dispute and the insurance company was liable to satisfy the claim. This judgment also supports the view of this Court that the intention of the legislature is to make the insurance company liable immediately, in spite the transfer having not been recorded in the records of the transport office and the intention is not to exclude the transferees strictly.

17. In the present case the transfer does not stand completed and the claimant continues to be the registered owner of the vehicle. He had entered into a contract of insurance with the appellant and he filed the claim.

18. In absence of the ownership of the vehicle having been transferred, the petitioner would continue to be liable under the contract of insurance entered between the appellant and the registered owner of the vehicle.

19. In view of the foregoing discussion, I am of the considered view that there is no illegality of error in the judgment and order dated 04.06.2024 passed by the Permanent Lok Adalat, Lakhimpur Kheri in P.L.A. Case No. 09 of 2022 allowing the claim of the opposite party warranting interference by this Court.

20. The petition lacks merits and the same is **dismissed.** The parties shall bear their own costs of litigation.

(2024) 9 ILRA 1443
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.09.2024

BEFORE

THE HON'BLE ARVIND SINGH SANGWAN, J.

THE HON'BLE MOHD. AZHAR HUSAIN IDRISI, J.

Habeas Corpus Writ Petition No. 445 of 2024

Kallu @ Praveen ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioner:
Anju Shukla, Nigamendra Shukla

Counsel for the Respondent:
A.S.G.I., G.A., Prem Narayan Rai

Criminal Law – Constitution of India,1950 - Article 226 - order of preventive detention by District Magistrate- under Section 3 (2) of the National Security Act, 1980-detention under F.I.R. under Sections 147, 148, 149, 302 and 404 of IPC-detention is based on this FIR- no sucg proceedings initiated against the petitioner in St. of Haryana on basis of earlier registered FIR- matter of trial whether the petitioner who is nominated on the St.ment of co-accused-such St.ment can be read in evidence against the petitioner when eyewitnesses have not named him-petitioner was not initially named in FIR-implicated later on the St.ment of co-accused- lack of a proper hearing and non-disclosure of vital materials to petitioner- NSA provisions cannot be used to prevent bail applications-detention order set aside-petition allowed. (Paras 26 and 27)

HELD:

The detention of the petitioner is based on two F.I.R. i.e. one Case Crime No. 0611 of 2023 under Sections 147, 148, 149, 302 and 404 of IPC at Police Station – Teelamod, Trans Hindon Commissionerate Ghaziabad in U.P. In this F.I.R., for a period of one month, the informant, his wife, and wife of his deceased-brother did not name the petitioner as an accused. Rather, perusal of the F.I.R. shows that the same has been registered against the co-villagers on account of enmity regarding the election of Village Pradhan and all the three witnesses have assigned specific roles of firing on deceased to those persons who are residents of the same

village. Therefore, it will be the mater of trial whether the petitioner who is nominated on the St.ment of co-accused, such St.ment can be read in evidence against the petitioner when eyewitnesses have not named him.

It is well settled principle of law that provisions of NSA cannot be invoked just to deter a person from exercising his right to apply for bail before the competent Court of law.

The order dated 16.4.2024 passed by the Special Secretary rejecting the representation of the petitioner is a totally non speaking order and does not qualify the test as laid down by the Supreme Court in Nenavath Bhujji's Case (Supra). (Para 26)

Thus, from the above, it is apparent that the material forming basis of the opinion of the competent authority to pass impugned orders were never supplied to the petitioner in terms of the decisions in Smt. Icchu Devi Choraria's Case (Supra), Mohinuddin's Case (Supra), Smt. Shalini Soni's Case (Supra) and S. Gurdip Singh's Case (Supra) and he has not been afforded proper opportunity of hearing and the impugned order of rejection is a totally non speaking order with regard to the pleas raised by the petitioner. (Para 27)

Petition allowed. (E-13)

List of Cases cited:

