

SMT. BIMLA DEWAN

v.

LIEUTENANT GOVERNOR OF DELHI

B July 30, 1982

[D.A. DESAI, BAHARUL ISLAM AND A. VARADARAJAN, JJ.]

C *National Security Act, 1980—Section 3(2)—Nature of acts prejudicial to maintenance of public order—Inclusion of past cases of acquittal in grounds of detention—Validity.*

D The husband of the petitioner was detained by an order made under section 3(2) of the Act. The grounds of detention in support of the order referred to a number of criminal cases involving the detenu in many of which he had been acquitted. The allegations in cases pending against the detenu were :
E that a Municipal Councillor had complained that when the staff of the Corporation wanted to apprehend some persons for purposes of prosecution, the detenu along with 70 others had pelted stones etc. resulting in damage to a building; that whisky was being served in his restaurant; that a loaded revolver along with live cartridges had been recovered from his restaurant; that a lady had complained that he had conspired for the murder of her husband; that a police officer had reported that two ladies of the family of a deceased person apprehended danger from him; and that a lady had complained that he had threatened her with dire consequences. It was stated in the grounds that these acts of the detenu showed that he was a desperate and dangerous character who was prone to act in a manner prejudicial to the maintenance of public order and therefore his detention under the provisions of the Act had been considered essential.

F The detenu had challenged his detention by a writ petition filed under Article 226 but the High Court which had heard the matter several months before the filing of the present petition under Article 32, had not passed any order thereon.

G It was alleged in the petition that the detenu was a social worker who was active in politics, that due to political rivalry he had been involved from time to time in a number of false cases, that he had succeeded in proving his innocence in most of them and that he had now been detained on account of political vendetta. It was submitted that the alleged activities of the detenu, even if true, did not fall within the concept of threat to public order. Counsel for the petitioner contended that since the National Security Act did not contain a provision like section 5A of the Conservation of Foreign Exchange and Prevention of Smuggling Act, if one of the grounds was bad, the order of detention had to be quashed in its entirety.
H

Allowing the petition,

HELD: 1. None of the instances in which the detenu had been found to be not guilty and acquitted could have legitimately been taken into consideration for detaining the detenu under section 3(2) of the National Security Act. Since the detaining authority would naturally have been influenced by these grounds as well for coming to the conclusion that the detenu was required to be detained under the provisions of the Act, the entire order of detention was unsustainable. [45 F-G; 46-B]

2. It is the potentiality of the act to disturb the even tempo of living in a community or society which makes it prejudicial to the maintenance of public order or public tranquillity. A mere allegation in the complaint of the Municipal Councillor without anything more could not constitute a ground for detention under the Act. There was no allegation in that instance that the law enforcement authorities had any valid reason to believe that the allegations made in the complaint were true. There was also no allegation that the building at which stones etc. were alleged to have been thrown was situate in a public place and that the alleged act of the detenu and 70 other persons had caused apprehension in the minds of the residents of the locality in regard to maintenance of public order. This instance could not constitute a ground for detention under the Act as it had no potentiality to interfere with or affect public order or public tranquillity. The instances mentioned in other cases pending against the detenu could not in law amount to any interference with the maintenance of public order and could not constitute grounds of detention under the Act. [47G; 46E-F; 47E-G; 47C]

Arun Ghosh v. State of West Bengal, AIR 1970 S.C. 1228, referred to.

ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 126 of 1982.

(Under Article 32 of the Constitution of India)

Ram Jethmalani, Miss Rani Jethmalani, Harjinder Singh and K.K. Sood for the Petitioner.

O.P. Rana and R.N. Poddar for the Respondent.

The Judgment of the Court was delivered by

VARADARAJAN, J. On 31st March, 1982, after hearing learned counsel for both the parties, we quashed the order of detention in this case, observing that our reasons will follow. We proceed to give the reasons.

