

Yogendra Murari

Vs

State of U.P. and Others

Writ Petition (Criminal) No. 259 of 1988

(L. M. Sharma JJ)

08.08.1988

JUDGMENT

SHARMA, J. –

1. The writ petitioner has by the present application under Article 32 of the Constitution challenged the order of his detention dated December 7, 1987, passed under Section 3 (2) of the National Security Act, 1980. Earlier he had unsuccessfully moved the Allahabad High Court under Article 226.
2. The District Magistrate has mentioned three incidents in the grounds served on the petitioner : (i) the petitioner is alleged to have fired with his revolver at one Shri Azam with the intention to kill him but he narrowly escaped. As a result of this attack at 5.00 p.m. on December 17, 1986, according to the detaining authority, "terror spread over in the entire area and all the shopkeepers who had their shops in the nearby locality closed down their shops out of panic and fear. This incident created a public order problem "; (ii) the petitioner is said to have made another bid on June 21, 1987 to kill another person named Aziz who also narrowly escaped; and (iii) on July 27, 1987, at about 7.45 p.m. the petitioner with his colleagues killed Shri Aziz in front of the Lucknow District Jail. The persons who were present there ran away out of fear. The jail authorities returned the fire and the petitioner then threw a hand grenade. On being challenged again, the party hurled bombs and the petitioner indiscriminately fired from his pistol. This incident seriously disturbed the public order. The details of the panic which struck the locality are mentioned in the grounds.
3. Criminal cases were registered against the petitioner with respect to each of the three incidents but it appears that evidence against the petitioner was not forthcoming, although several persons supported the prosecution version of the third incident dated July 27, 1987 by their statements recorded under Section 161 of the Criminal Procedure Code. The petitioner was, however, in custody and moved an application for bail. The District Magistrate after considering the relevant circumstances came to the conclusion that the petitioner was likely to be enlarged on bail by the criminal court and since he was further of the view that if the petitioner was not detained, he would be indulging in activities prejudicial to the maintenance of public order, the order of detention was made.
4. Mr R. K. Garg, learned counsel for the petitioner has contended that the order of detention is vitiated on several counts. The learned counsel argued that as only one of the three incidents, mentioned in the grounds, can be held to be connected with the public order problem, the order must be held to be bad and further to was wrong for the District Magistrate and the High Court to have referred to the first two incidents. Besides, the order having been passed on account of the

third incident which happened more than four months earlier ought to be set aside on the ground of undue delay alone. It was further said that the order was vitiated as the petitioner's bail application in the criminal court was not opposed by the State; and in any view the District Magistrate had no jurisdiction for detaining the petitioner with a view to frustrate the criminal court's order enlarging the petitioner on bail. Referring to the first information report about the July occurrence it was pointed out that 14 persons besides the petitioner were made accused in the case and the authority has illegally discriminated against the petitioner in detaining him while the others have been left free. It was also stated that all the relevant records were not placed before the District Magistrate before passing the detention order and a copy of the application filed at the instance of the petitioner by way of counter-case was not served on him. Lastly it was suggested that in view of the respondent's reply it appears that probably the petitioner representation was not considered and disposed of by the Centre Government at all.

5. The High Court has not considered it essential to decide, whether the first two incidents mentioned in the grounds served on the petitioner are referable to public order problem as the third ground by itself is capable of sustaining the order. Although Mr Garg indicated that in his view the provisions of Section 5-A introduced in the Act by an amendment in 1984 must be held to be ultra vires, U. P. he did not invite us to decide this point and suggested that we may refrain making any observation on this aspect, as the question may have to be decided by a larger Bench. Since the Act before the court in the above case did not contain any provisions corresponding to Section 5-A of the present Act, the decision cannot be of any help of the petitioner. However, so far as the first incident of December 17, 1986 is concerned, it appears to have created a public order problem. In any view the impugned order cannot be struck down on the ground that the second incident or for that matter both the first and the second incidents did not relate to disturbance of public order.

