

G. M. Shah

Vs

State of Jammu and Kashmir

Writ Petition No. 1125 of 1979

(V.D. Tulzapurkar, E.S. Venkataramiah JJ)

30.10.1979

JUDGMENT

VENKATARAMIAH, J. –

1. At the conclusion of the hearing of the above petition on October 24, 1979, we made the follows order :

The detenu Shabir Ahmed Shah who has been detained by the order dated May 23, 1979 of the District Magistrate, Anantnag is directed to be released forthwith. Reasons would follow.

2. The reasons in support of the above order are given below :

2A. The above petition under Article 32 of the Constitution is filed by the petitioner requesting this Court to quash the order of detention bearing No. 299-304/ST dated May 23, 1979 passed by the District Magistrate, Anantnag in the State of Jammu and Kashmir under Section 8(2) of the Jammu and Kashmir Public Safety Act, 1978 (Act No. 6 of 1978) (hereinafter referred to as 'the Act') directing the detention of his petitioner's son, Shabir Ahmed Shah (hereinafter referred to as 'the detenu'). The relevant part of the order of detention reads :

Whereas I, Omar Jan, District Magistrate, Anantnag, am satisfied that with a view to preventing Shri Shabir Ahmed Shah s/o Ghulam Mohammad Shah r/o Kadipora, Anantnag, from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do;

Now, therefore, in exercise of the powers conferred by Section 8(2) of the Jammu and Kashmir Public Act, 1978 (Act No. 6 of 1978), I, Omar Jan, District Magistrate, Anantnag hereby direct that the said Shri Shabir Ahmed Shah be detained in Central Jail Srinagar.

Sd/- (Omar Jan) District Magistrate Anantnag##

3. The detenu was informed in pursuance of Section 13 of the Act that his detention had been ordered on the following grounds :

(1) You originally belonged to YOUNG MAN'S LEAGUE (Hamid group) which was an anti-national and pro-Pak organization of young men. You along with you

erstwhile associates were responsible for creating subversion and danger to the maintenance of public order by organizing anti-national demonstrations and protests.

(2) Later in the year 1975 when the Peoples' League was formed with the avowed object of challenging the accession of the State to India and also for furthering the cause and interest of Pakistan in the State, you joined the party as an active member. You are currently the General Secretary of the Peoples' League. You and your party have shown open sympathy and have tried to elicit public opinion in favour of Mohammad Maqbool Bhat, a die-hard pro-Pak subversive element who has been sentenced to death on two occasions for murder, espionage and sabotage and is currently awaiting execution. Pamphlets and posters have been issued by the Peoples' League in support of Mohammad Maqbool Bhat.

(3) In January and February, 1979 you joined subversive elements of Sopore area and organized the burning of religious places in order to create chaos in the State. The conspiracy was, however, unearthed by Baramulla Police in time before much damage was done. You were arrested in Case FIR No. 38 of 1979 under Section 436 RPC P/S Sopore registered in this connection.

(4) Much before the execution of Mr. Z. A. Bhutto in Pakistan, you and your party sent hand-bills and booklets to arouse the sentiments of the people against the State Government. You along with your party members moved secretly to maintain contacts with disgruntled and undesirable elements in the valley and to arouse their base sentiments in this connection and context.

(5) In the third week of March, 1979, when some unemployed youth started hunger strike at Lal Chowk, Anantnag, you lent support to the CPI (ML) and other parties who were out to create disturbances and to incite the youth to resort to violence and disorder.

(6) On March 29, 1979 you along with your colleagues held a meeting and decided to disturb public order in Anantnag town in the context of pro-Bhutto sentiments and demonstrations the next day.

(7) Consequently on March 30, 1979 you along with your associates moved stealthily to warn the shopkeepers to close their shops. You also incited the people to put road-blocks and stop traffic. You and your associates organized a strike in Anantnag College when it opened on 30th. Later in the day you along with your associated incited youths to resort to violence and create disorder. Consequently a lot of violence including murderous assault on the Police and Magistracy took place in Anantnag town in which many officials were seriously injured. A case FIR No. 98 of 1979 under Sections 302/148/336/149/120-B RPC was registered. You went underground and could not be arrested for quite some time but you were arrested in the case later. You are presently on bail in this case. On April 7, 1979 when normalcy was being restored in Anantnag town and shops were being opened, you along with your associates appeared near Lal Chowk and threatened shop-keepers to close shops. Their shouting and running had the effect of creating tension in the town and many shops were closed. Police efforts to arrest you could not succeed as you ran away in the by-lanes and later went under-ground.

