ASHOK KUMAR

v.

DELHI ADMINSTRATION & ORS.

May 5, 1982

[A.P. SEN, E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

National Security Act 1980, Ss. 3 and 8 and Constitution of India 1950 Article 22(5).

Detention Order—Period of detention—Specification of—Whether mandatory.

Grounds of detention—Furnishing of—Delay of two days—Detention order—Whether rendered invalid.

"Public Order"—"Law and order"—Distinction between.

Words & Phrases—"As soon as may be"—"As soon as practicable"—Meaning of—National Security Act 1980; S. 8 and Constitution of India 1950, Article 22(5).

The petitioner who was held at the Central Jail in connection with some of the offences committed by him, was served with an order of detention passed by the Commissioner of Police, under sub-section (2) of section 3 of the National Security Act 1980, stating that his detention was necessary with a view to preventing him from "acting in any manner prejudicial to the maintenance of public order." Two days later he was served with the grounds of detention and copies of documents and statements relied upon in the grounds of detention. The Commissioner made a report to the Administrator about the passing of the detention order together with the grounds of detention. The Administrator approved the detention order and sent the report to the Central Government, and also informed the petitioner that the order of detention had been approved by him and that he had a right to make a representation. The case of the petitioner was placed before the Advisory Board who was of the opinion that there was sufficient cause for his detention. The Administrator confirmed the detention order under sub-section (1) of section 12 and further directed under section 13 of the Act that the petitioner be detained for a period of 12 months from the date of his detention.

In his petition under Article 32 of the Constitution the petitioner contended that : (1) the unexplained delay of two days in furnishing the grounds of detention was a denial of the constitutional imperatives of Art. 22(5) read with section 8 of the Act which cast a duty on the detaining authority to afford the detenu "the earliest opportunity of making a representation against the order of detention", (2) there was a failure on the part of the Commissioner as well as the

A Administrator to apply their minds and specify the period of detention while making the order of detention under sub-section (2) of section 3 of the Act, and (3) the grounds of detention served were not connected with "maintenance of public order", but relate to "maintenance of law and order".

Dismissing the petition,

B HELD : 1. (i) Sub-section (1) of section 8 of the Act which is in conformity with Article 22(5) provides that where a person is detained in pursuance of a detention order made under sub-section (1) or sub-section (2) of section 3 of the Act, the authority making the order shall, "as soon as may be", but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later than ten days from the date of C detention, communicate to him the grounds on which the order has been made. Parliament has thus by law defined the words "as soon as may be" occuring in Art. 22(5) as meaning normally a period of five days. [711 F]

(ii) The law is that the detaining authority must, as soon as may be, i.e. as soon as practicable, communicate to the detenu the grounds on which the order of detention has been made. That period has been specified by section 8 D of the Act to mean a period ranging from five to ten days depending upon the facts and circumstances of each case. [712 D]

In the instant case, the petitioner was served with the grounds of detention within a period of two days i.e. within the period allowed by section 8 of the Act and that was "as soon as practicable." The order of detention is therefore not rendered invalid merely because the grounds of detention were E furnished two days later. [712 E-F]

(iii) In *A.K. Roy* v. *Union of India*, [1982] 1 S.C.C. 271 this Court has not laid down that the detaining authority making an order of detention under sub-section (1) or sub-section (2) of section 3 of the Act or the authority approving of the same, must specify the period of detention in the order. [714 B]

F 2. Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case i.e. the nature of the prejudicial activity complained of. It is not that the period of detention must in all circumstances extend to the maximum period of 12 months as laid down in section 13 of the Act. [714 E]

G 3. (i) The true distinction between the areas of 'public order' and 'law and order' lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of 'law and order' and 'public order' is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and H circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of 'law and order', while in another it might affect 'public order'. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even

tempo of the life of the community which make it prejudicial to the 'maintenance of public order.' [715 C-E] A

(ii) Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. Justification for such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. It follows that any preventive measures, even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. [715 F-G] B

