

Smt. Bimla Rani

Vs

Union of India and Others

Writ Petition (Criminal) No. 296 of 1989

(M. M. Dutt, K. N. Saikia JJ)

25.09.1989

JUDGMENT

DUTT, J. -

1. In this writ petition under Article 32 of the Constitution of India, the mother of the detenu, Shri Praveen Kumar Gupta, has prayed for the quashing of the detention order of her son dated May 6, 1989 passed under sub-section (2) read with sub-section (3) of Section 3 of the National Security Act, 1980, as confirmed by the order dated May 11, 1989 of the State of U.P. on the report of the Advisory Board. There is also a prayer for issuance of an appropriate writ in the nature of habeas corpus directing the respondents to release the said Praveen Kumar Gupta forthwith.

2. The grounds of detention, as communicated to the detenu by the District Magistrate, Meerut, are as follows :

"That on April 30, 1989 at about 9.15 p.m. at Delhi Road, Kesarganj, P. S. Delhi Gate, Meerut, you along with your other accomplice with the common intention to kill Babli showing your wrath gave him a gun injury and also threatened to give gunshot to those persons who came in his rescue. On the basis of information given by Mohd. Bhura a Crime Case No. 121 was registered against you u/s 307 IPC in P. S. Delhi Gate, Meerut, which is pending. By your above misdeed fear and terror was spread in the hearts of public in the markets, Mela Manchandi and in city of Meerut. Thus you have committed an act which is prejudicial to the maintenance of public order.

You are at present in jail and are trying to be released on bail and there is every possibility of releasing you on bail.

On the basis of above grounds and reasons I am satisfied that you are likely to indulge in the activities prejudicial to the public order and public life and with a view to prevent you from acting in any manner prejudicial to the public order and public life, it has become necessary to detain you."

3. It is apparent from the grounds of detention that a crime case was registered against him under Section 307 IPC and he was arrested and detained in jail.

4. Along with the grounds of detention, a copy of the report of the Inspector-in-Charge, P. S. Delhi Gate, Meerut, was also supplied to the detenu in jail. The relevant portion of the report is extracted

below :

"On April 30, 1989 at busy road (Delhi Road) at about 21.12 p.m. he without any reasons gave a gunshot to one Babli s/o Shri Bhura r/o Mohalla Purwa Hamindnagar who had come for reading Namaz, as a result of which he was seriously injured. At present he is in serious condition in the hospital. This site is the most sensitive area of the city for communal point of view. On receiving the information of the gun injury to Babli by the Muslim community on the pious occasion of Raamzaan there spread great excitement. Thousands of people from community gathered. There was an apprehension of communal threat in the city and area. People closed their shops feeling threat of communal riots and the road became quite due to fear and terror. Above all, on receiving the news of this incident the people famous Manchandi Mela started running to their houses. This news of fear and terror created due to this incident was also published in the newspaper Amar Ujala on May 1, 1989. Shri Bhura s/o Dilsad r/o 29, Purwa Hamid Hussain got lodged one report in the P. S. Delhi Gate and a Crime Case No. 121 of 1989 under Section 307 IPC is pending consideration. Shri Praveen Kumar is in jail for commission of this offence.

Praveen Kumar has given application for bail in the above matter and there is every possibility of his release on bail. He is a man of strong means. After release on bail he would again commit such serious act which would be prejudicial to communal harmony and cause adverse reaction in general public especially in Muslim community.

Therefore the detention under National Security Act is recommended to above Praveen."

5. At this stage, it may be mentioned that the detenu has since been granted bail, but in view of the order of detention, he is not released. Mr. Lalit, learned counsel appearing on behalf of the petitioner, has strongly urged that as the grounds of detention does not disclose any past history of commission of any crime by the detenu and the incident that has been referred to in the grounds being the solitary incident and there having been no materials on record to show that such an incident would be repeated in future, the order of detention is illegal and should be quashed. Counsel submits that the only ground on which the detaining authority had placed reliance for making the order of detention was that there was a chance of the detenu being released on bail by the criminal court and, in that event, it was apprehended that he would act prejudicially to the interest of public order. It is submitted that such apprehension is not supported by any material on record and, accordingly, the detention order should-be quashed.

