

Chief Justice's Court

Case :- HABEAS CORPUS WRIT PETITION No. - 264 of 2020

Petitioner :- Nuzhat Perween

Respondent :- State of U.P. and Another

Counsel for Petitioner :- In Person, Dileep Kumar (Senior Adv.),
Manish Singh, Manoj Kumar, N.I. Jafri (Senior Adv.)

Counsel for Respondent :- G.A., GA, Manish Goyal (Senior Adv.),
Patanjali Mishra (Aga), Sushil Kumar Mishra

Hon'ble Govind Mathur, Chief Justice

Hon'ble Saumitra Dayal Singh, J.

Being transmitted by the Supreme Court, this Habeas Corpus petition is before us for adjudication.

Smt. Nuzhat Parween, mother of the detenu Dr. Kafeel Khan has preferred this petition assailing validity of the detention order dated 13th February, 2020 passed by the District Magistrate, Aligarh invoking powers under sub-Section (2) of Section 3 of the National Security Act, 1980. Factual matrix of the case is as follows:-

After obtaining the degree of Doctor in Medicine (MD), Dr. Kafeel Khan, the detenu entered in service of the State of Uttar Pradesh being appointed as Lecturer at Baba Raghav Das Medical College, Gorakhpur (B.R.D. Medical College, Gorakhpur) in the month of August, 2016.

An unfortunate incident occurred at the teaching hospital attached with B.R.D. Medical College, Gorakhpur in the intervening night of 10/11 August, 2017 due to unexpected shortage in supply of liquid oxygen. In a course of disciplinary action, the detenu was placed under suspension on 22nd August, 2019, which was followed by a memorandum of allegations dated 12th September, 2017.

For the ill-happenings in the intervening night of 10th/11th August, 2017, a criminal case was also registered against detenu and eight other

Doctors working at B.R.D. Medical College, Gorakhpur for the alleged commission of offences under Sections 409, 308, 120B, 420 Indian Penal Code, 1860, Section 15 of Indian Medical Council Act, 1956 and Section 66 of the Information Technology Act, 2000. The case aforesaid was lodged on 23rd August, 2017 at Police Station Hazratganj, Lucknow and the same was transferred for investigation to Police Station Gulhariya, Gorakhpur. The investigating agency arrested the detinue on 2nd September, 2017 but was released on bail in pursuance of an order dated 25th April, 2018 passed by learned single Bench of this Court.

As per the averments contained in the petition for writ, the petitioner and his other family members including the detinue were continuously harassed and victimized by the State authorities including the District Administration, Gorakhpur by several means. Details of certain such events and incidents are given in paragraphs 24 to 30 of the petition.

In the month of December, 2019, Government of India introduced Citizenship Amendment Bill that came to be passed by both houses of Parliament in their winter session and was also assented to by His Excellency, the President of India on 12th December, 2019. The Act triggered protests across several parts of the country. On 12th December, 2019 itself the detinue and Dr. Yogendra Yadav addressed a gathering of protesting students at Aligarh Muslim University, Aligarh. On 13th December, 2019 at the instance of Sub-Inspector of Police, Sri Danish a criminal case was lodged against the detinue under Section 153-A of the Indian Penal Code at Police Station Civil Lines, Aligarh. The offences under Section 153B, 109, 505(2) Indian Penal Code were added subsequently and, during course of investigation the detinue was arrested on 29th January, 2020. Under an order dated 31st December, 2019 passed by the District Magistrate, Aligarh he was transferred to District Jail, Mathura.

An application preferred by the detinue for his release on bail came

to be accepted by the Chief Judicial Magistrate, Aligarh vide order dated 10th February, 2020. The order aforesaid reads as under:-

“BAIL ORDER

At the Court of Chief Judicial Magistrate Aligarh

10.02.2020

The accused Dr. Kafeel has submitted a bail application in the order of Case Crime No.-700/2019, Section 153A, 153B, 505(2), 109 IPC, P.S. Civil Line, stating that the applicant/accused is innocent and falsely implicated. There is no criminal history of the accused therefore bail has been sought.

Opposing the bail application, the Ld. Assistant Prosecuting Officer, it has been said that the accused is criminal in nature and the nature of the crime committed by the accused is of a serious nature. Against the above argument of the prosecution the accused contends that the offence has not been committed and he has merely expressed his views of which he has a freedom guaranteed by the Constitution of India. He has been falsely accused and the accused is not in jail but rather on bail.

The accused is detained in the district prison. On the bail application the Ld. Advocate for the accused and the Ld. Assistant Prosecuting Officer were heard and records were observed.

It is evident from the observation of the records that the accused has been held in the district prison for a long time. The offence committed by the accused is considered by the Magistrate Court and punishment by imprisonment of not less than 7 years. As far as the argument of prosecution is concerned that the offence will be repeated by the accused, if the crime is repeated again after the accused is released on bail then the prosecution is free to revoke bail. Therefore, keeping in view the

nature of the crime committed by the accused and all the facts and circumstances of the case the reason for granting bail is sufficient. The bail application is acceptable.

ORDER

The bail application is accepted. The accused is released on bail on production of two sureties of Rs.60,000/- and a surety of the same amount with the condition that he will not repeat the crime in future.

*Sd/-
CJM
(Aligarh)”*

(translated version of the order as filed along with the writ petition)

Suffice to notice that as per release order the accused was to be produced before the Magistrate at 11.00 am on 13th February, 2020 in the event of discrepancy in the particulars given in the release order. Despite the release order dated 10th February, 2020, the accused (present detenu) was neither released nor was produced before the Magistrate, hence the Chief Judicial Magistrate, Aligarh further passed another order dated 13th February, 2020 in following terms:-

“From:

Chief Judicial Magistrate, Aligarh

To:

Superintendent of Jail,

District Jail, Mathura.

Subject:- In relation to the forwarding of release order, through special messenger, of the accused in Case Crime No.700/2019, State vs. Dr. Kafeel, under section 153-A, 153-B, 505(2), 109 IPC.

This is to inform you that this court on 10.02.2020, has allowed the bail application of accused Dr.Kafeel s/o Shakeel

*Khan, r/o 172 Basantpur, P.S. Rajghat, District Gorakhpur.
The release order of above mentioned accused detained in the
district prison of Mathura is being sent by a Special
Messenger, Shri Parmeet Kumar.*

*Therefore, after receiving the release order from the
Special Messenger, ensure the release of abovementioned
accused.*

Date:13.02.2020

Sd/-

Chief Judicial Magistrate, Aligarh.”

(translated version of the order as filed along with the writ petition)

As per the petitioner, the order above quoted was presented before the Superintendent of Jail, District Jail, Mathura at about 5.30 pm but was not accepted intentionally and purposefully. The receipt of the order was ultimately shown at 20:20 hours. The order aforesaid was sent to the Superintendent of Jail, District Jail, Mathura by hand through a special messenger Sri Parmeet Kumar. On the same day i.e. 13th February, 2020 the Inspector In-charge, Police Station Civil Line, Aligarh reported to Deputy Inspector General of Police/Senior Superintendent of Police, Aligarh to recommend the District Magistrate, Aligarh for detention of Dr. Kafeel Khan as per provisions of sub-Section (2) of Section 3 of the National Security Act, 1980. The report given by the Inspector In-charge dated 13th February, 2020 reads as under:-

“To,

*Sir Deputy Inspector General/Senior Superintendent of
Police*

District Aligarh

Through:- Proper Channel

Subject – Proposal to detain Dr. Kafeel Khan aged 46

years, S/o Shakeel Khan, R/o 172 Basantpur P.S. Rajghat District Gorakhpur under the provisions of Section 3(2) National Security Act 1980.

Sir,

It is submitted that Dr. Kafeel aged about 46 years S/o Shakeel Khan R/o 172 Basantpur P.S. Rajghat District Gorakhpur has a criminal and communal nature. He has incited disharmony by provoking the Muslim community against CAA & NRC and against other communities. There is a situation of panic, fear and terror amongst the society due to his acts. The criminal and communal acts committed by him have posed serious danger to the public order.

