

SUPREME COURT OF INDIA

K.K. Saravana Babu

Vs

State of Tamil Nadu

Criminal Appeal No.1332 of 2008(Arising out of SLP (Crl) No.4386 of 2008)

(Dalveer Bhandari and Harjit Singh Bedi)

22/08/2008

JUDGMENT

DALVEER BHANDARI, J.

1. Leave granted.
2. This appeal is directed against the judgment of the High Court of Madras passed in Habeas Corpus Petition No.1677 of 2007 on 29th April, 2008.
3. The detenu has challenged the detention order under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) passed vide Order No. 360/07 dated 28.8.2007.

4. The detenu is involved in a land grabbing case registered at St. Thomas Mount Central Crime Branch Cr. No. 70/2006 under sections 420, 465, 468 read with 471 and 120(B) IPC and the said case is pending trial before the court. Subsequently another case was registered against the detenu during 2007 in Central Crime Branch, Chennai City X Crime No. 364/2007 under sections 420, 465, 466, 467, 468 read with 471 and 120(B) IPC for the offence of land grabbing and his activities are said to have been adverse to the interest of the land owners and prospective buyers. The modus operandi of the detenu in both the cases is land grabbing in a clandestine manner. The detaining authority had considered the said aspect and came to the conclusion that in case the detenu is let out on bail he would again indulge in similar type of offences and, therefore, it is imperative to detain him. The order of detention came to be passed keeping in mind the welfare of public who own lands as well as the prospective buyers.

5. It may be pertinent to mention that a number of bail applications of the detenu were dismissed and he was already in jail on 28.08.2007 when the detention order was served on him.

6. The detenu made a representation on 14.9.2007 to the Secretary and the Advisory Board seeking revocation of the detention order, which was rejected on 14.10.2007. Thereafter, the detenu filed a Habeas Corpus petition seeking quashing of the detention order. The said petition was dismissed on 29.04.2008. The detenu aggrieved by the said order preferred a special leave petition before this court. In pursuance to the notice issued by this court, a counter affidavit has been filed by the respondent.

7. Mr. Huzefa Ahmadi, learned counsel appearing for the detenu submitted that the detention order passed against the detenu is illegal and unsustainable in law. The detention order is based on aforementioned two criminal cases. According to the detenu, all allegations incorporated in both the criminal cases if taken to be true even then the detenu cannot be said to have indulged in activities prejudicial to the public order.

8. It was contended by the detenu that the grounds of detention are based on cases pertaining to law and order problem. The distinction between 'law and order' and 'public order' has been very clearly defined in a catena of judgments of this court. The clear legal position which emerges from the number of judgments of this court clearly leads to the definite conclusion that if allegations are taken to be correct even then the activities of the detenu do not fall in the category of cases affecting the public order.

9. Mr. Ahmadi also submitted that the High Court has seriously erred in not properly appreciating the distinction between "law and order" and "public order" and rejected the habeas corpus petition preferred by the detenu.

10. Mr. Ahmadi further contended that three bail applications preferred by the detenu were rejected and no bail application was pending when the detention order was passed, therefore, the apprehension expressed by the detaining authority that there was imminent possibility of detenu likely to be released on bail was merely ipse dixit of the detaining authority without any material on record.

11. Mr. Ahmadi submitted that the detention order ex facie is arbitrary, illegal, mala fide and passed with an oblique motive. He also contended that the State because of wrongful detention has deprived the detenu of his fundamental rights enshrined under Articles 21 and 22 of the Constitution of India.

12. Mr. T.L.V. Iyer, learned senior counsel appearing for the State of Tamil Nadu submitted that the detaining authority after arriving at a subjective satisfaction clamped the above order of detention on the basis of an appraisal of the material placed by the sponsoring authority.

13. Mr. Iyer further submitted that the detention order does not constitute an infringement of the fundamental rights guaranteed to the detenu under Articles 19, 21 and 22(5) of the Constitution of India. Mr. Iyer contended that the detenu is a slum grabber and involved in crime No. 70/2006 under sections 420, 465, 468 read with 471 and 120(B) IPC and crime No. 364/2007 under sections 420, 465, 466, 467, 468 read with 471 and 120(B) IPC and that, keeping in mind the seriousness of the offence of land grabbing, the detaining authority was justified in passing the detention order.

