

A

RAM RANJAN CHATTERJEE

v.

THE STATE OF WEST BENGAL

January 22, 1975

[V. R. KRISHNA IYER, P. K. GOSWAMI AND R. S. SARKARIA, JJ.]

B

Maintenance of Internal Security Act, 1971—Preventive Detention—Distinction between Public order and Law and Order.

C

The petitioner challenged the order of his detention made under section 3 of the Maintenance of Internal Security Act. The Order was founded on 3 grounds. First, the petitioner exploded a bomb in which one person died in a thickly populated area which created panic amongst the local people and he threatened the local people to see that they did not inform the Police. Secondly, the petitioner and his associates tried to extort on pain of instant death grocery from a shop keeper. As a result customers fled away for fear of their lives and all shops in the bazar closed down immediately. Thirdly, bombs were recklessly hurled at the villagers, causing panic and disruption.

The petitioner contended :

D

(1) That the grounds mentioned in the detention order are not relevant to public order. They concerned law and order only.

(2) That the impugned order was passed mechanically without application of mind.

Dismissing the petition.

E

HELD : Qualitatively the acts which affect law and order are not different from the acts which affect public order. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. If the contravention in its effect is confined only to a few individuals, directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only. It is the length, magnitude and the intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting public order from that concerning law and order. The instances in question were serious enough to cause panic and disruption of even flow of life in the locality. Counter-affidavit clearly states that the prosecution against the petitioner could not succeed because the witnesses were not prepared to give evidence for fear of their lives. [304 D-G]

F

Held further, that the detention order in question was passed after due consideration of all relevant grounds. [309 G]

ORIGINAL JURISDICTION : Writ Petition No. 476 of 1974.

(Petition under Article 32 of the Constitution).

G

S. K. Sinha A.C., for the Petitioner.

D. N. Mukherjee and G. S. Chatterjee of Sukumar Basu & Co., for the Respondent.

The Judgment of the Court was delivered by

H

SARKARIA, J.—The petitioner, Ham Ranjan Chatterjee, challenges the order of his detention dated 8.12.1973 made under s. 3 of the Maintenance of Internal Security Act, by the District Magistrate, Purulia. The order states that “with a view to preventing him from acting

in any manner prejudicial to the maintenance of public order, it is necessary so to do'. It is founded on three grounds which run as under :

"1. On 3.6.1973 at about 19.00 hrs. at village Kotaldi a thickly populated area, under P. S. Santuri, District Purulia, you with your associates were illegally manufacturing bombs for unlawful purposes from dangerous explosive in your possession when an explosion took place causing fatal injury to one of your associates—Sova Gope (s/o Late Chandi Gope of Kataldi, P. S. Santuri. You and your associates' act of preparing bombs presumably for criminal operations as given out by you and your associates and the explosion taking place in a thickly populated area, created panic amongst the local people on further threatened the local people with dire consequences even upto causing death. If they informed police of your above said activity. This act of you and your associates endangered public safety and tranquillity and were prejudicial to the maintenance of Public Order.

In consequence of your said activity which comes within the purview of Sec. 6(3) of Indian Explosive Act 1884, (Act No. IV of 1884) the maintenance of Public Order was disturbed.

2. On 28.6.73 at about 08.00 hrs. you with your associates armed with daggers and other dangerous weapons suddenly entered into the 'Grocery' of Shri Narayan Chandra Garai (S/o Harishikesh Garai) at Kistapur Bazar, P. S. Santuri and demanded commodities from his shop for which you did not intend to pay. On refusal of the shopkeeper (Shri Narayan Chandra Garai), you and your associates furiously attacked him (the shopkeeper) with daggers, threatening him others present with instant death if they protested. Dismayed and overawed the shopkeeper (Shri Narayan Garai) and the customers fled away from the shop for fear of life. This violent act created consternation in the area and all the shop in the said bazar were closed down instantly as a consequence. Your activity jeopardised the normal life and free movement of the local people injuring public interest.

Your activity thus attract sub-clause (ii) of Clause (a) of Sub-section (1) of section 3 of the Maintenance of Internal Security Act 1971 (Act 26 of 1971).

3. On 3.7.73 at about 08.00 hrs. you along with your associates armed with daggers and bombs surprisedly attacked one Siddique Sk. (S/o late Mahaffat Sk.) of Vet, P. S. Santuri (District Purulia) for extorting money from him (Siddique Sk) for your personal expenses putting him under threat of immediate death. Apprehending danger Siddique Sk. and other present, cried out for help when villagers rushed in. Being infuriated, you with your associates, mur-

A derously attacked them hurling recklessly dangerous bombs at these villagers who got panicky and fled away to save their lives.

B This violent act committed by you and your associates created alarm and anxiety amongst the local people, endangered security, affected the normal and rightful activities of their lives.

The said activities thus attract Sub Clause (ii) of Clause (a) of sub-section (1) of section 3 of the Maintenance of Internal Security Act 1971 (Act 26 of 1971)."

C In response to the Rule Nisi, the officer who had passed the impugned order has *inter alia* averred :

D "With reference to the incidents mentioned in the grounds of detention I have been informed by the I.O. of the case that one criminal case and two G.D. entries were filed against the petitioner and his associates. Ground No. 1 relates to Santuri P.S. case No. 3 dated 5.6.73 under section 6(3) of the Indian Explosive Act and Ground No. 2 relates to Santuri P.S.G.D. Entry No. 805 dated 29.6.73 and the Ground No. 3 relates to Santuri P.S.G.D. Entry 76 dated 3.7.73. The detenu was named in F.I.R. and G.D. Entries and was arrested on 27.9.73 in connection with the first case as he was absconding and he was put in jail custody (intermediate). The petitioner was ultimately discharged from the cases on the prayer of the Police from the said first case on 4.4.74 case not because there was no evidence against him but because this detenu being a dangerous person witnesses were afraid to depose against him in open court. The order of detention passed by me was served on the detenu on 8.12.73 when he was in jail custody. I say that the detenu was not illegally detained as alleged. All statements contrary to what has been stated herein before are denied."