At present, his criminal activities are described as follows:

Dr. Kafeel addressed about 600 students of AMU on 12.12.2019 at 6:30 pm at Baba Sayeed Gate of the University of the University wherein he provoked the religious sentiments of all the Muslim students of AMU present and there was also an attempt to incite hatred, enmity and disharmony against the other community so that there is an adverse impact on the harmony between the communities and disturbance in the public peace. In his speech he said that Mota Bhai teaches that we will either become Hindu or Muslim. We are being made second-class citizens by way of CAA and they will further disturb you by introducing NRC, your father's certificate is not correct. You will be made to run. This is fight for our identity, we will have to fight. In his speech, there was an attempt to provoke hatred in Muslim students for Hindus, Sikhs, Christians, Parsis. He attempted to spread hatred and enmity in the students of AMU for the other communities. In this regard a complaint was admitted on 13.12.2019 at 03.10 am by Sub-Inspector Sh. Danish which was registered in the P.S. Civil Lines vide Case Crime No. 700/19 u/s 153A IPC and thereafter

an entry was made on the same day in P.S. Civil Lines, Aligarh vide G.D. No. 3 at 03.10 am.

Upon receiving the complaint by the P.S. and the subsequent handing over of the case to S.I. Sh. Nizamuddin and upon his deliberation, S. 153B, 109 and 505(2) IPC were added on the basis of statements of Deputy Inspector Sh. Danish, witness Co. 2290 Akhilesh Kumar, Co. Clerk 2098 Shami Mohammed, video recording of the speech of Dr. Kafeel and other evidences which proved that the incitement created amongst the Muslim students of AMU by his speech on 12.12.2019 against the other communities by provoking them was an attempt to distort the public order in the district of Aligarh. Due to this on 13.12.2019, around 10,000 students of AMU attempted to march towards the Aligarh City who were stopped by the various efforts with the help of additional police force, PAC, RAF. Had these students were not stopped by due counselling they would have entered the Aligarh District and would have disturbed the peace and public order as well as the communal harmony. On 15.12.2019 around 8:30 pm there was an attempt by the AMU students to break open the Bab-e-Syed gate and to go towards the Aligarh city which was stopped by the Aligarh city police, local police, PAC, RAF and the barricading done for the same. When they were so restricted by the police, the students tried to throw stones towards the police and fired with an intention to kill by which led to a situation of anarchy and chaos as there were rumors and stampede. Due to this governmental property and vehicles were damaged. Many police officials and staff also got injured. After hours of efforts the students were sent back to AMU campus and the public peace and law and order was saved from getting distorted by calling additional police force and RAF who were placed at the sensitive areas of the district. In reference to the said event, Case Crime No.703/19 was registered at the P.S. Civil Line, District Aligarh on 16.12.2019 u/s 147, 148, 149, 153, 188,

189, 332, 336, 307, 504 and 506 IPC against Sarfaraz Ali and 52 others along with 1200-1300 unknown AMU students and Case Crime No.704/19 was registered u/s 395, 353, 332 and S. 7 CLA Act against Salman Imtiaz and 26 others along with 1200-1300 unknowns. The copy of their images has been attached.

Dr. Kafeel was arrested from the Chattrapati Shivaji International Airport, Mumbai on 30.01.2020 by team of S.T.F., Lucknow. He was presented before the Hon'ble M.M. Court 9, Bandara, Mumbai who accepted the transit remand till 5 pm of 02.02.2020.

Case Crime No.428/17 was registered against Dr. Kafeel in P.S. Gulhira District Gorakhpur u/s 15 of IMC Act, 1956, S. 7/13 of Prevention Corruption Act, 1988, S. 308, 409, 420, 120B of IPC and S. 66 of IT Act. Also, Case Crime No.558/18 has been registered against him at P.S. Cantt, Gorakhpur u/s 419, 420, 467, 468, 471 & 120B IPC.

Apart from these, Case Crime No.241/18 has been registered against Dr. Kafeel at P.S. Kotwali Nagar, District Bahraich u/s 332, 353, 452 IPC and S. 15(3) of IMC Act, 1956.

Public order has been disrupted as a result of the speech delivered to the AMU students by Dr. Kafeel. In view of the fear, terror and anger caused in the people of Aligarh, there are efforts being made to restore the public order with the aid of the present police force. Since that provocation at the Bab-e-Syed gate, there have been continuous protests by the students followed by the protests by women at Shahajmal since 29.01.2020. Public order was completely disrupted in Aligarh for many days. Government schools were asked to be closed.

Due to the said speech by Dr. Kafeel and the disturbance caused to the public order has also been published in the national newspaper Dainik Jagran, Amar Ujala and Hindustan which depicts the fearful situation caused by the

incident. The copies of the said newspapers have been attached herewith.

He is currently detained in the Mathura District Jail for Case Crime No.700/19 u/s 153A, 153B, 109, 505(2) of IPC. The bail application presented by Dr. Kafeel has been accepted by the Hon'ble Court. There is a strong apprehension of the public order of District Aligarh being distorted again by Dr. Kafeel by provoking the students once he comes out of bail. If Dr. Kafeel comes out on bail he shall surely incite the students and disturb the peace and communal harmony in the Aligarh District.

Since the fierce and communal speech given by him has had an adverse and unfavorable impact on the public order of the District, therefore it is very important to keep this person detained in jail to maintain the public order.

Thus, it is requested that the District Magistrate, Aligarh may be pleased to pass an order to detain Dr. Kafeel, aged about 46 years S/o Shakeel Khan, R/o 172 Basantpur P.S. Rajghat, District Gorakhpur under S. 3(2) National Security Act, 1980.

Sd/-

Amit Kumar

Inspector Incharge

PS Civil Line

District Aligarh”

(translated version of the order as filed along with the writ petition)

Reports of the same nature were also given by the Circle Officer, Aligarh and Superintendent of Police, Aligarh on 13th February, 2020. The reports so given are verbatim same except some formal distinctions. On 13th February, 2020 itself the Deputy Inspector General of Police/Senior Superintendent of Police, Aligarh made a request to the District Magistrate, Aligarh to pass an order to detain Dr. Kafeel Khan in

accordance with National Security Act, 1980. The recitals of the recommendation made by the Deputy Inspector General of Police/Senior Superintendent of Police/Aligarh to the District Magistrate, Aligarh are also largely in the terms and tune to the recommendations made to him by other police officials.

The District Magistrate, Aligarh then invoked the powers under sub-Section (2) of Section 3 of the National Security Act, 1980 and passed the order dated 13th February, 2020 that reads as follows:-

“ORDER

For the reason that, as the District Magistrate of Aligarh I have come to the conclusion that to prevent the person known as Dr. Kafeel aged 46 years s/o Shakeel Khan r/o 172, Basantpur, PS Rajghat, District Gorakhpur from engaging in activities that are prejudicial to the maintenance of public order this order is necessary.

And therefore, by the power conferred to me by section 3(2) of The National Security Act, 1980 I hereby order that Dr. Kafeel be detained, under simple category in district jail Mathura in the custody of the abovementioned prison's SP u/s 3(2) of the abovementioned act.

Today dated 13/02/2020 with my Signature and Seal this order is passed.

Sd.

