgated by the State Government

Notification 111/01/01/80-C.X-6 dated September 25th, 1980, whereafter the State Government extended the said notification successively from time to time on the expiry of every three months of the earlier notification till date. The said notification was in contravention of the provision of section 3(3) of the Act because that sub-section empowers the State Government to confer the jurisdiction upon the District Magistrate only if, having regard to circumstances prevailing or likely to prevail in any area within the local jurisdiction of the District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary to do so but the State Government instead of looking into entire circumstances prevailing in the area has conferred upon all the District Magistrates of the State of U.P. such a power of detention by extending earlier notification in a mechanical manner which has made it to be non-est. Therefore, the petitioner is seeking relief of declaration that the notification issued from time to time extending the notification dated 25.9.1980 is bad in law in exercise of Power under Article 226 of the Constitution. It is further stated that the petitioner was in jail on 2.11.2017 when the detention order was passed being involved in Case Crime No.154 of 2017, Case Crime No.152 of 2017, Case Crime No.156 of 2017, Case Crime No.162 of 2017 and Case Crime No.163 of 2017 which were registered at P.S. Kotwali Dehat, District Saharanpur. He was enlarged on bail in Case Crime No.154 of 2012 on 25.8.2017 by the concerned court and in all other four cases he was enlarged on bail by the High Court.

4. The detention order dated 2.11.2017 is being challenged on the ground that the material which was supplied to the petitioner as grounds for detention does not contain any material to show that if he was released on bail he was likely to indulge in activities, which may be prejudicial to the maintenance of the public order. The District Magistrate, Saharanpur has not recorded such a satisfaction in the impugned order. In the grounds of detention in paragraph no.22, the District Magistrate, Saharanpur has not mentioned that the petitioner is trying to be released on bail and that if no order was passed under the Act to detain him, after his release on bail, there was a likelihood that there could be caste conflict and hostility which might adversely affect the normal human activities and there would be again a disturbance of public order. He has simply mentioned that the release of the petitioner on bail would create a situation which is mentioned by him in paragraph no. 22 of the grounds of detention. Besides above, even if entire record and the grounds mentioned for detention are perused there is no material at all to show that the petitioner was even remotely proposed to act in a manner prejudicial to the security of the State or prejudicial to the maintenance of public order or prejudicial to the maintenance of essential supplies and services. The ground no. 1 shown in the detention indicates that it relates to some incident which happened on 5.5.2017, in which no role is assigned to the

petitioner. It is mentioned that to oppose the incident of 5.5.2017 which happened in village Shabbirpur there was a programme of holding Mahapanchayat on 9.5.2017 at 10:00 A.M. in Ravidas Chhatravas (Police Station Janakpuri, Saharanpur) under the supervision of the petitioner, but for want of necessary permission, 150-200 persons, who wanted to participate in the Mahapanchayat, reached at Gandhi Maidan at 10:45 A.M. but due to intervention of the police, they could not do anything there and thereafter 300 young person belonging to Ram Nagar assembled in Ram Nagar at about 12:00 noon under the leadership of petitioner who raised slogans in favour of Bhim Army, the crowd became agitated and people were armed with saria, rods, swords and country made pistols in illegal manner and started stopping the vehicles. Police tried to pacify them but to no avail and the crowd became violent and threw stones and damaged 13 motorcycles, one swift car was put on fire. They also damaged the furniture, documents etc. of Police Chowki, Ramnagar and demolished four wall of Maharana Pratap Bhawan. All this resulted in injuries to both sides. The ground no. 2 in the grounds of detention shows that the role assigned to the petitioner is only to make 300 young local persons of Ram Nagar assemble and indulge thereafter in violent activities. Therefore, the said ground would show that no role was assigned to the petitioner and that it could not be said that the said violence took place under the leadership of the petitioner as he is not a resident of Ram Nagar rather he is a resident of village Chhutmalpur. Further it is stated that in ground nos. 3 and 4 no role is assigned to the petitioner; in ground no. 5 of grounds of detention pertaining to FIR in Case Crime No.152 of 2017 no mention was made of the name of the petitioner, hence the said occurrence could not be attributed to the petitioner; in ground no. 6 of the grounds of detention, pertaining to Case Crime No.154 of 2017 also he was not named in the FIR; in ground no. 7 of the grounds of detention, his name did not find place in the FIR; regarding ground no.8 of the grounds of detention it is submitted that he was not supplied the copy of the FIR of Case Crime No.149 of 2017; in ground no. 9 of grounds of detention, the name of the petitioner was stated that he along with five named persons and 20-25 persons unnamed had indulged in violent activities; in regard to ground no. 10 of the grounds of detention it is stated that the detaining authority has not attributed any act to him in this ground which might be relevant for passing detention order; regarding ground no. 11 of the grounds of detention, it is stated that in the FIR in Case Crime No.163 of 2017 the petitioner was not named nor anyone was named; regarding ground no. 12 of the grounds of detention it is stated that no details of the action alleged to have been taken by the police force, PAC and RAF has been mentioned, hence the same could not be a ground for detention. Regarding ground no. 13 of the grounds of detention it is stated that the Case Crime No.243 of 2017 the name of the petitioner does not appear; in respect of ground nos. 14 to 20 of the grounds of detention it is urged that these contains only allegation that some charge-sheets were filed in certain

