

RAJASTHAN HIGH COURT

Hari Ram

Vs.

State (Rajasthan)

D.B. Criminal Habeas Corpus Petition No. 847 of 1973
(Beri C.J. and Gupta, J.)

20.11.1973

JUDGMENT

Beri C.J.

1. This is a petition under Section 491 of the Code of Criminal Procedure and Article 226 of the Constitution of India praying for a writ, order or direction for the release of HariRam Loharia (hereinafter called 'the detenu') detained under Section 3(1)(a)(iii) of the Maintenance of Internal Security Act, 1971 (hereinafter called 'the Security Act') by the order of the District Magistrate, Sikar (hereinafter called 'the D.M ') dated 25-9-1973.

2. On a report by the Assistant District Supply Officer to the Sadar Police Station, Sikar, dated 7-9-73 a search was made of the premises of Jagdamba Oil and Dal Mills, Sikar, and the Inspector found 2808 bags of cement while the stock register showed a balance of 2689 bags only. The excess of 119 bags according to the police was due to the admixture of sand in cement bags and in a garage some laborers were engaged in the process of adulteration and they made statements to this effect. A case under Section 420 IPC and Essential Commodities Act was registered, the detenu was arrested on 22-9-73 and released by the police on a bail in the sum of Rs 55,000/-, The D.M. however, by his order dated 25-9-1973 (Ex.1) exercising his power under the Security Act detained the detenu "with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community". The grounds for detention (Ex 3) were supplied to the detenu on 26-9-1973. According to the detenu the grounds are malafide, irrelevant, incorrect and vague and, therefore, it is prayed that the detention be set aside.

3. The State has filed an answer and certain documents. It is admitted that the detenu has been detained and the order (Ex.1) has been approved by the State Government by its order dated 3-10-1973 (Ex.R/3). It is, however, submitted that the detenu is a partner of the Firm Kailashchand Ramesh kumar, who is the cement stockist of Sikar under a license. The plea of mala fide is stoutly denied. It is averred that the fundamental rights covered by Article 19 of the Constitution of India stand suspended and no grievance can be made on that account. It is also submitted that the detention of the detenu is valid. The answer is supported by an affidavit of the District Supply Officer Sikar.

4. Mr. Bhargava, learned Counsel for the petitioner, urged that cement was a commodity, the supply of which was not essential to the community; houses were being made of mud and other alternative material and even assuming that cement was being adulterated it was not acting in any manner prejudicial to the maintenance of supplies essential to the community. He placed reliance on *Misrilal and Ors. v. The State*¹

5. Let us read the material words of the statute. Section 3(1)(a) of the Security Act reads,:

3. Power to make orders detaining certain persons:

(1) The Central Government or the State Government may-

(a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to-

(b)

(iii) the maintenance of supplies and services essential to the community, it is necessary so to do make an order directing that such person be detained.

The important words are "preventing him from acting in any manner prejudicial to the maintenance of supplies essential to the community." The word "supplies" as distinguished from the word "services" means the act of supply-the commodity. The dictionary meaning of the word 'supply' is "...the amount or the quantity available for use, stock, store,..." (See Webster's New Twentieth Century Dictionary). If a person acts in any manner prejudicial to the supplying of an article essential to the community in order to prevent him from so acting, such person can be detained under the Security Act. The learned Counsel's argument is that cement is not an essential

article for the community because in villages houses are made and can be made of mud and there are other alternative materials to replace cement Who is to determine what is essential to the community at a given point of time? Its will be relevant in our opinion to refer to the Essential Commodities Act, 1955 which extends to the whole of India and Section 2(a)(xi) whereof provides any class of commodity which the Central Government may, by notified order, declare to be an essential commodity is entitled to that status. By S.O. No. 3594 dated 24-1-1962 cement was declared to be an essential commodity, There is no substance in the argument that an article ceases to be essential because it has alternatives. By this process of reasoning drinking water may become unessential on account of fruit juice and bicycle unessential on account of a bullock cart, or to borrow the historic argument of Marie Antoinette, who had said that bread was not essential because there was the classic alternative of cake. What is essential to a community is regulated by the current needs of the society. Could we say that mud plaster is as strong and protective as cement? Cement is a versatile and today it serves the essential purposes of a civilized life not only in private shelter but in the construction of bridges, dams; towers, reservoirs, sky-scrappers, bunkers, and so on.