*Chandra Bhushan Singh
District Magistrate
District Aligarh”*

(translated version of the order as filed along with the writ petition)

Along with the order of detention the District Magistrate, Aligarh also supplied the grounds of detention, which are as follows:-

**“OFFICE OF THE DISTRICT MAGISTRATE,
ALIGARH**

GROUND OF DETENTION

Vide No.149 dated 13/02/2020 Dr. Kafeel aged about 46 years s/o Shakeel Khan R/o 172 Basantpur, PS Rajghat, Distt. Gorakhpur has been detained under Section 3(2) of the NSA 1980. The reasons for your detention u/s 8 of the said Act are provided as follows by the undersigned:

On the date 12/12/2019 around 18:30 hours you addressed the university students around 600 in number at the Bab-E-Sayyed gate of AMU in which in your address you tried to incite the religious sentiments of the AMU Muslim students present in the meeting and to increase hatred, enmity and disharmony towards the other community. There was an adverse effect on the harmony between communities and disturbance in public peace. In your speech it was said that Mota Bhai teaches us that we will become Hindu or Muslim but not human by CAA, we will be made second class citizens after that by implementation of NRC they will trouble you by saying your father's documents are not correct you will be made to run around. This is a fight for existence and we will have to fight. By this address of yours you have tried to create disharmony and enmity towards the Hindu, Sikhs, Christian and Parsi community in the minds of the Muslim students of the AMU. You have tried to instill a feeling of hatred and enmity in the minds of the Muslim students of AMU towards other community in this reference S.I. Danish filed a complaint 13.12.2019 at 0310 hours in Civil Lines P.S. Aligarh in the said complaint Case Crime No.700/19 section 153A IPC was registered and the registered was entered same date at GD No.3, time 03010 hours in case Civil Lines, Aligarh.

After receiving the information at the P.S the investigation in the above said case was handed over to S.I Shri Nizamudin. During the investigation Section 153B, 109 and 505(2) IPC were added. From the investigation and the

statements given by the complainant S.I Shri Danish, witness Constable 2290, Constable Clerk 2098 Shami Mohd. as well as the video recording of the speech and other evidence, this fact has been established that you have on 12.12.19 in AMU made an attempt to disturb the law and order in District Aligarh by inciting the Muslim students of AMU against other communities. Due to this act on 13.12.19 about 10,000 students of AMU attempted to march towards Aligarh city, who were stopped by tireless efforts of the police administration. Had the violent students not been talked to and stopped then this crowd would have disrupted the public order and the communal harmony of the district, by entering Aligarh city. On 15.12.19 at about 8.30 pm students of AMU attempted to go to Aligarh city by breaking open the gate at Bab-E-Sayyed and when an attempt was made to stop them by barricading then the violent students started pelting stones, targeting the police and administration and fired with the intention to kill due to which an atmosphere of anarchy was created and along with rumors panic was created in the city. Government property was damaged by them and due to the aforesaid incident, many police officers and policemen were injured . After hours of efforts, the students of AMU were sent back inside the campus. In relation to this Case crime No. 703 of 2019 U/S 147, 148, 149, 153, 188, 189, 332, 336, 307, 504, 506 IPC was registered at P.S. Civil Lines, District Aligarh against Sarfaraz Ali and 52 named and 1200 to 1300 unknown AMU students. Also, Case Crime No. 704 of 2019 U/S 395, 353, 332 IPC and 7 CLA act against Salman Imtiaz and 26 named and 1200-1300 unknown persons was registered. As a result of your fierce speech given on 12.12.19 and the aforesaid acts consequent there to the public order in district Aligarh was disrupted.

Inspired by your instigating speech against the constitutional CAA and NRC given to the students of AMU the public order has been disturbed by the continuous violent

protests through the students of AMU. Keeping in view the fear, insecurity and anger amongst the people of sensitive district Aligarh, with the aid of the police force present in the district, public order is being attempted to be restored. Since that day at Bab-E-Sayyed gate of AMU continuous protest is being carried out by the instigated students and in this sequence protest by women in Shahaj Mahel is also continuing since 29.01.2020. For days in Aligarh city public under was completely disrupted. Government Schools had to be closed.

The incidents of violent protest due to your instigating speeches which have disturbed the public order in the district have been reported in national daily, Danik Jagaran, Amar Ujala and Hindustan which depicts terrible state of affairs. Due to this feeling of fear and insecurities have emerged in the people of the sensitive District of Aligarh. Photocopies of the aforesaid newspaper.

Currently you are incarcerated at the District jail Mathura in connection with Case Crime No. 700/19 U/S 153A, 153B, 109, 505(2) IPC. The bail application preferred by you has been allowed by the Ld. Court. Through discrete inquiry by the district police and LIU Aligarh it has been brought to my knowledge that upon being released on bail there is a strong and complete likelihood of your re-entering district Aligarh and further instigating the students by coming to AMU thereby posing a serious threat to the prevailing public order.

On the basis of the aforesaid grounds, I have come to the conclusion that there is a likelihood of you committing such acts which are prejudicial to the maintenance of public order and in order to prevent you from committing such acts which would be prejudicial to the maintenance of public order it is necessary that you remain under detention.

You hereby informed by the undersigned in pursuance of section 8 of the aforesaid Act that if you seek to challenge such

orders under which you are detained you may present the same, through the in charge of the jail where you have detained, to the detaining authority (District Magistrate) and the State government at the earliest. If such application is received after 12 days of this detention order or after the approval of the detention order by the State government, whichever is earlier then the same will not be considered by the Detaining Authority (District Magistrate). If you wish to exercise the right giving such application to the State Government you may present the same through the jail where you are detained addressing the same to the Secretary Home Department U.P. Government, Lucknow.

You are further informed in pursuance of Section 9 & 10 of the aforesaid Act that if you seek to exercise your right of giving an application against the order in pursuance of which you have been detained to the U.P. State Advisory Board, Lucknow then you may present the same through the in charge of the jail where you are detained addressing the same to the U.P. State Advisory Board, Lucknow at the earliest. You are also informed that your case as per Section 10 of the aforesaid Act will be referred to the U.P. State Advisory Board within 3 weeks of the actual date of your detention and if the same is received with a delay then the same will not be considered by the aforesaid Board. You are also informed as per sub-section (1) of section 11 of the aforesaid Act if the U.P. State Advisory Board considered it necessary and if you seek then the aforesaid Board will grant you a hearing. If you desired to be heard in person by the aforesaid board this should be specifically mentioned in your application and the same should be presented through the incharge of the jail where you are detained to the State government.

You are further being informed u/s 14 of the aforesaid Act that you have a right to prefer an application to the Central

Government against the order under which you have been detained.

In case you seek to exercise your right of giving an application to the Central Government then you may present the same addressing it to the Secretary, Government of India, Ministry of Home (Internal Security Department, North Block, New Delhi) through the in charge of the jail where you have detained.

Date:- 13-02-2020

*Sd/-
Chandrabhushan Singh
District Magistrate
District Aligarh”*

(translated version of the order as filed along with the writ petition)

As per the counter affidavit filed by the Superintendent of Jail, District Jail, Mathura, the order of detention was served upon Dr. Kafeel Khan on 14th February, 2020 but no date and time of receipt of the detention order is disclosed. The detention order dated 13th February, 2020 came to be approved by the State Government on 24th February, 2020 and a copy of the order of approval was supplied to the detinue on 25th February, 2020. It would also be appropriate to state that as per Superintendent of Jail, District Jail, Mathura the order dated 13th February, 2020 passed by the Chief Judicial Magistrate, Aligarh was received in his office on 13th February, 2020 after locking up the jail, therefore, the accused (present detinue) was not released on that day itself.

On receiving the order of detention, the detinue submitted representations in four sets addressed to the District Magistrate, Aligarh, the State Government, the State Advisory Board and the Central Government on 20th February, 2020. The State Government rejected the representation on 4th March, 2020 and a copy of order of rejection was supplied to the detinue on 5th March, 2020. The Central Government

rejected the representation on 9th March, 2020. An opportunity of hearing was provided to the detenu by the State Advisory Board on 17th March, 2020. The Board then submitted report to the State Government and on 1st April, 2020 the State confirmed the order of detention.

By an order dated 6th May, 2020 the State Government invoking powers under sub-Section (1) of Section 12 of the National Security Act, 1980 extended the term of detention for a period of six months from the date of detention i.e. 13th February, 2020. The State Government vide order dated 4th August, 2020 further extended the term of detention for a period of three months from the date the term of six months expires.