criminal cases but merely filing of charge-sheets could not be said to be a material to pass a detention order, further it is mentioned that regarding ground no. 20 of the grounds of detention it is specifically stated that several news item published in the newspapers have been mentioned which could not be a valid basis to pass an order of detention order; regarding ground no. 21 of the grounds of detention it is stated that the then District Magistrate, Sri M.P. Singh and Subhash Chandra Dubey were suspended because they were not satisfied that there was sufficient material for passing the detention order and thereafter new District Magistrate was said to pass the detention order under pressure of the Government; in regard to ground no. 22 of the grounds of detention it is urged that the same is very vague; ground no. 23 of the grounds of detention it is stated that no case was made out on the basis of the said material; regarding ground no. 24 of the grounds of detention it is stated that no reply is required to be given; regarding ground no. 25 of the grounds of detention it is stated that the petitioner had filed representation dated 14.11.2017 before the Advisory Board through the Superintendent Jail, Saharanpur and that he came to know that the State Government had sent its comments to the Advisory Board against the representation of the petitioner but the copy of the comment was not supplied to the petitioner.

5. The State Government after receipt of the report of the Advisory Board, passed an order dated 21.12.2017 confirming the detention order dated 2.11.2017 which on the face of it is wholly arbitrary as it accepted the report of the Advisory Board with a mechanical mind, not mentioning any fact as to how and why the report of the Advisory Board had been accepted by the State Government. Section 12 of the Act stipulates that in case the Advisory Board submits report stating that there was sufficient cause for detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit while in the present case the Detaining Authority has passed the detention order dated 2.11.2017 to keep the petitioner under preventive detention for three months. The order of confirmation of the report of the Advisory Board dated 21.12.2017 indicates that the State Government had observed that the petitioner is being tentatively detained for three months. Under section 12 of the Act, it is stipulated that the State Government has to decide at the time when it confirms the detention order, as to for what period the detention should be continued. It is not permissible under section 12 of the Act that the District Magistrate may determine the said period tentatively and thereafter on or before expiry of that period, he may extend the period of detention but in the present case the State Government vide its order dated 23.1.2018 in purported exercise of its power under section 12(1) of the Act has extended the period of detention dated 2.11.2017 from three months to six months which on the face of it is wholly arbitrary inasmuch as the situation as it existed when the initial order

of detention dated 2.11.2017 was passed, were the same, as at the time when the order of extension of detention dated 23.1.2018 was passed. It is just not possible for the petitioner to make out the grounds on which the order dated 21.12.2017 confirming the detention order dated 2.1.2017 has been passed, which is an unfair procedure and violative of Article 21 of the Constitution.