(iii) The Executive can take recourse to its power of preventive detention in those cases where the Court is genuinely satisfied that no prosecution could possibly succeed against the detenu because he is a dangerous person who has overrawed witnesses or against whom no one is prepared to depose. [716 B] C

(iv) What essentially is a problem relating to 'law and order' may due to sudden sporadic and intermittent acts of physical violence on innocent victims in a metropolitan city result in serious 'public disorder'. It is the length, magnitude and intensity of the terror wave unleashed by a particular act of violence creating disorder that distinguishes it as an act affecting 'public order' from that concerning 'law and order'. Some offences primarily injure specific individuals and only secondarily the public interest, while others directly injure the public interest, and affect individuals only remotely. [717 D-E] D

In the instant case the particular acts enumerated in the grounds of detention clearly shows that the activities of the detenu cover a wide field and fall within the contours of the concept of 'public order'. [717 G] E

ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 8061 of 1981.

(Under article 32 of the Constitution of India.) F

Dr. N.M. Ghatate for the Petitioner.

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

The Judgment of the Court was delivered by G

SEN, J. By this petition under Art. 32 of the Constitution, one Ashok Kumar seeks issuance of a writ of *habeas corpus* challenging the validity of the order of detention dated August 11, 1981, passed by the Commissioner of Police, Delhi under sub-s. (2) of s. 3 of the National Security Act, 1980 (for short 'the Act') on being satisfied that his detention was necessary with a view to preventing him from "acting in any manner prejudicial to the maintenance of H

A public order". The main issue is as to whether the activities of the petitioner fall within the realm of 'public order' or 'law and order'.

It appears that on August 12, 1981 while the detenu was held at the Central Jail, Tihar in connection with some of the offences committed by him, he was served with the aforesaid order of detention passed a day earlier i.e. on August 11, 1981. Two days later i.e. on August 14, 1981 he was furnished with the grounds of detention as well as with copies of documents and statements relied upon in the grounds of detention. It seems that the Commissioner of Police forthwith made a report to the Administrator about the passing of the detention order together with the grounds of detention and all other particulars bearing on the same. The said report and the other particulars were considered by the Administrator and he, by his order dated August 20, 1981, approved of the detention order under sub-s. (4) and sent a report to the Central Government as required under sub-s. (5) of s. 3 of the Act. The Administrator by his order dated August 20, 1981 informed the petitioner that his order of detention had been approved by him and that he had a right to make a representation. The case of the petitioner was placed before the Advisory Board who was of the opinion that there was sufficient cause for the detention of the petitioner and accordingly the Administrator by his order dated September 15, 1981 confirmed the aforesaid detention order under sub-s. (1) of s. 12 and further directed under s. 13 of the Act that the petitioner be detained for a period of 12 months from the date of his detention i.e. w.e.f. August 12, 1981.

In support of the petition, four points are canvassed. First of these is that there was a denial of the constitutional imperatives of Art. 22(5) read with s. 8 of the Act which cast a duty on the detaining authority to afford the detenu "the earliest opportunity of making a representation against the order of detention" inasmuch as there was unexplained delay of two days in furnishing the grounds of detention; secondly, there was a failure on the part of the Commission of Police as well as the Administrator to apply their mind and specify the period of detention while making the order of detention under sub-s. (2) of s. 3 of the Act and therefore the impugned order of detention is invalid; thirdly, the grounds of detention served on the detenu are not connected with "maintenance of public order", but they relate to "maintenance of law and order" and fourthly, the facts as set out in the grounds of detention did not

furnish sufficient nexus for forming the subjective satisfaction of the detaining authority and further they were vague, irrelevant and lacking in particulars. We are afraid, none of these contentions can prevail.