This Writ Petition under Article 32 of the Constitution of India is by Smt. Bimla Dewan, wife of the detenu Shri Dev Raj Dewan,

- A resident of House No. 53, Gadodia Road, 146/2 Than Singh Nagar, Anand Parbat, Delhi, for quashing the order of detention dated 25.9.1981 issued by the Commissioner of Police, Delhi under s. 3 (2) of the National Security Act, 1980. The detenu was detained from 26.9.1981. The order of detention is said to have been approved by the respondent, Lieutenant, Governor, Delhi, by order dated 1.10.1981 under sec. 3 (4) of the Act. The detenu had been detained in the Central Jail, Tihar, New Delhi.
- B

C It is alleged in the petition that the detenu is a social worker, who is in active politics, and had contested the Municipal Elections of the Municipal Corporation of Delhi from the Anand Parbat constituency in 1977 and was defeated by a Congress-I candidate by a narrow margin of 360 votes, and due to political rivalry he has been involved from time to time in a number of false cases, in most of which he has succeeded in proving his innocence and was acquitted. It is further alleged in the petition that out of sheer political vendetta the detenu has been detained maliciously with full knowledge that the alleged activities of the detenu, even if true, do not fall within the concept of threat to public order. The arrest or prosecution of the detenu, cannot by itself, be a ground of detention. It is only the material on the basis of which the detenu is arrested, prosecuted or convicted that can constitute a ground of detention.

D

E But no such material, including the blue film mentioned in item 28 of paragraph 2 of the grounds of detention has been supplied to the detenu and it has, therefore, become impossible for him to make any effective representation against his detention. No opportunity was given to the detenu to make a representation to the detaining authority. The detenu challenged his detention by filing Criminal Writ Petition No. 126 of 1981 in the High Court of Delhi on 13.10.1981. But since no order had been passed in that petition though arguments were heard in November 1981, this Writ petition has been filed in the Supreme Court on 3.3.1982.

F

G It is alleged in the grounds of detention in which 32 instances have been given that those acts of the detenu show that he is a desperate and dangerous character who acts in a manner which is prejudicial to maintenance of public order, that his activities are hazardous to the community and he has not stopped his violent, anti-social and criminal activities in spite of his prosecution in a number of cases, and that in these circumstances his detention under

H

s. 3 (2) of the National security Act, 1980 has been considered essential in order to stop his criminal activities.

In the counter-affidavit it is stated at the outset that the High Court of Delhi has by an order dated 4.3.1982 dismissed Criminal Writ Petition No. 126 of 1981 which was filed for quashing the very same order of detention dated 25.9.1981 and that the present Writ Petition is consequently not maintainable and only an appeal to this Court against the judgment of the High Court could be filed. It is contended that there is nothing on record to show that the detenu is a social worker. The counter-affidavit further proceeds to state that the criminal history of the detenu as disclosed in the grounds of detention goes to show that he has been a serious threat to maintenance of public order and that whenever any police officer or any other agency tried to interfere in the matter he had assaulted, obstructed or attempted to murder him and that detention under the Act is the only way to prevent him from indulging in activities which are prejudicial to maintenance of public order. It is stated that copies of all first information reports mentioned in the grounds of detention were supplied to the detenu and that the detaining authority has specifically mentioned in the grounds of detention that the detenu has a right of representation to the Lieutenant Governor and the Advisory Board. The respondent has prayed for dismissal of the Writ Petition for the aforesaid reasons.

Instances Nos. 1 to 22, 24 and 28 relate to criminal cases, in all of which the detenu has been found to be not guilty and acquitted. Instance No. 23 relates to a case in which the detenu has been discharged. Instance No. 28 relates to a blue film of naked picture for public circulation/exhibition alleged to have been recovered on 23/24.6.1979 by the Police from the Kamal Restaurant of the detenu. Since all these instances relate to cases in which the detenu has been found to be not guilty and acquitted none of these instances can legitimately be taken into consideration for detaining the detenu under s. 3 (2) of the National Security Act. Mr. Ram Jethmalani, Senior Advocate who appeared for the petitioner in this case submitted that in the National Security Act there is no provision like s. 5A in COFEPOSA (Conservation of Foreign Exchange and Prevention of Smuggling Act) and, therefore, if one of the grounds is bad the order of detention has to be quashed in its entirety and that as the detaining authority has based the order of detention on

A grounds Nos. 1 to 24 and 28 also, the order of detention is unsustainable. The learned counsel for the respondent did not submit anything to controvert that submission of Mr. Ram Jethmalani. We are of the opinion that since the detaining authority would naturally have been influenced by these grounds as well for coming to the conclusion that the detenu requires to be detained under the provisions of the Act, the entire order of detention is unsustainable.