6. Learned A.G.A. has filed counter affidavit on behalf of the District Magistrate, Saharanpur, respondent no.2 wherein opposing the prayer for quashing of the abovementioned impugned order. It is stated that after passing the detention order, the followers of Bheem Army Party, headed by District President Kamal Baliya had conducted hunger strike and also led procession before the office of the District Magistrate, Saharanpur in order to put pressure to release the petitioner from judicial custody. Jail Bharo Andolan and various meeting regarding agitations were also conducted on different dates by the followers and they obstructed the public order, whereon the Administration deployed heavy police force along with Sector Magistrate, Paramilitary Force to control the situation. Incident was also published in the daily newspapers. It was evident that in case the petitioner was released from judicial custody on bail, it was quite possible that he would indulge in activities which would affect the public order. The fallout of the incident in question had culminated into chaos disturbing the congenial atmosphere, flaring horrific feeling, affecting the maintenance of public law and order. It was an organized act which was prejudicial to the maintenance of public order. He considered possibility of petitioner being released on bail from concerned court and upon release, his further indulgence in similar type of activities, which will be prejudicial to the public order, with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order. He was rightly detained under section 3(2) of the Act after complete subjective satisfaction on the basis of material available on record and there was no violation of any fundamental right. As regards the notification dated 25.9.1980 it is stated that as per the provision enshrined in the Section 3(3) of the Act, the District Magistrates of the State of U.P. have been empowered by the State Government for smooth functioning and with regard to taking preventive action against anti-social elements under his local limits of jurisdiction which is in accordance with law. It is further stated that in exercise of powers conferred under sub-section 3(3) of the Act read with section 21 of the General Clauses Act, 1897 in partial modification of the orders contained in Government Notification No.111/1/11/80-CX-6 T.C.III dated 25.9.1980 as notified from time to time and lastly notified by Government Notification NO.111/1/80-CX-7-T.C.III dated 15.1.2018, His Excellency was pleased to empower all the District Magistrates of the State to exercise powers conferred by sub-section (2) of the said section for a further period of three months with effect from 17.01.2018.

7. It is further stated that on 5.5.2017 a symposium of 'Maharana Pratap Jayanti' was proposed to be held in village Shimlana, situated at M.P.M. Inter College, in which 50-60 youngsters were going to participate by cycle and Motorcycle along with D.J. (Sound System).. The said programme was protested by the SC community of the said village. Thereafter, police reached the spot and stopped the D.J. due to which some quarrel started and parties started pelting stones in which Sumit son of Brahm Singh Rajpoot, r/o village Rasoolpur, Police Station Deoband, district Saharanpur sustained grievous injuries and during the course of treatment, he succumbed to the injuries. In addition to the aforesaid fact, it is further stated that some of the persons reached village Shabbirpur from village Shimlana and became aggressive and set ablaze the house, straw etc. of SC community and also committed Maar-Peet. Some of the crowd of village Shimlana belonging to 'Kshatriya Community' rushed towards village Maheshpur and committed arson and sabotage. On the protest of incident dated 5.5.2017, one Mah-Panchayat was scheduled to be held on 9.5.2017 at about 10.00 A.M. in Ravidas Hostel, Police Station Janakpuri, District Saharanpur, but for want of necessary permission, several persons wanted to participate in the said Maha-Panchayat. On the said point of time, due to intervention of the Police, they could not participate in Maha-Panchayat. Thereafter, 300 persons under the leadership of the petitioner along with one of his associate namely Kamal Baliya, Zila Adhyakash, Bheem Army Sangathan collected at about 12:00 'O'clock and become belligerent, who armed with Lathi, Danda, Iron Rod, Sword and country made pistol etc. jammed the road and committed arson and sabotage at different places and set ablaze the buses and even the employees who were deployed for maintaining law and order, also sustained injuries.

