

Smt. Angoori Devi for Ram Ratan

Vs

Union of India and Others

Writ Petitions (Criminal) Nos. 353 and 491 of 1988

(G. L. Oza, K. Jagannatha Shetty JJ)

06.12.1988

JUDGMENT

K. JAGANNATHA SHETTY, J. –

1. These two petitions under Article 32 of the Constitution are for issue of a writ of habeas corpus for the release of Ram Ratan and Hawa Singh, who have been detained under Section 3(2) of the National Security Act of 1980.
2. Ram Ratan was a Head Constable and Hawa Singh was constable in the Security Unit of Delhi Police. While on duty, they were together said to have committed a cognizable offence under Section 392/34 of IPC along with a member of the public. Immediately thereafter they were arrested and placed on suspension. The court, however, released them on bail. While the case was under investigation, the Commissioner of Police, Delhi (Mr. Vijay Karan) though fit to detain them under the National Security Act. Accordingly, he made the orders which are impugned herein. Subsequently, they have been summarily dismissed from service under Article 311(ii)(b) of the Constitution.
3. The principal contention urged for the petitioners relates to the oft-repeated question, - that the ground of detention has no nexus to the "public order", but is purely a matter for "law and order".
4. In order to appreciate the contention urged in this regard, it will be necessary to have regard to the orders of detention. The orders passed against the two detenus are on different dates, but are similar in terms and it may be sufficient if we refer to one of the orders. The ground of detention in each case relates to one incident which has been stated as follows :

That on July 22, 1988, one Shri Jasbir Singh s/o Shri Inder Singh r/o 5869/3 Ambala City (Haryana) reported that on July 21, 1988 he purchased some TV parts from Lajpat Rai Market. After purchase, he loaded the TV parts on a rickshaw and asked the rickshaw puller Shanker s/o Shri Vasudev r/o Old Lajpat Rai Market, Near Hanuman Mandir, who was known to him to take the TV parts to Patiala Transport near Libra Service Station G.T.K. Road. He himself went alone to patiala transport and waited for the rickshaw puller. At about 11 p.m., the rickshaw puller informed him that two police personnel namely H. C. Ram Ratan and Constable Hawa Singh who were previously posted in P. S. Kotwali along with a member of the public Prabhu Dayal who he knew had stopped his rickshaw near B-Block, Industrial Area, G.T.K. Road. Head Constable Ram Ratan caught him and started beating him and asked for a receipt for the goods. Constable Hawa Singh and Prabhu Dayal removed the parts and loaded in a TSR and went away.

5. It was also stated that those TV parts were recovered from the detenus and the case was registered under Section 392/34 IPC in which the investigation was progressing.

6. There then, it was said :

From the above criminal activity of Shri Ram Ratan it is clear that he, being a police officer and bound to provide security and safety to the public, has himself committed a heinous offence which has created a sense of insecurity in the minds of public at large and is prejudicial to the maintenance of public order.

Keeping in view the above criminal activity of the said Head Constable Ram Ratan, it has been felt necessary to detain him under Section 3(2) of the National Security Act, 1980 so that his such activity which is prejudicial to the maintenance of public order could be stopped.

# \* \* \* Sd/- (Vijay Karan) Commissioner of Police, Delhi##

7. As is obvious from the order, the Commissioner was satisfied with the need to detain the person, firstly because, the person being a police officer was bound to provide security and safety to the public and secondly, the offence committed was "heinous" which has created a sense of insecurity in the minds of the public at large.

8. The same was highlighted before us by Shri Mahajan, learned counsel for the respondents justifying the detention orders. The counsel argued that though the incident in question was a simple case of robbery, since it was committed by persons belonging to the disciplined police force, it would certainly disturb the public safety in the life of the community with a sense of insecurity in their minds.

9. It is true that the detenus belonged to the police force in the national capital. Public look to the police for safety. Society regards them as their guardian for its protection. Society needs a properly trained and well disciplined police force whom it can trust in all respects. They are the real frontline of our defence against violence. They have to maintain law and order. They have to safeguard our freedoms and liberty. They have to prevent crime and when crime is committed, they have to detect it and bring the accused to justice. They must be available at all hour. They are always expected to act and indeed must act properly. It is reprehensible if they themselves indulge in criminal activities.

10. We are not, as we cannot, be unmindful of the danger to liberties of people when guardians of law and order themselves indulge in undesirable acts. But the law of preventive detention is not different for police personnel. It is the same law that we apply to police as well as to public. We cannot, therefore, apply a different standard in respect of acts individually committed by any police officer. The subjective satisfaction of the detaining authority with respect to the persons sought to be detained should be based only on the nature of the activities disclosed by the grounds of detention. The grounds of detention must have nexus with the purpose of which the detention is made.

11. The question in this case is whether the crime in question has any impact on "public order" as such. Courts have strived to give to this concept a narrower construction than what the literal words suggest. In the Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia ((1960) 2 SCR 821, 833 : AIR 1960 SC 633 : 1960 Cri LJ 1002) Subba Rao, J., as he then was, observed (at p. 833) :

But in India under Article 19(2) this wide concept of "public order" is split up under

different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. All the grounds mentioned therein can be brought under the general head "public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is therefore something which is demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postulated that "public order" is synonymous with public peace, safety and tranquillity.