6. In support of the above contention, learned counsel has placed much reliance upon a decision of this Court in Smt. Shashi Aggarwal v. State of U.P. ((1988) 1 SCC 436 : 1988 SCC (Cri) 178) In that case, this Court observed as follows : (SCC pp. 439-40, para 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."

7. In laying down the above proposition of law, this Court has placed reliance upon its two earlier decisions in *Alijan Mian v. District Magistrate, Dhanbad* ((1983) 4 SCC 301 : 1983 SCC (Cri) - 840 : AIR 1983 SC 1130 : (1983) 3 SCR 939 : 1983 Cri LJ 1649) and in *Ramesh Yadav v. District Magistrate, Etah* ((1985) 4 SCC 232 : 1985 SCC (Cri) 514).

8. It is true that the incident on April 13, 1989 was a solitary one so far as the detenu was concerned, but the question is whether the incident had prejudicially affected the public order. In other words, whether it had affected the even tempo of life of the community. As observed in *Alijan Mian* case ((1983) 4 SCC 301 : 1983 SCC (Cri) 840 : AIR 1983 SC 1130 : (1983) 3 SCR 939 : 1983 Cri LJ 1649), it is for the detaining authority to have the subjective satisfaction about the apprehension of the breach of the public order and that even one incident may be sufficient to satisfy the detaining authority in that regard depending upon the nature of the incident. It is not disputed by Mr. Lalit that a single incident may disturb the tranquillity and the even tempo of life of the community.

9. In the grounds of detention, it has been stated "By your above misdeed, fear and terror was spread in the hearts of public in the markets, Mela Manchandi and in the city of Meerut. Thus you have committed an act which is prejudicial to the maintenance of public order." This is not a mere bald statement of the detaining authority without any material in support of the same. We have already extracted above the report of the Inspector-in-Charge, P. S. Delhi Gate, Meerut, which has been taken into account by the detaining authority at the time he passed the order of detention. It has been already noticed that a copy of the said report was served on the detenu along with the grounds of detention. The situation that emerged as a result of the incident, as stated in the said report, was grave and serious and prejudicially affected public order. It may be a solitary incident, but it gave rise to communal tension and there was apprehension of a communal riot as alleged in the report. The report, in our opinion, is sufficient material for the subjective satisfaction of the detaining authority that there was disturbance of tranquillity and harmony of public life.

10. It is not correct to say that there is no material for the apprehension that if released on bail, the detenu will indulge in such criminal acts affecting public order. Really, the detaining authority had taken into consideration all the circumstances including the grave and serious situation that emerged as a result of the incident. In our opinion, when an incident was such that it created communal tension and the authorities were apprehensive of the breaking of a communal riot, such incident in itself may be sufficient and may afford justification for the satisfaction of the detaining authority for the detention of the detenu in order to prevent him from indulging in such activity prejudicial to public order even though, as submitted by the learned counsel, there are no antecedent acts of similar nature or past history of commission of crime by the detenu. In this connection, we may refer to a recent decision of this Court in *Ayya v. State of U.P.* ((1989) 1 SCC 374 : 1989 SCC (Cri) 153) In that case, this Court observed as follows : (SCC p. 383, para 23)

"Even a single instance of activity tending to harm 'public order' might, in the circumstances of its commission, reasonably supply justification for the satisfaction as to a legitimate apprehension of a future repetition of similar activity to the detriment of 'public order'."

11. The above observation fully supports the view we have taken. In our opinion, there were cogent reasons apparent on the fact of the record justifying the order of detention.

12. In the circumstances, we are of the view that the detention of the petitioner was justified. The rule nisi is discharged and the writ petition is dismissed.

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