Raj Kumar Singh

Vs

State of Bihar and Others

Criminal Appeal No. 353 of 1986

(R. S. Pathak, Sabyasachi Mukharji JJ)

26.09.1986

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This appeal and the writ petition challenge the order passed by the District Magistrate, Dhanbad under Section 12(2) of the Bihar Control of Crimes Act, 1981 (hereinafter called the said 'Act'). The order was passed on January 15, 1985 and was served on the petitioner on December 7, 1985. The impugned order was approved by the Government on January 15, 1985.

2. The said Act was an Act to make special provisions for the control and suppression of anti-social elements with a view to maintenance of public order. Section 12 deals with power to make orders for detaining persons.

3. Clause (d) of Section 2 of the Act states "Anti-Social Element" as a person who is :

> (i) either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII of the Indian Penal Code; or
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> (ii) habitually commits or abets the commission of offences under the Suppression of Immortal Traffic in Women and Girls Act, 1956; or
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> (iii) who by words or otherwise promotes or attempts to promote on grounds of religion, race, language, caste or community or any other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language group of castes or communities; or
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> (iv) has been found habitually passing indecent remarks to, or teasing women or girls; or
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> (v) who has been convicted of an offence under Section 25, 26, 27, 28 or 29 of the Arms Act of 1959.
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> 4. Under Section 3, the power is there of externment on certain conditions. Sub-sections (1) and (2) of Section 12 of the said Act provides as follows :
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> 12. Power to make orders detaining certain persons. -

(1) The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of anti-social elements cannot be prevented otherwise than by the immediate arrest of such person, make an order directing that such anti-social element be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1) exercise the power conferred upon by the said sub-section :

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

5. The other provisions are not material for the present purpose. Insofar as these are relevant have been dealt with in the judgment under appeal and it is not necessary to reiterate these again.

6. The High Court in the judgment under appeal has referred to the order of detention exhaustively. The High Court has narrated the facts in the judgment under appeal and stated as follows :

On March 11, 1984 on a confidential information a raid was organised under the leadership of the officer-in-charge of Dhanbad Police Station to apprehend one Sri Raghunath Singh an absconder detenu of the National Security Act. According to the confidential information he was going to witness a Qwali programme at Sijua gate within Jagota Police Station. As soon as the raiding party reached the Sijua gate they saw that Raghunath Singh was coming out of club and was going towards Sijua More. The police cordoned him and told him about his arrest under the National Security Act. On this the aforementioned Raghunath Singh called one Sakaldeo Singh who was coming towards him alongwith his associates duly armed. Sakaldeo Singh immediately reached the spot and asked the detenu and his other associates to open fire. As ordered the detenu opened fire on the police party. The police party, however, escaped injury. Meanwhile Raghunath Singh took the position and opened fire from his revolver which hit the SI Sri R.K. Verma, a member of the raiding party who fell on the ground. The police party also opened fire but the detenu and his associates, quite in number, under the coverage of firing fled away by breaking the cordon of the police party. The incident took place at about 1.50 a.m. in the presence of a large gathering which was witnessing the Qwali programme. This created great panic and alarm amongst the people who were witnessing the program and they started running helter and skelter for their lives. A complete confusion prevailed in the programme and the police had a hard time to control the situation. This adversely affected the public order. The people were so much afraid that they stopped moving freely in the area. It is alleged that the detenu is a terror in the area and nobody dares to speak against him. He is an uncrowned king of the Mafia World and the people living in the area are under the constant threat of life and property. A case bearing

Jogta P.S. Case No. 22 dated March 11, 1984 under Section 142/149/307/326/353/333/224/225 IPC/27 Arms Act was registered for this incident and charge-sheet had already been submitted in the case. Besides the aforesaid ground two cases have been referred to in the order of detention as background to show the criminality of the detenu :

(1) Kenduadih P.S. Case No. 43 dated March 11, 1983 (sic '84) under Section 302/34 IPC/25(1-A)/27 of the Arms Act/3/5 of the Explosive Substance Act. In this case the detenu with his associates is alleged to have murdered one Sri Nagendra Singh in broad day-light and a charge sheet in this case had already been submitted.

(2) The other case referred to as a background is that numbered as Kenduadih P.S. Case No. 31 dated March 11, 1984 under Section 25(1-A)/35 Arms Act. In this case a DBBL gun looted in Keswar P.S. Case No. 5/84 under Section 395 of the Indian Penal Code was recovered from the detenu's house besides cartridges of various arms. A charge-sheet in this case had also been submitted.