1. Tofan Singh Vs St. of T.N., (2013) 16 SCC 31

2. Nenavath Bhujji Vs The St. of Telangana & ors., 2024 (3) SCR 1181

3. HABEAS CORPUS WRIT PETITION No. - 271 of 2024 (Faizan Khan Alias Raja Babu Vs Addhikshak Janpadkendriya Karagar Bareilly And 3 Others) decided on 14.5.2024

4. Mohinuddin Vs District Magistrate, Beed & ors., 1987 0 AIR (SC) 1977

5. Smt. Shalini Soni Vs U.O.I. & ors., 1981 0 AIR (SC) 431

6. S. Gurdip Singh Vs U.O.I. & ors., 1981 0 AIR (SC) 362

(Delivered by Hon'ble Arvind Singh Sangwan, J.)

1. Heard learned counsel for the petitioner and learned A.G.A. for the State.

2. This petition is filed challenging the order dated 19.02.2024 passed by the District Magistrate, Ghaziabad in exercise of power under Section 3 (2) of the National Security Act, 1980 (herein after referred to as 'NSA') and all the consequential orders dated 2.4.2024, 5.04.2024, 9.4.2024 and 16.4.2024 passed by the respondents vide which the petitioner is directed to remain in preventive detention for one year.

3. Brief facts of the case are that an F.I.R. dated 23.10.2023 was registered vide Case Crime No. 0611 of 2023 under Sections 147, 148, 149, 302 and 404 of IPC at Police Station – Teelamod, Trans Hindon Commissionerate Ghaziabad. In the F.I.R., there were nine persons named as an accused along with three unknown persons.

4. Counsel for the petitioner has referred to the F.I.R. to submit that as per prosecution, on account of enmity regarding the election of the Gram Pradhan, nine persons namely Kapil-Gram Pradhan, Jitnendra, Sonu, Hariom, Sheetal, Dharmveer, Dharampal, Anand along with three unknown persons fired upon the brother of the informant namely Pramod Kasana alias Lalu and he died on the spot.

Counsel submits that all the nine persons named in the F.I.R. are the residents of the same village and they were allegedly identified by the informant.

5. Counsel further submits that later on, the police recorded the statement

of Sunita wife of informant-Vinod who stated on the line of the F.I.R. as she has alleged that there was enmity with her brother-in-law, deceased-Pramod Kasana, with accused Kapil and she along with her husband was following the deceased and saw that Kapil, Sachin and Praveen were firing upon Pramod Kasana whereas Jitendra, Dharmpal and Dharmveer had caught hold of Pramod and others had encircled him.

6. It is further stated that after some time, the police recorded the statement of Karuna wife of the victim, on the same line and stated that she had seen Kapil, Sachin and Praveen firing upon her husband Pramod Kasana and other accused had caught hold of her husband.

7. It is submitted that neither in the F.I.R. nor in the statements of eye-witnesses the name of the petitioner surfaced. However, in the supplementary statement, the informant named the petitioner as one of the assailant who was referred to as an unknown person. However, no overt act was attributed to him. Counsel submits that the said statement was made after the arrest of one accused-Sachin and his confessional statement was recorded by the police and petitioner was named as one of the conspirator.

8. Counsel submits that this statement of Sachin was recorded on 20.11.2023 i.e. more than one month after the incident just to involve the petitioner.

9. Counsel has referred to the judgment of the Supreme Court in **Tofan Singh vs. State of Tamil Nadu, (2013) 16 SCC 31** to submit that it will be a matter of trial whether the confessional statement made by one of the accused can be used against the other accused. It is further submitted that on the basis of the said F.I.R. proceedings under the NSA was initiated against the petitioner.

10. Counsel submitted that the petitioner is resident of Village-Ameerpur@ Motipur, PS-Tigaon, District – Faridabad, Haryana and is not the resident of the village of the informant and other accused persons. It is also submitted that nothing has come on record that the petitioner is related to any of the accused.

