

Kamlakar Prasad Chaturvedi

Vs

State of M. P. and Another

Writ Petition (Criminal) No. 584 of 1983

(D. A. Desai, A. Varadarajan, O. Chinnappa Reddy JJ)

07.10.1983

JUDGMENT

DESAI, J.

1. (dissenting). - I have very carefully gone through the opinion prepared by my learned brother Varadarajan, J. But I regret my inability to agree with the same.

2. All the relevant facts and the grounds on which the order of detention was made against the petitioner have been succinctly set out by my learned brother and therefore, it is not necessary to recapitulate them here. However, the only ground examined by my learned brother is that the order of detention is vitiated on account of taking into consideration grounds 1 and 2 which were stale and not proximate to the time when detention order was made and therefore, they are irrelevant, and would vitiate the order of detention. Grounds 1 and 2 relate to the events that occurred on March 20, 1978 and August 9, 1980. The order of detention is made on May 6, 1983. In between there are four other incidents involving the detenu dated July 13, 1982, July 26, 1982, September 8, 1982 and January 10, 1983. The order of detention is grounded on the subjective satisfaction of the Detaining Authority that with a view to preventing the detenu from acting in any manner prejudicial to the security of Satna City, it was necessary to detain the detenu. When criminal activity of a person leads to such a drastic action as detention without trial, ordinarily a single stray incident may not unless contrary is shown be sufficient to invoke such drastic power of preventive detention. Ordinarily, drastic power of preventive detention without trial is invoked when the normal administration of criminal justice would fail to prevent the person so acting in a manner set out in sub-section (2) of Section 3 of the National Security Act, 1980. In order to avoid the charge that a stray incident seized upon to invoke such drastic power of preventive detention, the authority charged with a duty to maintain public order or assure security of the State, may keep a close watch on the activities of the miscreant for some time and repeated indulgence into prejudicial activity may permit an inference that unless preventive detention is resorted to, it would not be possible to wean away such person from such prejudicial activity. Therefore, when in 1983, an action was proposed to be taken under sub-section (2) of Section 3, the detaining authority examined the history of the criminal activity of the detenu and took into account a continuous course of conduct which may permit an inference that unless interdicted by a detention order, such activity cannot be put to an end to and accordingly proceeded to exercise the power conferred by sub-section (2) of Section 3. Obviously, if there is a big time lag between the last of the events leading to the detention order being made and the remote earlier event, the same cannot be treated as showing a continuity of criminal activity. But if events in close proximity with each other are taken into account for drawing a permissible inference that these are not stray or spasmodic events but disclose a continuous prejudicial activity, the reference to earlier events cannot be styled as stale or remote

which would vitiate the order of detention. In this connection, one may refer to *Gora v. State of West Bengal* [(1975) 2 SCR 996 : (1975) 2 SCC 14 : 1975 SCC (Cri) 391 : AIR 1975 SC 473 : 1975 Cri LJ 429]. This Court after a review of the earlier decisions observed that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. The question is whether the past activities of the detenu are such that the detaining authority can reasonably come to the conclusion that the detenu is likely to continue in his unlawful activities. This view was affirmed in *Rekhaben Virendra Kapadia v. State of Gujarat* [(1979) 2 SCC 566 : 1979 SCC (Cri) 543]. In a recent decision in *Fitrat Raza Khan v. State of Uttar Pradesh* [(1982) 2 SCC 449 : 1982 SCC (Cri) 472] this Court held that when both the incidents are viewed in close proximity, the propensity of the petitioner to resort to prejudicial activity becomes manifest and the Court therefore, rejected the contention that the earlier event was not proximate in point of time and had no rational connection with the conclusion that the detention was necessary for maintenance of public order.

3. Turning to the facts of this case, if each event is examined in close proximity with each other, the events of 1978 and 1980 referred to in grounds 1 and 2 cannot be rejected as stray or not proximate to the making of the detention order. But they provide the genesis of the continuity of the prejudicial activity of the detenu and they appear to have been relied upon for that limited purpose.

4. I would therefore, find it difficult to quash the detention order on the short ground that incidents set out in grounds 1 and 2 are stale and would be irrelevant and therefore, the detention order is vitiated. I would therefore uphold the detention order.

VARADARAJAN, J.

(for himself and Chinnappa Reddy, J.). - This writ petition under Article 32 of the Constitution is for quashing the order of detention dated May 6, 1983 passed by the second respondent District Magistrate, Satna as being arbitrary and unreasonable and for the issue of a writ of habeas corpus directing the immediate release of the petitioner Kamalakar Prasad Chaturvedi. There is also another prayer in the petition, which cannot be granted in these proceedings, and that is to direct the first respondent State of Madhya Pradesh to pay compensation to the petitioner for the wrongful detention.