There is no substance in the contention that there was denial of the constitutional imperatives of Art. 22(5) read with s. 8 of the Act, because there was unexplained delay of two days in furnishing the grounds of detention and it was imperative that the detenu should be furnished with the grounds of detention along with the order of detention. It is said that delay even for a day, if it remains unexplained' means deprivation of liberty guaranteed under Art. 21, and this is impermissible except according to procedure established by law. The contention that the constitutional safeguards in Art. 22(5) were not complied with merely because the detenu was not 'simultaneously' furnished with the grounds of detention along with the order of detention and was thereby deprived of the right of being afforded 'the earliest opportunity of making a representation against the order of detention' as enjoined by Art. 22(5) read with with s. 8 of the Act, cannot be accepted. The language of Art. 22(5) itself provides that where a person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, "as soon as may be", communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Sub-s. (1) of s. 8 of the Act which is in conformity with Art. 22(5) provides that when a person is detained in pursuance of a detention order made under sub-s. (1) or sub-s. (2) of s. 3 of the Act, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made. Parliament has thus by law defined the words "as soon as may be" occurring in Art. 22(5) as meaning normally a period of five days.

The matter is no longer *res integra*. Chandrachud, C.J. in *A.K. Roy* v. *Union of India*(1) observed :

"This argument overlooks that the primary requirement of s. 8(1) is that the authority making the order of

(1) [1982] 1 S.C.C. 271.

A detention shall communicate the grounds of detention to the detenu "as soon as may be". The normal rule therefore is that the grounds of detention must be communicated to the detenu without avoidable delay. It is only in order to meet the practical exigencies of administrative affairs that the detaining authority is permitted to communicate B the grounds of detention not later than five days ordinarily and not later than 10 days if there are exceptional circumstances. If there are any such circumstances, the detaining authority is required by s. 8(1) to record its reason in writing. We do not think that this provision is open to any objection."

C

Under our constitutional system, therefore, it is not the law that no person shall be detained in pursuance of an order made under a law providing for preventive detention without being informed of the grounds for such detention. The law is that the D detaining authority must, as soon as may be, i.e. as soon as practicable, communicate to the detenu the grounds on which the order of detention has been made. That period has been specified by s. 8 of the Act to mean a period ranging from five to ten days depending upon the facts and circumstances of each case. Admittedly, the detenu here was served with the grounds of detention within a E period of two days i.e. within the period allowed by s. 8 of the Act and that was "as soon as practicable".

This is not a case where the detenu alleges that his detention was for non-existent grounds. Nor does he attribute any *mala fides* on the part of the detaining authority in making the order. The F order of detention is therefore not rendered invalid merely because the grounds of detention were furnished two days later.

We find it difficult to conceive of any discernible principle for the second submission. It is submitted by learned counsel appearing G for the detenu that the right to make a representation under Art. 22(5) of the Constitution read with s. 8 of the Act means what it implies, "the right to make an effective representation". It is urged that unless the period of detention is specified, there can be no meaningful representation inasmuch as the detenu had not only the H right of making a representation against the order for his detention but also the period of detention. On this hypothesis, the contention is that the impugned order of detention is rendered invalid. The

entire submission rests on the following observations of Chandrachud, C.J. in *A.K. Roys case*, supra :

> "We should have thought that it would have been wrong to fix a minimum period of detention, regardless of the nature and seriousness of the grounds of detention. The fact that a person can be detained for the maximum period of 12 months does not place upon the detaining authority the obligation to direct that he shall be detained for the maximum period. The detaining authority can always exercise its discretion regarding the length of the period of detention."