8. Pursuant to this occurrence as many as eight criminal cases were registered being **Case Crime No.152 of 2017** under sections 147, 148, 149, 452, 307, 436, 427 IPC and section 7 of Criminal Las Amendment Act and section ¾ of Damages to Public Property Act registered at Police Station Kotwali Dehat, District Saharanpur; **Case Crime No.154 of 2017** under sections 147, 136 IPC registered at Police Station Kotwali Dehat, District Saharanpur; **Case Crime No.156 of 2017** under sections 147, 148, 149, 452, 307, 436, 427 IPC registered at Police Station Kotwali Dehat, District Saharanpur; **Case Crime No.162 of 2017** under sections 147, 148, 149, 307, 332, 353, 436, 427 IPC and section 7 of Criminal Las Amendment Act and section ¾ of Damages to Public Property Act registered at Police Station Kotwali Dehat, District Saharanpur; **Case Crime No.163 of 2017** under sections 147, 148, 149, 307, 504, 323 IPC registered at Police Station Kotwali Dehat, District Saharanpur; **Case Crime No.243 of 2017** under sections 505(1), 505(2), 120-B IPC and section 66(F) of I.T. Act, registered at Police Station Sadar

Bazar, District Saharanpur; **Case Crime No.159 of 2017** under sections 147, 148, 336, 427, 435 IPC registered at Police Station Kotwali Dehat, District Saharanpur and **Case Crime No.160 of 2017** under sections 147, 148, 427, 435 IPC registered at Police Station Kotwali Dehat, District Saharanpur. Further it is submitted that due to aforesaid continuous incident, the sense of insecurity and terror arose in the whole area and the incident of arson and sabotage at different places took place which was published in the daily newspaper and highlighted the involvement of the petitioner and his associates. The fallout of the said incident had culminated into chaos disturbing the congenial atmosphere, flaring up horrific feeling affecting the maintenance of public place and law and order. Therefore, he after having gone through the report of the police station and senior police officer and also on the basis of material available on record, took preventive action against the petitioner under section 3(2) of the Act on 2.11.2017 after being satisfied subjectively. The said detention order dated 2.11.2017 along with grounds of detention with all relevant materials were served upon the petitioner through jail authorities on the same day i.e. 03.07.2017 as he was in judicial custody at District Jail, Saharanpur to afford him the earliest opportunity to make an effective representation. When the detention order was served, the petitioner was not only informed the grounds of the detention but also regarding the right of moving a representation to the different authorities including the District Magistrate, Saharanpur. He considered possibility of petitioner being released on bail from concerned court and upon release, his further indulgence in similar type of activities, which would be pre-judicial to the public order, with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of peace and public order. He was rightly detained under section 3(2) of the Act. It is further submitted that the order by which the detention order has been confirmed for the period of three months at the first instance from the date of detention order, is absolutely just and has been passed on the basis of report of the Advisory Board as well as after considering the possibility of the petitioner being released on bail from concerned court and upon there being likelihood of his indulgence in similar types of activities in case of such release. The Advisory Board has applied its judicious mind and thereafter it submitted its report before the State Government. Further it is mentioned that the confirmation order dated 23.12.2018 for a period of six months from the date of detention order dated 2.11.2017 has been rightly passed by the State Government, which is in accordance with law and as per the statutory provision. It is also mentioned that later on the detention order was approved by the State Government on 9.11.2017 thereafter the petitioner submitted his representation dated 14.11.2017 which was rejected by him on 17.11.2017 and information of the same was communicated to the petitioner on the same day through jail authorities. The State Government also rejected his representation on 28.11.2017 and its information was communicated to him on 29.11.2017. The Central

Government has also rejected the representation of the petitioner on 28.11.2017 and its information has been communicated to him on 4.12.2017. The petitioner was produced before the Advisory Board on 8.12.2017 which found ample cause for detaining him, hence detention order does not suffer from any infirmity and that it cannot be set aside merely on the ground that it speaks about the detention of the petitioner on account of breach of public order and national security. The term 'National Security' of the Nation/State include the public order.

