

**High Court of Judicature at Allahabad
(Lucknow)**

A.F.R.

Judgment Reserved on 27.07.2022

Judgment Delivered on 14.09.2022

Reserved

Case :- HABEAS CORPUS WRIT PETITION No. - 30758 of 2021

Petitioner :- Ram Sewak

Respondent :- State Of U.P.Thru.Prin.Secy.Home Lucknow And Ors.

Counsel for Petitioner :- Arvind Kumar Tripathi,Dr. Ravi Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Rajan Roy,J.

Hon'ble Shekhar Kumar Yadav,J.

(Per: Rajan Roy, J.)

1. Heard Dr. Ravi Kumar Mishra, learned counsel for the petitioner and Mr. S.P. Singh, learned AGA for the State.
2. This petition has been filed seeking issuance of writ of certiorari quashing the order of detention dated 01.10.2021 passed by the District Magistrate, Sitapur under Section 3 (2) of the National Security Act, 1980 (for short the 'Act 1980'). A writ of mandamus has also been sought commanding the opposite parties to set the petitioner at liberty forthwith.
3. The facts of the case are that an incident took place on 18.08.2021 at about 7 PM, when minor daughter of Kamal Kishore aged about 10 years went missing. The villagers searched her and ultimately her body was found in a field at about 10 PM. The aforesaid Kamal Kishore lodged a First

Information Report bearing case Crime No. 229 of 2021 under Section 302 IPC. Subsequently, Sections 201 and 376 IPC read with Section 5(d)/6 of Prevention of Children from Sexual Offence Act, 2012 were also added. The petitioner herein was apprehended on 20.08.2021 in connection with the said crime and was sent to jail. The petitioner applied for bail in the said case. During pendency of the bail application, the impugned order of preventive detention was passed by the District Magistrate on 28.09.2021 under Section 3(2) of the Act 1980 so as to prevent him from acting in a manner prejudicial to the maintenance of public order. The District Magistrate passed the order on the report of the Sponsoring Authority. The supporting material which is the basis for preventive detention was supplied to the petitioner and has been annexed by him. Apart from the satisfaction recorded by the District Magistrate with reference to the ingredients of Section 3 (2) of the Act 1980, as claimed by the learned AGA, he has also mentioned that enlargement of the petitioner on bail could endanger public order, hence the preventive detention.

4. The contention of learned counsel for the petitioner was that the alleged incident of rape and murder took place at a secluded place and was an individual offence which could very well be dealt with under the ordinary law of the land and there was no requirement of invoking the provisions of the Act 1980 for the petitioner's preventive detention. It was at best a case involving law and order and not public order.

He submitted that the District Magistrate has not independently exercised his mind to the material before him.

5. Learned AGA opposed the writ petition. He submitted that the crime was gruesome which disturbed the even tempo of life of the persons residing in the locality where the crime was committed, therefore, based on the material supplied by the Sponsoring Authority, the District Magistrate has formed an independent opinion for preventive detention of petitioner which does not suffer from any error.

6. We have heard the learned counsel for the parties and perused the records.

7. We take note of the fact that vide order dated 10.06.2022, the petitioner-Ram Sewak has been enlarged on bail by the High Court in Criminal Misc. Bail Application No. 2393 of 2022.

8. The term of detention of the petitioner, which cannot exceed 12 months, is to expire in October, 2022.

9. As regards the contention of petitioner's counsel that the offence having been committed in a secluded area and not in a public place, therefore, the ingredients of Section 3 (2) of the Act 1980 were not satisfied, we are not ready to accept this contention. Merely because the offence was committed in a secluded area does not mean that public order cannot be disturbed. We may in this regard refer to the decision of Hon'ble the Supreme Court in the case of ***Arun Ghosh vs.***

State of West Bengal and others' wherein a Four Judge Bench had the occasion to consider the scope of Section 3 (2) of the Preventive of Detention Act, 1950 and in that context had the occasion to consider as to which act would be subversive of public order. It considered the difference between the maintenance of law & order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than the law & order. Public order is even tempo of life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished, from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Then, their Lordships referred to various instances. One of the instances was that a man who molests women in lonely places. Their Lordships opined that as a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man (other instance referred where public order was not disturbed) but in its potentiality and in its affect upon the public tranquility, there is a vast difference. The act of the man who molests

the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. Their Lordships further observed that similar acts in different context affect differently law and order on the one hand and public order on the other hand. It is always a question of degree of the harm and its effect upon the community. The question to ask is : does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another. In this context, their Lordships referred to earlier decisions in the case of *Dr. Ram Manohar Lohia vs. State of Bihar*²; *Pushkar Mukherjee and others vs. State of West*

² 1966 CriLJ 608

*Bengal*³; and, *Shyamal Chakraborty vs. The Commissioner of Police, Calcutta and another*⁴.