B Before considering the other instances, it is necessary to note what Hidayatullah, C.J. has observed in *Arun Ghosh v. State of West Bengal*.⁽¹⁾ It is this :

C "Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. D As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being way-laid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. E The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may F be taken note of by the criminal prosecution agencies."

G Instances Nos. 25 to 27 and 29 to 32 relate to criminal cases which are said to have been pending against the detenu on the date of order of detention. We shall first consider instances Nos. 25 to 27 and 30 to 32. Instances 25 and 27 relate to cases in which the detenu is alleged to have been arrested for the reason that whisky was being served in a restaurant belonging to him. Instance No. 26 relates to the alleged recovery of a loaded English revolver and 5 live cartridges from the detenu's Kamal Restaurant on 24.6.1979. H Instance No. 30 relates to a case in which the detenu is said to have

(1) A.I.R. 1970 S.C. 1228.

been arrested on the complaint of a lady that the detenu had conspired for the murder of her husband, who was murdered while he was returning after seeing a cinema on 16.8.1981. Instance No. 31 relates to a case arising out of a report sent by a Sub-Inspector of Police, Anand Parbat against the detenu alleging that Smt. Praveen Kapoor and Smt. Shielawati Kapoor, members of the family of deceased Vinod Kapoor apprehended danger to their lives at the hands of the detenu. Instance No. 32 relates to the arrest of the detenu on the complaint of Smt. Sheilawati Kapoor that the detenu threatened her with dire consequences when she went to Tees Hazari Courts to see her son Ashok on 10.9.1981. We are clearly of the opinion that these instances cannot in law amount to any interference with the maintenance of public order and could not constitute grounds for detention under the National Security Act 1980.

We now come to instance No. 29 which relates to the arrest of the detenu on the complaint of one Prem Kumar Narang Municipal Councillor that when the Corporation Staff wanted some persons for prosecution, one Ram Singh came to rescue them and that later on the detenu came alongwith 70 other persons and started throwing stones etc. resulting in damage to a building. On that complaint a First Information Report dated 28.12.1979 under ss. 147, 148, 149, 323 and 427 I.P.C. is said to have been submitted by the Police. A mere allegation in the report of the Municipal Councillor, without anything more, cannot constitute a ground for detention under the National Security Act. There is no allegation in that instance that law enforcement authorities had any valid reason to believe the allegations made in the complaint to be true even while the case registered on that complaint was pending trial and posted to 29.10.1981. There is no allegation in that instance that the building at which stones etc. are alleged to have been thrown is situate in a public place and that the alleged act of the detenu and 70 other persons has caused apprehension in the minds of the residents of the locality in regard to maintenance of public order. We are, therefore, unable to hold that this instance has any potentiality to interfere with and has effect upon the public tranquillity and order and that it cannot constitute a ground for detention under the National Security Act 1980.

It is necessary to mention in passing the fact that it is admitted in the Writ Petition itself that Criminal Writ Petition No. 126 of 1981 had been filed in the High Court of Delhi on 13.10.1981

- A** for quashing the very same order of detention dated 25.9.1981 and that arguments in that Petition had been heard in November 1981 itself. In the counter-affidavit it is stated that the High Court of Delhi has by an order dated 4.3.1982 dismissed that Writ Petition and, therefore, only an appeal against that order would lie to this Court and this Writ Petition is not maintainable. Though the
- B** learned counsel for the respondent invited our attention to certain portions of that order dated 4.3.1982 of a Division Bench of the Delhi High Court dismissing Writ Petition No. 126 of 1981 it was not contended by him that only an appeal against that order would lie to this Court and that this Writ Petition is not maintainable. It
- C** is, therefore, unnecessary for us to go in detail into this ground of objection taken in the counter-affidavit.

For the reasons mentioned above we are of the opinion that the order of detention dated 25.9.1981 is unsustainable and liable to be quashed. There will be no order as to costs.

D H.L.C.

Petition allowed.