14. We have heard the learned counsel for the parties at length and carefully gone through the record of the case.

15. This court on several occasions examined the concepts of "law and order" and "public Order". Immediately after the Constitution came into force, a Constitution Bench of this court in Brij Bhushan & Another v. The State of Delhi (1950) SCR 605 dealt with a case pertaining to public order. The court observed that "public order" may well be paraphrased in the context as "public tranquillity".

16. Another celebrated Constitution Bench judgment of this court is in the case of Romesh Thappar v. The State of Madras (1950) SCR 594. In this case, Romesh Thappar, a printer, publisher and editor of weekly journal in English called Cross Roads printed and published in Bombay was detained under the Madras Maintenance of Public Order Act, 1949. The detention order was challenged directly in the Supreme Court of India by filing a writ petition under Article 32 of the Constitution. The allegation was that the detenu circulated documents to disturb the public tranquillity and to create disturbance of public order and tranquillity.

17. The court observed:-

"... 'Public order' is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established It must be taken that 'public safety' is used as a part of the wider concept of public order..... "

18. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of this court in *Dr. Ram Manohar Lohia v. State of Bihar & Others* (1966) 1 SCR 709. In this judgment, Hidayatullah, J. by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads thus:

"....Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State...."

19. In *Arun Ghosh v. State of West Bengal* (1970) 1 SCC 98, Hidayatullah, J. again had an occasion to deal with the question of "public order" and "law and order". In this judgment, by giving various illustrations, very serious effort has been made to explain the basic distinction between "public

order" and "law and order". The relevant portion reads as under:

"...Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society..."

20. The concept of 'public order' and 'law and order' has been dealt with in the case of Pushkar Mukherjee & Others v. The State of West Bengal, AIR 1970 SC 852. In this case, the Court had relied on the important work of Dr. Allen on 'Legal Duties' and spelled out the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr. Allen has distinguished 'public' and 'private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. There is a broad distinction along these lines, but differences naturally arise in the application of any such test.

21. This court in Babul Mitra alias Anil Mitra v. State of West Bengal & Others (1973) 1 SCC 393

had an occasion to deal with the question of "public order" and "law and order". The court observed that the true distinction between the areas of "law and order" and "public Order" is one of degree and extent of the reach of the act in question upon society. The court pointed out that the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different.

22. In *Dipak Bose alias Naripada v. State of West Bengal* (1973) 4 SCC 43, a three-Judge Bench of this court explained the distinction between "law and order" and "public order" by giving illustrations. Relevant portion reads as under:

"..Every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all of such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed. There is nothing in the two incidents set out in the grounds in the present case to suggest that either of them was of that kind and gravity which would jeopardise the maintenance of public order. No doubt bombs were said to have been carried by those who are alleged to have committed the two acts stated in the grounds. Possibly that was done to terrify the respective victims and prevent them from offering resistance. But it is not alleged in the grounds that they were exploded to cause terror in the locality so that those living there would be prevented from following their usual avocations of life. The two incidents alleged against the petitioner, thus, pertained to specific individuals, and therefore, related to and fell within the area of law and order. In respect of such acts the drastic provisions of the Act are not contemplated to be resorted to and the ordinary provisions of our penal laws would be sufficient to cope with them."

23. In *Kuso Sah v. The State of Bihar & Others* (1974) 1 SCC 185, this court had also considered the issue of "public order". The court observed thus:

"These acts may raise problems of law and order but we find it impossible to see their impact on public order. The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but

every infraction of law does not necessarily result in public disorder...."

24. This court in another important case Ashok Kumar v. Delhi Administration & Others (1982) 2 SCC 403 clearly spelled out a distinction between 'law and order' and 'public order'. In this case, the court observed as under:-

"13. The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not detrimental of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order...."

