

Vashisht Narain Karwaria

Vs

State of U. P. and Another

Criminal Appeal No. 219 of 1990 along with Writ Petition (Criminal) No. 92 of 1990

(S. R. Pandian, K. Jayachandra Reddy JJ)

28.03.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. -

1. Leave granted in the special leave petition.
2. This appeal is against the judgment and order dated December 12, 1989 in Habeas Corpus Writ Petition No. 13644 of 1989 passed by the High Court at Allahabad dismissing the writ petition filed by the appellant, Vashisht Narain Karwaria, the detenu herein.
3. The District Magistrate, Allahabad, in exercise of powers conferred on him under Section 3(3) of the National Security Act, 1980 (hereinafter referred to as 'Act') passed the impugned order of detention on March 31, 1988 against the detenu on reaching his requisite subjective satisfaction on consideration of the materials placed before him that it had become necessary to pass the detention order with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order.
4. The salient and material facts which necessitated the detaining authority to pass the impugned order, as set out in the grounds of detention are as follows :

On March 30, 1988 at about 3.30 p.m. the auction of liquor shops for the sale of Indian made foreign liquor was held in the campus of Collectorate at Allahabad. A large number of bidders were present. Among them, the detenu along with his three other associates also participated in the auction. At about 3.30 p.m. the auction of the liquor shop within the area of the Mooratganj took place. For this shop the first bid was from one Ajai Kumar for Rs one Lakh. The next bid for the same shop was of Chedi Lal for Rs. one Lakh and ten thousand. The moment the said two persons made their bid, the detenu along with his associates stood up in the presence of all prospective bidders and told Ajai Kumar, Chedi Lal and others that the abovesaid shop fell within his area and, therefore, if anybody dared to bid the shop in the auction he would shoot him and also the entire members of his family. So saying the detenu along with his associates advanced towards Ajai Kumar and Chedi Lal threatening them with dire consequences. This created terror and panic among all the bidders. As the situation was becoming worse, Shri Rana Pratap Singh, Station House Officer along with other police officials advanced towards the detenu and his associates to apprehend them. On seeing the police party advancing, the detenu fired at the police party with his countrymade pistol. Fortunately, nobody was hurt. The detenu, however, escaped on being chased by the police party. The detenu fired another two shots and hurled bombs on the police party while fleeing away. His repeated firing and explosion of bombs created further panic and the people assembled for

bidding in the auction started running away and the nearby shopkeepers pulled down the shutters of their shops. The vehicles parked there fled away. Thus the public order was completely disrupted. In connection with this incident, a case was registered in Crime No. 221 of 1988 in the Colonelganj Police Station under Sections 307 and 506 of Indian Penal Code. The case is still under investigation.

5. On the basis of the above material the detaining authority on being satisfied that there was apprehension of commission of act of violence at the hands of the detenu, which would be prejudicial to the maintenance of public order, passed this impugned order and directed the detenu to be kept under detention.

6. Admittedly, along with his ground of detention 4 documents were enclosed and served on the detenu. Those documents are :

(1) Report of SSP Allahabad dated March 31, 1988.

(2) Report of the SHO Colonelganj Police Station.

(3) Copy Chik No. 199, Crime No. 221 of 1988 under Section 307/506 of IPC in Colonelgunj Police Station, Allahabad.

(4) Copy of G.D. No. 37 relating to the aforesaid offence.

7. The detenu challenged the validity of this order before the High Court, but became unsuccessful. Feeling aggrieved by the impugned judgment, this appeal is now preferred.

8. Mr. R. K. Jain, the learned senior counsel appearing on behalf of the appellant made a number of submissions at the hearing, one of which being that the sponsoring authority had placed certain irrelevant extraneous matters before the detaining authority which could have influenced the mind of the detaining authority and stealthily crept into the decision of the said authority directing detention of the detenu and as such the impugned order is liable to be quashed. This argument was resisted by Shri. Dalveer Bhandari, the learned counsel appearing on behalf of the respondents that the detaining authority had not considered any other material save the material referred to in the grounds of detention. Therefore, the short question for our consideration is whether the sponsoring authority has placed before the detaining authority any extraneous and irrelevant materials which might have influenced the mind of the detaining authority. It cannot be disputed - indeed there is none - that the 4 documents referred to above, copies of which were furnished to the detenu have been placed before the detaining authority. It follows that the detaining authority passed this order only on consideration of the abovesaid materials. In the confidential letter dated March 31, 1988 sent by the Senior Superintendent of Police, Allahabad to the detaining authority it is stated thus :

"It is stated that the accused is a hardened criminal and has a gang. Such persons are committing heinous crimes often which adversely affects the public order. There are many cases/offences against accused Vasishtha Narayan registered in various police stations. It has become his habit to commit offences ... Hence I recommend that an order for at least 12 months detention be passed against Shri Vashishtha Narayan alias Bhukkhal s/o late Shri Jagat Narayan Karvaria, the aforesaid accused under Section 3(2) of the abovementioned Act."

