

Anand Prakash

Vs

State of U. P. and Others

Writ petition (Criminal) No. 353 of 1989

(B. C. Ray, V. Ramaswami II JJ)

14.12.1989

JUDGMENT

RAMASWAMI, J. -

1. This writ petition has been filed under Article 32 of the Constitution praying for the issue of a writ of certiorari to quash the order of detention dated May 3, 1989 passed by the District Magistrate, Farrukhabad, U.P. as confirmed by the Government of U.P. in their order dated June 20, 1989 detaining one Lakhmi Chand Gupta under the National Security Act and to issue a writ of habeas corpus releasing the said detenu from such detention. The order of detention was made under Section 8 of the National Security Act, 1980 by the District Magistrate on the ground that with a view to prevent the detenu from indulging in unlawful activities which are prejudicial to the maintenance of essential services and supplies required for public life it was necessary to keep him under detention. The detenu made his representation to the Advisory Board. On receipt of the report of the Advisory Board to the effect that in its opinion there are sufficient grounds for detention, the government after a consideration of the report confirmed the order of detention under Section 12(1) of the Act and directed that the said Lakhmi Chand Gupta be detained for a period of 12 months from May 3, 1989 the date of detention order. This writ petition for habeas corpus has been filed by the brother-in-law of the detenu.

2. The learned counsel for the petitioner contended that there are absolutely no grounds or basis on which the detaining authority could have satisfied himself that the detenu had been engaged in criminal activities which are injurious to the maintenance of essential services and supplies required for public life or that the detenu is likely to indulge in any such activity in future. Secondly, there is an unexplained delay from the date of the alleged incident or crime and the date of detention vitiating the satisfaction and the detention order itself. The circumstances referred to in the order of detention does not lead to nor there was anything on which the District Magistrate can come to a conclusion that there is inherent criminal propensity in the detenu which could lead the District Magistrate to infer that there is every likelihood of the detenu repeating the alleged unlawful activity.

3. The facts relating to the incident which is referred to in the order of detention as the ground for detention are as follows : On February 15, 1989 the Junior Engineer, Tubewell Electrification Sub-Division, Sarvodaya Nagar, Kanpur lodged a complaint with the Station House Officer, Police station Chhibramau, District Farrukhabad that electric wires to a length of about 2900 mtrs. in 11 KV Visya Bank Feeder had been cut and stolen away on February 14, 1989 by some unknown persons and that the value of the loss to the Electricity Board amounted to Rs. 21,500, This FIR was registered as Crime Case No. 51 of 1989 under Section 379 IPC in the said police station and it was

shown therein that three persons, namely, Jagdish, Santosh and Munshi Sharma were the accused. Santosh is the brother of Jagdish. On March 3, 1989 the house of Jagdish was raided and two bags filled with stolen aluminum electric wire recovered. Jagdish gave an information that a person at Vishnugarh Road claiming himself to be a resident of Delhi used to purchase stolen electric wire from the person cutting the electric wire stealthily. On this information of Jagdish the factory on the detenu at Vishnugarh Road was raided. One Munshi Sharma who is stated to be the servant of the detenu was found in possession of about 20 kg of melted electric wire and that was seized from him under a recovery memo. The order of detention stated that Munshi Sharma had confessed that the stolen electric wire had been purchased by him from Jagdish and Santosh. The detenu was arrested on May 2, 1989. On the same date the bail application was moved on behalf of the accused. After setting out this incident the grounds of detention stated :

"This act on your part has disrupted the electric system resulting in non-operation of tubewells, dearth of water for crops, non-supply of drinking water for general public and cattle. This unlawful act of yours and that of your accomplices is against the maintenance of essential services and supplies required for public order and life. This act of yours has caused injury to the national economy and created terror in the general public and poses a serious threat to the public life."

The order of detention further stated :

"At present you are detained in the District Jail of Fatehgarh in connection with Case No. 51/89 under section 379/411 of IPC and in the P. S. Chhibramau in connection with Case No. 56/89 under section 379 of IPC and your well wishers and sympathisers are trying to get you bailed out in the aforesaid cases and a bail application in this behalf has already been moved in the court and you are likely to be bailed out. There is every likelihood that after coming out of jail you will again indulge in your criminal activities."