9. Learned A.G.A. has filed counter affidavit on behalf of the State Government , respondent no. 1 sworn by Anil Kumar, Deputy Secretary (Home), U.P. Civil Secretariat, Lucknow opposing quashing of the impugned order alleging therein that the detention order dated 2.11.2017 along with grounds of detention and all other connected documents, were forwarded by the District Magistrate, Saharanpur to the State Government on 5.11.2017 vide his letter dated 2.11.2017 and after examining the entire aspect of the case, the State Government approved the order of detention on 9.11.2017 which was communicated through radiogram and letter dated 9.11.2017 to the petitioner through the District authorities by the State Government i.e. within 12 days from the date of the detention order as required under section 3(4) of the Act. The said order along with aforementioned documents were sent to the Central Government by Speed Post on 10.11.2017 within seven days from the date of approval by the State Government as per requirement under section 3(5) of the Act. The case of the petitioner was referred to the U.P. Advisory Board, Detentions, Lucknow by the State Government by forwarding the detention order along with grounds and connected papers on 9.11.2017 within three weeks from the date of his actual detention as required under section 10 of the Act along with the reply of the petitioner's representation dated 14.11.2017 along with letter of District Magistrate, Saharanpur dated 17.11.2017. The State Government has sent the copy of representation and its parawise comments to the Central Government, New Delhi on 21.11.2017 and also to U.P. Advisory Board (Detention) on the same day. Thereafter, the concerned section of the State Government examined the representation dated 21.12.2017 and file was submitted to the higher authorities for final order of the State Government. After due consideration, the said representation was finally rejected by the State Government on 27.11.2017. Similarly, the reply to the petitioner's second representation dated Nil along with parawise comment was also received on 21.12.2017 which was also, after due consideration was rejected by the State Government on 28.12.2017 and its communication was sent to the petitioner. It is further submitted that U.P. Advisory Board Lucknow vide its letter dated 29.11.2017 had informed the State Government that the case of the petitioner would be taken up for hearing on 8.12.2017 and directed the petitioner to be informed that if he desired hearing before the Advisory

Board along with his next friend (Non-Advocate) he could do so. The said fact was communicated to the petitioner who appeared for hearing before the Advisory Board on 8.12.2017. After hearing the petitioner in person, the Advisory Board submitted the report to the State Government that there was sufficient cause for detention of the petitioner under the Act. The said report along with record was received by the State Government on 15.12.2017 through letter dated 14.12.2017 sent by the Registrar of the Advisory Board well within seven weeks from the date of detention as provided under section 11(1) of the Act. The State Government thereafter examined the matter afresh along with information of the U.P. Advisory Board and took the decision to confirm the detention order and also for keeping the petitioner under detention for a period of three months at the first instance from the date of his actual detention i.e. since 2.11.2017 and thereafter the order of actual detention was issued by the State Government through radiogram and letter, both dated 21.12.2017. It is further stated that on the basis of recommendation dated 17.1.2018 of the District Magistrate, Saharanpur and after consideration of the facts and circumstances of the case, the State Government was satisfied that it was further necessary to extend the detention period for another three months. Thereafter, the State Government amended the above order and extended the period of six months from the date of actual detention i.e. Since 2.11.2017. Accordingly, the detention order dated 2.11.2017 was amended and order was issued on 23.1.2018. Further it is submitted that the 3rd representation dated 9.11.2017 was submitted before the President of India and thereafter a letter dated 17.1.2018 was sent by the Central Government which was received in the concerned section of the State Government on 23.1.2018 and thereafter on 29.1.2018 the State Government sent a letter to the District Magistrate Saharanpur seeking his report and thereafter on 9.2.2018 a reminder was sent to the District Magistrate, Saharanpur whereafter on 26.2.2018 the District Magistrate sent his report to the State Government which was received on 27.2.2018 and thereafter the State Government sent the report and copy of representation dated 9.11.2017 to the Central Government on 5.3.2018, thereafter the concerned section of the Home Department of the State of U.P. examined the representation on 6.3.2018 and the same was examined by Deputy Secretary, Special Secretary and Secretary respectively on 7.3.20-18, 8.3.2018 and 8.3.2018 where-after the file was submitted to the higher authorities for final orders and the State Government after due consideration of the representation dated 9.11.2017, finally rejected on 9.3.2018 and its intimation was also sent through radiogram to the Central Government, District Magistrate, Saharanpur as well as to Jail Authorities vide radiogram dated 10.3.2018. Rest of the replies are almost reiteration of the same which are contained in the counter affidavit of the respondent no. 2 hence they need not be repeated.