9. The preamble of the letter submitted by the Station House Officer of Colonelgunj, Allahabad

dated March 31, 1989 to the Senior Superintendent of Police, Allahabad reads as follows :

"It is submitted that Shri Vashishtha Narayan Karvaria alias Bhukkal, the aforesaid accused is a hardened criminal and has a gang. In his gang his son Kapil and two other big offenders Ram Chandra Tripathi and Santosh Kumar Tripathi son of Gaya Prasad, resident of Ganspur, P. S. Poormufti, District Allahabad, are included. These people often used to commit heinous crimes, by registered against Vashishtha Narayan Karvaria in many police stations."

10. The above averments made in the above two letters, the copies of which are furnished to the detenu along with grounds of detention unequivocally and clearly spell out that the detenu is a hardened criminal, having a gang under his control often committing heinous crimes, that many cases against the detenu are registered in various police stations and that he is in the habit of committing offences. No doubt, these averments are not made mention of in the grounds of detention. But can it be said that these materials placed before the authority might not have influenced the mind of the detaining authority, in taking the decision of detaining the detenu ? In our view, the above averments which are extraneous touching the character of the detenu though not referred to in the grounds of detention, might have influenced the mind of the detaining authority to some extent one way or other in reaching the subjective satisfaction to take the decision of directing the detention of the detenu. As rightly pointed out by Mr. Jain, had these extraneous materials not been placed before the detaining authority, he might or might not have passed this order. Therefore, we have to hold that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the order. There are several pronouncements of this Court, on this point, of which we will make mention of the following decisions : Ram Krishna Paul v. Government of West Bengal ((1972) 1 SCC 570 : 1972 SCC (Cri) 334); Pushpa v. Union of India (1980 Supp SCC 391 : 1979 SCC (Cri) 1015); Merugu Satyanarayana v. State of A. P. ((1982) 3 SCC 301 : 1983 SCC (Cri) 18); Mehboob Khan Pathan v. Police Commissioner, Ahmedabad ((1989) 3 SCC 568 : 1989 SCC (Cri) 655).

11. Mr. Dalveer Bhandari relying on Section 5-A of the Act urged that the order of detention should not be deemed to be invalid or inoperative merely on the ground that some extraneous materials were placed before the detaining authority since those alleged extraneous materials have no bearing on the validity of this impugned order which can be sustained on the material set out in the grounds of detention itself. Placing reliance on decision of this Court in Prakash Chandra Mehta v. Commissioner and Secretary, Govt. of Kerala (1985 Supp SCC 144 : 1985 SCC (Cri) 332) wherein it has been observed that the 'grounds' under Article 22(5) of the Constitution do not mean mere factual inferences plus factual material submitted that in the present case the factual material set out in the grounds of detention alone led to the passing of the order with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. We are unable to see any force in the above submission. What Section 5-A provides is that where there are two or more grounds covering various activities of the detenu, each activity is a separate ground by itself and if one of the ground is vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention.

12. It is not the case that this impugned order has been made on two or more grounds covering various activities of the detenu, but on the other hand the order has been passed on the sole ground relatable to a single incident. The conclusion arrived at by us is only on the basis that the aforesaid extraneous materials, placed before the detaining authority might have influenced the mind of the

detaining authority, but not on the ground that one of the grounds of the detention order has become invalid or inoperative for the reasons mentioned in Section 5-A(a).

13. The next submissions made by Mr. Jain on behalf of the detenu is on the basis of ground Nos. VII and VIII of the special leave petition in which the appellants has expressed his grievance that he had been deprived of making an effective and purposeful representation as envisaged under Article 22(5) of the Constitution of India since no particulars or details are given in documents I and II enclosed with the grounds of detention in regards to the alleged 'many cases/offences' said to have been registered in various police stations against him and in regard to the allegations that he was a hardened criminal and had a gang often committing heinous crimes and that it had become the habit of the detenu to commit offences. In support of this contention reference was made to the decision in Mehboob Khan Nawab Khan Pathan case ((1989) 3 SCC 568 : 1989 SCC (Cri) 655). No denial is made in counter field on behalf of respondent 1. This latter submission, in our opinion cannot be rejected as having no force.

14. In the result, we without going into the merits of the other contentions allow this appeal, quash the detention order and direct the detenu to be set at liberty forthwith.

Order in W.P. (Cri.) No. 92 of 1990

15. The Writ Petition is connected with the Criminal Appeal No. 219 of 1990 arising out of SLP (Cri) No. 2473 of 1989. The detention order under challenge in both the proceedings is the one passed by the District Magistrate, Allahabad on March 31, 1988 under Section 3(3) of the National Security Act, 1980. As we have now set aside the order of detention in the criminal appeal, no order is necessary in this writ petition. The writ petition is disposed of accordingly.

</html