11. It is submitted that in the impugned order, in paragraph No.29, a reason is given that if petitioner Kaalu alias Praveen is released on bail in aforesaid Case Crime No. 0611 of 2023, he may indulge in similar other activities causing threat to national security and therefore, on this ground, the District Magistrate, Ghaziabad passed the order dated 19.2.2024 directing detention of the petitioner for a period of one year in exercise of power under Section 3 (2) read with Section 8 of the NSA.

12. Counsel submits that petitioner has given objections/representation before the District Magistrate taking as many as thirty grounds primarily that no proper opportunity of hearing has been given; no copy of report forming basis of detention was supplied; no proper procedure was adopted and two F.I.Rs at Police Station - Kheripul, which are formed basis against the petitioner apart from the present are registered in Haryana and not in UP.

13. The first F.I.R. was registered under Section 325, 379B and 307 of IPC and second under Section 25 of the Arms Act.

14. Counsel for the petitioners submits that no such proceeding is initiated in the State of Haryana.

15. Counsel submits that vide subsequent impugned order, the representation of the petitioner has been rejected by passing a totally non speaking order dated 16.4.2024, therefore, it is prayed that the detention of the petitioner is illegal and he is in illegal detention since 19.02.2024 and he be released.

16. Counsel has relied upon the judgment of the Supreme Court in **Nenavath Bhujji Vs. The State of Telangana and others, 2024 (3) SCR 1181** where in paragraph No.43, following directions were issued :

> *"43. We summarize our conclusions as under: -*
>
> *(i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,*
>
> *(ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,*
>
> *(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,*
>
> *(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,*
>
> *(v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,*
>
> *(vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,*
>
> *(vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,*

(viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and

(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention . For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority."

17. Counsel submits that without recording a satisfaction, the order of detention has been passed in an illegal manner.

18. Counter affidavit by the State of Uttar Pradesh has been filed, in which, pending cases against the petitioner including Case Crime No. 611 of 2023 under Section 302 of IPC in Police Station – Teelamod, Trans Hindon Commissionerate Ghaziabad and two F.I.Rs registered under Section 307 and 379B of IPC in District Faridabad, Haryana, as detailed. It is submitted that District Magistrate, Ghaziabad has recorded a finding and has also communicated the order dated 19.2.2024 to the petitioner. It is, however, submitted that in one case in Haryana, the petitioner has been released on bail.

19. In the affidavit filed by the Deputy Secretary, Home, similar stand is taken and it is submitted that vide order dated 16.4.2024, the representation of the petitioner was rejected. The operative part of the order read as under :

"उत्तर प्रदेश शासन
गृह (गोपन) अनुभाग-7
संख्या- 108/2/02/2024-सी०एक्स०-7
लखनऊः दिनांक 16 अप्रैल, 2024
आदेश

"चूँकि, श्री कालू उर्फ प्रवीन पुत्र श्री सत्यवीर को "राष्ट्रीय सुरक्षा अधिनियम, 1980" की धारा 3(2) के अधीन जिला मजिस्ट्रेट, गाजियाबाद के द्वारा पारित निरोधादेश दिनांक- 19.02.2024 के आधार पर दिनांक- 19.02.2024 को निरूद्ध किया गया है।

और चूंकि, उक्त अधिनियम की धारा 10 के अधीन उक्त श्री कालू उर्फ प्रवीन का प्रकरण उ०प्र० परामर्शदात्री परिषद को निर्दिष्ट किया गया था और परामर्शदात्री परिषद ने उक्त अधिनियम की धारा 11 के अधीन रिपोर्ट दी है कि उनकी राय में उक्त व्यक्ति को निरूद्ध करने का पर्याप्त कारण है।

अतएव, अब उत्तर प्रदेश परामर्शदात्री परिषद (निरूद्धियाँ) की रिपोर्ट पर आवश्यक

विचारोपरान्त, राज्यपाल महोदय, उक्त अधिनियम की धारा 12(1) के अधीन शक्ति का प्रयोग करते हुए पूर्वोक्त निरोधादेश की पुष्टि करते हैं और निदेश देते हैं कि उक्त श्री कालू उर्फ प्रवीन को उक्त अधिनियम की धारा 13 के अन्तर्गत निरूद्ध किये जाने के दिनांक-19.02.2024 से बारह माह की अवधि तक के लिए निरूद्ध रखा जायेगा।