Being aggrieved by the order of detention, its confirmation by the appropriate government and further extension under the orders dated 6th May, 2020 and 4th August, 2020, instant petition is preferred to have a writ in the nature of Habeas Corpus.

The arguments advanced on behalf of the petitioner are:-

A(i) No material is available on record to arrive at a satisfaction that detention of Dr. Kafeel Khan is necessary to prevent any activity or eventuality referred under sub-Section (2) of Section 3 of the National Security Act, 1980.

(ii) The satisfaction recorded by the appropriate government to detain Dr. Kafeel Khan is absolutely ill-founded and is based on malicious analysis of the facts taken into consideration.

(iii) The order of detention is passed only to frustrate the order passed by the Chief Judicial Magistrate, Aligarh on 10th February, 2020 directing the State Government to release Dr. Kafeel Khan from custody on bail after furnishing requisite sureties and bail bonds.

B. The detention brought into effect under order dated 13th February, 2020 deserves to be declared illegal as the authority making the order of detention did not communicate the grounds for detention sufficient to afford opportunity of making representation against the order.

C. The detention of Dr. Kafeel Khan deserves to be revoked as the State of Uttar Pradesh as well as the Central Government failed to decide expeditiously the representation submitted by the detenu.

Per contra, learned Additional Advocate General, Sri Manish Goyal assisted by Sri Patanjali Mishra, learned Additional Government Advocate while opposing the petition for writ vehemently urged that the District Magistrate, Aligarh only after taking into consideration all the circumstances and the material made available to him arrived at a definite conclusion pertaining to the need of detaining Dr. Kafeel Khan to prevent him from acting prejudicially to public order. It is asserted that the District Magistrate, Aligarh examined all the events taken place on 12th December, 2019 and subsequent thereto, recorded satisfaction that Dr. Kafeel Khan may cause serious injury to the maintenance of public order in the city of Aligarh and, therefore, the detention is highly desirable.

According to learned Additional Advocate General, the subjective satisfaction arrived by the District Magistrate, Aligarh after consideration of the material available is not open to be examined and interfered by this Court under Article 226 of the Constitution of India.

The arguments advanced by learned counsel appearing on behalf of the petitioner have also been seriously contested by learned Additional Advocate General. It is asserted that the police authorities on 13th February, 2020 brought into his notice about valid apprehension for causing injury to the city of Aligarh by Dr. Kafeel Khan and by taking into consideration the same, the order of detention was passed. The order was served upon the detenu at Mathura as soon as possible. A complete note pertaining to grounds of detention was also served upon the detenu. Along with the note, necessary material was also supplied including a compact disk recording the speech delivered by Dr. Kafeel Khan at Bab-e-Syed gate Aligarh Muslim University, Aligarh. The contents of the speech clearly indicate that the detenu was intending to harm communal harmony, peace and tranquility and for the purpose he prompted student

community to be aggressive. As a consequence to the address made by him to a gathering of about 600 students on 12th February, 2020, nearly 10,000 people gathered at Bab-e-Syed gate Aligarh Muslim University, Aligarh on 13th February, 2020 and caused violence at high level. The violence erupted was controlled by the police after huge efforts. A criminal case in that regard was also lodged in which Chief Judicial Magistrate, Aligarh directed for release of Dr. Kafeel Khan on bail but the District Magistrate, Aligarh without having any intention to flout the bail order, examined effect and impact the arrival of Dr. Kafeel Khan in the city of Aligarh and; anticipating a serious blow to maintenance of public order, a definite opinion was formed to have an order of detention.

So far as the delay in deciding representation is concerned, it is submitted that the representation was given by the detenu on 20th February, 2020 and that was examined at different levels and was ultimately decided on 4th March, 2020.

Learned Additional Advocate General states that the month of February had 28 days and after 20th, 21st and 22nd were holidays. The District Magistrate considered the representation and rejected the same on 24th March, 2020. The State Government too considered the representation expeditiously and rejected the same on 4th March, 2020. A copy of the rejection order was served upon the detenu on 5th March, 2020 itself.

In rejoinder, Sri Dileep Kumar, learned Senior Counsel assisted by Sri Manoj Kumar, Advocate and Sri N.I. Jafri, learned Senior Counsel assisted by Sri Manish Singh, Advocate while reiterating all the arguments made by him pointed out that the note containing grounds for detention does not satisfy the requirements of Article 22 of the Constitution of India and also the provisions of National Security Act, 1980 as the detaining authority did not look into the complete speech made by Dr. Kafeel Khan and also failed to understand its intent. Some portions from here and there are taken out and are mentioned in the order

of detention. An intentional effort was made for not providing complete lecture said to be delivered by Dr. Kafeel Khan on 12th December, 2019 at Bab-e-Syed gate Aligarh Muslim University, Aligarh. A compact disk was certainly supplied but no device was made available to play the same. In absence of such performing device, the supply of compact disk is meaningless and that amounts to non-supply of the material.

It is further stated that the Chief Judicial Magistrate, Aligarh passed the bail order on 10th February, 2020. In pursuance to the order aforesaid, necessary bail bonds and sureties were furnished on very next day but the accused (present detinue) was not released. A release order then was passed but that too was not accepted intentionally with a view to have an order of detention in the meantime.

According to learned counsel, examination of complete facts in seriatum indicates malicious exercise of powers just to curtail liberty and freedom of Dr. Kafeel Khan and the same causes serious injury to the fundamental rights protected under Article 21 and 22 of the Constitution of India.

Heard learned counsels, considered the arguments and also perused the record including the original record placed before us by Dr. Anil Kumar Singh, Special Secretary (Home), Government of U.P., Lucknow and Sri Sanjeev Ojha, Deputy Collector, Aligarh.

The National Security Act, 1980 that was enacted by Parliament in 31st year of the Republic of India to provide for preventive detention in certain cases and for matters connected therewith.

Preventive detention is an exceptional mode to curtail liberty and freedom of a person in exceptionally rare circumstances. Under Article 21 of the Constitution of India along with the right to life, the right to personal liberty is a precious fundamental right. This precious fundamental right must always be protected. Under our constitutional scheme the nation of India is weaved as a democratic republic where

social, economic and political justice to every citizen is secured, where liberty of thought, expression, belief, faith are constitutionally protected, where every citizen is at equal status with equal opportunities. The system of governance is to promote fraternity with assurance to maintain the dignity of every individual as well as unity and integrity of the nation. The strong and valuable fabric of our nation is well designed with support of fundamental rights given in Part-III of the Constitution. These rights are golden thread in the fabric, which is further illuminated by extending protection of life and personal liberty under Article 21 of the Constitution of India. True it is, the right so given under Article 21 is not absolute but no one can be deprived of his or her personal liberty except on such grounds and in accordance with such procedure as are established by law. Any act that causes injury to the valuable rights given in Part-III of the Constitution would be nothing but an effort to weaken the fabric of our nation, a democratic republic. We are examining the entire issue involved in this petition with the conceptual understanding of the fundamental rights as above.

Most of the facts placed before us are admitted by the parties. It is a fact admitted that Dr. Kafeel Khan and Dr. Yogendra Yadav addressed a gathering of 600 students at Bab-e-Syed gate of Aligarh Muslim University, Aligarh on 12th December, 2019. They were invited to address the students who were protesting the proposed amendments through the Citizenship Amendment Bill, 2019. The bill was passed by both the houses of the Parliament on 12th December, 2019 and was also assented to by the President of India, on 13th December, 2019. It is also a fact admitted that on 13th December, 2020 a huge crowd of people gathered at Bab-e-Syed gate of Aligarh Muslim University, Aligarh to lodge protest against the amendments introduced in the Citizenship Act.

As per the respondents, the crowd gathered caused violence and also damaged public property. An inference has been drawn by the respondents that whatever happened on 13th December, 2019 is an

outcome of the provocative speech of Dr. Kafeel Khan. Relevant parts of which are referred in the grounds for detention supplied to the detainee.