6. Let us now examine the Patna Full Bench case (1). The detenus in that case were engaged in the activities of mixing stone powder with Ata (flour). Their houses were raided and evidence of the activity was collected including 35 bags of stone powder. Imam, J; as he then was, observed that the conduct of the detenus was "highly reprehensible" but after ascertaining the dictionary meaning of the word "supply" he held-

I do not think that the words 'maintenance of supplies & services essential to the community' could reasonably carry the meaning that any one who adulterated foodstuffs would be acting in a manner prejudicial to the maintenance of supplies or the continuity of supplies. It is true that adulterated food-stuff supplied to the community may be harmful to its health, but supplying such adulterated foodstuff would not be prejudicing the maintenance of supplies. The Act does not speak of profiteering, much less profiteering at the expense of the health of the community.

We have given our earnest consideration to the aforesaid observations of the learned Judges but we regret our inability to agree with them. In our opinion the crucial words of the statute are, "acting in a manner prejudicial to the maintenance of supplies". The

burden is not on maintenance as it merely imports continuity. The essence of the matter is that the act should not be prejudicial to the supply, A person is said to act prejudicially if he acts to the detriment or acts injuriously. The next question is supply of what? we have already said the commodity which is essential to the community, Atta (Wheat) is certainly one of such articles and probably the most basic for keeping the soul and body together. If Atta is adulterated with stone powder, what is supplied is not a commodity essential to the community but its counterfeit. The object of the Security Act is to deal effectively with the threats to the organized life and to the security of India. If the stone powdered Atta was supplied to the defence personnel with its undoubted deleterious effect on their system and they lose a battle and perhaps a chunk of our territory, could we still say in good conscience and reason that the maintenance of the supply was not prejudiced and the security of India was not endangered on account of Atta being mixed with stone powder? To take the case before us if the cement adulterated by ordinary clay was to be utilized for the construction of a culvert strategic for the defense of the country and it collapsed could we say that the supply of cement was not prejudiced? In essence we regret to have to repeat that supply means the supply of essential commodity and not its counterfeit and those who are engaged in the process of counterfeiting an essential commodity are certainly acting prejudicially to the maintenance of the supply of the essential commodity. In our opinion, therefore, adulterating an essential commodity is acting prejudicially to the maintenance of its supply and the provisions of Section 3(1)(a)(iii) are clearly attracted.

7. Mr. Bhargava next urged that if any of the grounds supplied to the detenu suffers from the vice of vagueness, irrelevancy, non-existence then the order which follows those grounds falls to the ground.

8. Section 8 of the Act provides that if a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government. The furnishing of grounds, therefore, is to provide an opportunity to the detenu to make a representation against his detention. Therefore it is obvious that the grounds must be clear to a lay man who can effectively make a representation. In

*Naresh Chand Ganguli v. The State of West Bengal and Ors.*² it has been considered as to what should be the contents of the grounds. They have been divided in two parts. The order of detention to be served on the person detained should contain firstly the recitals in terms of one or more of the Sub clauses of Clauses (a) and (b) of Section 3(1), which has been characterized by the Supreme Court: as the 'preamble' and secondly, the grounds contemplated by Section 8, namely, the conclusions of fact which have led to the passing of the order of detention, informing the detentive as to why he was being detained. If the grounds do not contain all the particulars necessary for enabling the detentive to make his representation against the order of his detention, he may ask for further particulars of the facts, and the authority which passed the order of detention is expected to furnish all that information. In *Sushanta Goswami v. The State of West Bengal*,³ the Hon'ble Judges of the Supreme Court observed in para 4 that if some of the grounds which are given are irrelevant the order of detention cannot be upheld because the court cannot predicate what the subjective satisfaction of the authority would have been on the exclusion of those reasons and the order of detention has been set aside for that reason. In *Mintu Bhakta v. The State of West Bengal*,⁴ the Hon'ble Judges of the Supreme Court in para 9 have observed-

It is by now well-settled that in cases dependent on subjective satisfaction if it is found that one of the grounds for detention is extraneous or is factually baseless, the order must fail, since it is impossible in such cases to predicate upon which of the grounds the concerned authority had reached its satisfaction or whether it would have reached the satisfaction without or irrespective of the ground which fails.

