

Tarannum (Smt)

Vs

Union of India and Others

Writ Petition (Crl.) No. 419 of 1997

(K. Venkataswami, A. P. Mishra JJ)

05.02.1998

ORDER

1. This petition under Article 32 of the Constitution of India is filed by the wife of one Imran Ahmad alias Kheer, who has been detained under the National Security Act, 1980 by the order dated 27-4-1997 under challenge. The petitioner challenges the order of detention substantially on the ground that the grounds of detention do not have any nexus to the maintenance of public order. It is also contended that there was inordinate delay in considering the representation of the detenu by the authorities concerned.
2. The above complaints in the petition are denied by the respondents by filing a counter-affidavit.
3. We have heard learned counsel for the petitioner and the respondents.
4. We have been taken through the grounds of detention. We find, on a careful consideration of the same, that the main cause for action appears to be an alleged incident which took place on 16-2-1997 at 7.00 p.m. in the house of one Vijai Chaudhary, a resident of a house bearing no. 54, Sarai Zeena. According to the respondents, the detenu along with three other companions looted gold ornaments, watches and cash amounting to rupees one lakh thirty thousand from the said house of Vijai Chaudhary by wielding knives and pistols. The other grounds based on this incident related to alleged threats held out by the detenu himself or through his agent while he was put in jail. No incident is mentioned in the grounds of detention which has no relation with the main incident that took place on 16-2-1997 at the house of Vijai Chaudhary. For the main incident and the incidents connected with that, those were supposed to have taken place on 3-4-1997 and on other dates, appropriate criminal cases had been filed and the detenu was arrested and imprisoned. Factually, when the detention order was passed the detenu was in prison and on the basis of apprehension that the detenu would be bailed out and that he would indulge in several criminal activities, the impugned order of detention was passed under Section 3(2) of the Act.
5. As we have pointed out earlier, none of the acts mentioned in the grounds of detention relating to the main incident can be considered as acts by the detenu which are prejudicial to the maintenance of "public order". They all relate to "law and order" problem which has been booked appropriately under the relevant provisions of the Penal Code.
6. In this connection, learned counsel appearing for the petitioner, placed reliance on a judgment of this Court in Angoori Devi v. Union of India ((1989) 1 SCC 385 : 1989 SCC (Cri) 164). This Court in that case had occasion to consider the fine distinguishing feature between "public order" and "law and order". This Court observed as follows : (SCC pp. 389-90, paras 12-13)

"12. The impact on 'public order' and 'law and order' depends upon the nature of the act, the place where it is committed and motive force behind it. If the act is confined to an individual without directly or indirectly affecting the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquillity, it may fall within the orbit of the public order. This is precisely the distinguishing feature between the two concepts. Sometimes, as observed by Venkatachaliah, J. in *Ayya v. State of U.P.* ((1989) 1 SCC 374 : 1989 SCC (Cri) 153) : 'What might be an otherwise simple "law and order" situation might assume the gravity and mischief of a "public order" problem by reason alone of the manner or circumstances in which or the place at which it is carried out.' Necessarily, much depends upon the nature of the act, the place where it is committed and the sinister significance attached to it.

13. As for example dare-devil repeated criminal acts, open shoot-out, throwing bomb at public places, committing serious offences in public transport, armed persons going on plundering public properties or terrorising people may create a sense of insecurity in the public mind and may have an impact on 'public order'. Even certain murders committed by persons in lonely places with the definite object of promoting the cause of the party to which they belong may also affect the maintenance of 'public order'."

7. As against the above judgment, learned counsel appearing for the State of U.P., invited our attention to another judgment of this Court in *Harpreet Kaur v. State of Maharashtra* ((1992) 2 SCC 177 : 1992 SCC (Cri) 370) and, in particular, he invited our attention to paras 24 and 25, which read as follows : (SCC p. 186)

"24. Crime is a revolt against the whole society and an attack on the civilisation of the day. Order is the basic need of any organised civilised society and any attempt to disturb that order affects the society and the community. The distinction between breach of 'law and order' and disturbance of 'public order' is one of degree and the extent of reach of the activity in question upon the society. In their essential quality, the activities which affect 'law and order' and those which disturb 'public order' may not be different but in their potentiality and effect upon even tempo of the society and public tranquillity there is a vast difference. In each case, therefore, the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether his activities are prejudicial to maintenance of 'public order' or only 'law and order'.

25. There is no gainsaying that in the present state of law, a criminal can be punished only when the prosecution is able to lead evidence and prove the case against an accused person beyond a reasonable doubt. Where the prosecution is unable to lead evidence to prove its case, the case fails, though that failure does not imply that no crime had been committed. Where the prosecution case fails, because witnesses are reluctant on account of fear of retaliation to come forward to depose against an accused, obviously, the crime would go unpunished and the criminal would be encouraged. In the ultimate analysis, it is the society which suffers. Respect for law has to be maintained in the interest of the society and discouragement of a criminal is one of the ways to maintain it. The objectionable activities of a detenu have, therefore, to be judged in the totality of the circumstances to find out whether those

activities have any prejudicial effect on the society as a whole or not. If the society, and not only an individual, suffers on account of the questionable activities of a person, then those activities are prejudicial to the maintenance of 'public order' and are not merely prejudicial to the maintenance of 'law and order'."

8. In the light of the facts of this case, we do not think that the passage relied on by the learned counsel for the State of U.P. can come to his support. On the other hand, in the light of the passage extracted in Angoori Devi case (1992) 2 SCC 177 : 1992 SCC (Cri) 370 we find that the authorities were not right in passing the impugned detention order for "law and order" problem treating the same as "public order" problem.

9. In the circumstances, we accept the petition and make the rule absolute. The order of detention impugned in this case is quashed. The detenu Imran Ahmad alias Kheer be set at liberty forthwith unless he is required in any other case.