Shafiq Ahmad

Vs

District Magistrate, Meerut and Others

Writ Petition No. 200 of 1989

(Sabyasachi Mukharji, B. C. Ray JJ)

06.09.1989

JUDGMENT

SABYASACHI MUKHERJI, J. –

1. This petition under Article 32 of the Constitution challenges the detention of the petitioner - a detenue, under Section 3(2) of the National Security Act, 1980 (hereinafter called 'the Act'). The petitioner is a bachelor. He does not own any property. The order for detention under Section 3(2) of the Act was passed on April 15, 1988 by the District Magistrate, Meerut. In the grounds of detention it is stated that on the night of April 2/3, 1988 which was an occasion of "shabberat" festival, a muslim festival, the religious celebration was going on at Gudri Chaupala. At about 11 p.m. in the night on that day, a cow belonging to the Muslims of Ismail Nagar came from Sabun Garan towards. Gudri Chaupala and was going towards Ismail Nagar and, according to the order of detention, 'some undesirable elements' present there did not allow the cow to go on the right way and she again came towards Gudri Chaupala, and was made to run avoiding the crow towards Nakkar Chian but near the shop of Haj Dhola, 'some undesirable elements' stopped the cow and poked a wood piece on her back. Due to this the cow started pumping and humping and ran inside the celebration. It is stated that at this the petitioner came to the stage, got excited and spread the rumour that "the police had not made any arrangement". It was stated that the cow belonged to the Hindus and had been deliberately sent inside the festival and "other provoking" things. Due to the aforesaid, the people started running and communal feelings got around (sic aroused). It is stated in the order of detention that in this way the petitioner had committed an act which was prejudicial to the maintenance of public order. Again on April 9, 1988 at about 9 p.m. near Transformer at Gudri Chaupala P. S. Kotwali, the petitioner is alleged to have "provoked some persons" of the Muslim community by saying that "the administration even now has not allowed to get a loud speaker fixed here and all of you are silent, get a loud speaker on the mosque and we will see. I am with you". It is also stated that the petitioner had also said that on the occasion of shabberat these Hindus had deliberately "sent their cow on the road" for their festive celebrations and the "people are silent". He had also said about teaching "them" a lesson.

2. It was stated that due to the "aforesaid bad act", communal feelings got aroused in the Meerut city and fear and terror got spread, and in this way the petitioner had done an act which was "prejudicial to maintenance of public law and order". In the aforesaid, it was stated that for the reasons mentioned hereinbefore, there was possibility of the petitioner doing such an act, and therefore in order to restrain the petitioner from doing so, it is necessary to detain him. Accordingly, the order was passed with consequential directions and information.

3. As mentioned hereinbefore, the alleged incidents were on April 2/3, 1988 as well as April 9,

1988. The order of detention (hereinafter referred to 'the order') was made on April 15, 1988. The petitioner was arrested pursuant to the said order on October 2, 1988. There was representation but the same was rejected and the order of detention was confirmed.

4. In this petition various grounds have been taken before this Court challenging the order under Article 32 of the Constitutions. Mr. C. P. Mittal, learned counsel for the petitioner, however, urged before us three grounds upon which he contended that the said order be quashed or set aside. It was submitted by Mr. Mittal that there was inordinate delay in arresting the petitioner pursuant to the order, which indicated that the order was not based on a bona fide and genuine belief that the action or conduct of the petition were such that the same were prejudicial to the maintenance of public order and that preventive detention of the petitioner was necessary for preventing him from such conduct. He further submitted that delay in the circumstances of this case in arresting the petitioner and or in acting pursuant to the order indicated that the "so-called grounds" were merely make belief and not genuine grounds upon which the satisfaction of the authority concerned was based.

