Fazal Ghosi

Vs

State of U.P. and Others

Vs

State of U.P. and Others

Ayaz Ahmad

Vs

State of U.P. and Others

Riaz Ahmad

Vs

State of U.P. and Others

Writ Petitions Nos. 300 and 301 of 1986 and Criminal Appeals Nos. 374-A and 411 of 1986

(CJI R. S. Pathak, V. Khalid JJ)

29.06.1987

JUDGMENT

PATHAK C.J. -

1. The petitioners Fazal Ghosi and Wahid in the two writ petitions before us and the appellants Ayaz Ahmad and Riaz Ahmad in the two criminal appeals are aggrieved by the orders of detention made respectively in respect of them under sub-section (2) of Section 3 of the National Security Act, 1980. The petitioners Fazal Ghosi and Wahid filed writ petitions in the High Court of Allahabad against the detention orders concerning them and those writ petitions were dismissed. They have now filed the present petitions under Article 32 of the Constitution. The appellants Ayaz Ahmad and Riaz Ahmad filed writ petitions in the High Court of Allahabad against the detention orders concerning them, and those writ petitions having been dismissed they have appealed here by special leave. All the four cases have been heard together. It is agreed between the parties that although separate orders of detention were made under sub-section (2) of Section 3 of the National Security Act against the various petitioners and appellants the grounds raised in this Court against their detention orders are identical.

2. It appears that consequent upon the opening of the Ram Janam Bhumi temple at Ayodhya, Faizabad, there was considerable agitation among the Muslim community. According to the State Government, several members of the community were returning from the mosque after their afternoon prayers, and at Bholanath Ka Kuan, Abdul Aziz Road, Lucknow they were addressed by Fazal Ghosi and his son Wahid in language inciting them to beat the police and the Provincial

Armed Constabulary. At another place, Sarkata Nala, a large number of the Muslim community are said to have been similarly addressed by the appellants, Ayaz Ahmad and Riaz Ahmad. It is alleged that in consequence the crow commenced pelting stones and discharged firearms on the government officials and the police personnel assembled there as as a result of which they received injuries. The petitioners and the appellants were arrested along with other persons, and a first information report was lodged in respect of each of them for offences under Sections 147/148/149/307 and 332 of the Indian Penal Code. The petitioners and the appellants applied for grant of bail, and while the bail applications were pending the District Magistrate, Lucknow, purporting to act under sub-section (3) of Section 3 of the National Security Act, served a detention order on February 20, 1986 on each of the four detenus. This was followed on February 21, 1986 by service of the grounds of detention.

3. Learned counsel for the detenus challenges the detention orders on several grounds. In our opinion, it is not necessary to consider all the points raised because it appears to us that the cases can be disposed of on a short ground. The contention on behalf of the detenus is that there was no material before the District Magistrate on the basis of which he could form the opinion that the detenus would act in future in a manner prejudicial to the maintenance of public order. It is pointed out that the National Security Act provides for preventive detention, and preventive detention is intended where it is apprehended that the person may act prejudicially to one or more of the considerations specified in the statute. There is no doubt that preventive detention is not intended as a punitive measure, as a curtailment of liberty by way of punishment for an offence already committed. Section 3 of the Act clearly indicates that the power to detain thereunder can be exercised only with a view to preventing a person from acting in a manner which may prejudice any of the considerations set forth in the section. In the present case, we are unable to discover any material to show that the detenus would act in the future to the prejudice of the maintenance of public order. Even if it is accepted that they did address the assembly of persons and incited them to lawlessness there is no material to warrant the inference that they could repeat the misconduct or do anything else which would be prejudicial to the maintenance of public order. The District Magistrate, it is true, has stated that the detention of the detenus was effected because he was satisfied that it was necessary to prevent them from acting prejudicially to the maintenance of public order, but there is no reference to any material in support of that satisfaction. We are aware that the satisfaction of the District Magistrate is subjective in nature, but even subjective satisfaction must be based upon some pertinent material. We are concerned here not with the sufficiency of that material but with the existence of any relevant material at all.

4. In the circumstances, the detention orders in respect of the four detenus must be quashed.

5. The writ petitions and the appeals are allowed, the order of detention in respect of each detenu is quashed, and the detenus are entitled to be set at liberty unless their detention is required in connection with other cases.

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