

Ashok Kumar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-15-1997

Reported in : 1998(2)AWC925

Judge : S.K. Phaujdar and; N.S. Gupta, JJ.

Acts : [National Security Act, 1980](#) - Sections 3(2), (3) and (5); [Constitution of India](#) - Article 226; [Indian Penal Code \(IPC\), 1860](#) - Sections 364

Appeal No. : Habeas Corpus Petition No. 20659 of 1997

Appellant : Ashok Kumar

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.K. Lal, Adv.

Judgement :

S.K. Phaujdar and N.S. Gupta, JJ.

1. The petitioner has been detained under the provisions of the National Security Act under the order of the District Magistrate. Mahamaya Nagar recorded on 22.5.97. This order has been challenged through the present habeas corpus petition invoking the powers of this Court under Article 226 of the Constitution for

issuance of a writ, order or direction in the nature of habeas corpus for production of the petitioner before Court, for quashing the order of detention and for setting him at liberty.

2. The order dated 22.5.97 is in Hindi and it reads that the District Magistrate was satisfied that the petitioner's detention was necessary for maintenance of public order in the district of Mahamaya Nagar and accordingly he exercised his powers under Section 3(3) of the National Security Act and directed his detention in terms of Section 3(2) of the said Act in the District Jail at Aligarh.

3. The order was appended with the grounds of detention and it indicated that the petitioner had been a driver under one Banke Behart Agarwal at Hathras and was given the responsibility of taking and bringing back the children to and from the school. While on such duties, he conspired with other persons to kidnap the children and on 24.4.97 at about 11.00 a.m., he kidnapped for ransom three children aged 5 years or below. A Criminal Case No. 85 of 1997 under Section 364, I.P.C, was registered for this kidnapping. 'As a result of this incident, not only in the city of Hathras but in the contiguous areas as well, thousands of persons assembled at police station Hathras Gate. There was a complete 'Bundh' of the markets in Hathras city and the guardians in general stopped sending their wards to schools. Social service institutions started hunger strike against inaction of the police and all commercial Institutions were closed. A sense of fear and panic engulfed the people in general and public order had broken down completely. When the sense of insecurity felt by the people of Hathras was published in the news paper the panic spread to the entire area as well. On 20.4.97 a co-accused Durgpal was arrested and on his pointing out, the present petitioner was found along with the kidnapped children in the forest of Naglaveer Sahai.

4. It was further indicated in the grounds that the offence was committed by the petitioner with his associates and the panick situation for the sense of insecurity could be brought to normalcy only on police intervention. At the time of notice of detention the petitioner had been in Aligarh Jail in judicial custody and he had made prayers for his release on bail and the possibility of his being so released was there. It was indicated that if released on bail he would again involve himself

in like activities prejudicial to the maintenance of public order and it was therefore, necessary to detain him.

5. The petitioner was informed that he had a right to make applications or representations against the detention order to the State Government, to the Advisory Committee and to the Central Government. It was also indicated as to who should be addressed with his representation for each of these authorities. He was further informed that if he desired he would be given a personal hearing by the Advisory Committee. He was also given papers on the basis of which the District Magistrate satisfied himself about existence of the conditions for making the detention order.

6. It was the case of the petitioner as per his application that he was on duty in taking the children as usual on 24.4.97 when a neighbor of his master requested for a lift. This neighbor Dev Dutta was known to him and he stopped the car and Dev Dutta and some others took seat In the car and when the car moved, they, on the point of revolver, compelled the petitioner to drive the car away. Finally the car had to be led to the place of Papa Yadava. It was stated that it was at the instance of the petitioner that an information was sent to his master through phone by another person and only then the recovery was made. It was stated that because of the high social position of Sri Banke Behari Agarwal and because of his political strength, demonstrations and 'Bundh' were staged by the public although there was no disturbance of public order and in any case the petitioner was not at all liable for the offence of the after math.

7. It was urged that the District Magistrate's satisfaction suffered from arbitrariness and there was no application of mind as he had simply paraphrased the report of the Superintendent of Police. It was stated further that extraneous materials were considered by the District Magistrate which were not borne out from the records. It was further urged that the State Government had not sent its report to the Central Government within 7 days as required under Section 3(5) of the National Security Act and the Central Government had also failed to convey its decision to the detenu.