In *Rameshwar Lal Patwari v. The State of Bihar*,⁵ it was held that if a vital ground is shown to be non-existing so that it could not have and ought not to have played a part in the material for consideration, the Court may attach some importance to this fact. Detention will not be justified where some grounds are found to be non-existent in fact. In *Dr. Ram Krishan Bhardwaj v. The State of Delhi*,⁶ one of the grounds supplied to the detentive was that he had been organizing the movement by enrolling the volunteers among the refugees in his capacity as President of the Refugee Association of Bara Hindu Rao, a local area in Delhi. The learned Counsel argued in this case that it was extremely vague and the learned Attorney General endeavored to show that if this ground was read in conjunction with the preceding ones it could be intelligible. Patanjali Sastri, C.J; who spoke for the Bench, made the following significant

observations-

"...the petitioner, who is a layman not experienced in the interpretation of documents, can hardly be expected without legal aid, which is denied to him, to interpret the ground in the sense explained by the Attorney General. Surely, it is up to the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to his own resource for interpreting the grounds. We must, therefore, hold that the ground mentioned in Sub-para (e) of para 2 is vague in the sense explained above.

There are some of the authorities that are relevant for the consideration of the grounds supplied in the case before us. We need not cite other decisions. The grounds supplied to the detenu in our case read as follows. We are not translating them in the interest of exactitude.

Jh gjhjke yksgfM;k iq= Jh ewaxhyky yksgkfM;k fuoklh lhdj dks esUVsusUl vkWQ bUVjuj fID;ksfjVh ,DV] 1971 dh /kkjk 3AA,A 3A ds vUrZxr fMVsu djus ds otqgkrA

Jh gjhjke yksgfM;k iq= Jh eawxhyky yksgkfM;k fuoklh lhdj ds lhesUV xksnkeksa ij jln dk;kZy; ds deZpkjh;ksa }kjk fnukad 6&9&73 dsk Nkik ekjk x;kA ekSds ij Jh gfjjke ds xksnke ij rkyk yxk feyk ijUrq rkyk [kqyokus ij vUnj rhu etnwj lhesUV es feV~Vh feykr ik;s x;sA lhesUV feykus dk jax rFkk lhesUV tSls jax ls feykbZ gqbZ feV~Vh Hkh ik;h x;hA etnwjkas ds U;k;ky; es c;ku djok;s x;sA tgka mUgksus Lohdkj fd;k fd Jh gjhjke ds funsZ'k ij lhesUV es feV~Vh feykus dk dk;Z muds }kjk dkQh le; ls fd;k tk jgk gSA Lo;a gjhjke us Hkh esjs le{k vkt fnukad 25&9&73 dks lhesUV es feV~Vh feykuk Lohdkj fd;kA Nkik ekjrs le; ekSds ij [kqyh gqbZ lhesUV dh cksjh;ka Hkh feyh rFkk feV~Vh ihlus dh pDdh vkfn Hkh feysA ekSds ij izkIr 2572 cksjh;kW rFkk nks vU; xksnkeksa ij 336 cksjh;ka bl izdkj 2808 cksfj;ks dks tCr fd;k x;kA iqfyl }kjk nQk 420 rk0fgo nQk 3@7 ,slksfU'k;y deksfMVht ,DV ds vUrZxr eqdnek uEcj 63@1973 fnukad 7&9&73 dks ntZ fd;k x;k gSA lhesaV ds LVkWd es 119 cksfj;k vf/kd feyh fild Li"Vr;k dkj.k ;gh Fkk fd lhesaV es feV~Vh feykus ls cksfj;ks dh la;k chA Jh gjhjke dk mDr dk;Z xSj dkuwuh rFkk lekt fojks/kh gS vkSj bl izdkj feykoV dh lhesaV ds bLrseky ls mi;ksx drkZvks dh tku dh [krjk mRiUu gks ldrk gSA 90

