Anil Vats

Vs

Union of India and Others

Writ Petn. (Criminal) No. 1745 of 1990

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

11.12.1990

ORDER

1. The petitioner has been under detention pursuant to the order dated 5th June, 1990 passed by the District Magistrate, Meerut u/ sub-s. (3) of S. 3 of the National Security Act 1980 (Act 65 of 1980) with a view to preventing him "from doing any such work which is prejudicial for the maintenance of public order".

2. The grounds of detention were furnished to the detenu in time. Therein it was stated inter alia:

> "That you along with one companion on 12-2-1990 about 7.45 indiscriminately fired and murdered Dr. Km. Sivaraubala Chaurasia who was connected with Chaurasia Nursing Home. When she was returning from Dr. Rakesh Kumar's dental clinic situated at a busy and crowded Hapur Road after the dental treatment along with her sister Smt. Madhubala Chaurasia with the result that the people started running here and there and were scared. In this connection a case was registered in Police station Kotwali at Crime No.72/90. U/S.302 I.P.C. and after its investigation charge sheet has been submitted in the Court against Anil Vats."

3. It was stated "that the brutal murder has created a feeling of insecurity in public in general and among doctors in particular.".

4. The grounds of detention further said that the detenu was in District Jail, Bulandshahar in connection with the Criminal case No. 284/82 u/Ss. 395, 397 I.P.C. of Police Station Railway Road, Desai and he was on bail. But he got his bail cancelled on 14-2-1990 and was trying for his bail in Criminal case No. 72/90 u/S.302 I.P.C., P. S. Kotwall, Meerut and his bail application was under consideration.

5. It is seen that the petitioner applied for bail on 30th May 1990 and this detention order was passed on 5th June 1990.

6. Mr. Lalit, the learned counsel for the petitioner assails the detention order mainly on three grounds. First, that the detention order was passed on a solitary instance of the petitioner having murdered a doctor, and there having admittedly been a private dispute between the detenu and the deceased it could not have caused any prejudice to public order and that there was no material for satisfaction of the detaining authority at the relevant time for arriving at any satisfaction about the

need for detention of the petitioner. Secondly, it is submitted that the distance of time from the date of occurrence i.e., 12th February 1990 to the date of the detention order i.e. 5th June, 1990 was such as to have snapped the nexus of proximity and reasonable relationship; and that there was nothing to show that during this period the apprehension or panic that was caused by the murder was continuing or by any means recurring. Thirdly, it is submitted, as stated in the petition, that when the detenu was to appear and defend himself before the Advisory Board he sought permission for taking the assistance of a friend before the Advisory Board, but the Advisory Board,rejected the prayer which caused prejudice to the detenu.

7. We take the third submission first as we feel the petition succeeds on this ground alone. The State's answer is that the detenu himself being a graduate, he was competent to defend himself and in no way required the assistance of any friend. Therefore, Mr. Bhandari, learned counsel for the State submits, refusal of the permission could not have caused any prejudice to the detenu, and in fact he argued his own case before the Advisory Board. We are not inclined to agree. In A. K. Roy v. Union of India (1982) 2 SCR 272 :(1982) 1 SCC 271 : (AIR 1982 SC 710) this Court laid down at para 94 (of SCR) (Para 95 of AIR):

> "Another aspect of this matter which needs to be mentioned is that the embargo on the appearance of legal practitioners should not be extended so as to prevent the detenu from being aided or assisted by a friend who, in truth and substance, is not a legal practitioner. Every person whose , interests are adversely affected as a result of the proceedings which have a serious import, is entitled to be heard in those proceedings and be assisted by a friend. A detenu, taken straight from his cell to the Board's room, may lack the case and composure to present his point of view. He may be "tonguetied, nervous confused or wanting In intelligence", (see Pett v. Greyhound Racing Association Ltd., (1969) 1 QB 125), and if justice is to be done, he must at least have the help of a friend who can assist him to give coherence to his stray and wandering ideas. Incarceration makes a man and his thoughts dishevelled. Just as a person who is dumb is entitled, as he must, to be represented by a person who has speech, even so, a person who finds himself unable to present his own case is entitled to take the aid and advice of a person who is better situated to appreciate the facts of the case and the language of the law. It may be that denial of legal representation is not denial of natural justice per se, and therefore, if a statute excludes that facility expressly, it would not be open to the tribunal to allow it. Fairness as said by Lord Denning M.R. in Maynard v.Ogmond (1977) 1 QB 240, 253 :(1977) 1 All ER 64 can be obtained without legal represensation. But, it is not fair, and the statute does not exclude that right, that the detenu should not even be allowed to take the aid of a friend. Whenever demanded, the Advisory Boards must grant that facility."
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> This was followed in Johney Dcouto v. State of Tamil Nadu, AIR 1988 SC 109: (1988) 1 SCC 116. It was said in para 6:
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> "The rule in A. K. Roy case made it clear that the detenu was entitled to the assistance of a 'friend'. The word 'friend' used there was obviously not intended to carry the meaning of the term in common parlance. One of the meanings of the word 'friend', according to the Collins English Dictionary is "an ally in a fight or cause; supporter". The term 'friend' used in the judgments of this Court was more in this sense than meaning 'a person known well to another and regarded with liking, affection and loyalty.' A person not being a friend in the normal sense could be

> picked up for rendering assistance within the frame of the law as settled by this Court. The Advisory Board has, of course, to be careful in permitting assistance of a friend in order to ensure due observance of the policy of law that a detenu is not entitled to representation through a lawyer. As has been indicated by this Court, what cannot be permitted directly should not be allowed to be done in an indirect way. Sundararajan, in this view of the matter, was perhaps a friend prepared to assist the detenu before the Advisory Board and the refusal of such assistance to the detenu was not justified. It is not for this Court to examine and assess what prejudice has been caused to the detenu on account of such denial. This Court has reiterated the position that matters relating to preventive detention are strict proceedings and warrant full compliance with the requirements of law."

8. In view of the above law laid down by this Court, it is not reasonable to accept the submission that the detenu was not prejudiced.

9. We do not see any valid reason why the detenu should have been refused the assistance of a friend. It is true that the Advisory Board has to report within the prescribed period and the meeting may brook no delay. But timely request of the detenu for being allowed to be assisted by a friend ought to be considered. It has not been denied in this case that the person proposed to assist the detenu wets present at the relevant time and place. Mr. Bhardari submits that A. K. Roy's case is distinguishable on the ground that the detenu therein was not a graduate as in this case. We are of the view that it cannot be a sufficient ground. The position of the detenu in custody has to be appreciated. He may not properly be served by his memory, he may be nervous incoherent and his faculties may be Senumbed. Assistance of a friend would result in fairness of procedure towards the detenu. We, therefore, feel that the procedural safeguard, as envisaged under Art. 22(5) was not satisfied in this case-, with the result that continuation of detention of the petitioner would be rendered illegal.

10. This petition is accordingly allowed; and the detenu has to be at once set at liberty" if he is not otherwise required to be detained in any other case.

11. As the petition succeed on this point the other point need not be dealt with

Petition allowed.

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