8. Counter-affidavits were filed by the Deputy Jailor of Aligarh Jail, by the District Magistrate. Mahamaya Nagar as also by the Assistant in the confidential section of the Uttar Pradesh Secretariat. In the affidavit of the District Magistrate, the truth of the defence case was challenged. It was asserted that the subjective satisfaction of the District Magistrate was based on relevant materials, copies of which were supplied to the petitioner. It was further stated that the requirements of law were all complied with. In the affidavit of the Jailor, it was indicated that the petitioner was admitted in District Jail, Aligarh on 29.4.97 in Case Crime No. 85/97 under Section 364, I.P.C, and the order dated 22.5.97 was served upon the petitioner in the Jail. It was further indicated that the State Government had approved the detention by crash radiogram dated 30.5.97 and when the order was received on 18.6.97 it was served upon the petitioner then and there. The petitioner had submitted a representation to the jail authorities on 3.6.97 and it was forwarded to the District Magistrate. The representation was rejected by the State Government and information thereof was given through radiogram on 19.6.97. The petitioner was informed on 21.6.97 through the police authorities. The notice dated 26.6.1997 was also served upon the petitioner in Jail to inform him that the Advisory Board would hear the matter on 30.6.1997. The petitioner never made any prayer before the Jail authorities either orally or in writing to allow any of his next friend to be before the Advisory Board although he appeared personally before the Board on 30.6.97. In the affidavit on behalf of the State Government, it was indicated that the approval of the detention order was communicated to the petitioner on the date of approval itself and on the same day a copy of the detention order with grounds thereof were reported to the Central Government within 7 days from the date of approval as required under the law. The petitioner had appeared personally before the Advisory Board on 30.6.97 and the Advisory Board had found grounds of detention sufficient. Even after the receipt of the letter from the Advisory Board the State Government examined the entire case afresh and was of the view that the detention order was to be affirmed.

9. The learned counsel for the petitioner basically made his submission on the true interpretation of the term 'public order' vis-a-vis the term 'law and order'. It was contended that a single act directed against a single individual could not lead to a conclusion that public order was thereby disturbed and in that light, the order of

detention was bad in law. The learned A.G.A., however, submitted that whether a particular act would result in a prejudice to the maintenance of public order or would be a question of some law and order, is to be determined from its effect on the society. Both the learned counsels relied on case laws in support of their contentions.

10. Section 3 speaks of powers to make orders detaining certain persons and sub-section (3) empowers a District Magistrate to record such an order within the local limits of his jurisdiction when he is satisfied that it is necessary to do so and the satisfaction is to be in terms of the sub-section (2). This subsection (2), requires that before making an order of detention, there should be a satisfaction that such detention was necessary to prevent the person detained from acting in any manner prejudicial to the maintenance of public order, etc. What was public order, has been consistently explained by the Supreme Court in several decisions. In the case of Gulab Mehra. 1987 ACC 520, the Court had considered its earlier decisions in the cases of Dr. Ram Manohar Lohia v. State of Bihar and Arun Ghosh v. State of West Bengal, wherein it was observed that a contravention of law always affected order but before it can be said to affect public order, it must affect the community of the public at large. The Supreme Court had explained that there were three concepts, namely, law and order, public order and security of the State and to appreciate these concepts, one should imagine three concentric circles, the largest representing law and order. the next representing public order and the smallest representing the security of the State. In Arun Ghosh's case, it was observed by the Supreme Court that it was the degree of disturbance and its effect upon the life of the community in a locality which determine whether it was a question of breach of public order or of mere law and order. In the case of Gulab Mehra, however, the Court was of the view, on the facts of the case, that the incidents were not inter-linked and couldnot have prejudiced maintenance of public order. In the case of Subhash Bhandari, 1988 ACC 48, the Court found that the act complained of did not disturb public tranquillity and did not create terror or panic and the act had emanated from business rivalry and as such the application was allowed. But in this case also, the Supreme Court had observed that the main question which fell for decision was whether the act referred to in the grounds of detention was directed against certain Individuals creating a law and