Pertinent to notice here that no proceedings for detention of Dr. Kafeel Khan were initiated for about good two months from the day he addressed the students. At that time the sole action taken was lodging a criminal case against him pertaining to offences under Section 153A of Indian Penal Code. Some offences were subsequently added to it. In the case aforesaid, accused Dr. Kafeel Khan was arrested on 29th January, 2020 i.e. after a lapse of more than 45 days. In that case an application for getting the accused released on bail came to be accepted by the Chief Judicial Magistrate, Aligarh on 10th February, 2020. No recommendation even then was made for invoking powers under sub-Section (2) of Section 3 of the National Security Act, 1980. It is only after passing of the release order dated 12th February, 2020 three police officials made a request to the Deputy Inspector General/Senior Superintendent of Police, Aligarh to make a request to the District Magistrate, Aligarh for having an order of detention. The order of detention was served upon Dr. Kafeel Khan along with a note of grounds for detention and the supporting material.

As per the grounds of detention, on 12th December, 2019 around 18.30 hours Dr. Kafeel Khan addressed the University students around 600 in number at Bab-e-Syed gate of Aligarh Muslim University, Aligarh. In his address, he tried to incite the religious sentiments of the Muslim students present in the meeting and to increase hatred, enmity and disharmony towards the other community. The speech delivered by Dr. Kafeel Khan had adverse effect on the harmony between communities and that disturbed public peace. In his speech, he stated that “Mota Bhai teaches us that we will become Hindu or Muslim but not human by CAA, we will be made second class citizens after that by implementation of NRC they will trouble you by saying your father's documents are not correct you will be made to run around. This is a fight for existence and will will have to fight”.

The recitals aforesaid were treated as an effort to create disharmony and enmity towards Hindus, Sikhs, Christians and Parsi in the minds of the Muslim students of Aligarh Muslim University, Aligarh as the detenué tried to instill a feeling of hatred and enmity in minds of the Muslim students of Aligarh Muslim University, Aligarh towards other communities. The above speech, as per the grounds for detention note inspired and instigated students of Aligarh Muslim University to protest against CAA and NRC and that adversely affected public order resulting into a continuous violence. It also developed fear, insecurity and anger amongst the people of sensitive district Aligarh. An apprehension was expressed by the District Magistrate, Aligarh of likelihood of Dr. Kafeel Khan committing such acts.

A reading of the grounds of detention certainly creates an impression that a provocative speech was given by the detenué, but a plain reading of that reflects otherwise, hence it would be appropriate to go through that. However, objection of learned Additional Advocate General is the Court must be conscious that the satisfaction of the detaining authority is “subjective in nature” and the Court cannot substitute its opinion over subjective satisfaction of the detaining authority, as such, no interference with an order based on subjective satisfaction of the detaining authority is desirable. He has supported the objections by placing reliance upon following judgments of the Hon'ble Supreme Court:-

1. ***Ram Bali Rajbhar Vs. The State of West Bengal and others, (1975) 4 SCC 47.***
2. ***Magan Gope Vs. The State of West Bengal, (1975) 1 SCC 415.***
3. ***Asha Keshavrao Bhosale Vs. Union of India and another, (1985) 4 SCC 361.***
4. ***Subramanian Vs. State of Tamil Nadu and another, (2012)***

4 SCC 699.

We are in absolute agreement with learned Additional Advocate General that it is not open for the courts to substitute their opinion by interfering with “subjective satisfaction of the detaining authority”. However, it does not mean that the court cannot look into the material on which detention is based. The expression “subjective satisfaction” means the satisfaction of a reasonable man that can be arrived at on the basis of some material which satisfies a rational man. It does not refer to whim or caprice of the authority concerned. While assessing “subjective satisfaction of the detaining authority” the Court examining a petition seeking a writ of habeas corpus has to look into the record to examine whether the subjective satisfaction is acceptable to a reasonable wisdom and that satisfies rationality of normal thinking and analyzing process. The grounds for detention with supporting material is also required to be looked into to ascertain whether it is sufficient to enable the detenu to make his representation at earliest, of course, this opportunity must be effective and real. In view of above, we have looked into the speech delivered by the detenu. The closure of examining record as suggested would be nothing but a licence to allow the executives to act at their whims or caprice. This would be against the fundamentals of our constitutional values and provisions.

Looking to the seriousness of the issue, we consider it appropriate to quote the entire speech of Dr. Kafeel Khan:-

“Very good Evening.

Let's begin with famous piece of poetry by Allama Iqbal Sahab “Kuch baat hai ki hasti mit-ti nahi humari sadiyon raha hai dushman daur-e-zamaa hamara” (There must be something special that we still exist despite the whole world against us) – (Students clapping)

Before even entering the gate, I received a call from the C.O. City and he said that don't go there or your will be put

behind bars. – (Shame -Shame-Shame by students)

I asked him if he received a call from Yogi Ji regarding my arrival. If you all sit down it will be convenient for everyone. – (Students saying sit down everyone)

If you all sit down then we will be able to talk and understand what CAB & NRC are?

How afraid we should be of it ... please sit (students “sit down sit down”)

Since our childhood we all are taught that we will neither become Hindus nor Muslims, but humans and our Mota Bhai teaches us that we will become Hindus, Muslims, but not humans.

Why because as they said (pointing at students) “How will a murderer know, whose clothes are stained in blood, how will he hide those stains?”

How would they know the meaning of Constitution, since the day RSS came into being in 1928, they don't believe in Indian Constitution. They don't believe in our Constitution. It is repeatedly said that the law brought in by Amit Shah Ji, our Home Minister, is unconstitutional and is not in consonance with India's pluralism, communal harmony, humanity and equality.

We should understand whom are we talking to, We are talking to those who never believed Baba Saheb's Constitution and never ever read it. Since the time they came into existence nearly 90 years ago, their objective has been to divide this Country.

Firstly, you all are very young and I believe you will have to lift the baton and will have to fight. (Students – Inshallah (if God will)).

Aligarh has always been dear to me and I think when I was in jail there was a huge protest march for me. After being

released from jail, I've been here for 2-3 times and though I won't be able to reciprocate the love I've got from here, however when I got the call last night, I made up my mind that I would definitely come here, no matter how much Yogi Ji try ... (clapping)

Lets firstly talk about what CAB really is. How many people actually know the CAB is? Does everyone know? Why Citizenship Amendment Bill was introduced? There was an attempt in 2015 as well (2016 prompted by crowd). The reason to bring it at the moment is that the NRC implemented by them in Assam has resulted in 19 lakh people being left out. Out of them 90% were those people whom they wanted to be included in NRC. This backfired for them. Now they weren't able to understand what they should do first, otherwise perhaps they would have been silent after the Kashmir issue for some days. Hence, they brought CAB. According to CAB, barring Muslims, even barring atheists and other groups including Rohingya and many others, whose name I can count, only for 5-6 religions, people were told that those who faced religious persecutions in Pakistan, Bangladesh and Afghanistan will provided citizenship. Muslims shall not be provided the same. We are not affected by it, it's a good thing. Like Amit Shah ji said yesterday that it is about giving citizenship and not taking it from us Muslims, then why are you all protesting. Why are you protesting, you should not be concerned about it.

NRC plus CAB is the lethal term. And one thing is that, they have just build a small wall for now, and later they will build a full structure on it. It is the result of the hatred that they have spread amongst us for 90 years in minds of our youth on the basis of religion.