(8) More recently you have been collaborating with anti-national, pro-Pak elements who come to hold secret talks and links with you. You are a dangerous and desperate character out to create chaos, disorder, subversion and the like to achieve your ends. Your remaining at large is prejudicial to the maintenance of public order and also to the security of the State. I am convinced that unless you are detained there is every likelihood that you will continue to create confusion in public minds and instigate people to lawlessness and disturbance of public peace and tranquillity.

The paragraphs are numbered by us for the purpose of convenience).

4. It may be noted that whereas the order of detention stated that it had been passed with a view to preventing the detenu "from acting in any manner prejudicial to the maintenance of public order", in the last paragraph of the grounds furnished to the detenu, it was stated that "your remaining at large is prejudicial to the maintenance of public order and also to the security of the state". The relevant part of Section 8 of the Act under which the order of detention is passed reads :

8. Detention of certain persons. - (1) The Government may -

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to -

(i) the security of the state or the maintenance of the public order, or

(ii) the maintenance of supplies and services essential to the community; or

##(b)##

it is necessary so to do, make an, order directing that such person be detained.

(2) Any of the following officers namely -

(i) Divisional Commissioners,

(ii) District Magistrates,

may, if satisfied as provided in sub-clauses (i) and (ii) of clause (a) of sub-section (1), exercise the powers conferred by the said sub-section.

(3) For the purpose of sub-section (1), -

(a) "acting in any manner prejudicial to the security of the state" means making preparations for using, or attempting to use, or using or instigating, inciting, provoking or otherwise abetting the use of force, to overthrow or overawe the Government established by law in the State;

(b) "acting in any manner prejudicial to the maintenance of public order" means -

(i) promoting, propagating or attempting to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community, or region;

(ii) making preparations for using, or attempting to use, or using, or instigating,

inciting, provoking, otherwise abetting the use force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order;

(iii) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of, mischief within the meaning of Section 425 of the Ranbir penal Code where the commission of such mischief disturbs, or is likely to disturb public order;

(iv) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offence disturbs, or likely to disturb public order.

5. It is seen from Section 8(1)(a)(i) and Section 8() of the Act extracted above that the government or the District Magistrate 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 the maintenance of the public order, make an order directing that such a person be detained. The expression "acting in any manner prejudicial to the security of the State" is defined in clause (a) of sub-section(3) of Section 8 of the Act as making preparation for using, or attempting to use, or using or instigating, inciting, provoking or otherwise abetting the use of force to overthrow or overawe the government established by law in the State. Clause (b) of Section 8(3) of the Act defines the expression "acting in any manner prejudicial to the maintenance of public order". The distinction between the two expressions lies in the fact that while in the case of the former, the object of making preparation or instigating or abetting the use of force etc. should be with a view to overthrow or overawe "the government established by law in the State", in the case of the latter, the object of the acts mentioned therein should be disturbance of public order.

6. As already mentioned, while the order of detention states that it was being made a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, in the grounds disclosed to him, it had seen stated that the detenu's remaining at large was prejudicial to the maintenance of public order and also to the security of the State. We shall now briefly refer to the nature of the grounds furnished to the detenu. First we shall deal with paragraphs (1), (3) and (5) to (7) of the grounds. In paragraph (1) of the grounds, it is stated that the detenu along with his erstwhile associates was responsible for creating subversion and danger to the maintenance of public order by organizing anti-national demonstrations and protests. In paragraph (3) of the grounds, it is stated that in January and February, 1979, the detenu had joined subversive elements of Sopore area and organized the burning of religious places in order to create chaos in the State. In paragraph (5) of the grounds, it is stated that in the third week of March, 1979, the detenu had lent support to the Communist Party of India (ML) and other parties who were out to create disturbances and to incite the youth to resort to violence and disorder when some unemployed youth started hunger strike at Lal Chowk, Anantnag. In paragraph (6) of the grounds, it is stated that on March 29, 1979, the detenu had along with his colleagues held a meeting and decided to disturb public order in Anantnag town. In paragraph (7) of the grounds, there is reference to the detenu along with his associates inciting the youth to resort to violence and create disorder. It is thus clear that in paragraphs (1), (3) and (5) to (7) of the grounds, there is no reference to any attempt made by the dentu to use force to overthrow or overawe the government established by law in the State. Paragraphs (2) (4) and (8) of the grounds are also in no way different. In paragraph (2) of the grounds, although there is a reference to the detenu joining Peoples' League which had been formed with an avowed object of