25. It has to be seen whether the detenu's activity had any

impact on the local community or to put it in the words of Hidayatullah, J., had the act of the detenu disturbed the even tempo of the life of the community of that specified locality?

26. Mr. Ahmadi, learned counsel for the detenu submitted that the detenu was in jail at the time when the detention order was passed. His three bail applications were rejected. Since there was no bail application pending, therefore, there was no imminent possibility of his being released by the court. The detenu's coming out on bail was merely ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. In absence of any such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. The learned counsel for the detenu also placed reliance on *Ramesh Yadav v. District Magistrate, Etah & Others* (1985) 4 SCC 232. In this case the court observed as under:-

"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 not 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."

27. Mr. Ahmadi, the learned counsel further placed reliance on *Binod Singh v. District Magistrate, Dhanbad, Bihar & Others* (1986) 4 SCC 416. In this case, the court observed as follows:-

"7. It is well settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in

custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald 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 to protect the fundamental freedoms of our citizens. In the affidavits on behalf of the detaining authority though there are indications that transfer of the detenu from one prison to another was considered but the need to serve the detention order while he was in custody was not properly considered by the detaining authority in the light of the relevant factors. At least the records of the case do not indicate that. If that is the position, then

however disreputable the antecedents of a person might have been, without consideration of all the aforesaid relevant factors, the detenu could not have been put into preventive custody. Therefore, though the order of preventive detention when it was passed was not invalid and on relevant considerations, the service of the order was not on proper consideration."

28. In *Commissioner of Police & Others v. C. Anita (Smt.)* (2004) 7 SCC 467, this court again examined the issue of "public order" and "law and order" and observed thus:

"7.The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the

act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is:

"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?"

This question has to be faced in every case on its facts."

29. In *R. Kalavathi v. State of Tamil Nadu* (2006) 6 SCC 14, this court while dealing with the case affecting the public order observed that even a single act which has the propensity of affecting the even tempo of life and public tranquillity would

be sufficient for detention.

30. Mr. Ahmadi, the learned counsel for the detenu placed reliance on T.V. Sravanan alias S.A.R. Prasana Venkatachaariar Chaturvedi v. State through Secretary & Another (2006) 2 SCC 664. In this case the court observed that when the detenu was already in custody, there was no imminent possibility of his being released. In that event it would not be appropriate to pass order of detention against him. This proposition of law also seems to be well-settled, but in view of the fact that the detenu succeeded in his threshold submission that the detention order passed against him was arbitrary, illegal and unsustainable because even assuming the allegation in both the cases relied on by the detaining authority are correct then also no case of disturbance of public order is made out.

31. We have tried to deal with the important cases dealing with the question of "law and order" and "public order" right from the case of Romesh Thappar (supra) to the latest case of R. Kalavathi (supra). This court has been consistent in its approach while deciding the distinction between 'law and order' and 'public order'. According to the crystallized legal position, cases affecting the public order are those which have great potentiality to disturb peace and tranquillity of a particular locality or in the words of Hidayatullah, J. disturb

the even tempo of the life of the community of that specified locality.

32. In the instant case, in the grounds of detention, two cases have been enumerated, one of which pertains to the offences punishable under sections 420, 465, 468 read with 471 and 120(B) IPC in Crime No.70 of 2006. Another case pertains to Crime No.364 of 2007 registered under sections 420, 465, 466, 467, 468 read with 471 and 120(B) IPC. The facts of these cases have been carefully examined and even assuming the allegations of these cases as true, even then by no stretch of imagination, the offences committed by the detenu can be called prejudicial to public order. The detenu can be dealt with under the ordinary criminal law if it becomes imperative.

33. In this view of the matter, the detention order passed against the detenu is illegal, unsustainable and liable to be quashed and we accordingly do so. Since we are quashing the detention order on the threshold submission of the detenu, therefore, it is not necessary to examine other submissions advanced by the detenu. The detention order is accordingly quashed. The detenu be set at liberty forthwith, if not required in any other case. The appeal is accordingly allowed and disposed of.