10. Learned counsel for the petitioner has filed rejoinder affidavit to the counter affidavits filed by the respondent nos. 1 and 2 in which the assertion is made of the same facts which have been made in the writ petition.

11. Learned counsel for the petitioner had taken us through all the relevant provisions of the Act particularly sections 3, 8, 10, 11 but mainly has emphasized on the provisions mentioned under section 3 of the Act. For the sake convenience, section 3 is reproduced below:

3. Power to make orders detaining certain persons-

(1) The Central Government or the State Government may,—

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained. Explanation.—For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section: Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government: Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detentions, this sub-section shall apply subject to the modification, that, for the words "twelve days", the words "fifteen days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

12. He argued that even if the entire facts which are alleged by the respondents in the impugned order and the grounds mentioned in support of the passing of the detention order be taken to be true, no case is made out for passing such a detention order. It is absolutely arbitrary and against Article 21 of the Constitution which needs to be set aside and the petitioner should be set at liberty and not only this he further argued that he should also be awarded exemplary compensation for his wrongful confinement by the State Government. He further stressed that no mention is made in the grounds that he was likely to be released on bail and no such material has been brought on record to conclude that in case he was released on bail he would further indulge in the similar kind of activities which will be prejudicial to the public order and on this ground itself the detention order suffers from infirmity and needs to be set aside. He has relied upon the judgment of this High Court rendered in **Amir Ali vs. Union of India, LAWS(ALL) 2017 5 246** wherein the Court has relied upon in paragraph no. 9 on the judgment of Supreme Court which is relied therein and in which the principles have been laid down as to when a person who is already in judicial custody, can be detained under this Act. For the sake of convenience the paragraph no. 9 of **Amir Ali (Supra)** is reproduced below.

The Hon'ble Supreme Court has laid down the principles as to when a detention order can be passed with regard to a person already in judicial custody in the case of Kamarunnissa vs. Union of India and another reported in 1990(27) ACC 621 SC and in paragraph 13 of the aforesaid case the The Hon'ble Supreme Court has held as hereunder :-

"13. From the catena of decisions referred to above, it seems clear to us that even in the case of a person in custody a detention order can validly be passed(1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him(a) that there is real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in his behalf, such an order can not be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question of before a higher Court."

13. He has further relied upon the judgment of Supreme Court rendered in the case of **Huidrom Konungjao Singh vs. State of Manipur, Laws (SC)2012 5 44**, relevant paragraph no. 9 of the said judgment is as follows:

"9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts:

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary. In case either of these facts does not exist the detention order would stand vitiated. “

14. He has relied upon the judgment of the Supreme Court rendered in **Abdul Munaf vs. State of West Bengal, LAWS (SC) 1974 3 13** in which the point of proximity is dealt with in respect of between the alleged prejudicial activity of the petitioner and the detention order. The relevant paragraph no. 5 is quoted here-in-below.

“5. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order or to the maintenance of supplies and services essential to the community. But in order to justify such an inference it is necessary to bear in mind that such past conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary (see *Shri Nagen Murmu v. The State of West Bengal* . No doubt, it is both inexpedient and undesirable to lay down any inflexible test as to how far distant the past conduct or the antecedent history should be for reasonably and rationally justifying the conclusion that the person concerned if not detained may indulge in prejudicial activities. If in a given case the time lag between the prejudicial activity of a detenu and the detention order made because of that activity is ex facie long, the detaining authority should explain the delay in the making of the detention order with a view to show that there was proximity between the prejudicial activity and the detention, order. If the detaining authority fails to do so, in spite of an opportunity having been afforded to it, a serious infirmity would creep into the detention order. “

15. Further reliance has been placed upon **Laxman Khatik vs. State of West Bengal, LAWS (1974 2 1** which also deals with the point which has been dealt with in **Abdul Munaf (Supra)**. The relevant paragraph no. 5 is quoted here-in-below.