izfr'kr lhesaV ds ijfeV dqvks ds dk;Z ds fy, tkjh fd;s x;s tgka bl izdkj dh lhesV ds mi;ksx ls dq, fxj ldrs rFkk dq, cukus okys etnwjksa dh ftUnxh [krjs es iM ldrh gSA Jh gjhjke dk ;g d'R; Ilykbt o lfoZlst tks lekU; turk ds fy, vko';d gS fd esUVsusUl es xfrjks/k mRiUUk djus oky gS rFkk bl izdkj dh lhesaV dk Kku gksus ij dq, okyks o lkekU; tUkrk es ftUgksus ;g lhesV bLrseky dh gS es Hk; dk okrkoj.k mRiUu gqvk gSA blds vfrfjDr Jh gjhjke }kjk vU; xSj dkuwuh dk;Z Hkh fd;s x;sA gS ftues dqN fuEu gS %&

1- mijksDr Nkis ds le; es Jh gjhjke ds xksnke es 80 cksjh tkS o tSk?kkV o 17 cksjh puk Hkh cjken fd;k gqvk gSA tks LVkWd ds vuqlkj Bhd ugh FkkA blds vfrfjDr Jh gjhjke ds vU; xksnke ij tks ?kskf'kr ugh Fkk 17 cksjh puk Hkh ik;k x;k tks /kkjk 3@7 ,lsU'ky deksfMVht ,DV ds vUrZxr n.Muh; vijk/k gSA

2- Jh gjhjke ds fo:) eqdnek ua0 42@73 /kkjk 407 rk0fg0 ds vUrZxr ntZ fd;k gqvk gS ftles mlDs ikl jktLFkku fo|qr e.M+y ds tkjh gq, ,axy vkbju cjken gq,A ;g ekeyk lhdj dksroky es tsj rQ'kh'k gSA ;g ,axy vkbju jkTkLFkku jkT; fo|qr e.My }kjk fons'kks ls vk;kr fd;s x;s FksA

3- Jh gjhjke ds fo:) VsfyQksu foHkkx pqjk;s gq, rkj ds [kjhn dk Hkh vkjksi gS rFkk eqdnek uEcj rk0fg0 dh /kkjk 380 ds vUrZxr ntZ fd;k x;k gSA Jh gjhjke dh nqdku ls 293 fdyks VsfyQksu rkj cjken fd;s tks eky Li"Vr;k Jh gjhjke dh tkudkj es pqjk;k gqvk FkkA

4- izoZru vf/kdkjh jln 'kk[kk }kjk fnukad 22&9&73 dks tkWp djus ij ik;k x;k fd fofHkUu [kk|kUuksa dh dbZ lh cksjh;kas dk ysus&nsu fcuk [kk|kUu jftLV~j es vafdr fd;s fd;k x;k gSA

g0 ih0,u0 Hk.Mkjh]

ftyk/kh'k lhdjA

9. The learned Additional Advocate General urged that it is only the first two paragraphs without Dumber in the aforesaid grounds that constitute the real grounds and the grounds which are mentioned at Nos- 1 to 4 are mere illustrations. We have no difficulty in rejecting this argument. The endeavor of the D.M has been to inform the detenuue that not only he was responsible for mixing sand with cement but he was otherwise involved in several other illegal activities It cannot be said that the D.M. was interested in recounting of the alleged mis-deeds of the detenuue but he only

mentioned those which apparently influenced his mind to act under Section 3(1)(a) of the Security Act. The words (besides this) are clearly indicative of the connection between what preceded and what followed.

10. In regard to the ground relating to Cement the clear infirmity is that it relates to an act already done and does not speak of any apprehension in regard to its repetition for which the detention was necessary. *In re S.V. Ghate's case*⁷ it has been observed that the satisfaction that the Jaw requires is that there must be at least a reasonable probability of repetition by the person concerned of an activity which was to be prevented. It may not be necessary to go to the length of saying that the detaining authority may feel absolute certainty that the person who was to be detained was going to act in a prejudicial manner. There is no suggestion in paragraphs 1 and 2 of the aforesaid grounds that there was any apprehension much less probability that the detnue would be mixing sand with cement and it was therefore necessary to detain him. This ground, therefore, suffers from a clear infirmity.