F The first contention of Mr. K. K. Sinha, learned Counsel appearing for the petitioner as *amicus curiae*, is that the three incidents mentioned in the grounds of detention are not relevant to the maintenance of "public order". According to Counsel, these incidents concern "law and order" only. On these premises, it is urged that the impugned order is illegal. Support for this contention has been sought from the dictum of this Court in *Dipak Bose v. State of West Bengal*⁽¹⁾.

H The second point pressed into argument is that in the counter, although something has been said as to why the petitioner was discharged by the Court in *one* of the cases, no such explanation has been given in regard to the other two cases. The impugned order, says the Counsel, was passed by the detaining authority mechanically without due application of mind.

(1) A.I.R. 1972 S.C. 2686.

On the other hand Mr. D. N. Mukherjee, learned Counsel for the State stresses that the criminal acts which are the foundation of the impugned order were, accompanied by such violence that they had seriously disturbed public tranquillity and the normal flow of life in those localities. These activities therefore, maintains the Counsel, directly affected the maintenance of 'public order'. Mr. Mukherjee further submits that the question whether a particular criminal act raises a problem of 'law and order' and 'public order' is one of fact. *Dipak Bose's case* (supra), according to him turns on its own facts, and is not a precedent for deciding the instant case having entirely different facts. Counsel has placed reliance on the recent decision dated 20.12.74 of this Court in *Ram Bali Rajbhar v. State of West Bengal*⁽¹⁾.

In regard to the second point canvassed on behalf of the petitioner, Mr. Mukherjee has placed before us a copy of the report or history-sheet of the detenu whereby the Superintendent of Police had moved the District Magistrate for the preventive detention of the petitioner.

We will deal with the contentions *ad seriatum*.

It may be remembered that qualitatively, the acts which affect 'law and order' are not different from the acts which affect 'public order'. Indeed, a state of peace of orderly tranquillity which prevails as a result of the observance of enforcement of internal laws and regulations by the Government, is a feature common to the concepts of 'law and order' and 'public order'. Every kind of disorder or contravention of law affects that orderly tranquillity. The distinction between the areas of 'law and order' and 'public order' as pointed by this Court in *Arun Ghosh v. State of West Bengal*⁽²⁾, "is one of degree and extent of the reach of the act in question on society". It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only. These concentric concepts of 'law and order' and 'public order' may have a common 'epicentre', but it is the length, magnitude and intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting 'public order' from that concerning 'law and order'.

Considered in the light of the above principles, it is clear that in the instant case the three grounds of detention conveyed to the detenu had a direct nexus with public order. The first incident relates to a bomb explosion in which one person died in a thickly populated area. It created panic amongst the local people who were threatened by the detenu, and were restrained under pain of death, from informing the police. The second incident took place on 28.6.73 in Kistanura Bazar at 8 p.m. The petitioner and his associates tried to extort under pain of instant death, grocery from the shopkeeper. Custo-

(1) Writ Petition No. 322 of 1974.

(2) [1970] 3 S.C.R. 288.

A mers fled away for fear of their lives. Consternation prevailed in the area and all shops in the Bazar closed down immediately. Thus the normal pursuits of life by the people of the locality was thrown out of gear, and the public tranquillity in the area was seriously disturbed. In the third incident bombs were recklessly hurled at the villagers causing panic and disruption of even flow of life in the locality.

B *Dipak Bose's case* (supra) stands on its own facts. There was no allegation in the grounds of detention that the detenu therein or his associates had exploded bombs to cause terror in the locality; while in the instant case the criminal acts in question actually disturbed the normal pursuits of life by the people of the localities concerned. The terror-tremors generated by these acts prejudicially affected the general people of the localities. Thus the grounds of detention had a direct nexus with the object sought to be achieved by the detention order.

C The second contention, although attractive, does not stand a close examination. The counter-affidavit is no doubt unhappily worded. At one place the word 'case' is used in a singular and at another the same word is used in plural. This has afforded some tenuous ground for this contention. But a perusal of the report, dated 8.12.1973, which was submitted by the Superintendent of Police, Purulia (a copy of which has been placed on record) to the District Magistrate makes the matter clear. This report discloses several other instances of murder and dacoity in which, according to it, the petitioner was concerned. Those instances have not been made the basis of the impugned order obviously because they were relatively not proximate in point of time. The recent instances of his violent activities given in it, are the same which constitute the ground of detention. It has been specifically stated with regard to each of these incidents that the prosecution for those crimes against the petitioner could not succeed because for fear of their lives, witnesses were not prepared to give evidence against the petitioner in court.

E There is thus no reason to doubt the sworn word of the detaining authority that although charges against the petitioner were true, his prosecution in court, could not be pursued because the terror stricken witnesses were not prepared to depose against him in open court.

F The Superintendent of Police made the report to the District Magistrate on 8-12-1973. The impugned order was passed on that very day. There was no delay.

G We are satisfied, in the circumstances of the case, that the detention order in question was passed after due consideration on relevant grounds. We uphold the same, dismiss the petition and discharge the rule.

H Before we part with this judgment, we would like to place on record our appreciation of the valuable assistance rendered by the Counsel on both sides particularly the *amicus curiae*.