7. Upon these materials, the District Magistrate, in his order of detention, has reiterated that he was satisfied that the petitioner is an anti-social element and habitually commits offences punishable under Chapters XVI and XVII of the Indian Penal Code and as such his movements and acts adversely affect the public order.

8. The District Magistrate further stated that he was satisfied on ground No. 1 referred to hereinbefore.

9. Insofar as Jogta P.S. Case No. 22 dated March 11, 1984 is concerned, it was with regard to the same incident which resulted in the detention of the petitioner/appellant. So far as the background was concerned, the incident No. 2 mentioned therein was Kenduadih P.S. Case No. 31 dated March 11, 1984 with regard to the same date i.e. March 11, 1984 but with regard to a different occurrence. In that case a gun was looted and a case under IPC was instituted under Section 395 of the Indian Penal Code. The said gun was recovered from the petitioner's/appellant's house beside cartridges of various arms and a charge-sheet had been submitted in connection with Jogta P.S. Case No. 22 dated March 11, 1984. These cases were pending at the relevant date. Therefore, there was no question of the acquittal or termination of the petitioner one way or the other in respect of both the incidents of the same date. In respect of incident No. 1 referred to hereinbefore i.e. Kenduadih P.S. Case No. 43 dated March 11, 1984 under Section 302/34 IPC/25(1-A)/27 Arms Act/3/5 Explosive Substance Act in which the petitioner/appellant and his associates are alleged to have murdered Sri Nagendra Singh in the broad day-light, a charge-sheet had been submitted but the case had not been tried or terminated in any manner. All these cases were pending disposal.

10. There is a proximity between these incidents betraying a nature and a tendency of committing these offences. But it cannot be denied that these indicate, in the facts of this case, that the petitioner/appellant was one who habitually committed offences which are at least punishable under IPC.

11. We have noted who is anti-social element under the Act. The petitioner/appellant has not yet been convicted under any of these sections referred to hereinbefore. So far the incidents referred to hereinbefore betray criminal propensity. The first incident is of a case which was one year prior to the date of the detention order and the other incident was of the same date. If in this background, an

appropriate authority charged with the implementation of the Act comes to the satisfaction that the petitioner/appellant is one who is habitually committing or abetting the commission of offences, such a conclusion is neither irrational nor unreasonable.

12. In Vijay Narain Singh v. State of Bihar [(1984) 3 SCR 435 : (1984) 3 SCC 14 : 1984 SCC (Cri) 361 : AIR 1984 SC 1334], this Act came up for consideration by his Court. But in this case the facts were entirely different. In that case the petitioner was facing trial for offences under Section 302 read with Sections 120-B, 386 and 511 of the Indian Penal Code and was allowed to be enlarged on bail by the High Court. But before the petitioner was released in that case the District Magistrate passed an order on August 16, 1983 under Section 12(2) of the Act for detention of the petitioner. The grounds of detention supplied to the petitioner related to the incidents which took place in 1975 and 1982. There is a gap of 6-7 years in between. The majority of the judges in that decision (O. Chinnappa Reddy and E.S. Venkataramiah, JJ.) observed that the law of preventive detention is hard law and therefore should be strictly construed. Care should, therefore, be taken that liberty of a person is not jeopardized unless his case fell squarely within the four corners of the relevant law. A.P. Sen, J. disagreed. It is not necessary to discuss the decision in detail in view of the facts of that case and difference of the facts in this case. We only reiterate that what the majority of the learned Judges said was that while adequacy or sufficiency was no ground of a challenge, relevancy or proximity were grounds of challenge. We may respectfully add that proximity would be relevant in order to determine whether an order of detention was arrived at irrationally or unreasonably. It is well settled that the detaining authority is not the sole judge of what national security or public order requires. But neither is the court the sole judge of the position. When power is given to an authority to act on certain facts and if that authority acts on relevant facts and arrives at a decision which cannot be described as either irrational or unreasonable, in the sense that no person instructed in law could have reasonably taken that view, then the order is not bad and the court cannot substitute its decision or opinion, in place of the decision of the authority concerned on the necessity of passing the order. See in this connection the observations of Barium Chemicals Ltd. v. Company Law Board [1966 Supp SCR 311, 354 and 363 : AIR 1967 SC 295].

13. Preventive detention for the social protection of the community is, as noted and observed in Vijay Narain Singh case [(1984) 3 SCR 435 : (1984) 3 SCC 14 : 1984 SCC (Cri) 361 : AIR 1984 SC 1334], a hard law but, it is a necessary evil in the modern society and must be pragmatically construed, so that it works. That is how law serves the society but does not become an impotent agent. Anti-social elements creating havoc have to be taken care of by law. Lawless multitude bring democracy and constitution into disrepute. Bad facts bring hard laws - but these should be properly and legally applied. It should be so construed that it does not endanger social defence or the defence of the community, at the same time does not infringe the liberties of the citizens. A balance should always be struck.

