

SMT. ANGOORI DEVI FOR RAM RATAN

v.

UNION OF INDIA & ORS.

DECEMBER 6, 1988

[G.L. OZA AND K. JAGANNATHA SHETTY, JJ.]

National Security Act, 1980, s. 3—Detenu—Two police personnel in Security Unit—Offence committed u/s 392/34 I.P.C.—An isolated criminal act—Does not disturb 'public order'—'Public Order' and 'law and order'—Distinction between.

The detenu, in the writ petitions filed by the petitioners under Article 32 of the Constitution, belonged to the Security Unit of Delhi Police. While on duty, they were alleged to have stopped a rickshaw puller who was carrying some goods to a transport company. They caught hold of him and started beating him and asked for a receipt for the goods. Thereafter they removed the goods from the rickshaw and went away in a T.S.R. The aforesaid goods was recovered from their possession and a case under Section 392/34 I.P.C. was registered against them. Thereafter they were arrested and placed under suspension. The court, however, released them on bail. While the case was under investigation, the Commissioner of Police, Delhi detained them u/s 3(2) of the National Security Act, 1980 on the ground that the above criminal activity of the detenu has created a sense of insecurity in the minds of public at large and is pre-judicial to the maintenance of public order.

It was contended on behalf of the petitioners that the said orders are bad in law, since the ground of detention has no nexus to the 'public order', but purely a matter for 'law and order'. Counsel for the respondents, on the other hand, argued that though the incident in question was a simple case of robbery, since it was committed by persons belonging to the disciplined police force, it would certainly disturb the public safety in the life of the community with a sense of insecurity in their minds and therefore the detention orders were justified.

Allowing the writ petitions,

HELD: (1) The orders of detention are quashed. The detenu Ram Ratan and Hawa Singh are set at liberty forthwith. [1030F]

A (2) The law of preventive detention is not different to police personnel. It is the same law that is applied to police as well as to public. Therefore, this Court cannot apply a different standard in respect of acts individually committed by any police officer. [1027D]

B 3(i) The subjective satisfaction of the detaining authority with respect to the persons sought to be detained should be based only on the nature of the activities disclosed by the grounds of detention. The grounds of detention must have nexus with the purpose for which the detention is made. [1027E]

C 3(ii) The impact on 'public order' and 'law and order' depends upon the nature of the act, the place where it is committed and motive force behind it. If the act is confined to an individual without directly or indirectly affecting the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquillity, it may fall within the orbit of the 'public order'. What might be an otherwise simple 'law and order' situation might assume the gravity and mischief of a 'public-order' problem by reason alone of the manner of circumstances in which or the place at which it is carried-out. Necessarily, much depends upon the nature of the act, the place where it is committed and the sinister significance attached to it. [1028C-E]

E In the instant case, the offence was committed by two misguided police men under the cover of darkness with the assistance of a member of the public. It is an isolated criminal case with no sinister significance attached to it. It was certainly suicidal to those two police personnel. But it seems to have no connection whatsoever to disturb the 'public order' having regard to the circumstances of the case. [1030D-E]

F *Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*, [1960] 2 SCR 821; *Ayya Alias Ayub v. The State of U.P. & Anr.*, Judgment Today 1988 Vol. 4 p. 489 (at 496); *Abdul Aziz v. The Distt. Magistrate Burdwan & Ors.*, [1973] 2 SCR 646 and *Mohd. Dhana Ali Khan v. State of West Bengal*, [1975] Suppl. SCR 124 followed.

G ORIGINAL JURISDICTION: Writ Petition (Crl) Nos. 353 and 491 of 1988.

(Under Article 32 of the Constitution of India).

H A.S. Pundir for the Petitioners.

V.C. Mahajan, Mrs. A. Katiyar, Dalveer Bhandari and Ms. A Subhashini for the Respondents. A

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. These two petitions under Art. 32 of the Constitution are for issue of a writ of Habeas Corpus for the release of Ram Ratan and Hawa Singh, who have been detained under sec. 3(2) of the National Security Act of 1980. B

Ram Ratan was a Head Constable and Hawa Singh was a Constable in the Security Unit of Delhi Police. While on duty, they were together said to have committed a cognizable offence under Sec. 392/34 of IPC alongwith a member of the public. Immediately thereafter they were arrested and placed on suspension. The Court, however, released them on bail. While the case was under investigation, the Commissioner of Police, Delhi (Mr. Vijay Karan) thought fit to detain them under the National Security Act. Accordingly, he made the orders which are impugned herein. Subsequently, they have been summarily dismissed from service under Article 311(ii)(b) of the Constitution. C D

