

Smt. Shashi Aggarwal

Vs

State of U. P. and Others

Writ Petition (Criminal) No. 735 of 1987

(B.C. Ray, K. Jagannatha Shetty JJ)

12.01.1988

ORDER

JAGANNATHA SHETTY, J. –

1. The arguments of this case concluded at the close of the court hours on December 18, 1987. We then made the following order :

We will give the reasons later. But we make the operative order here and now.

The detention order is quashed. The detenu will be set at liberty forthwith.

2. Here are the reasons : In this writ petition, the validity of the detention of Arun Aggarwal has been challenged. He has been detained by the District Magistrate, Meerut by an order dated August 3, 1987 made under Section 3(2) of the National Security Act, 1980. The government, after the receipt of opinion of the Advisory Board, has approved the detention as required under Section 12(1) of that Act. The impugned order reads as under :

# Office of the District Magistrate, Meerut ORDER##

As I am satisfied as District Magistrate, Meerut, that issue of order to prevent Shri Arun Aggarwal, son of Shri Rattan Singh, resident of 234, 'L' Block, Shastri Nagar, Police Station Medical, Meerut from doing act against the maintenance of public order is necessary.

Therefore, in exercise of power given in sub-section (3) of Section 3 of National Security Act, 1980 (Act 65 of 1980), I hereby give order that the abovesaid Shri Arun Aggarwal, son of Shri Rattan Singh, resident of 234, 'L' Block Shastri Nagar, Police Station Medical, Meerut be detained in general category in District Meerut Jail in the custody of Superintendent of the said jail under sub-section (2) of Section 3 of the abovesaid Act.

Passed today dated August 3, 1987 under my signature and seal.

3. There are as many as five grounds of detention set out in the order. All relate to the offence said to have been committed by Arun Aggarwal on May 19, 1987. Two of the offences are said to have been committed at 9 a.m. on that day, the other two offences at 9.30 a.m. and the fifth one was alleged to have been committed, between 9.30 a.m. to 1 p.m. on the same day. In each of the grounds there is a mention to the following effect :

Due to your above ill acts there broke out communal riots causing heavy loss to

properties and lives of the people and your this ill act has spread fear and terror in the general public of Meerut city. In this manner, you have committed such an act which is against public law and order.

4. All the cases referred to in the grounds are non-bailable offences. In relation to those offences, Arun Aggarwal was arrested as an accused on August 2, 1987. The detention order was passed and served on August 3, 1987. The order particularly stated :

At present you are detained in District Jail, Meerut and you are trying to come out on bail and there is enough possibility of your being bailed out.

5. Before we consider the main ground raised in the petition, we may make one point clear. The order of detention repeatedly states that the detenu committing the alleged five offences set out in the detention order was the cause for breaking out of communal riots in Meerut city. But in the counter-affidavit filed on behalf of the respondents, it has been stated "that the communal riots broke out in Meerut on April 14, 1987 on the occasion of Shab-e-Barat. That was controlled by the administration. However, in the night intervening between May 18/19, 1987, again a communal riot broke out". But all the offences said to have been committed by the detenu were after 9 a.m. on May 19, 1987. It was not in the intervening night between May 18/19. It was, therefore, inaccurate to state that the communal riot broke out due to the incidents attributed to the detenu on May 19, 1987.

6. The primary question however, is whether the detention of Arun Aggarwal could be justified solely on the ground that he was trying to come out on bail and there was enough possibility of his being bailed out and he would then act prejudicially to the interest of the public order. Mr. Yogeshwar Prasad, learned counsel for the State, sought to justify the detention order relying upon the decision of this Court in *Alijan Mian v. District Magistrate, Dhanbad* ((1983) 3 SCR 939 : (1983) 4 SCC 301 : 1983 SCC (Cri) 840). The counsel also said that the subsequent two decisions of this Court to which we will make reference later, are not in tune within the ratio of the decision in *Alijan Mian* case ((1983) 3 SCR 939 : (1983) 4 SCC 301 : 1983 SCC (Cri) 840).

7. We will first consider what the case was about in *Alijan Mian* case ((1983) 3 SCR 939 : (1983) 4 SCC 301 : 1983 SCC (Cri) 840). The detention order considered in that case contained statement that the District Magistrate was satisfied that the detenu was likely to be released on bail and if he was allowed to remain at large, he would be indulging in activities prejudicial to the maintenance of public order. This Court refused to interfere with that detention order on the ground that the detaining authority was justified in forming that opinion. The conclusion of this Court was evidently on the basis of material placed before the detaining authority in that case.

8. The principles applicable in these types of preventive detention cases have been explained in several decisions of this Court. All those cases have been considered in a recent decision in *Poonam Lata v. M. L. Wadhawan* ((1987) 4 SCC 48 : 1987 SCC (Cri) 685). The principles may be summarised as follows :

Section 3 of the National Security Act does not preclude the authority from making an order of detention against a person while he is in custody or in jail, but the relevant facts in connection with the making of the order would make all the difference in every case. The validity of the order of detention has to be judged in every individual case on its own facts. There must be material apparently disclosed to the detaining authority in each case that the person against whom an order of

preventive detention is being made is already under custody and yet for compelling reasons, his preventive detention is necessary.

9. We will now refer to the two decisions which according to Mr. Yogeshwar Prasad are not in tune with the ratio of the decision in Alijan Mian case ((1983) 3 SCR 939 : (1983) 4 SCC 301 : 1983 SCC (Cri) 840). In Ramesh Yadav v. District Magistrate, Etah ((1985) 4 SCC 232, 234 : 1985 SCC (Cri) 514), this Court observed : [SCC p. 234 : SCC (Cri) p. 516, para 6]

On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehensive of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.

What was stressed in the above case is that an apprehension of the detaining authority that the accused if enlarged on bail would again carry on his criminal activities is by itself not sufficient to detain a person under the National Security Act.

10. Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order. That has been made clear in Binod Singh v. District Magistrate, Dhanbad ((1986) 4 SCC 416, 421 : 1986 SCC (Cri) 490), where it was observed : [SCC (Cri) p. 495, para 7]

A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens.

11. There is, to our mind, nothing in these two decisions which runs counter to the decision in Alijan Mian case ((1983) 3 SCR 939 : (1983) 4 SCC 301 : 1983 SCC (Cri) 840).

12. In the instant case, there was no material made apparent on record that the detenu, if released on bail, is likely to commit activities prejudicial to the maintenance of public order. The detention order appears to have been made merely on the ground that the detenu is trying to come out on bail and there is enough possibility of his being bailed out. We do not think that the order of detention could be justified only on that basis.

13. These were the reasons upon which we quashed the order of detention.

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