challenging the accession of the State of Jammu and Kashmir to India and also for furthering the cause and interest of Pakistan in the State, the act attributed to the detenu is that he had tried to elicit public opinion in favour of Mohammad Maqbool Bhat who had been sentenced to death. An attempt on the part of any citizen to elicit public opinion in favour of a person who had been sentenced to death and to save him from the gallows cannot be considered as acting in any manner prejudicial to the security of the State because it cannot be considered as an attempt to overthrow or overawe the government established by law in the State. Similarly the act attributed to the detenu in paragraph (4) of the grounds cannot be considered as an act prejudicial to the security of the State as what is alleged therein is that much before the execution of Mr. Z. A. Bhutto in Pakistan, the detenu had sent hand-bills and booklets to arouse the sentiments of the people. Although it is stated that the detenu had tried to arouse the sentiments of the people against the State Government, the alleged act on the part of the detenu even if it was true could not be considered to be prejudicial to the security of the State of Jammu and Kashmir because the State of Jammu and Kashmir had nothing to do with the proposed execution of Mr. Z. A. Bhutto. Ground No. 8 which lacks material particulars appears to be a general one. These grounds are also vague insofar as the questions of security of the State is concerned.

7. It is thus clear that none of the grounds supplied to the detenu falls within the scope of clause (a) of Section 8(3) of the Act which defines the expression "acting in any manner prejudicial to the security of the State". It is further seen that even though it is stated in the grounds that the District Magistrate was of the view that the detenu remaining at large was prejudicial to the security of the State also, he did not make the order with a view to preventing him from acting in any manner prejudicial to the security of the State. A combined reading of the order of detention and the grounds furnished to the detenu shows that at the time when the order was made, the District Magistrate either had no material relevant to the security of the State on which he could act or even if he had information of those grounds, he did not propose to act on it. He, however tried to support the order of detention by stating in the course of the grounds that by the detenu remaining at large, the security of the State was likely to be prejudiced.

8. The expressions "law and order", "public order" and "security of the State" are distinct concepts though not always separate. Whereas every breach of peace may amount to disturbance of law and order, every such breach does not amount to disturbance of public order and every public disorder may not prejudicially affect the "security of the State". This is borne out from the observations made by Patanjali Sastri, J. in the decision of this Court in *Romesh Thapar v. the State of Madras* (1950 SCR 594, 600 : AIR 1950 SC 124) which are as follows :

As Stephen in his Criminal Law of England observes : "Unlawful assemblies, riots, insurrections, rebellions, levying of war, are offences which run into each other and are not capable of being marked off by perfectly defined boundaries. All of them have in common one feature, namely, that the normal tranquillity of a civilised society is in each of the cases mentioned disturbed either by actual force or at least by the show and threat of it". Though all these offences thus involve disturbances of public tranquillity and are in theory offences against public order, the difference between them being only a difference of degree, yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Indian Penal Code. Similarly, the Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Article 19(1), has placed in a distinct category those offences against public order which aim at undermining the

security of the State of overthrowing it, and made their prevention the sole justification for legislative abridgment of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression, while the rights to freedom of speech and expression, while the right of peaceable assembly "sub-clause (b)" and the right of association "sub-clause (c)" may be restricted under clause (3) and (4) of Article 19 in the interests of "public order", which in those clauses includes the security of the State. The differentiation is also noticeable in Entry of List III (Concurrent List) of the Seventh Schedule, which refers to the "security of a state" and "maintenance of public order" as distinct subjects of legislation. The Constitution thus requires a line to be drawn in the field of public order or tranquillity marking off, may be, roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind.

9. As observed by Hidayatullah, J. (as he then was) in *Dr. Ram Manohar Lohia v. State of Bihar* ((1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608) one has to imagine three concentric circles, in order to understand the meaning and import of the above expressions. 'Law and order' represents the largest circle within which is the next circle representing "public order" and the smallest circle represents "security of State". It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of State. It is in view of the above distinction, the Act defines the expressions "acting in any manner prejudicial to the security of the State" and "acting in any manner prejudicial to the maintenance of public order" separately. An order of detention made either on the basis that the detaining authority is satisfied that the person against whom the order is being made is acting in any manner prejudicial to the security of the State or on the basis that he is satisfied that such person is acting in any manner prejudicial to the maintenance of public order but which is attempted to be supported by placing reliance on both the bases in the grounds furnished to the detenu has to be held to be an illegal one vide decisions of this Court in *Bhupal Chandra Ghosh v. Arif Ali* ((1974) 2 SCR 277 : (1974) 1 SCC 253 : 1974 SCC (Cri) 78) and *Satya Brata Ghose v. Arif Ali* (AIR 1974 SC 258 : (1974) 3 SCC 600 : 1974 SCC (Cri) 82).

10. The order of detention, is therefore, liable to be quashed and the detenu is entitled to be set at liberty. The petition is accordingly allowed.

11. In view of the above conclusion, we have not gone into the other contention urged by Mr. M. K. Ramamurthi that many of the grounds furnished to the detenu being vague, the order of the detention cannot be supported even on the ground that it has been passed with a view to preventing the detenu from acting against public order.

</html