Ayub alias Pappurkhan Nawabkhan Pathan

Vs

S. N. Sinha and Another

Writ Petition (Criminal) No. 687 of 1990

(A. M. Ahmadi, M. M. Punchhi, K. Jayachandra Reddy JJ)

21.08.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. -

1. We allowed the writ petition vide our order dated August 7, 1990 and released the detenu for the reasons to be given later. We accordingly proceed to give the reasons.

2. The petitioner was detained under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('Act' for short) by an order dated March 13, 1990 passed be the Commissioner of Police, Ahmedabad City. The grounds were served within time. The said order is challenged in this writ petition. It is manly contended that the detaining authority has not applied his mind in passing the detention order inasmuch as the relevant material has not been taken into account at the time of passing the order. Even otherwise, according to the learned counsel, there are absolutely no grounds which warrant detention. It is also further submitted that the provisions of the Act are not attracted even if all the averments in the grounds are accepted. To appreciate this contention it become necessary to refer to the contents of the grounds in brief.

3. The detenu is a resident of Ahmedabad City. There is a reference in the ground to above there crimes registered in various police stations and they are Crime Nos. 122/86, 70/88 and 96/90. In all these cases it is alleged that the detenu and his associates armed with deadly weapon like swords dhariya and fire-arms committed offences punishable under section 307, 451, 143, 147, 148 IPC and Section 25(1) of the Arms Act. So far as the first two crimes are concerned admittedly the detenu was acquitted. In Crime No. 96/90, in which investigation is pending, bail was granted. Then there is a reference to 8 crimes under the provisions of the Prohibition Act registered in Kagapith Police Station on the basis whereof he is described as 'bootlegger' within the meaning of Section 2(b) of the Act. Some ended in conviction and some are pending in trial but admittedly the detenu does not figure in any one of these cases. Thereafter it is stated in the grounds in general that the detenu was having dangerous weapons and with the aid of his associates, has been subjecting innocent citizens to physical bating causing physical injuries and that he and his associates have been threatening and beating the peace loving citizen and people residing and doing there business in the said area are afraid and an atmosphere of fear, danger and terror prevails and that the detenu comes within the meaning of 'dangerous person' as defined under Section 2(c) of the Act. The detaining authority has also referred to an earlier detention order dated August 20, 1985 passed against the detenu and noted that he was released by the High Court. Then the detaining authority proceeds to mention that taking action under Section 59(1) of the Bombay Police Act, 1951 is not possible and also is not appropriate under the circumstances. In the concluding paragraph it is particularly mentioned that the detenu was a strong headed 'dangerous person' and he was using the dangerous weapons creating

an atmosphere of terror. Towards the end it is specifically mention that in respect of Crime No. 96/90 registered with the Sattelite Police Station, the Chief Judicial Magistrate had remanded him to the Judicial custody till March 15, 1990 and there are chances of his being released, therefore to prevent him from acting prejudicially to the maintenance of public order, the detention was ordered.

4. Section 2 (be) of the Act defines 'bootlegger' which reads thus :

> "2.(b) "bootlegger" means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 (Bombay 25 of 1949) and the rules and orders made thereunder, or any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing;"

Unless there is material to show that the detenu committed any one of the acts mentioned in the definition, he cannot come within the meaning of 'bootlegger'. Though in the grounds there is reference to 8 crimes under the provisions of the Prohibition Act, the detenu, as already mentioned, does not figure in any on of these cases. There is no material whatsoever of his involvement in any manner in any of these prohibition case. Therefore, he cannot be said to be a bootlegger.

5. Now we shall consider whether he comes within the meaning of 'dangerous person' as defined in Section 2(c) of the Act which reads as under :

> "2.(c) "dangerous person" means a person, who either by him-self or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (45 of 1860), or any of the offences punishable under Chapter V of the Arms Act, 1959 (54 of 1959)."

As per this definition, a person, who 'habitually' commits or attempts to commit or abets the commission of offences mentioned therein either by himself or as a member of or leader of a gang is a "dangerous person". The expression 'habitually' is very significant. A person is said to be habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of those offences. In Vijay Narain Singh v. State Of Bihar ((1984) 3 SCC 14 : 1984 SCC (Cri) 361) the majority explained the meaning of the word 'habitually' thus : (SCC p. 34, para 31)

> "The expression 'habitually' mean 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar respective acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions."

Rashidmiya at the rate of Chhava Ahmdmiya Shaik v. Police Commissioner, Ahmadabad ((1989) 3 SCC 321 : 1989 SCC (Cri) 559) is yet another case where the scope of Section 2(c) of the Act came up for consideration before this Court and it is held that : (SCC p. 326 para 14)

> "[T]herefore, this solitary incident would hardly be sufficient to conclude that the detenu was habitually committing or attempting to commit or abetting the commission of offences."

It is submitted that in the instant case except Crime No. 96/90 there is no other case pending and the other two crimes which are referred to in the grounds ended in acquittal and the definition of 'dangerous person' in Section 2(c) does not include cases under the Prohibition Act. Therefore the detenu is not a habitual offender so as to come within the meaning of 'dangerous person'. We find considerable force in this submission. We have gone through the entire records. The learned counsel appearing for the State could not place any material from which it can be inferred that the petitioner was a habitual offender. No doubt a lengthy counter is filed in which it is repeatedly averred in general that the detenu was indulging in prejudicial activities but as already mentioned, only Crime No. 96/90 is pending investigation and from this alone we cannot infer that the petitioner is a 'dangerous person' within the meaning of Section 2(c) of the Act. To satisfy ourselves we have also carefully perused the FIR in Crime No. 96/90 and the complaint annexed to the same. The main allegation against the detenu was that he, out of sudden excitement, fired the revolver and as a result of which one Mehbub Khan received injury on his leg and again he fired a shot into the air and that he and his associates were moved around in a jeep threatening the people in the area. But in the order passed by the learned Session Judge on March 13, 1990 while releasing the petitioner on bail, it is noted that the said Mehbub Khan had no fire-arm injury at all and as a matter of the fact, the public prosecutor conceded the same. The learned Sessions Judge has also noted that no medical evidence is produced to prove that anyone was injured during the alleged occurrence. If such is the only crime pending in which the detenu is alleged to have participated, it can by no stretch of imagination be said that he comes within the meaning of 'dangerous person' and the conclusions drawn by the detaining authority area bereft of sufficient material as required under Section 2(c) of the Act. This betrays non-application of mind by the detaining authority. Consequently, the grounds on which the detention order is passed, are irrelevant and non-existing. These are the reasons which weighed with us for not upholding the detention.

</html