5. In answer to this contention, on behalf of the District Magistrate, Meerut, by an affidavit affirmed on August 28, 1989 and filed in these proceedings, stated that raids on the petitioner's premises for the service of the order dated April 15, 1988 were conducted. It was further stated that the respondent authorities had made all efforts to serve the order on the petitioner and for this purpose the house of the petitioner was raided on several occasions and a reference was made to the general diary report, details whereof were extracted in the affidavit. The details indicate report, details indicate that in respect of the order dated April 15, 1988 the first raid was made in the house of the petitioner on May 12, 1988, the followed by eight other attempts up to the end of May 1988 to arrest the petitioner but he was not available. There was, however, no attempt in the months of June, July, August 1989 but on September 23, 25 and 29, 1988, three attempts were made and as such, it was stated on behalf of the respondents, the order could not be served before October 2, 1988. According to the District Magistrate, the respondent authorities did not leave any stone unturned to arrest the petitioner. It was, however, stated that from May 1988 to September 1988 the entire police force of Meerut city was extremely busy in maintaining law and order, but the petitioner was all along absconding in order to avoid the service of the order. The District Magistrate has further stated that during the period from May to September 1989 great communal tension was prevailing in the Meerut city and a large number of people were arrested on account thereof. The question that requires consideration is, whether there was inordinate delay. The detention under the Act is for the purpose of preventing persons from acting in any manner prejudicial to the maintenance of public order. Sub-section (2) of Section 3 of the Act authorises the Central Government or the State Government, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State, it is found necessary then the person can be detained. Hence, there must be conduct relevant to the formation of the satisfaction having reasonable nexus with the action of the petitioner which are prejudicial to the maintenance of public order. Existence of materials relevant to the formation of the satisfaction and having rational nexus to the formation of the satisfaction that because of certain conduct "it is necessary" to make an order "detaining" such person, are subject to judicial review. Counsel for the petitioner contends that in the aforesaid facts and the circumstances if the conduct of the petitioner was such that it required preventive detention, not any punitie action, for the purpose of "preventing" the person concerned from doing things or indulging in activities which will jeopardise, hamper or affect maintenance of public order then there must be action in pursuance of the order of detention with promptitude. Delay, unexplained and not justified, by the circumstances and the existences of the situation, is indicative of the facts that the authorities concerned were not or could not have been satisfied that "preventive custody" of the person concerned was necessary to prevent him from acting in any

manner prejudicial to the maintenance of public order. Whether there has been unreasonable delay, depends upon the facts and the circumstances of a particular situation. Preventive detention is a serious inroad into the freedom of individuals. Reasons, purposes and the manner of such detention must, therefore, be subject to closed scrutiny and examination by the courts. In the interest of public order, for the greater good of the community, it becomes imperative for the society to detain a person in order to prevent him and not merely to punish him from the threatened or contemplated or anticipated course of action. Satisfaction of the authorities based on conduct must precede action for prevention. Satisfaction entails belief. Satisfaction and belief are subjective. Actions based on subjective satisfaction are objective indication of the existence of the subjective satisfaction. Action based on satisfaction should be with speed commensurate with the situation. Counsel for the petitioner submitted that in this case there was no material adduced on behalf of the Government indicating that the petitioner was "absconding". It was urged that there are no material at all to indicate that the petitioner was evading arrest or was absconding. It was submitted that Section 7 of the Act gave power to the authorities to take action in case the persons were absconding and in case the order of detention cannot be executed. It is stated that in this case no warrant under Section 7 of the Act has been issued in respect of his property or persons. Hence, it was contended that the respondent was not justified in raising the plea that the petitioner was absconding. We are, however, unable to accept this contention. If in a situation the persons concerned is not available or cannot be served then the mere fact that the action under Section 7 of the Act has not been taken, would not be a ground to say that the detention order was bad. Failure to take action, even if there was no scope for action under Section 7 of the Act, would not be decisive or determinative of the question whether there was undue delay in serving the order of detention. Furthermore, in the facts of this case, as has been contended by the government, the petitioner has no property, no property could be attached and as the government's case in that he was not available for arrest, no order under Section 7 could have been possibly made. This, however, does not salvage the situation. The fact is that from April 15, 1988 to May 12, 1988 no attempt had been made to contact or arrest the petitioner. No explanation has been given for this. There is also no explanation why from September 29, 1988 to October 2, 1988 no attempt had been made. It is, however, stated that from May to September 1988 the 'entire police force' was extremely busy in controlling the situation. Hence if the law and order was threatened and prejudiced, it was not the conduct of the petitioner but because of 'the inadequacy' or 'inability' of the police force of Meerut city to control the situation. Therefore, the fact is that there was delay. The further fact is that the delay is unexplained or not warranted by the fact situation.

6. To shift the blame for public order situation and raise the bogey of the conduct of the petitioner would not be proof of genuine or real belief about the conduct of the petitioner but only raising a red herring. This question was examined by this Court in Sk. Nizamuddin v. State of West Bengal ((1975) 3 SCC 395 : 1975 SCC (Cri) 21 : AIR 1974 SC 2353 : (1975) 2 SCR 593). The question involved therein under Section 3(2) of the Maintenance of Internal Security Act. 1971. There was delay of about two and a half months in detaining the petitioner pursuant to the order of detention and the court considered that unless the delay was satisfactorily explained, it would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate recited in the order of detention. Mr. Justice Bhagwati, as the learned Chief Justice then was, speaking for the court observed at page 595 of the report (SCC p. 397, para 3) that it will be reasonable to assume that if the District Magistrate was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greeted promptitude in securing the arrest of the petitioner immediately after invoking of the order of

detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. It is, however, not the law that whenever there is some delay in arresting the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. In this case, from the facts and the circumstances set out hereinbefore we find no reasonable or acceptable explanation for the delay. In a situation of communal tension prompt action is imperative. It is, therefore, not possible for this Court to be satisfied that the District Magistrate had applied his mind and arrived at "real" and "genuine" subjective satisfaction that it was necessary to detain the petitioner to "prevent" him from wrongdoing. The condition precedent, therefore, was not present. But as Justice Chinnappa Reddy explained in Bhadwarlal Ganeshmalji v. State of Tamil Nadu ((1979) 1 SCC 465, 469 (para 6) : 1979 SCC (Cri) 318 : (1979) 2 SCR 633, 638 :) that there must be 'live and proximate link' between the grounds of detention alleged by the detaining authority and the avowed purpose of detention, and in appropriate cases, it is possible to assume that the link is 'snapped' if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. Mr. Yogeshwar Prasad, learned counsel for the State of U. P. drew our attention to the decision of this Court in Indradeo Mahato v. State of West Bengal ((1973) 4 SCC 4 : 1973 SCC (Cri) 645). That was also a case of arrest under the Maintenance of Internal Security Act, 1971. It was urged in that case that there was no real or genuine apprehension that the petitioner there was likely to act in manner prejudicial to the maintenance of public order. This Court in the facts of that case, was unable to accept the said contention. The court held that mere failure to take recourse to Sections 87 and 88 of the Criminal Procedure Code would be a warrant to believe that the delay was unreasonable. Whether the delay was unreasonable depends on the facts and the circumstances of each case. We are satisfied, in view of the facts and circumstances of the case mentioned before, that by the conduct of the respondent authorities, there was undue delay, delay not commensurate with the facts situation in this case. The conduct as aforesaid betrayed that there was no real and genuine apprehension that the petitioner was likely to act in any manner prejudicial to public order. The order, therefore, is bad and must go.

7. The next ground urged in support of this application was that the grounds mentioned were not germane to maintenance of 'public order'. It was submitted that the petitioner has only alleged inefficiency or incompetency of the police either in providing a loud speaker or in ensuring that the cows do not enter into or within the arena of Muslim festivals. It was submitted that the criticism of the administration is not endangering public order. Mr. Mittal submitted that it was not a question of law and order but public order that is important in this case. What that petitioner is alleged to have done may have some relevance to the purpose of securing law and order but there cannot be any rational nexus with the satisfaction regarding the maintenance of public order. By the conduct alleged or the saying attributed as mentioned above, public order was not prejudiced. Criticism of police does not prejudice public order, it is said. The court has to ensure that the order of detention is based on materials before it. If it is found that the order passed by the detaining authority was on materials on record, the court can examine the record only for the purpose of seeing whether the order of detention was based on no material or whether the materials have rational nexus with satisfaction that public order was prejudiced. Beyond this, the court is not concerned. See the observations in State of Gujarat v. Adam Kasam Bhaya ((1981) 4 SCC 216 : 1981 SCC (Cri) 311 : (1982) 1 SCR 740). The difference between public order and law and order is a matter of degree. If the morale of the police force or of the people is shaken by making them lose their faith in the law enforcing machinery of the State then prejudice is occasioned to maintenance of public order. Such attempts or actions which undermine the public faith in the police administration at a time when tensions are high, affects maintenance of public order and as such conduct is prejudicial. See in this

connection Indradeo Mahato case ((1973) 4 SCC 4 : 1973 SCC (Cri) 645), Subhash Bhandari v. Distt. Magistrate, Lucknow ((1987) 4 SCC 685 : 1988 SCC (Cri) 36) and Kanu Biswas v. State of West Bengal ((1972) 3 SCC 831 : 1973 SCC (Cri) 16 : AIR 1972 SC 1656 : (1973) 1 SCR 1 SCR 546). Therefore, we are unable to acc ept the contention that the grounds were not relevant for the order of detention under the Act. This contention of Mr. Mittal must, therefore, fail.

8. The last contention was that the grounds mentioned were vague and unintelligible. It was not stated, it was urged, that as to what the petitioner said, to whom the rumour was spread as mentioned in ground No. 1 and what "other provoking things" the petitioner is alleged to have said as alleged in the grounds mentioned before. It was urged, it is further not clear as to whom the petitioner wanted to teach a lesson. It has to be borne in mind that if more than one ground are stated in the grounds then the fact that one of the grounds is bad, would not alter order of detention after the amendment of the Act is 1984 provided the other grounds were valid. But quite apart from the same, it appears to us that none of the grounds were vague. The grounds must be understood in the light of the background and the context of the facts. It was quite clear what the detaining authorities were trying to convey was that the petitioner stated things of the nature and it was to teach Hindus a lesson. Hence, it was meant to create communal tension. We final no irrelevancy or vagueness in the grounds. On this ground the challenge cannot be sustained.

9. However, in the view taken by us on the first ground the order of detention must be quashed and set aside. We order accordingly. Let the petitioner be set at liberty forthwith unless he is required for any other offence under any other Act. The application is disposed of accordingly.

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