6. We also do not find any merit in the plea that the impugned order is bad on account of delay. It is true that the ground which led the District Magistrate to pass the detention order became available in July and the order was passed only in December but it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay. (See *K. Aruna Kumari v. Government of Andhra Pradesh* and the cases mentioned there.) It is necessary to consider the circumstances in each individual case to find out whether the delay has been satisfactorily explained or not. In the present case the petitioner was in custody and there could not be any apprehension of his indulging in illegal activities requiring his detention until the grant of bail by the criminal court became imminent. Besides, enquiry was also proceeding. This aspect has been explained in the detention order itself as also by the District Magistrate in his affidavit and it is clear that there has been no undue delay on his part in taking action. Besides, the distinction between such delay and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution as pointed out in *Rajendrakumar Natvarlal Shah v. State of Gujarat*, is also relevant here especially because of the background of the petitioner's antecedents taken into account by the detaining authority showing his propensity for acts which were likely to disturb public order. We do not see any objection to the District Magistrate referring the first two incidents in this context, specially when the first incident related to disturbance of public order.

7. So far as the allegation that the petition's prayer for bail was not opposed, it is strongly denied in the counter-affidavit. The apprehension of the District Magistrate that the prayer in this regard was likely to be granted does not mean that the application was unopposed. The District Magistrate was expecting an adverse order on account of the fact that the witnesses of the incident appeared to be reluctant to support their earlier statements. The situation can be well appreciated as it is common knowledge that due to deteriorating law and order situation in the country and mounting aggressive

intimidating postures of accused persons, witnesses are failing to summon courage in assisting the administration of justice by going before a court of law to state what they have seen or heard.

8. It has been contended on behalf of the petitioner that the detention order was passed with a view to frustrate the bail allowed to the petitioner in the criminal case. Reliance was placed on the observations in *Maledath Bharathan Malyali v. Commissioner of Police* A perusal of the detention order in the case before us and of the affidavit of the District Magistrate, makes it abundantly clear that he did not act for defeating the bail order. He was of the view that having regard to the entire circumstances appearing from the records placed before him, the petitioner when let out on bail, was likely to create public order problem. The District Magistrate came to this conclusion on the consideration of relevant materials. Copies of the documents were served on the petitioner along with the grounds. The scope for passing an order of detention against an accused immediately after he is allowed bail or at a point of time when he is likely to be (*Alijan Mian v. District Magistrate, Dhanbad*; *Poonam Lata v. M. L. Wadhawan* and several other cases) and we do not consider it necessary to against discuss the point. It is true that in such cases great caution should be exercised in scrutinising the validity of the order, which is based on the very same charge which is to be tried by a criminal court, and according we have given our anxious consideration to the entire circumstances of the case but do not find any fault with the impugned order.

9. There is no merit whatsoever in the petitioner's grievance of discrimination on the ground that the other co-accused persons have not been detained. The role of the petitioner and that of the other are not identical and the reasonable apprehension as to their future conduct must depend on the relevant facts and circumstances which differ from individual to individual. It would have been wrong on the part of the detaining authority to take a uniform decision in this regard only on the ground that the persons concerned are all joined together as accused in a criminal case.

10. The plea of the petitioner that all the relevant materials were not placed before and considered by the District Magistrate is made in vague terms and is not fit to be accepted. The detaining authority in his counter-affidavit has denied the allegation and we see no reason to disbelieve him. The learned counsel further urged that the petitioner was not supplied with a copy of the application filed at his instance as a cross-case and he was, therefore, prejudiced in effectively making his representation. We do not find any force in this argument as it cannot be presumed that the petitioner was prejudiced by non-service of a copy of his own application.

11. So far the last point mentioned above is concerned it was argued that since the petitioner filed his representation on December 22, 1987 and according to the statement of the Central Government, it disposed of some representation of another date, it must be assumed that the representation was not considered and disposed of. We do not find any merit in the presumption raised by the petitioner on account of the error in the date mentioned by the Central Government as the matter stands clarified by the counter-affidavit of Shri Shiv Basant, Deputy Secretary, Ministry of Home Affairs, Government of India stating that it was the petitioner's representation which was disposed of and the error pointed out was accidental. We are satisfied that the error in the date referred to by the petitioner was clerical in nature and that the Central Government had, in fact, rejected the petitioner's representation after duly considering it.

12. In the result, we do not find any merit in any of the points pressed on behalf of the petitioner and the writ application is, therefore, dismissed.

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