“5. All the three grounds on which the District Magistrate purports to have reached the required satisfaction are based on incidents which took place in rapid succession in the month of August, 1971. The first incident of unloading 5 bags of rice took place in the afternoon of 3-8-1971. The second incident took place on 5-8-1971 also in the afternoon practically at the same place as the first incident. This time also some rice was removed from the trucks carrying rice. The third incident took place in the afternoon of 20-8-1971 also at the same place. That also related to the removal of some rice from loaded trucks It is not clear from the record whether the petitioner was prosecuted for the theft, especially, when it is seen that the first incident of removal of rice was witnessed by two

constables. However that might be, it appears to us that the District Magistrate could not have been possibly satisfied about the need for detention on 22-3-1972 having regard to the detenu's conduct some 7 months earlier. Indeed mere delay in passing a detention order is not conclusive, but we have to see the type of grounds given and consider whether such grounds could really weigh with an officer some 7 months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of foodgrains. It is not explained why there was such a long delay in passing the order. The District Magistrate appears almost to have passed an order of conviction and sentence for offences committed about 7 months earlier. The authorities concerned must have due regard to the object with which the order is passed, and if the object was to prevent disruption of supplies of foodgrains one should think that prompt action in such matters should be taken as soon as incidents like those which are referred to in the grounds have taken place. In our opinion the order of detention is invalid.”

16. Therefore, in the light of the above quoted laws, it is apparent that there is no bar to pass a detention order in respect of person who is in judicial custody and is under incarnation provided; 1) the authority passing the detention order is aware that he is actually in custody; 2) that he has reason to believe that on the basis of reliable material placed before it there is a possibility of his being released on bail and that on being so released, he would indulge in prejudicial activities; 3) it is essential to prevent him from doing so; 4) the date of order of detention should be in close proximity to the commission of such activities which are prejudicial to the maintenance of public order.

17. Now we have to see as to whether in the case at hand, these necessary ingredients are satisfied and whether on touch stone of the ingredients the impugned order deserves to be upheld or set aside.

18. From the perusal of the record, it is evident that though the petitioner was in prison on the date when the detention order has been passed i.e. on 2.11.2017 but main reliance which has been placed by the respondents in justifying the passing of the detention order is based on occurrence which took place on 5.5.2017 when a symposium was proposed to be held in village Shimlana on Maharana Pratap Jayanti, on which date Maar-Peet took place between the members of Bheem Sena Sangh and Kshatriya community and subsequent to that the associates of the petitioner in large number under the leadership of the petitioner indulged in activities being equipped with lathi-danda, iron rod, sword, country made pistol etc. jammed the road committed arson and sabotage at various places set ablaze the buses and police station. Pursuant to this occurrence large number of criminal cases which are mentioned in the counter affidavit of the respondent no. 2 have been registered in connection with this occurrence and it fallout and in some of those FIRs the present petitioner has been named and in some of them he has not been named but his indulgence has been found. Reference of the criminal cases has already been made in the above paragraph of this judgment. On the basis of this occurrence it is mentioned in the impugned order passed by the District Magistrate and which has also been upheld by the State Government that the District Magistrate was satisfied subjectively that there was possibility of the petitioner being released on bail from the court concerned and that if he was released on bail he would further indulge in similar activities which would be prejudicial to the public order.