order problem or the reach and potentiality of the act was so deep as to disturb the society to the extent of causing a general disturbance of public tranquility. In the case of Smt. Angoori Deui v. Union of India. 1989 ACC 1, the Supreme Court made a distinction between public order and law and order and stated that the Impact on public order and law and order depends upon the nature of the act, place where it is committed and the motive force behind it. If the act was confined to an individual without directly or Indirectly affecting the tempo of the life of the community, it could be a matter of law and order only. But where the gravity of the act was otherwise and was likely to endanger public tranquility, it can fall within the impact of public order. In the language of the Supreme Court 'This is precisely the distinguishing feature between the two concepts.' The Supreme Court further observed in the case of Smt. Victoria Fernandez. 1992 ACC 14, that the distinction between public order and law and order was one of degree and extent of reach of the act to the society. When a particular act was not one of such potentiality which would disturb the even tempo of the community, it would not be prejudicial to maintenance of public order. On the facts of the case, detention in this case was held illegal and was quashed. From the case law that have been relied upon on behalf of the petitioner, we gather that the Supreme Court had made a clear distinction between the law and order and public order and has indicated that in the disruption of these two concepts, there is a difference of degree only and not of kind. It is the impact of the act on the tempo of the life of the community that makes the difference and this impact could be direct or even indirect.

11. On behalf of the State also, reliance was placed on the decisions of the Supreme Court in the case of Smt Vimla Rani, 1989 ACC 589. The Supreme Court had before it a case in which there was a gun shot in an attempt to kill and there was threatening to persons in a most sensitive area as a result whereof fear and terror spread in public in markets. Mela and city. The incident was a solitary act of the detune but the Supreme Court upheld the order of detention holding that even this single incident led to harm public order in the circumstances of the case.

12. Reliance was also placed on a decision of the Allahabad High Court in case of Bhagwat Dayal, J 991 AWC 1066. A Division Bench of this High Court dealt with this very question which has been agitated before us. There was also a solitary act

of the detenu and the Court observed that it could be sufficient to warrant an order of preventive detention and the Court found that whether it related to the problem of the public order or was only a matter connected with the maintenance of law and order could be determined with a test whether the even tempo of life of the community was disturbed by the activity of the detenu or not.

13. In the case at our hands, the petitioner tried to make out a case that he was also a mere victim at the hands of the kidnappers and it was he on whose phone call police spotted and rescued the children. This Court is not called upon to look to the truth or otherwise of the defence case which must be left to the trial court for decision in the case for the substantive offence. This Court is to see if on the materials that were placed before the District Magistrate, a case of prejudice to public order could be presumed- The consistent decisions of the Apex Court make it clear that there is no hard and fast rule that a single incident may not lead to a preventive detention order. It has further been indicated as to what test is to be applied to see if a law and order situation had taken a dimensions of a prejudice to public order. In the instant case, no doubt children of a single family were allegedly kidnapped but, if the allegations are true, it was caused by a domestic driver with the connivance of others. The effect of this act on the society is certainly a panic and spontaneous outburst of demonstrations against the authority and a spontaneous 'Bundh' of educational and commercial institutions and the market. The incident, although affecting a single individual, had thus taken a proportion affecting the whole locality whereby the even tempo of the society was disturbed. In our view, therefore, it was a question of prejudice to public order and, thus, gave rise to the subjective satisfaction of the authorities empowered to take recourse to Section 3(2) and (3) of the National Security Act.

14. On other points, the learned counsel did not put much weight and it is found that the requirements of law in sending confirmation within the stipulated time, in sending a report to the Central Government, in allowing the detenu chances of representation, were all complied with. It was argued that the representation of the detenu made to the Central Government was not forwarded. A perusal of the writ petition, however, does not disclose that any such representation was made to the Central Government. The only objection in this regard is in Para 18 of the writ

petition taking objections regarding non-compliance of the Section 3(5) of the Act. This was not in respect of making a representation to the Central Government but was regarding routing reference by the State Government to the Central Government within 7 days of the approval of the detention order and the affidavit of the State indicates that it was done within the stipulated time.

15. There being no ground for interfering with the matter of detention, the present writ petition stands dismissed.

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