The majority decision in *A.K. Roys case*, supra, as pronounced by Chandrachud, C.J. is not an authority for the proposition that there is a duty cast on the detaining authority while making an order of detention under sub-s. (1) or (2) to specify the period of detention. The learned Chief Justice made the aforesaid observations while repelling the contention advanced by learned counsel for the petitioner that s. 13 of the Act was violative of the fundamental right guaranteed under Art. 21 read with Art. 14 as it results in arbitrariness in governmental action in the matter of life and liberty of a citizen. The challenge to the validity of s. 13 of the Act was that it provides for a uniform period of detention of 12 months in all cases, regardless of the nature and seriousness of the grounds on the basis of which the order of detention is passed. In repelling the contention, the learned Chief Justice observed that there was no substance in that grievance because, any law of preventive detention has to provide for the maximum period of detention, just as any punitive law like the Penal Code has to provide for the maximum sentence which can be imposed for any offence. In upholding the validity of s. 13 the learned Chief Justice observed :

> "We should have thought that it would have been wrong to fix a minimum period of detention, regardless of the grounds of detention".

And then went on to say :

> "It must also be mentioned that under the proviso to s. 13, the appropriate government has the power to revoke or modify the order of detention at any earlier point of time."

A It would thus be clear that the Court was there concerned with the validity of s. 13 of the Act and it is not proper to build up an argument or by reading out of context just a sentence or two. There is no doubt in our mind that the Court has not laid down that the detaining authority making an order of detention under sub-s. (1) or sub-s. (2) of s. 3 of the Act or the authority approving B of the same, must specify the period of detention in the order.

It is plain from a reading of s. 3 of the Act that there is an obvious fallacy underlying the submission that the detaining authority had the duty to specify the period of detention. It will be C noticed that sub-s. (1) of s. 3 stops with the words "make an order directing that such person be detained", and does not go further and prescribe that the detaining authority shall also specify the period of detention. Otherwise, there should have been the following words added at the end of this sub-section "and shall specify the period of such detention". What is true of sub-s. (1) of s. 3 is D also true of sub-s. (2) thereof. It is not permissible for the courts, by a process of judicial construction, to alter or vary the terms of a section. Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case i.e. the nature of the prejudicial activity complained of. It is not that the period of detention must in all circumstances extend to the E maximum period of 12 months as laid down in s. 13 of the Act.

The most crucial question on which the decision must turn is whether the activities of the detenu fall within the domain of 'public order' or 'law and order'. The contention is that the grounds of F detention served on the de tenu are not connected with 'maintenance of 'public order' but they relate to 'maintenance of law and order' and therefore the impugned order of detention purported to have been passed by the detaining authority in exercise of his powers under sub-s. (2) of s. 3 of the Act is liable to be struck down. It is urged that the facts alleged in the grounds of detention tend to G show that he is engaged in criminal activities and it is an apparent nullification of the judicial process if, in every case where there is a failure of the prosecution to proceed with a trial or where the case ends with an order of discharge or acquittal, the Executive could fall back on its power of detention because the verdict of the H Court goes against it. Put differently, the contention is that resort cannot be had to the Act to direct preventive detention of a person under sub-s. (2) of s. 3 of the Act for the Act is not a law for the

preventive detention of gangsters and notorious bad characters. The detention here, it is said, is not so much for the "maintenance of public order" but as a measure for the past criminal activities of the detenu. It is further urged that the grounds of detention have no rational connection with the object mentioned in the Act for which a person may be detained. Further, that there is no sufficient nexus between the preventive action and the past activities of the detenu which are not proximate in point of time but are too remote. There is no substance in any of these contentions advanced.

The true distinction between the areas of 'public order' and 'law and order' lies not in the nature or quality of the Act, but in the degree and extent of its reach upon society. The distinction between the two concepts of 'law and order' and 'public order' is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. 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. That test is clearly fulfilled in the facts and circumstances of the present case.

Those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. Justification for such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. It follows that any preventive measures, even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. It is a matter of grave concern that in urbanised areas like cities and towns and particularly in the metropolitan city of Delhi the law and order situation is worsening everyday and the use of knives and firearms has given rise to a new violence. There is a constant struggle to control the criminal activities of the persons engaged in such organised crimes for the maintenance of public

order. It is difficult to appreciate the argument that the detention here is with a view to punish the detenu for a series of crimes that he is alleged to have committed, but which the law enforcement agency is not able to substantiate. There is no reason why the Executive cannot take recourse to its power of preventive detention in those cases where the Court is genuinely satisfied that no prosecution could possibly succeed against the detenu because he is a dangerous person who has overawed witnesses or against whom no one is prepared to depose.