6. The second respondent passed the order of detention dated May 6, 1983 against the petitioner under Section 3(2) of the National Security Act, 1980. The grounds of detention were served on the petitioner in jail and a copy thereof was served on the petitioner's brother on May 6, 1983. The following are the grounds :

(1) On March 20, 1978 petitioner unauthorisedly entered the Nagar Mahapalika at Satna and beat the Revenue Inspector Ram Biswas Tiwari in the presence of other Government employees as a result of which those employees ran away on account of fear and a first information report has been lodged against the petitioner for offences under Sections 323 and 353 IPC;

(2) On August 9, 1980, petitioner and his associates Vijay Shankar and three others formed themselves into an unlawful assembly and unauthorisedly entered the Badri Hotel situate at Station Road and beat Surender Kumar Srivastava with sticks and rod, as a result of which the customers in the hotel and passers-by ran away in panic, and a first information report has been lodged against the petitioner and others for

offences under Sections 307, 147, 149 and 501 IPC;

(3) On July 13, 1982, petitioner and his associate Kamlesh entered the Land Development Bank and beat Gaya Prasad Pandey in the presence of the Manager of the Bank and threatened to beat him with shoes at the road crossings in Satna and on account of the terror the staff of the Bank ran away and Gaya Prasad Pandey has not lodged any report;

(4) On July 26, 1982, petitioner unauthorisedly entered the office of the Public Works Department and tried to obtain by force approval of a wood contract from the Office Secretary R. P. Sharma and on his refusal to comply with his demand the petitioner took away papers and intended to beat the Office Secretary, and the office staff ran away due to the terror and a first information report has been lodged against the petitioner for offences under Sections 353 and 448, IPC;

(5) On September 8, 1982, petitioner unauthorisedly entered the office of the Land Development Bank at Satna and threatened to beat the Chairman Ram Asrey Prasad, MLA and he again threatened to beat that person on October 1, 1982 at the Guest House at Bhopal in the presence of one Gulshar Ahmed;

(6) On January 1, 1983, petitioner with his associates entered the Land Development Bank, Satna and threatened the Guard and broke the telephone and beat one Tara Chand Jain at the Dharamshala later, and a first information report was lodged at the Police Station about that incident, and on January 15, 1983 Ram Asrey Prasad, MLA has reported to the police at Jahangirabad, Bhopal that at the Tara Chand Jain Guest House the petitioner threatened to break his arm as a result of which Harijans employed in the Land Development Bank were feeling insecure and a first information report has been lodged against him on January 6, 1983;

(7) On March 25, 1983 at night, petitioner with his associates threatened Bijju Prasad Misra and Shanti Prasad Misra near Dashrath Singh garage saying that he would kill them if they gave evidence against Anup Singh and Ram Charan and a case has been registered against him on March 26, 1983 under Sections 107 and 117, IPC and a notice calling upon him to appear in the court on April 2, 1983 had been served on him and he left the court without signing the order sheet.

7. The petitioner's case is that the detention Order is politically motivated and has been passed at the instance of the Congress (I) MLA Ram Asrey Prasad as the petitioner is a social worker who had always raised his voice against goondas who are protected by the Congress (I) Party in Madhya Pradesh and had organised a number of rallies against the unscrupulous and uncivilized behaviour of the Block Development Officers with illiterate and poor farmers of the State. The second respondent has passed the order of detention mechanically without applying his mind to the facts and circumstances of the case on the basis of the first information reports lodged against the petitioner. The grounds of detention must be precise, pertinent, proximate and relevant. Vagueness and staleness would vitiate the ground of detention as held in *Shiv Prasad Bhatnagar v. State of M.P.* [AIR 1981 SC 870 : (1981) 2 SCC 456 : 1981 SCC (Cri) 489 : (1981) 3 SCR 81 : 1981 Cri LJ 594]. All the seven grounds do not fall within the realm of public order but relate only to law and order. Grounds 1 to 4 suffer from want of proximity to the order of detention. Grounds 5 and 6 are vague. Ground 7 is irrelevant. The State Government has not considered the petitioner's representation

dated May 25, 1983 expeditiously. The order of detention contravenes Article 22(5) of the Constitution and is consequently liable to be quashed.

8. The petition is opposed. The District Magistrate, Satna has contended in his counter-affidavit that the petitioner's detention has been ordered because his recent activities coupled with the past incidents are prejudicial to the maintenance of public order. The order of detention was considered necessary to prevent him from repeating the offences because the petitioner has a tendency to go on violating the laws. The grounds of attack made in the petition have been denied in the counter-affidavit and it is stated that the State Government had considered the petitioner's representation and rejected it on June 4, 1983 and even the Advisory Board has rejected his representation.

9. In addition to the above grounds of attack on the order of detention the petitioner has stated in para 13 of the writ petition that the Detaining Authority has not "suggested the relevant documents on the basis of which the satisfaction of passing the detention order has been framed". Perhaps, what is meant to be conveyed by that allegation of the petitioner is that relevant documents on the basis of which the subjective satisfaction of the Detaining Authority had been reached have not been supplied to the petitioner. The learned counsel for the petitioner submitted in the course of his arguments before us that the copies of the first information reports referred to in the grounds of detention had not been supplied to the petitioner along with grounds of detention. The said allegation in para 13 of the writ petition does not naturally appear to have been understood by the second respondent who has not stated anything about it in his parawise reply in the counter-affidavit.