During the talks with Yogendra ji in car, he said that simply, constitution for us common village people is limited to the SHO. Whatever he says is the constitution for them. The

SHO since 2014 knows how to treat them, they are second-class citizens and they should be constantly reminded that it is not their country. Whenever you do to them, they will show you their true nature. This is the reason why we have to protest and oppose. The same has been now approved by the so-called Hon'ble House. When NRC will be introduced, that is the time when we will have problems. Now what is NRC? NRC was made for Assam, and for the same Indian Register was made which has now being amended and in 2019 the completed list is available on the website of the Home Ministry Affairs. The list is complete, all preparations are done. Also, let me tell you that Aadhar Card, Pan Card, Driving License won't be of any relevance. You would require a birth certificate. If you were born in India from 1950 to 1987 then you are a citizen, otherwise not. Next clause says that if any of your parents were born in the period 1987-2004, then you are a citizen. After 2004 till now, if both the parents are born in India, then only you are a citizen. It is nowhere written that if you are a Muslim you shall be removed. Then are we in trouble? Why are we protesting? Because we know what their intentions are. What do we know that people wearing white clothes, how dark they are. We know what their thinking is and what is there in their mind. Only hatred. They will intentionally make us run to get our certificates, our father's certificates, our mother's certificates, our legal records. They will thus create problems for lakhs and crores of people.

But let me assure you all about one thing, that the rumor about sending everyone to detention centres is not possible. Understood? A budget of twenty three thousands crore will be required to send 6 lakh people of Assam to detention centres. 1500 crores were spent on NRC in Assam, say 1600 crores. For the entire India, about 30,000 crores would be required. When we ask for free education, they say that there is no money, increase the fees of JNU. The year in which 70 children died in

BRD, 8 lakhs children died in India. I am running a Health for All Campaign, I'm working on that and I have met 13 chief ministers. Even I've met our Health Minister and given him my proposal. The data has been collected by us, a team of 25 non-political health activists, Supreme Court lawyers, CEO's, IITians and we have got the data from UN, UNICEF, World Bank and WHO. Those data were very tragic. 50% of our population are malnourished. India is the 3rd largest country of AIDS and HIV, 2nd largest of diabetes, 72% population is devoid of health facilities. If they get a heart attack, they will have to travel for 40 kilometers to get a doctor for themselves. As per the research, the ones who are called fake doctors, Bengali doctors are the ones who are actually working, otherwise there isn't anyone. The primary health centres which are the backbone of any health centres in the world is not there, it is shambles. So, we will not talk about that.

I am travelling across India and ask everybody, I repeat it again, they might be getting bored by my speech. But this is the truth. I ask people what do they want? People say that a respectful two-square meal per day, good medical facilities when our children are not well, good colleges and universities for their education for instance AMU, JNU, IIT, AIIMS, a good job after they attain their education. Thus, the only demand that we have for past 70 years is food, clothing, shelter, health, education and employment. And this demand is not just ours but of everyone, of all poor persons. But what they talk about is Shamshaan-Kabristan (Cremation ground-Graveyard), Ali-Bajrang Bali, your Kashmir, Ram Mandir, CAB, NRC. They don't talk about the promise that they made for 2 crores employment per year. They don't talk about giving 15 lakhs Rupees to us as earlier said by them. Economy is doomed, small businessman are ruined. If you go at the ground level, you are not the only one disturbed. By expressing their problems, they hid the problems of economy, employment,

roads and housing. So that you don't even ask.

Why is mob lynching done? Mob-lynching is an organized crime. A trained mob comes who are well taught how to attack. Why would a murderer make a video himself? They themselves record the video, upload it on Facebook and inform their senior that the senior sitting in Delhi shall be happy and will save them. This is why mob-lynching is done, to create a fear-psychosis to one community and to create a pseudo-euphoria in other community. The talks about nationalism is actually pseudo-nationalism, on the basis of pseudo-Hinduism only. Our entire opposition gets hid behind soft Hinduism. We only will have to speak and fight.

You must have heard that two months back I got a clean chit. Yogi Government constituted a committee in which it was alleged that Dr. Kafeel is a murderer, is involved in corruption, all children died because of him. The said committee held that Dr. Kafeel was the junior-most doctor and bought cylinders from his own pocket and saved lives of a number of children. Then Yogi ji thought now what can be done, how to trap him now. So, they again suspended me. Now they say that I speak against the government. So now I said “is zulm ke daur me zubaan kholega kaun, agar hum bhi chup rahenge to bolega kaun” (who will speak in this time of atrocities if not me). I would like to tell you that the ones sitting in power are merely faces, the ideology of RSS of spreading hatred has been existed for many years which is being spread in shakhas. We are the ones who are not able to understand this. We will have to understand and I will appeal all my brothers and sisters who believe in prosperous and united India that they should oppose this draconian law. Everybody should come up, not just us Muslims. Everyone should come as to how can citizenship be on the basis of religion. Where was this written in our Indian Constitution? We are the citizens of the world, these boundaries

are created by the politicians for their sake only. You only have to fight.

Aligarh will have to become the leader, the way JNU comes up as the only leader in the entire India for issue of fees or for any issue, For many years I believed that Aligarh is sleeping, but now perhaps after seeking these young faces, I think now is the time to wake up and they have woken up. This is the fight for our identity. We will have to fight. And let me tell you that fight does not mean creating physical violence, we have to fight in a democratic way. We have to fight in their way only and have to tell people that the rumor about detention centers is false. Their thinking is restricted only to Lok Sabha and Rajya Sabha. You don't know how much is India being condemned all over this world for bringing this law.

You should think this way that the servant in your neighbor's house has stolen something, he is manner less, and if he comes to your house you will give him employment. How will your relations be then with your neighbor? How is justified to divide people in the name of religion? However, my brother is also here with me but he has probably gone somewhere right now. My brother was shot where Yogi Adityanath was himself present about 500 meters away. (Crowd- Shame, Shame) After this, when he was taken in the car for emergency surgery to take out the bullet, there was an unnecessary delay of 4 hours. We thought for once that why is God testing his patience. I went to save the children only. There was never a response to it. But I think there must be some will of God. He must be testing me. He must have had a plan and that is the reason I am here with you guys. (Students clapping)

Convey my message that please be united. Please all come together and not be bothered about these small things and quarrels. Do you know yesterday I heard in a debate, someone said that Pakistan's Ahmadiya and Shias should have also been

included so that the Muslims here would fight amongst themselves only. Everyone would have been associating them with Shias so that by this reason only they would be covered under CAB. Do you understand? This is how they want to divide. So, please be united and not just in the name of religion. We are humans first. Islam has taught us that our deeds should be right. Our intentions should be right. You choose the path and God will take you to the destination. Inshallah (if God wills).

So, I request you all that you try to reach to your non-Muslim friends, sit and talk to them and tell them we are not the ones who repeat cycle-punctures, fridges, mobiles and who marry 4 times or Jihaadis, Pakistanis. We are also doctors, engineers. Come, sit and eat with us someday for the distances that are created. I would like to tell you that what RSS did was in the name of school, you must be knowing the name of school, I don't have to take its name, through the schools it stated teaching that these bearded people are very bad. It made 4-5 categories namely the ones who repair cycle-punctures, refrigerators, marries four times, lives untidily, support Pakistan, are terrorists. So, when they see that a doctor wearing a tie is saving the lives of children, they feel who is this animal. They don't know. How will you tell them? Get them together and make them understand that we are also humans and no one can be more religious than us. Only our religion teaches about humanity, only our religion teaches about pluralization. (Students clapping)

Thank you so much. There is a lot to talk about. I will just wrap up by saying three things.

First, that there is no need to be afraid of CAB. It has nothing to do with us. But yes, it is a pawn as it is being tried to show you that this country is not yours and you are merely tenants. This is a signal given, a very big signal and its

ramification shall be extended to that SHO who is seen as our Constitution.

Secondly, yes, be prepared for NRC. Get your birth certificate made. Get your parents' birth certificated made. And I'm telling you that Aadhar Card, PAN Card, Driving License is not valid at all. What all documents would be required have not yet been informed by them. But 4 documents which are most important, including birth certificate, and ensure that you get your parents' birth certificate made. Theirs would not be available, yours would be. Then, your land records, the ones received from Panchayats, your samasat, voter ID cards. These 4 documents are very important. Keep them ready.