It is on the basis of this the order stated that the detaining authority was satisfied that the detenu had been engaged in criminal activities injurious to the maintenance of essential services and supplies required for public life and that with a view to prevent him from indulging in such unlawful activities it has become necessary to keep him under detention.

4. The learned counsel contended that the detenu had no past criminal record. The present criminal case filed under Section 411 of IPC is the first crime which had been alleged against him. The learned counsel further contended that there is absolutely no evidence of detenu's complicity with the crime and making link of the detenu with the recovery of 20kg of melted wire recovered from Munshi Sharma at the behest of Jagdish. In this connection he also contended that the statement said to had been made by Munshi Sharma had not been supplied to him and that would also vitiate the order of detention. In the counter-affidavit filed in this Court the respondent stated that there was no separate confessional statement recorded from Munshi Sharma and the confessional statement referred to in the detention order is the one that is found in the recovery memo a copy of which had already been supplied to detenu. The learned counsel for the petitioner drew our attention to the recovery memo and contended that if the statement of Munshi Sharma in the recovery memo is the only material available that cannot be a basis of satisfaction for an order of detention under the National Security Act. The statement of Munshi Sharma relied on by the detaining authority and found in the recovery memo reads as follows :

"When the gauge of that melted wire was measured it was found that of the government wire, therefore, the said melted wire weighing 20 kg was taken in the possession of police and thoroughly sealed in a sack. But before sealing the same a separate specimen of melted wire and the specimen of wire were taken and the specimens were sealed. The accused Munshi Sharma on his being arrested stated that he had purchased that property from both Santosh i.e. the brother of Jagdish and Jagdish, he further stated that he melted and sold the same to Lakhmi i.e. the owner of the said factory. The said property after being melted cannot be identified and it is used for making utensils thereafter."

In this statement it may be seen that Munshi Sharma did not say that he purchased the stolen wire for the detenu or on the instructions of the detenu. In fact he did not even say that he is the servant or agent of the detenu. He had merely stated that 20 kg of melted wire recovered from him was purchased by him from Santosh and his brother Jagdish and that he had melted and sold the same to the detenu. After it is melted in the melted form it could not be distinguished from any other melted wire of legal origin. The statement also does not impute knowledge on the part of the detenu that the same was from stolen wires. In any case it was not possible to say on the basis of this statement that the detenu was in league with other persons in the activity of stealing wire or purchasing of the same. In fact it is not known how from the melted wire weighing 20 kg the detaining authority or the investigating officers came to the conclusion that the gauge of the melted wire was found to be that of government wire. Again only 20 kg was found in the factory and that too in the possession of Munshi Sharma though inside the factory. The statement of Munshi Sharma in the recovery memo and melted wire recovered from Sharma were the only material available before the detaining authority. In the light of the absence of past criminal history on the part of the detenu we have no doubt that the statement found in the recovery memo could not form a basis of satisfaction for the detention.

5. The learned counsel took strong exception to the view of the detaining authority that the detenu is likely to get bail and there is every likelihood that after coming out of jail the detenu will again indulge in criminal activities and that, therefore, it is necessary to detain him. In this connection he relied on the decision of this Court in *Ramesh Yadav v. District Magistrate, Etah* ((1985) 4 SCC 232 : 1985 SCC (Cri) 514) where it was held that merely on such apprehensions a detention order under National Security Act, 1980 should not ordinarily be passed. This Court observed : (SCC p. 234, 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 apprehension 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 under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed. We are inclined to agree with counsel for the petitioner that the order of detention in the circumstances is sustainable and is contrary to the well settled principles indicated by this Court in a series of cases relating to preventive detention. The impugned order, therefore, has to be quashed."

6. This Court had considered in a number of cases the validity of orders of detention made when a

person is in jail custody but the detaining authority considered the likelihood of the detenu getting a bail and in that view proceeding to consider the necessity for detaining him under the preventive detention proceedings. *Din Rameshwar Shaw v. District Magistrate, Burdwan* ((1964) 4 SCR 921 : AIR 1964 SC 334 : (1964) 1 Cri LJ 257) their Lordships observed : (SCR p. 929)

"On the other hand, if a person who is undergoing imprisonment, for a very short period, say for a month or two or so, and it is known that he would soon be released from jail, it may be possible for the authority to consider the antecedent history of the said person and decide whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released. The antecedent history and the past conduct on which the order of detention would be based would, in such a case, be proximate in point of time and would have a rational connection with the conclusion drawn by the authority that the detention of the person after his release is necessary.