राज्यपाल महोदय की आज्ञा से
ह०अपठनीय
(डा० अनिल कुमार सिंह)
विशेष सचिव,
गृह (गोपान) विभाग,
उत्तर प्रदेश शासन।"

20. In reply, the petitioner through his father-in-law filed a rejoinder denying the allegation and stated that the petitioner is illegally detained under the National Security Act.

21. In another rejoinder, it is stated on behalf of the petitioner that the copies of the report of the District Magistrate and that of Advisory Board, Lucknow were not provided to the petitioner and, therefore, principle of natural justice are violated. It is stated that in the F.I.R. in Haryana, the petitioner is on bail.

22. In another rejoinder affidavit, it is stated that the Advisory Board has passed the order in a mechanical manner just to approve the detention order passed by the District Magistrate and the mandate of Article 22 (4) of the Constitution of India is violated.

23. Counsel for the petitioner has argued that the detention of the petitioner is illegal and the proceedings have been initiated in violation of the settled provisions of the facts as well as the subsequent order has been passed in the mechanical manner.

24. Learned Counsel has referred to the judgement of this Court in HABEAS CORPUS WRIT PETITION No. - 271 of 2024 (**Faizan Khan Alias Raja Babu Vs. Addhikshak Janpadkendriya Karagar Bareilly And 3 Others**) decided on 14.5.2024 and has relied on paragraph Nos. 13 and 14 which read as under :

*"13. Counsel for the petitioner has referred to the decision in **Smt. Icchu Devi Choraria Vs. Union of India and others, 1980 0 AIR (SC) 1983**, to submit that it is held by the Supreme Court of India that right provided under Article 22 (5) of the Constitution of India is a substantive right and, if there is violation of the same, the detention order is liable to be quashed. Similar view is taken by the Supreme Court in **Mohinuddin Vs. District Magistrate, Beed and others, 1987 0 AIR (SC) 1977, Smt. Shalini Soni vs. Union of India and others, 1981 0 AIR (SC) 431** and in **S. Gurdip Singh vs. Union of India and others, 1981 0 AIR (SC) 362**.*

*14. Counsel has then relied upon another decision in **Sushanta Kumar Banik Vs. State of Tripura and Ors., 2022 0 AIR (SC) 4715**, whereby the Supreme Court has held that when vital material or vital facts are withheld and not placed by the Sponsoring Authority before the Detaining Authority, it vitiate the procedure. Counsel submits that admittedly in the instant case, till date the vital material relied upon by the Sponsoring Authority or by the Screening Authority had not been*

disclosed to the petitioner and, therefore, detention of the petitioner under PIT NDPS Act is illegal."

25. Learned A.G.A. for the State in reply has agreed that a proper procedure has been followed and District Magistrate has recorded its satisfaction that if the petitioner is released on bail, he may be a threat to the national security.

26. After hearing the counsel for the parties, we find merits in the petition for the following reasons :

A. The detention of the petitioner is based on two F.I.R. i.e. one Case Crime No. 0611 of 2023 under Sections 147, 148, 149, 302 and 404 of IPC at Police Station – Teelamod, Trans Hindon Commissionerate Ghaziabad in U.P. In this F.I.R., for a period of one month, the informant, his wife, and wife of his deceased-brother did not name the petitioner as an accused. Rather, perusal of the F.I.R. shows that the same has been registered against the co-villagers on account of enmity regarding the election of Village Pradhan and all the three witnesses have assigned specific roles of firing on deceased to those persons who are residents of the same village. Therefore, it will be the mater of trial whether the petitioner who is nominated on the statement of co-accused, such statement can be read in evidence against the petitioner when eye-witnesses have not named him.

B. In the second F.I.R. relating to District Faridabad, the petitioner has been released on bail and that F.I.R. is under Section 307 and 379B of IPC.