Thirdly and most importantly, this country is ours. This Hindustan is ours, not anyone's property. As much as this land is yours, it is ours too. It is not in your capacity that you can take it away from us. It is not in your capacity that you can intimidate us. It is not in your capacity that you can remove us. We are 25 crores, you can neither scare us by mob-lynching, or by such trivial laws. We will be together, we will be together, we will be united. We will be together like a wall. This is our Hindustan and we will tell you how it will run.

“Darna aata nahi hai hume, jitna bhi dara lo. Har baar ek nai taakat se uthege, chahe jitna bhi daba lo. “(We won't be afraid no matter how much scare us. Every time we will rise, no matter how much you suppress us)

Allah Hafiz (May God be with you)

No doubt, some part of the phrases used in the grounds for detention are there in speech, but apparently in different context. The speaker was certainly opposing the policies of the government and while doing so certain illustration are given by him, but that no where reflects the eventualities demanding detention. A complete reading of the speech prima facie does not disclose any effort to promote hatred or violence. It

also no where threatens peace and tranquility of the city of Aligarh. The address gives a call for national integrity and unity among the citizens. The speech also deprecates any kind of violence. It appears that the District Magistrate had selective reading and selective mention for few phrases from the speech ignoring its true intent. The entire speech being a subject matter of a criminal case pending against Dr. Kafeel Khan, therefore, it would not be appropriate for us to make much comments on that. Our anxiety is only to assess that as to whether a reasonable man could have arrived at a conclusion as arrived by the District Magistrate, Aligarh? Prima facie, the speech is not such that a reasonable man could have arrived at a conclusion as the inference drawn by the District Magistrate, Aligarh.

An important aspect of the matter is that the detenu addressed the gathering on 12th December, 2019. At that time the District Administration, Aligarh did not find the speech of Dr. Kafeel Khan sufficient for preventive detention. Nothing has been said in the order of detention or the grounds for detention that district administration had any information within the period from 12th December, 2019 to 13th February, 2020 about any effort made by the detenu to cause even a simple scar to the peace or tranquility or the public order of the city of Aligarh. It is only after passing of the bail order by the Chief Judicial Magistrate, Aligarh, the police officials and the District Magistrate, Aligarh initiated the process for detaining Dr. Kafeel Khan under the National Security Act, 1980. At the cost of repetition, it would be appropriate to state that from 12th December, 2019 to 29th January, 2020 the detenu was roaming free and he had ample time to make all the efforts to damage public order in the city of Aligarh, if he was intending to do so.

Thus, the detention of the detenu has been made by the executive and it has been defended by the State before this Court on the premise - subjective satisfaction had been reached on the basis of material on record that the detention was necessary to prevent prejudice to

maintenance of public order. Thus, the action of the State to curtail the detinue's personal liberty, which in many ways is the mother of the other fundamental rights guaranteed by the Constitution of the country, has been curtailed relying on Section 3(2) of the National Security Act, 1980. Relevant extract of the aforesaid provision is as below:

“(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.”

In **Khudi Ram Das Vs. State of West Bengal & 3 Ors.**, reported in **1975 (2) SCC 81**, a three Judge Bench of the Supreme Court while discussing the nature of satisfaction required to be recorded by the executive authorities before preventively detaining a person and while considering the scope of judicial review of such an action observed as under:

“9. But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority : if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. Emperor v. Shibnath Bannerji [AIR 1943 FC 75 : 1944 FCR 1 : 45 Cri LJ 341] is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority. The

existence of “improper purpose”, that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner of Police did in *Commissioner of Police v. Gordhandas Bhanji* [AIR 1952 SC 16 : 1952 SCR 135] and the officer of the Ministry of Labour and National Service did in *Simms Motor Units Ltd. v. Minister of Labour and National Service* [(1946) 2 All ER 201] the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded “on materials which are of rationally probative value”. *Machindar v. King* [AIR 1950 FC 129 : 51 Cri LJ 1480 : 1949 FCR 827]. The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. *Pratap Singh v. State of Punjab* [AIR 1964 SC 72 : (1964) 4 SCR 733] . If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider.

10. There is also one other ground on which the subjective satisfaction reached by an authority can successfully be challenged and it is of late becoming increasingly important. The genesis of this ground is to be found in the famous words of Lord Halsbury in *Sharp v. Wakefield* [1891 AC 173,179] :

“... when it is said that something is to be done within the discretion of the authorities ... that something is to be done according to the rules of reason and justice, not according to private opinion ... according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular.”

So far as this ground is concerned, the courts in the United

States have gone much further than the courts in England or in this country. The United States courts are prepared to review administrative findings which are not supported by substantial evidence, that is by “such relevant findings as a reasonable man may accept adequate to support a conclusion”. But in England and in India, the courts stop short at merely inquiring whether the grounds on which the authority has reached its subjective satisfaction are such that any reasonable person could possibly arrive at such satisfaction. “If”, to use the words of Lord Greene, M.R., in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [(1948) 1 KB 223 : (1947) 2 All ER 680] words which have found approval of the House of Lords in *Smith v. West Ellor Rural District Council* [1956 AC 736 : (1956) 1 All ER 855] and *Fawcett Properties Ltd. v. Buckingham County Council* [1961 AC 636 : (1960) 3 All ER 503] — “the authority has come to a conclusion so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere”. In such a case, a legitimate inference may fairly be drawn either that the authority “did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts”. *Ross v. Papadopollos* [(1958) 1 WLR 546 : (1958) 2 All ER 28] . The power of the Court to interfere in such a case is not as an Appellate Authority to override a decision taken by the statutory authority, but as a judicial authority which is concerned, and concerned only, to see whether the statutory authority has contravened the law by acting in excess of the power which the Legislature has confided in it. It is on this ground that the order of preventive detention made by the District Magistrate in *Debu Mahto v. State of West Bengal* [(1974) 4 SCC 135 : 1974 SCC (Cri) 274] was struck down by this Court. There, in that case, one single solitary act of wagon breaking was relied upon by the District Magistrate for reaching the satisfaction that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supplies and services to the community, it was necessary to detain him. This Court pointed out subject to certain reservations that it was difficult to see how “one solitary isolated act of wagon breaking committed by the petitioner could possibly persuade any reasonable person to reach the satisfaction that unless the petitioner was detained he would in all probability indulge in further acts of wagon breaking”. This Court did not go into the adequacy or sufficiency of the grounds on which the order of detention was based, but merely examined whether on the grounds given to the detenu, any reasonable authority could possibly come to the conclusion to which the District Magistrate did. It is true that this ground in a sense tends to blur the dividing line between subjective satisfaction and objective determination but the dividing line is very much there howsoever faint or delicate it may be, the courts have never failed to recognise it.

11. This discussion is sufficient to show that there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion. "Law has reached its finest moments", said Justice Douglas, "when it has freed man from the unlimited discretion of some ruler, some ... official, some bureaucrat.... Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions". United States v. Wunderlick [(1951) 342 US 98] . And this is much more so in a case where personal liberty is involved. That is why the courts have devised various methods of judicial control so that power in the hands of an individual officer or authority is not misused or abused or exercised arbitrarily or without any justifiable grounds."

Thus, while recognizing the grounds on which such a subjective satisfaction could be challenged, the Supreme Court definitely recognized the following grounds of challenge:-

- (a) non application of mind;
- (b) dishonest and improper exercise of power;
- (c) acting under dictation of another authority;
- (d) if the authority had disabled itself from applying its mind by self-created rules of policy, etc;
- (e) applying a wrong test and misconstruction of statute;
- (f) if the satisfaction is not grounded on "materials which are of rationally probative value";
- (g) the grounds for satisfaction are such as a rational human-being may not consider connected with the fact in respect of which the satisfaction is reached and must not be extraneous;
- (h) the action taken must be within the discretion of the authorities that is according to the rules of reason and justice and not private opinion. Thus, it cannot be arbitrary, vague or fanciful but must be legal and regular.