7. In *Kartic Chandra Guha v. State of West Bengal* ((1975) 3 SCC 490 : 1975 SCC (Cri) 82) the order of detention stated that having regard to the activities of the detenu, as discussed in the grounds of detention, and having regard to the possibility of his being enlarged on bail the detaining authority was satisfied that the detenu should be detained under the Act. This order was upheld on the ground that

"(t) he District Magistrate, on information received by him, thought that the petitioner was likely to be released on bail in which case having regard to his past activities it was open to the District Magistrate to come to the reasonable conclusion that having regard to the desperate nature of the activities of the petitioner, his enlargement on bail would be no deterrent to his desperate activities."

8. In *Alijan Mian v. District Magistrate, Dhanbad* ((1983) 4 SCC 301 : 1983 SCC (Cri) 840) it was again held that a detention order would not become invalid merely because the detention order was passed on the detaining authority being apprehensive of the likelihood of the detenu's release on bail.

9. In *Shashi Aggarwal v. State of U. P.* ((1988) 1 SCC 436 : 1988 SCC (Cri) 178) this Court observed : (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 repeat his criminal activity 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* ((1986) 4 SCC 416, 421 : 1986 SCC (Cri) 490), Dhanbad, where it was observed : [SCC (Cri) p. 495, para 7]

A bald statement is merely 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 of protect the fundamental freedoms of our citizens."

10. All these cases were again considered in a latest judgment of this Court in N. Meera Rani v. Government of Tamil Nadu ((1989) 4 SCC 418 : 1989 SCC (Cri) 732), and it was held that all those decisions of the court on this aspect have to be read in the light of the Constitution Bench decision in Rameshwar Shaw case ((1964) 4 SCR 921 : AIR 1964 SC 324 : (1964) 1 Cri LJ 257) and that the conclusion about the validity of the detention order in each case was reached having regard to the facts and circumstances in the particular case.

11. Thus the detaining authority though can take into account the possibility of the detenu being released on bail in criminal proceedings, has to be satisfied, having regard to his past activities or by reason of the credible information or cogent reasons, that if he is enlarged on bail, he would indulge in such criminal activities. In the present case except the bald statement that the detenu would repeat his criminal activities after coming out of the Jail, there is no credible information or material or cogent reasons apparent on the record to warrant an inference that the detenu if enlarged on bail would indulge in such criminal activities which are prejudicial to the maintenance of essential services. There must be some more than what is found in the record here to come to the conclusion that this is not a case of solitary incident but a case of the detenu indulging in business of receiving stolen electrical wires. On the other hand it appears to us that the detention order has been made in the order to supplant the criminal prosecution which is not permitted.

12. The learned counsel also contended that there is an unexplained delay which makes the ground of detention not proximate vitiating the order of detention itself. The theft of the wire was on February 14, 1989 and the FIR was registered on February 15, 1989. On that day itself as seen from the record Jagdish, Santosh and Munshi Sharma were shown as accused on the basis of some information. The house of Jagdish was raided on March 3, 1989 and on the same day the factory of the detenu was raided and 20 kg of melted wire was recovered from Munshi Sharma but no action was taken till May 2, 1989 against the detenu. On being arrested on May 2, 1989 the detenu moved a bail application and the detention order itself was made on May 3, 1989. Though bail was granted, in view of the detention order he could not be released from jail. In spite of the fact that the recovery statement itself was made as early as on March 3, 1989 no action was taken till May 3, 1989. Noting more is stated in the detention order. The delay has also not been satisfactorily explained in the counter-statement of the respondents. The ground instance, therefrom, could not be a proximate cause for a sudden decision to take action under the National Security Act and this also vitiates the order.

13. In the result we allow this writ petition set aside the order of detention and direct that the detenu be released forthwith.

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