19. Learned counsel for the petitioner has annexed the bail orders of various crime numbers which have been registered against the petitioner in which he has been granted bail, hence the satisfaction of the District Magistrate that the petitioner could be released on bail in other cases also and in case he was bailed out and come out from jail he would further indulge in similar activities prejudicial to the maintenance of the public order,

hence it was considered by him that it was essential for such a person to be detained under the Act so that he was prohibited from indulging in such kind of activities as have been mentioned above in detail.

20. As regards the proximity of passing the detention order from the date of his indulgence in such activities which are prejudicial public order, it may be mentioned that the impugned order of detention has been passed on 2.11.2017 while the occurrence which involved colossal loss of property arson etc. took place on 5.5.2017. Therefore, there is no huge gap of time between 5.5.2017 and 2.11.2017, the time gap between the two dates cannot be held to be very big which may be held to be inappropriate for passing the detention order. The impugned order does contain that it was necessary to pass the detention order on the grounds annexed therewith for maintenance of public order and for keeping National security. The enclosed grounds for detention contain the crime numbers as mentioned above on the basis of which it was apprehended that the petitioner who was on the look out for getting himself bailed out in all those cases and that after getting himself bailed out, he would indulge in such activities which would spread caste feeling and would indulge in such activities which would have adverse impact on maintenance of the law and order, therefore, it was expressed in the said order that it was essential to keep him in detention.

21. The steps taken by the respondents in passing the impugned order have already been narrated above at length which do disclose that all the provisions and the time period have been strictly adhere to by the authorities in making consideration of the matter and at each level the petitioner has been kept informed. Therefore, it cannot be said that there was any kind of illegality committed by the respondents in passing the impugned order.

22. Much emphasise was laid-down by the learned Senior Advocate appearing for the petitioner on the point that the power conferred upon the District Magistrate for passing the detention order under the aforementioned sections has been granted to all the District Magistrates of the U.P. which defeats the objective of the Act which was meant for only exercising such power of detention by the District Magistrate of the place concerned to enforce the provision of this Act but instead of that the District Magistrates of the whole State have been conferred with the power of passing the detention order which is against Article 21 of the Constitution. We are not inclined to accept this argument because it has been clearly stated in the counter affidavit filed on behalf of the respondents that there is apprehension of breach of peace on account of prejudicial activities of abovementioned nature on the part of the various persons which makes it necessary that the District Magistrate of the entire State should be conferred with this power so that on each occasion the State Government should not be required to pass a specific order separately because that would defeat the purpose of the Act. Therefore, we are not inclined to allow the prayer of the petitioner regarding setting aside the detention order which is found to have been issued in accordance with law.

23. As regards claiming the compensation for illegal confinement of the petitioner, learned counsel for the petitioner has relied upon **Neelabati Behera alias Lauta Behera (Through the Supreme Court Legal Aid Committee vs. State of Orissa, LAWS (SC) 1993 3 134**. This case relates for awarding compensation in the matter of custodian death and therefore, we found that the facts of this case are not akin to the facts of the present case and therefore no benefit can be given to the present petitioner under law laid-down in the abovementioned case. It may also be submitted here that the learned A.G.A. has drawn the attention of this Court to the provisions mentioned in section 16 of the Act which provides that no suit or other legal proceedings shall lie against the Central Government or a State Government and no suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

24. Relying upon the above provision, the learned A.G.A. again stated that the District Magistrate and the Officers of the State Government have taken steps in good faith in carrying out the provisions of this Act, therefore, it cannot be held that they committed any deliberate mischievous act by detaining the petitioner in jail for undue reason, illegally which would entitle him for any kind of compensation. We are impressed by the argument of the learned A.G.A. and do not find any substance in the argument of the learned counsel for the petitioner that the petitioner had been detained illegally in prison and therefore he should be awarded compensation.

25. We have already held above that the action taken by the respondents are absolutely in accordance with the provisions of the Act and the petitioner does not deserve for any compensation, therefore, we are not inclined to grant any compensation to the petitioner.

The writ petition is, accordingly, dismissed.

(Dinesh Kumar Singh-I, J.) (Ramesh Sinha, J.)

Order Date: 26.4.2018

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