10. It is not necessary to consider all the other objections raised by the petitioner in his writ petition as we propose to dispose of the petition on the ground of want of proximity of grounds 1 and 2, particularly ground 1 to the order of detention dated May 6, 1983. Those grounds relate to alleged incidents of March 20, 1978 and August 9, 1980 which are more than 5 years and about 2 years respectively prior to the date of the order of detention. This Court has taken a strict view of the law of preventive detention which deprives the citizen of his freedom without a trial and full fledged opportunity for him to prove his innocence. In *Shalini Soni v. Union of India* [AIR 1981 SC 431 : (1980) 4 SCC 544 : 1981 SCC (Cri) 38 : (1981) 1 SCR 962 : 1980 Cri LJ 1487] to which one of us was a party, it is observed : [SCC paras 4, 5, p. 548 : SCC (Cri) p. 42]

Quite obviously, the obligation imposed on the detaining authority, by Article 22(5) of the Constitution, to afford to the detenu the earliest opportunity of making a representation, carries with it the imperative implication that the representation shall be considered at the earliest opportunity. Since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Article 22(5) read with Article 19, the courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu. The representation dated July 27, 1980 was admittedly not considered and on that ground alone, the detenu was entitled to be set at liberty.

In the view that we have taken on the question of the failure of the detaining authority to consider the representation of the detenu it is really unnecessary to consider the second question raised on behalf of detenu in Criminal Writ Petition 4344 of 1980. However, this question has been squarely and directly raised and, indeed, it was the only question raised in the other two criminal writ petitions and we have, therefore, to deal with it.

11. In *Mehdi Mohamed Joudi v. State of Maharashtra* [(1981) 2 SCC 358 : 1981 SCC (Cri) 534] to

which one of us was a party the order of detention was set aside on the ground that the materials and documents were not supplied pari passu the grounds of detention and that there was delay of more than a month in disposing of the representation of the detenu. In *Taramati Chandulal Sejpal v. State of Maharashtra* [AIR 1981 SC 871 : (1981) 2 SCC 17 : 1981 SCC (Cri) 314 : 1981 Cri LJ 445] to which one of us was a party the order of detention was set aside on the ground that the documents relied upon in the order of detention were not supplied as part of the grounds along with the grounds of detention. In *Shibban Lal Saksena v. State of Uttar Pradesh* [1954 SCR 418 : AIR 1954 SC 179 : 1954 SCJ 73 : 1954 Cri LJ 456], it is observed :

The petitioner was arrested on January 5, 1953, under an order, signed by the District Magistrate of Gorakhpur, and the order expressly directed the detention of the petitioner in the custody of the Superintendent, District Jail, Gorakhpur, under sub-clauses (ii) and (iii) of clause (a) of Section 3(1) of the Preventive Detention Act, 1950, as amended by later Acts. On January 7, following, the grounds of detention were communicated to the detenu in accordance with the provision of Section 7 of the Preventive Detention Act and the grounds, it appears, were of a two-fold character, falling respectively under the two categories contemplated by sub-clause (ii) and sub-clause (iii) of Section 3(1)(a) of the Act. In the first paragraph of the communication it is stated that the detenu in course of speeches delivered at Ghugli on certain dates exhorted and enjoined upon the cane-growers of that area not to supply sugarcane to the sugar mills or even to withhold supplies from them and thereby interfered with the maintenance of supply of sugarcane essential to the community. The other ground specified in paragraph 2 is to the effect that by using expressions, some of which were quoted underneath the paragraph, the petitioner incited the cane-growers and the public to violence against established authority and to defiance of lawful orders and directions issued by Government officers and thereby seriously prejudiced the maintenance of public order.

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The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, except on the ground of mala fides [Vide *State of Bombay v. Atma Ram Sridhar Vaidya*, 1951 SCR 167 : AIR 1951 SC 157 : 52 Cri LJ 373]. A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu under Section 7 of the Act. What has happened, however, in this case is somewhat peculiar. The Government itself, in its communication dated March 13, 1953, has plainly admitted that one of the grounds upon which the original order of detention was passed is unsubstantial or non-existent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made under Section 3(1)(a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the

detention order as a whole.

12. The first two incidents which are of 1978 and 1980 are mentioned as grounds of detention in the order dated May 6, 1983. There can be no doubt that these grounds especially ground 1 relating to an incident of 1978 are too remote and not proximate to the order of detention. It is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an order of detention under Section 3(2) of the Act. Nor is it open to the Detaining Authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been mentioned as a ground of detention. Now there is no provision in the National Security Act, 1980 similar to Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 which says that where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, non-relevant, not connected or not proximately connected with such persons or invalid for any other reason, and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of detention and (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds. Therefore in the present case it cannot be postulated what view would have been taken by the Detaining Authority about the need to detain the petitioner under Section 3(2) of the Act if he had not taken into account the stale and not proximate grounds 1 and 2 into consideration in arriving at the subjective satisfaction. We are, therefore, of the opinion that the petitioner's detention is unsustainable in law. Accordingly, we quash the order of detention and direct that the petitioner be set at liberty forthwith.

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