The principal contention urged for the petitioners relates to the oft-repeated question—that the ground of detention has no nexus to the “public order”, but purely a matter for “law and order”. E

In order to appreciate the contention urged in this regard, it will be necessary to have regard to the orders of detention. The orders passed against the two detenu are on different dates, but are similar in terms and it may be sufficient if we refer to one of the orders. The ground of detention in each case relates to one incident which has been stated as follows: F

“That on 22.7.88, one Shri Jasbir Singh S/o Shri Inder Singh R/o 5869/3 Ambala City (Haryana) reported that on 21.7.88 he purchased some T.V. parts from Lajpat Rai Market. After purchase, he loaded the TV parts on a rickshaw and asked the rickshaw puller Shanker S/o Shri Vasudev R/o Old Lajpat Rai Market, Near Hanuman Mandir, who was known to him to take the TV parts to Patiala Transport near Libra Service Station G.T.K. Road. He himself went alone to Patiala Transport and waited for the rickshaw puller. At about 11.00 pm, the rickshaw G H

A puller informed him that two police personnel namely H.C. Ram Ratan and Constable Hawa Singh who were previously posted in P.S. Kotwali along with a member of the public Prabhu Dayal who he knew has stopped his rickshaw near B Block, Industrial Area, G.T.K. Road. Head Constable Ram Ratan caught him and started beating him and asked for a receipt for the goods. Constable Hawa Singh and Prabhu Dayal removed the parts and loaded in a TSR and went away."

It was also stated that those T.V. parts were recovered from the detenu and the case was registered under sec. 392/34 IPC in which the investigation was progressing.

There then, it was said:

"From the above criminal activity of Shri Ram Ratan it is clear that he, being a Police Officer and bound to provide security and safety to the public, has himself committed a heinous offence which has created a sense of insecurity in the minds of public at large and is pre-judicial to the maintenance of public order.

Keeping in view the above criminal activity of the said Head Constable Ram Ratan, it has been felt necessary to detain him u/s 3(2) of the National Security Act, 1980 so that his such activity which is prejudicial to the maintenance of public order could be stopped

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Sd/- (Vijay Karan)
COMMISSIONER OF POLICE: Delhi"

As is obvious from the order, the Commissioner was satisfied with the need to detain the person, firstly because, the person being a police officer was bound to provide security and safety to the public and secondly, the offence committed was "heinous" which has created a sense of insecurity in the minds of the public at large.

The same was highlighted before us by Shri Mahajan, learned counsel for the respondents justifying the detention orders. The counsel argued that though the incident in question was a simple case

of robbery, since it was committed by persons belonging to the disciplined police force, it would certainly disturb the public safety in the life of the community with a sense of insecurity in their minds.

It is true that the detenu belonged to the police force in the national capital. Public look for the police for safety. Society regards them as their guardian for its protection. Society needs a properly trained and well disciplined police force whom it can trust in all respects. They are the real frontline of our defence against violence. They have to maintain law and order. They have to safeguard our freedoms and liberty. They have to prevent crime and when crime is committed, they have to detect it and bring the accused to justice. They must be available at all hours. They are always expected to act and indeed must act properly. it is reprehensible if they themselves indulge in criminal activities.

We are not, as we cannot, be unmindful of the danger to liberties of people when guardians of law and order themselves indulge in undesirable acts. But the law of preventive detention is not different to police personnel. It is the same law that we apply to police as well as to public. We cannot, therefore, apply a different standard in respect of acts individually committed by any police officer. The subjective satisfaction of the detaining authority with respect to the persons sought to be detained should be based only on the nature of the activities disclosed by the grounds of detention. The grounds of detention must have nexus with the purpose for which the detention is made.

The question in this case is whether the crime in question has any impact on "public order" as such. Courts have strived to give to this concept a narrower construction than what the literal words suggest. In the *Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*, [1960] 2 SCR 321 Subba Rao, J., as he then was, observed (at 835):

"But in India under Art. 19(2) this wide concept of "public order" is split up under different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. All the grounds mentioned therein can be

- A brought under the general head "public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is therefore something which is demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postulated that "public order" is synonymous with public peace, safety and tranquility."
- B