12. The impact on "public order" and "law and order" depends upon the nature of the act, the place where it is committed and motive force behind it. If the act is confined to an individual without directly or indirectly affecting the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquillity, it may fall within the orbit of the public order. This is precisely the distinguishing feature between the two concepts. Sometimes, as observed by Venkatchaliah, J. in *Ayya alias Ayub v. State of U. P.* ((1989) 1 SCC 374) : "What might be an other wise simple 'law and order' situation might assume the gravity and mischief of a 'public order' problem by reason alone of the manner or circumstances in which or the place at which it is carried out." Necessarily, much depends upon the nature of the act, the place where it is committed and the sinister significance attached to it.

13. As for example dare-devil repeated criminal acts, open shoot out, throwing bomb at public places, committing serious offences in public transport, armed persons going on plundering public properties or terrorising people may create a sense of insecurity in the public mind and may have an impact on "public order". Even certain murder committed by persons in lonely places with the definite object of promoting the cause of the party to which they belong may also affect the maintenance of 'public order'.

14. In *Abdul Aziz v. Distt. Magistrate, Burdwan* ((1973) 1 SCC 301 : 1973 SCC (Cri) 321 : (1973) 2 SCR 646) this Court has stated so. There two grounds were furnished to the detenu in justification of the order of detention. It was stated : [SCC p. 302 : SCC (Cri) p. 322, para 3]

... firstly, that the petitioner and his associates were members of an extremist party (CPI-ML), that on August 16, 1971, they armed themselves with lethal weapons like firearms, choppers and daggers with a view to promoting the cause of their party, that they raised the house of one Durgapada Rudra and murdered him and that the aforesaid incidents created a general sense of insecurity, as a result of which the residents of the locality could not follow their normal avocations for a considerable period. The second ground of detention is that on May 22, 1971 the petitioner and his associated raided the house of Smt. Kshetromoni Choudhury and murdered one Umapada Mallick who was staying in that house. This incident is also stated to have created a general sense of insecurity amongst the residents of the locality.

15. Repelling the contention in that case that the two incidents referred to above are but simple cases or murder germane to law and order but could have no impact on public order Chandrachud, J. as he then was, said (at p. 648) : [SCC p. 302 : SCC (Cri) p. 322, para 4]

A short answer to this contention is that the murders are stated to have been committed by the petitioner and his associates with the definite object of promoting the cause of the party to which they belonged. These, therefore, are not stray or simple case of murder as contended by the learned counsel. Such incidents have serious repercussions not merely on law and order but on public order.

16. In Mohd. Dhana Ali Khan v. State of West Bengal ((1975) 2 SCC 586 : 1975 SCC (Cri) 695 : 1975 Supp SCR 124) this Court had an occasion to consider the detention of a person under the Maintenance of Internal Security Act, 1971 regarding a single instance of theft in a running train at night. The acts attributed to the detenu in that case were that on August 3, 1973 between 2110 and 2120 hrs, in detenu and his associated being armed with daggers boarded a third class compartment of 5L 257 Up train of E. Railway Sealdah Division at Gocharan Railway Station. They put the passengers of the compartment to fear of death and snatched away a wristwatch and a gold necklace from one Nirmal Chatterjee and his wife in between Gocharan and Surajpur Railway Stations. Then they decamped with booty from the running train at Suryapur Railway Station. It was contended in that case that the said single incident referred to has not even casual connection with the disturbance of public order. Fazal Ali, J. while rejecting that contention said (at p. 126) : [SCC p. 588 : SCC (Cri) p. 696, para 4]

From a perusal of this we are unable to accept the contention of the petitioner that this ground has no nexus with the disturbance of public order. It is true that the ground contains a single incident of theft of valuable property from some passengers travelling in a running train and may amount to robbery. But that does not by itself take the case out of the purview of the provisions of the Maintenance of Internal Security Act. There are two pertinent facts which emerge from the grounds which must be noted. In the first place the allegation is that the petitioner had snatched away a wristwatch and a gold necklace after putting the passengers of the compartment to fear of death. Secondly, the theft had taken place at night in a running train in a third class compartment and the effect of it would be to deter peaceful citizens from travelling in trains at night and this would undoubtedly disturb the even tempo of the life of the community.

17. We have carefully examined the act complained of in the present case in the light of the principles stated above. It is an isolated criminal case with no sinister significance attached to it. The offence was committed by two misguided policemen under cover of darkness with the assistance of a member of the public. It was certainly suicidal to those two police personnel. But it seems to have no connection whatsoever to disturb the 'public order' having regard to the circumstances of the case.

18. The last contention urged for the petitioners that the detention would be illegal in view of dismissal of detenus from service is really without merit. The subsequent order of dismissal is not germane to examine the validity of the detention.

19. In the result the rule is made absolute. The orders of detention impugned in these case are quashed. The detenus Ram Ratan and Hawa Singh be set at liberty forthwith.

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