10. The aforesaid observations and enunciation of the law on the subject by Hon'ble Supreme Court apply squarely to the facts of the case.

11. We have perused the detention order as also the material on the basis of which it has been passed. The District Magistrate has opined in the impugned order that a minor girl was raped and then murdered with the use of silk lace. Her body was hidden in a sack of husk. The incident was gruesome and of such nature that it created an environment of fear in the area. The people of the area were anguished and angry. They collected in large number. The general tempo of life in the area was disturbed. People in general were terrorized and fearful of any such happening against their own women and children. The entire area where the crime had been committed was tense for several days and police had to be deployed to restore the confidence of the public. The police had to be called from various police stations to meet the needs of the situation and instill confidence in the public. The public had to be assured about the well being of their women and children. The police had to be deployed for several days for maintaining public order and ensuring that it is not disturbed any further. The District Magistrate referred to the report of the Station House Officer,

³ 1970 CriLJ 852

⁴ [1970] 1 SCR 762

Rampur Kala in this regard. He has mentioned about the terror and fear created by the incident in the public of the locality. Women and children got frightened on account of the diabolical act of the petitioner. Small girls stopped going out of their house. Some of the shops were closed. Girl children were not being sent to school. The incident, thus, in the opinion of the District Magistrate disturbed public order in the locality. The incident hogged the limelight in various newspapers. The District Magistrate has further opined that the petitioner was in District Jail, Sitapur in connection with the aforesaid crime and had applied for bail which was fixed for hearing on 04.10.2021. Based on the material available with him, the District Magistrate opined that there was likelihood of the petitioner being enlarged on bail and this information had created terror and fear in the locality.

12. He has also opined that if the petitioner is enlarged, considering his criminal mentality and the brutal act committed by him, there was a likelihood of repetition of such acts by him which would prejudice and endanger public order which had been restored after lot of efforts. In order to prevent public order from being prejudiced, it was necessary to detain the petitioner as a preventive measure under the Act 1980. It is permissible in law, in the facts of a case, to take into account the possibility of release of a detainee on bail while considering preventive detention under Section 3 (2) of the Act 1980. We may in this contest refer to the decision of Hon'ble the Supreme Court in the case of

Rameshwar Shaw vs. District Magistrate, Burdwan and Anr⁵.

We have no doubt that it was a relevant factor in the facts of this case.

13. Along with the writ petition, statements of Gram Pradhan, etc. have been annexed wherein they have spoken about the fear and terror created in the area on account which girl children were not being sent to school and were not leaving their house, etc.

14. An incident involving rape and murder of a minor girl is bound to send shock waves and create a sense of fear and terror amongst residents of the locality. Crimes on women and crime on minor girls create sensation in the locality wherein the residents become fearful of well being of women, especially girls in their family. It is bound to disturb public order. Crime of rape and murder on a minor girl can be committed only by a depraved person with a hardened criminal mentality who lacks sensitivity and emotions towards the fairer sex, especially small children. Such an offence cannot be said to be an individual offence against the person of the deceased. Crime, generally, is not only against the individual in respect to whom it is committed but also against the society, but it is more so, in the case of rape and murder of a girl child as such crimes, send shock waves throughout the society.

15. There is material on record in the form of statements of Gram Pradhan, etc. as also newspaper items to show the

⁵ *AIR 1964 SC 334*

impact of the incident on the residents of the local area. This is not a simple case of law and order, but, a case where the District Magistrate has correctly formed the opinion that public order got disturbed and in the event the petitioner is enlarged on bail, there is a likelihood of repetition of such crimes and also a general and genuine apprehension in the mind of the residents of the area about such repetition of crime by the petitioner endangering the life and liberty of their women and children, therefore, the contentions of the petitioner's counsel in this regard, especially that it was a case which could have been dealt with under the ordinary law of the land, are not acceptable.

16. It is not a case involving merely law and order, but, a case where the public order got disturbed initially and, the District Magistrate was well within his rights to form a subjective opinion on the basis of objective material before him that in the event the petitioner was enlarged on bail it would prejudice the public order and create fear and terror in the locality. The fact that the petitioner does not have a prior criminal history is irrelevant considering the impact of his alleged crime on the even tempo of life in the locality as already discussed. We are not concerned as to whether the offence was actually committed by the petitioner or not as that is a matter which will be seen during trial.

17. Based on the discussions already made and law discussed in the case of *Arun Ghosh* (supra), we are of the opinion that the order of the District Magistrate for

preventive detention of the petitioner satisfies the ingredients of Section 3 (2) of the Act 1980 and the contentions of the petitioner's counsel are not acceptable.

18. We find no reason to interfere with the satisfaction recorded by the District Magistrate as the same does not suffer from any error.

19. The writ petition is *dismissed*.

[Shekhar Kumar Yadav, J.] [Rajan Roy, J.]

Order Date :- 14.09.2022

Santosh/-