The above test has largely been consistently applied in cases involving validity of preventive detention. Applying the aforesaid test, even if the satisfaction claimed by the executive is taken to exist in the

shape of the grounds of detention, it has to be seen whether the same would survive the aforesaid test laid down by the Supreme Court. Undisputedly, the detention order was first issued on 13.02.2020 and not before. Therefore, as for the subjective satisfaction to arise, it is the facts and circumstances that were existing on that day and/or at that point in time that had to be borne in mind before a valid satisfaction could arise that the detention of the detenu was necessary to maintain “public order” at Aligarh.

Testing the action taken against the detenu on the above principle, it appears other things apart, there is a serious lack of objective material on record as may have given rise to a valid subjective satisfaction with the detaining authority to preventively detain the detenu on 13.02.2020. The exact nature of the contents of the lecture delivered by the detenu on 12.12.2019 at the Bab-e-Syed Gate of the AMU (as claimed by the state authorities), even if accepted to be correct, it cannot be overlooked that, that material could not be relevant for the purpose of satisfaction being drawn two months thereafter, inasmuch during that period of two months, undisputedly, the detenu neither visited the city of Aligarh nor he made any further or other speech or lecture connected thereto nor there is any material shown to us that the detenu was about to commit any act in furtherance thereto or was going to deliver any other speech or lecture connected thereto as may have prejudiced the public order. Mere apprehension expressed in the grounds of detention, not founded on any material shown to exist on record, if allowed to stand, would fall foul with the test laid down by the Supreme Court in **Khudi Ram Das (supra)**, inasmuch as, neither there is any objective material giving rise to the subjective satisfaction nor the subjective satisfaction is found to have been reached in a legal and regular manner but on whim and humour.

Then, insofar as the occurrences of the dates 13.12.2019 and 15.12.2019 are concerned, in the first place, they were also more than two months prior to the date of issuance of order of preventive detention. By

very nature, the order of preventive detention could have been issued to prevent an occurrence but not punitively or merely by way of a consequence of the occurrences that were two months old. Even otherwise, with respect to those occurrences, two separate criminal cases being Case Crime Nos.703 of 2019 and 704 of 2019 were admitted to have been lodged against different individuals. During the course of arguments, it has also been submitted that chargesheets have been submitted in those cases against other persons, excluding the present petitioner. In absence of any other material existing on record, it cannot be said, at this stage, that there was any link between the stage when the lecture was delivered by the detinue on 12.12.2019 and the occurrences dated 13.10.2019 and 15.10.2019. That apart, again there is a complete lack of material on record to link those occurrences i.e. the lecture delivered by the detinue on 12.12.2019, and the violent occurrences of 13.12.2019 and 15.12.2019 referred to in the ground of detention and the formation of the satisfaction to preventively detain the detinue on 13.02.2020. In this regard, it may also be noted that on 12th December, 2019 the Citizenship Amendment Bill was assented to by His Excellency, the President of India.

Thus, the contention based on the contents of the lecture delivered by the detinue on 12.12.2019 apart, the State authorities have failed to discharge their bounden burden to establish that the lecture delivered by the appellant on 12.12.2019 had such a deleterious effect on the public order in district-Aligarh as had continued to exist up to 13.02.2020 necessitating preventive detention of the detinue, on that later date. In that regard, it may further be borne in mind that delay in passing of detention orders or in recording subjective satisfaction to preventively detain a person may not be a subject matter of a hard and fast rule, yet the record must itself indicate that there existed a continuing casual link between the satisfaction claimed to have been recorded and the offending act. In **Gora Vs State of West Bengal**, reported in (1975) 2 SCC 14, it was held:

“There is, therefore, no hard and fast rule that merely because there is a time lag of about six months between the "offending acts" and the date of the order of detention, the causal link must be taken to be broken and the satisfaction claimed to have been arrived at by the District Magistrate must be regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction must depend on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the "offending acts" and the order of detention. It is a subsidiary test evolved by the Court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu and its utility, therefore, lies only insofar as it subserves that purpose and it cannot be allowed to dominate or drown it. The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a part of an organised operation of a complex of agencies collaborating to clandestinely and secretly carry on such activities and in such a case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely or secretly carried on by the detenu and it is, therefore, necessary to detain him with a view to preventing him from indulging in such activities in the future.”

Later, the conspectus of law on the point was considered in **T.A. Abdul Rahman Vs. State of Kerala & Ors.**, reported in **1989 (4) SCC 741**, wherein it was observed as below:

The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay

and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.”

That exposition of law was restated with approval in *Rajinder Arora Vs. Union of India & Ors.*, reported in 2006 (4) SCC 796.

In the instant case, as noted above, that causal link is found to be missing or completely broken. In absence of any material indicating that the detinue continued to act in a manner prejudicial to public order from 12.12.2019 up to 13.02.2020 or that he committed any such other or further act as may have had that effect, the preventive detention order cannot be sustained. In fact, the grounds of detention are silent as to public order at Aligarh being at risk of any prejudice in February, 2020 on account of the offending act attributed to the detinue of the date 12.12.2019. What remains is a mere apprehension expressed by the detaining authority without supporting material on which such apprehension may be founded.

We have also tested legality of the detention on count of giving effective opportunity to the detinue to represent at earliest. The grounds for detention along with material were supplied to the detinue in light of clause (5) of Article 22 of the Constitution of India enabling him to submit representation to the competent authorities at earliest. The material so given was a compact disk of the speech delivered by Dr. Kafeel Khan on 12th December, 2019 at Bab-e-Syed gate of Aligarh Muslim University. On asking, it is conveyed to us that no transcript of the speech was supplied to the detinue. The non-supply of transcript would have been of no consequence, if a device would have been supplied to the detinue to play the compact disk. It is the position admitted that no such device was made available to the detinue. A reply to the writ petition has been filed on behalf of respondent no.4, the Superintendent of Jail, District Jail, Mathura wherein too nothing has been stated about supply of such device

to the detinue. In absence of such device the supply of compact disk is absolutely non consequential. It virtually amounts non-supply of the material necessary to submit a representation in accordance with clause (5) of Article 22 of the Constitution of India. Such non-supply of material violates a precious fundamental right of a detinue enshrined under Article 22 of the Constitution. On this count also the detention of Dr. Kafeel Khan deserves to be set aside.

The detention of Dr. Kafeel Khan has also been extended twice. It is stated by learned Additional Advocate General that the detinue even while in prison is in contact with the students of Aligarh Muslim University and is instigating to disturb public order of the city. The facts stated is not acceptable being not supported by any material. At the threshold, it would be appropriate to state that the detinue is in State custody where he can't have any electronic device or other mechanical device to have contact anyone. The other eventuality is sending messages through the visitors, but no record of that too is available.

One more important aspect of the matter is that the orders of extension were never served upon the detinue. The record shown to us and the pleadings of the petition also refer that only radiograms relating to decision of the State Government for extension of the term of detention were supplied to the detinue. The radiograms mentions that the actual order shall be sent through speed post but in fact nothing except the radiograms were given to the detinue. In light of the discussion above, we are having no hesitation in concluding that neither detention of Dr. Kafeel Khan under National Security Act, 1980 nor extension of the detention are sustainable in the eye of law.

As we have arrived at a conclusion that the order of detention is bad, we do not consider it necessary to deal with the argument advanced by learned counsel for the petitioner relating to delay in submission of representation.

The writ petition for the reasons given above is allowed. The order of detention dated 13th February, 2020 passed by District Magistrate, Aligarh and confirmed by the State of Uttar Pradesh is set aside. The extension of the period of detention of detenu Dr. Kafeel Khan is also declared illegal. A writ in the nature of habeas corpus is hereby issued to release Dr. Kafeel Khan, the detenu from State custody forthwith.

Order Date :- 01.09.2020
Bhaskar

(Saumitra Dayal Singh, J.)

(Govind Mathur, C.J.)