14. The executive authority is not the sole judge of what is required for national security or public order. But the court cannot substitute its decision if the executive authority or the appropriate authority acts on the proper materials and reasonably and rationally comes to that conclusion even though a conclusion with which the court might not be in agreement. It is not for the court to put itself in the position of the detaining authority and to satisfy itself that untested facts reveal a path of crime provided these facts are relevant. See in this connection the observations of O. Chinnappa Reddy, J. in Vijay Narain Singh case [(1984) 3 SCR 435 : (1984) 3 SCC 14 : 1984 SCC (Cri) 361 : AIR 1984 SC 1334] at pages 440 and 441 : (See p. 19, para 1)

15. In the facts of this case and having regard to the nature of the offences, the impugned order

cannot be said to be invalid and improper one. The High Court has very exhaustively dealt with this aspect and we respectfully agree with the High Court's view.

16. There is no analogy between the instant case and the facts of Vijay Narain Singh case [(1984) 3 SCR 435 : (1984) 3 SCC 14 : 1984 SCC (Cri) 361 : AIR 1984 SC 1334] decided by this Court.

17. On materials on record it cannot be said as the High Court has rightly pointed out that the power of preventive detention has been used to clip the 'wings of the accused' who is involved in a criminal prosecution. Certain allegations had been made that all materials had not been supplied to the accused. This is not true because as the High Court noted that all relevant FIR's were received by the petitioner and in token whereof he had put his signature in black and white in his own hand.

18. The fact that the petitioner was in jail has been taken into consideration. How these factors and to what extend these should be taken into consideration have been discussed by this Court in Suraj Pal Sahu v. State of Maharashtra [(1986) 4 SCC 378]. It is not necessary to reiterate them. In the instant case the limits have not been transgressed.

19. In the background of the facts of this case that all the relevant documents were in fact supplied and no other document was asked for, the observations of this Court in Smt. Ichchu Devi Choraria v. Union of India [(1981) 1 SCR 640, 651 : (1980) 4 SCC 531 at 539 : 1981 SCC (Cri) 25 : AIR 1980 SC 1983] on which reliance was placed by Mr Garg on behalf of the petitioner/appellant do not apply.

20. Mr Goburdhan, on behalf of the State of Bihar, rightly pointed out that in the facts and circumstances of this case and the background of the scheme of this Act, there was no scope of the application of the principles reiterated by this Court in Ibrahim Ahmed Batti v. State of Gujarat [(1983) 1 SCR 540, 558 : (1932) 3 SCC 440, 454-55 : 1983 SCC (Cri) 66 : AIR 1982 SC 1500]. Similarly the observations of this Court in State of Punjab v. Jagdeo Singh Talwandi [(1984) 2 SCR 50, 62 and 63 : (1984) 1 SCC 596, 609 : 1984 SCC (Cri) 135] upon which Mr Garg relied can have no application. All the relevant documents were supplied. All the statutory safeguards were complied with.

21. In view of the background in the facts and circumstances of this case and the grounds mentioned in the affidavit of the District Magistrate filed before the High Court in the in the case under appeal as well as in writ petition in this Court and the facts found by the High Court which are based on cogent and reliable evidence, there is no ground for interference with the order of detention.

22. Preventive detention as reiterated is hard law and must be applied with circumspection rationally, reasonably and on relevant materials. Hard and ugly facts make application of harsh laws imperative. The detenu's rights and privileges as a free man should not be curbed.

23. No other points were urged before us. This Court has reiterated in Suraj Pal Sahu v. State of Maharashtra [(1986) 4 SCC 378] the relevant aspect of the preventive detention law. In that view of the matter it is not necessary to reiterate those principles again here.

24. Preventive detention is a necessary evil in the modern restless society. But simply because it is an evil, it cannot be so interpreted as to be inoperative in any practical manner. Judged by all relevant standards, the impugned order of detention in the case of the petitioner cannot be said to be either illegal or beyond the authority of law.

25. Before we conclude we must point out that another point was taken that in the order there was no mention of the period of detention. There could not be an indefinite detention. The State Government has clearly notified the period of detention of the petitioner and indicated that he should be in detention till December 6, 1986. This appears at Annexure I at page 52 of the Paper Book Criminal Appeal No. 353 of 1986. The said order was passed under Section 22 of the said Act by the State Government.

26. In the premises the writ petition fails and is dismissed. The criminal appeal is also dismissed.

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