11. We might now examine the infirmity in regard to the ground No. 2 that the detinue was accused in police case No. 42/73 for committing an offence under Section 407 IPC because he had the stolen angle irons belonging to the Rajasthan State Electricity Board. The matter is said to be under investigation with the Sikar Kotwali and the angle irons were imported for the Rajasthan State Electricity Board. On behalf of the State Annexure B/1, which has been produced, is addressed to the D.M. by the Superintendent of Police, Sikar. It is alleged in this letter that the detinue is also involved in the case No. 42/73 under Section 407 IPC of the Police Station Kotwali, Sikar dated 31st March, 1973 for receiving stolen property. The facts of the case, discloses the letter, are that certain goods, angle irons, were received by the R.S.E.B. from the Railway Station. On way to the R.S.E.B. Stores certain quantity of angle irons were shifted by the accused Sri Hari Ram Loharia's firm from where it was transported to Jaipur through Hansa Goods Transport Co. On investigation of this case, the investigating officer was able to recover 59 feet 3 inches of angle iron which were actually of the R.S.E.B. As such Shri Hari Ram Loharia is involved in this case as receiver of stolen property concludes the letter. In our opinion ground No. 2 nowhere contains the information which the Superintendent of Police communicated to the D.M. and the detinue was bound to be left guessing what it was all about. Section 407 of the Indian Penal Code relates to criminal breach of trust by carrier, wharfinger or warehouse-keeper and it is no body's case that the detinue carries on any

such business and the ground suffers from complete lack of clarity.

12. Ground No. 3 relates to police case No. 36/73 under Section 380 IPC. It is said that from the detenu's shop 293 kilograms of telephone wire was recovered and the property was stolen property. On behalf of the detenu Ex. 2 has been produced, which is a first information report relating to police case No. 36/73 dated 16-3-1973. It relates to the recovery of one bottle of illicit country made liquor and an offence under Section 54 of the Excise Act against one Lalaram son of Bholuram. In an attempt to relate it to the detenu the Superintendent of Police informed the D.M by Ex B/1 that during investigation of case No. 36/73 under Section 380 IPC Police Station Sadar, Sikar, the local police got information from Sri Bhagirath Singh Rajput of Sinot Chhoti, 'an under arrest person' (sic), that he had stolen a large quantity of telephone wire (not copper wire) from the stores of the Telephone Deptt. At his instance, some 293 Kg. of telephone wire was recovered from the premises of Shri Hari Ram Loharia. The Telephone Deptt. was contacted but on account of non-availability of information with them they asked for some time which was granted. The matter was pending investigation. And the Superintendent of Police concludes in Ex. R/1 that as soon as the Telephone Department lodged a report of theft a case shall be registered. In any case, the complicity of Sri Hari Ram Loharia regarding receiving stolen property is proved in the opinion of the police. We have no hesitation in saying that the case number does not relate to the detenu, it is not under Section 380 IPC and the first information report regarding telephone wire is still awaited from the Telephone Department. This ground suffers from more than one infirmities. Partly the ground is imaginary and it is bound to mislead; the foundation for the offence, the first information is yet awaited. It thus vitiates the whole body of the grounds.

13. The ground No. 4 relates to the vague allegation that business of several hundred bags of food grains was done without recording them in the register. Mr. Shrimal says it should be connected with the first ground. We are unable to agree. What grains, how many bags, on what dates, in which registers? All these details are wanting. The detenu cannot possibly make any representation in regard to such a vague allegation.

14. The grounds contained in Ex. 3 in our opinion suffer from many infirmities. Even if there was a single infirmity it would have vitiated the entire order. There is no dearth of such vices in the grounds supplied to the detenus and we cannot countenance the detention of the detenu under Section 3(1)(a) in the face of such grounds, which have been furnished to him. The order of detention (Ex. 1) dated 25-9-73 is

accordingly quashed and the detinue is ordered to be released forthwith on account of the non-compliance of Section 8 of the Security Act.

Cases Referred.

1. AIR 1951 Pat 134 (FB)
2. AIR 1959 S.C. 1335
3. AIR 1969 S.C. 1004
4. AIR 1968 S.C. 1303
5. AIR 1968 S.C. 1303
6. AIR 1953 S.C. 318
7. AIR 1951 Bom. 161