The prejudicial activities of the detenu leading to public disorder, as revealed in the grounds of detention, consist of a consistent course of criminal record. Although the criminal activities of the detenu in the past pertained mostly to breaches of law and order, they have now taken a turn for the worse. From the facts alleged it appears that the detenu has taken to a life of crime and become a notorious character. His main activities are theft, robbery and snatching of ornaments by the use of knives and firearms. The area of operation is limited to South Delhi, such as Greater Kailash, Kalkaji and Lajpat Nagar. A perusal of the F.I.Rs. shows that the petitioner is a person of desperate and dangerous character. This is not a case of a single activity directed against a single individuals. There have been a series of criminal activities on the part of the detenu and his associates during a span of four years which have made him a menace to the society. It is true that they are facing trial or the matters are still under investigation. That only shows that they are such dangerous characters that people are afraid of giving evidence against them.

To bring out the gravity of the crimes committed by the detenu, we would just mention four instances. On November 19, 1979 Smt. Anupam Chander of B-5/10, Safdarjang Enclave reported that she was robbed of her gold-chain near East of Kailash and on investigation the petitioner along with his associates was arrested for this high-handed robbery and there is a case registered against them which is pending trial. Just a month after i.e. on December 11, 1979, one Munna of Lajpat Nagar reported that he was robbed of his wrist-watch and cash by three persons who were travelling in a three-wheeler. On investigation, the petitioner and his associate Rajendra Kumar were arrested and the police recovered the stolen property. They are facing trial in these cases. On July 18, 1981,

Kumari G. Radha reported that she had been robbed of her gold-chain and a pair of tops in Lajpat Nagar at the point of knife by persons in the age group of 21/22 years. On investigation, the petitioner and his associate Rajendra Kumar were arrested and the entire booty was recovered. The case is still under investigation. It appears that the detenu was enlarged on bail and two days after i.e. on July 20, 1981, he was again arrested on the report of Smt. Ozha that she was robbed of her gold-chain near Shanti Bazar, Khokha Market, Lajpat Nagar by two persons in the age group of 21-25 years at the point of knife. On investigation, the petitioner and his companion Rajendra Kumar were arrested and she identified them to be the culprits and the booty was recovered from them. The case is under investigation. There have been similar incidents of a like nature.

What essentially is a problem relating to law and order may due to sudden sporadic and intermittent acts of physical violence on innocent victims in the metropolitan city of Delhi result in serious public disorder. It is the length, magnitude and intensity of the terror wave unleashed by a particular act of violence creating disorder that distinguishes it as an act affecting public order from that concerning law and order. Some offences primarily injure specific individuals and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. The question is of the survival of the society and the problem is the method of control. Whenever there is an armed hold-up by gangsters in an exclusive residential area like Greater Kailash, Kalkaji or Lajpat Nagar and persons are deprived of their belongings like a car, wrist-watch or cash, or ladies relieved of their gold-chains or ornaments at the point of a knife or revolver, they become victims of organised crime. There is very little that the police can do about it except to keep a constant vigil over the movements of such persons. The particular acts enumerated in the grounds of detention clearly show that the activities of the detenu cover a wide field and fall within the contours of the concept of public order.

The contention that the facts alleged in the grounds of detention did not furnish sufficient nexus for forming the subjective satisfaction of the detaining authority and further that they were vague, irrelevant or lacking in particulars, cannot be accepted. A bare perusal of the grounds of detention along with the particulars

A of the 36 cases furnished in the accompanying chart, shows that the grounds furnished were not vague or irrelevant or lacking in particulars or were not adequate or sufficient for the subjective satisfaction of the detaining authority.

In the result, the petition must fail and is dismissed.

B

N.V.K. *Petition dismissed.*