C. The petitioner is facing the trial in Case Crime No. 0611 of 2023 and is in judicial custody since 23.12.2023 and when he filed an application for bail, the provisions of NSA were invoked with an allegation as mentioned in paragraph No.29 of the impugned order that if the petitioner is granted bail, he may misuse the same.

D. It is well settled principle of law that provisions of NSA cannot be invoked just to deter a person from exercising his right to apply for bail before the competent Court of law.

E. The order dated 16.4.2024 passed by the Special Secretary rejecting the representation of the petitioner is a totally non speaking order and does not qualify the test as laid down by the Supreme Court in **Nenavath Bhujji's Case (Supra).**

F. It is admitted case that before passing the impugned order dated 19.2.2024, the District Magistrate has neither afforded any legal assistance nor afforded any opportunity of personal hearing to the petitioner. There is nothing on record to suggest that the relevant material forming basis of passing the impugned order dated 19.2.2024 was ever supplied to the petitioner as order only reflects that the copy of the impugned order be sent to the petitioner.

27. Thus, from the above, it is apparent that the material forming basis of the opinion of the competent authority to

pass impugned orders were never supplied to the petitioner in terms of the decisions in **Smt. Icchu Devi Choraria's Case (Supra), Mohinuddin's Case (Supra), Smt. Shalini Soni's Case (Supra)** and **S. Gurdip Singh's Case (Supra)** and he has not been afforded proper opportunity of hearing and the impugned order of rejection is a totally non speaking order with regard to the pleas raised by the petitioner.

28. Accordingly, this petition is allowed. The impugned orders are set aside. The petitioner be released forthwith if he is granted bail by the competent Court.

29. However, it is made clear if petitioner is found involved in any subsequent F.I.R., it will be open for the authorities to initiate fresh proceedings against the petitioner.

(2024) 9 ILRA 1450
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.09.2024

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Election Petition No. 11 of 2024

Prahlad Singh ...Petitioner
Versus
Yogesh Chaudhary ...Respondent

Counsel for the Petitioner:
Amit Kumar Pandey, In Person

Counsel for the Respondent:
--

Election Law –Election petition challenging the election of the returned candidate in MLC elections-petition filed beyond time by 92 days- beyond the 45-day limit prescribed by Section 81 of the Representation of People Act, 1951-no power in the Act for delay condonation-Act is a complete code and does not allow for the extension of the filing period or the application of the Limitation Act- if an election petition does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, 1951-the High Court shall dismiss it-election petition held to be time-barred-petition dismissed. (Paras 13, 19, 20 and 21)

HELD:

There is no provision in the Act, 1951 for considering the period of limitation. There is nothing in the Act, 1951 which gives powers for condonation of delay, if any, and the extension of the period of limitation. The time prescribed for presentation of an election petition is provided specifically in Section 81 of the Act, 1951. The judgement in the case of Nijam Uddin (supra) as is being relied upon by the learned counsel for the petitioner is distinguishable in as much as the presentation of the present petition beyond 92 days is an admitted fact and as such nothing lay to be decided on the said fact. The case relied upon by the learned counsel for the petitioner has a different fact in as much as the fact about limitation was in dispute therein. The issue with regard to a delayed presentation of an election petition which arises in the present petition is an admitted fact and is no more res integra. (Para 13)

The High Court while hearing an election petition operates as an Authority under Article 329 (b) of the Constitution of India whose jurisdiction is circumscribed by the statutory provisions as per the Act, 1951. (Para 19)

After having heard learned counsel for the petitioner and perusing the records, it is settled that unless and until an election petition is maintainable and is not barred by limitation, the merits of the matter cannot be seen and considered. In the present matter, from the judgement relied by the learned counsel for the petitioner and the discussion as above, it is apparent that the provisions of Limitation Act, 1963 do not apply to election petitions. The filing / presentation of the election petition is strictly governed by Section 81 of the Act, 1951. The trial of the election petition is provided