- C The impact on "public order" and "law and order" depends upon the nature of the act, the place where it is committed and motive force behind it. If the act is confined to an individual without directly or indirectly affecting the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquility, it may fall within the orbit of the public order. This is precisely the distinguishing feature between the two concepts. Sometimes, as observed by Venkatachaliah, J. in *Ayya Alias Ayub v. The State of U.P. & Anr.*, Judgment Today 1988 Vol. 4 p. 489 (at 496): "what might be an otherwise simple "law and order" situation might assume the gravity and mischief of a "public-order" problem by reason alone of the manner or circumstances in which or the place at which it is carried-out." Necessarily, much depends upon the nature of the act the place where it is committed and the sinister significance attached to it.
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- E

- F As for example dare devil repeated criminal acts, open shoot out, throwing bomb at public places, committing serious offences in public transport, armed persons going on plundering public properties or terrorising people may create a sense of insecurity in the public mind and may have an impact on "public order". Even certain murder committed by persons in lonely places with the definite object of promoting the cause of the party to which they belong may also affect the maintenance of 'public order'.

- G In *Abdul Aziz v. The Distt. Magistrate Burdwan & Ors.*, [1973] 2 SCR 646 this Court has stated so. There two grounds were furnished to the detenu in justification of the order of detention. It was stated:

- H "firstly, that the petitioner and his associates were members of an extremist party (CPI-ML), that on 16th August 1971, they armed themselves with lethal weapons like

firearms, choppers and daggers with a view to promoting the cause of their party, that they raided the house of one Durgapada Rudra and murdered him and that the afore-said incidents created a general sense of insecurity, as a result of which the residents of the locality could not follow their normal avocations for a considerable period. The second ground of detention is that on 22nd May, 1971 the petitioner and his associates raided the house of Smt. Kshetromoni Choudhury and murdered one Umapada Mallick who was staying in that house. This incident is also stated to have created a general sense of insecurity amongst the residents of the locality.”

Repelling the connection in that case that the two incidents referred to above are but simple cases of murder germane to law and order but could have no impact on public order Chandrachud, J. as he then was, said (at p. 648):

“A short answer to this contention is that the murders are stated to have been committed by the petitioner and his associates with the definite object of promoting the cause of the party to which they belonged. These, therefore, are not stray or simple cases of murder as contended by the learned counsel. Such incidents have serious repercussions not merely on law and order but on public order.”

In *Mohd. Dhana Ali Khan v. State of West Bengal*, [1975] Suppl. SCR 124 this Court had an occasion to consider the detention of a person under the maintenance of Internal Security Act, 1971 regarding a single instance of theft in a running train at night. The acts attributed to the detenu in that case were that on 3.8.1973 between 2110 and 2120 hrs., the detenu and his associate being armed with daggers boarded a 3rd class compartment of 5L 257 UP train of E. Railway Sealdah Division at Gocharan Railway Station. They put the passengers of the compartment to fear of death and snatched away a wrist watch and a gold necklace from one Nirmal Chatterjee and his wife in between Gocharan and Surajpur Railway Stations. Then they decamped with booty from the running train at Suryapur Railway Station. It was contended in that case that the said single incident referred to have not even casual connection with the disturbance of public order. Fazal Ali, J. while rejecting that contention said (at 126):

“From a perusal of this we are unable to accept the

A contentions of the petitioner that this ground has no nexus with the disturbance of public order. It is true that the ground contains a single incident of theft of valuable property from some passengers travelling in a running train and may amount to robbery. But that does not by itself take the case out of the purview of the provisions of the Maintenance of Internal Security Act. There are two pertinent facts which emerge from the grounds which must be noted. In the first place the allegation is that the petitioner had snatched away a wrist watch and a gold necklace after putting the passengers of the compartment to fear of death. Secondly, the theft had taken place at night in a running train in a third class compartment and the effect of it would be to deter peaceful citizens from travelling in trains at night and this would undoubtedly disturb the even tempo of the life of the community."

D We have carefully examined the act complained of in the present case in the light of the principles stated above. It is an isolated criminal case with no sinister significance attached to it. The offence was committed by two misguided police men under the cover of darkness with the assistance of a member of the public. It was certainly suicidal to those two police personnel. But it seems to have no connection whatsoever to disturb the 'public order' having regard to the circumstances of the case.

F The last contention urged for the petitioners that the detention would be illegal in view of dismissal of detenu from service is really without merit. The subsequent order of dismissal is not germane to examine the validity of the detention.

In the result the rule is made absolute. The orders of detention impugned in these cases are quashed. The detenu Ram Ratan and Hawa Singh be set at liberty forthwith.

G M.L.A.

Petitions allowed.