

Anil Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Aug-05-1996

Reported in : 1997CriLJ276

Judge : K.C. Bhargava and ;A.S. Gill, JJ.

Acts : [Constitution of India](#) - Articles 14 and 226; [National Security Act, 1980](#) - Sections 3, 3(2), 8, 10, 11, 12 and 12(2); Indian Penal Code (IPC) - Sections 201, 302 and 368

Appeal No. : Writ Petn. No. 171 (H.C.) of 1996

Appellant : Anil

Respondent : State of U.P. and ors.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : P.K. Punhani, Adv.

Disposition : Petition allowed

Judgement :

A.S. Gill, J.

1. The petitioner (in detention) before us has invoked the writ jurisdiction of this Court under Article 226 of the Constitution for issuing a writ in the nature of

certiorari for quashing his detention order dated 20-9-1995, passed by the District Magistrate, Meerut under Section 3(2) [National Security Act, 1980](#). The order of detention was served on the petitioner on 20-9-1995. when he was in Jail in case Crime No. 296/1995, under Sections 368/302/201, I.P.C., Police Station T.P. Nagar Mcerut. The detention order indicated that the District Magistrate, Meerut was satisfied that the detention of the petitioner was necessary with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order.

2. The detention order of the petitioner emanated from his involvement in the commission of murder of a child Tushar aged about 4 years after hatching a criminal conspiracy with other co-accused in respect of which the aforesaid crime case was registered with the police station with the allegation that on 13-4 -1995 at 12.00 noon, purusant to criminal conspiracy he kidnapped 4 years' old child Tushar son of Sanjay Singh. Supervisor Naveen Mandi. Mecrul with the help of a Riksha Puller and after taking the child to a vacant house in the Avas Vikas Colony, same day he committed the murder of the child with a knife in a most heinous manner by damaging, the eyes of the child and keeping hot brick on the body of the child. Petitioner allegedly confessed his guilt and narrated the sequence of murder of child and narrated his participation with his brother Sunil and father Nanak. He allegedly produced the blood stained knife from his possession during investigation of the case. It was further stated in the grounds of detention that on account of the act and conduct of the petitioner of killing the child in such a cruel manner a sense of fear and panic was created in the locality and children were not permitted to go to their schools. It is also indicated that the bail application of the petitioner was pending consideration before the Court and in order to avoid his further involvement in similar cases after his release on bail, which will affect public order, he was required to be detained under the National Security Act.

3. The case of detention against the petitioner was referred to the Advisory Board, before whom the petitioner appeared on 30-10-1995. The advisory Board recommended to the Government the detention of the petitioner on 4-11-1995 and the Slate Government confirmed the detention order on 9-11-1995.

4. The detention order has been challenged inter alia on two grounds, firstly that similar detention order was passed against the father and brother of the petitioner, which was not approved by the Advisory Board and the Government revoked the detention order in respect of Sunil and Nanak Chandra. The detention orders in respect of both Sunil and Nanak Chandra-were on similar grounds, on which the detention of the petitioner has been ordered and secondly the offence, if any allegedly committed by the petitioner does not attract the disturbance of public peace or a public order in any manner and if at all, it was a case of breach of law and order.

5. Counter-affidavit has been filed by the District Magistrate and he has supported the detention order on the grounds of detention and other documents placed before him. The cases of Sunil and Nanak Chandra were on different footing because the role of the petitioner in the commission of crime at the time of passing the detention order about the recovery of blood stained knife at the instance of the petitioner during the investigation was considered, which also finds mention in the grounds of detention. As a result of killing of the child panic and terror and resentment prevailed in the locality and the people stopped their children from going out of their houses and as such the presence of the petitioner again in the locality was likely to disturb and affect the public order. In a separate counter-affidavit filed by the State similar pleas have been taken. It is highlighted that the representation of the petitioner was duly considered by the Advisory Board, besides which was finally rejected by the Government on 1 -11-1995 whereas the Advisory Board did not support the detention of others two i.e. Sunil and Nanak Chandra and the State Government accepting the report of Advisory Board passed the order of revocation of their detention under Section 12(2) of the National Security Act on 15-11-1995. The learned counsel for the petitioner and the learned Government Advocate have been heard at length.

6. Section 3(2) of [National Security Act, 1980](#) hereinafter referred to as the Act. empowers the detaining authority to pass an order directing detention of a person, if he is satisfied that it is necessary with a view to preventing him from acting in any manner prejudicial to public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. If the

satisfaction of the detaining authority is based on a number of grounds and if the grounds on which it is based are found non-existent or irrelevant, the order stands vitiated, because in the absence of any cogent and convincing ground, which have direct nexus with the object sought to be achieved by the detention order, the detention becomes illegal. In the instant case there is no challenge to the procedure adopted by the detaining authority in passing the detention order, informing the detenu of the grounds of detention or intimating him of his right to represent in time by making reference of his case to the Advisory Board, consideration of the representation made by the petitioner against his detention and as such it need not be adverted to if there was any non-compliance of Sections 8, 10, 11 and 12 of the Act. The gravamen of the charge against the petitioner under Section 3(2) of the Act is only to the extent that his detention was with a view to prevent him to act prejudicial to the maintenance of public order. It is no doubt true that the satisfaction of the detaining authority is entirely subjective when passing a detention order against a particular person and normally the Courts do not go into its validity on the basis of objective consideration. However, subjective satisfaction of detaining authority must be on the basis of some material to form such an opinion that was necessary to detain the person to prevent him from acting in any manner prejudicial to public order. Such a material should be sufficient if placed before a reasonable person so as to form a similar opinion. The Courts can interfere only if the material or grounds, on the basis of which the detaining authority passed the detention order, are vague, indefinite or if the grounds or material do not have any nexus with the purpose or object of detaining the person, to be achieved.

7. 'Public order' has been subject matter of clarification of its import and meaning before the Courts. In normal parlance it means peace, tranquillity or normal tempo of society. A reading of Section 3 of the act implies that in the absence of detention of a person, he is likely to act in a manner, which would endanger the normal peace of human activity in a particular area. Invariably it has been found that the detaining authority proceeded to pass such orders even in the cases where there was apprehension of breach of law and order and not public order. Every breach of law by necessary implication creates disorder in the society, but the same may not necessarily jeopardise the public order. One has to appreciate

the line of markings between law and order and public order. In *Virendra Pratap Shahi v. State of U.P.* 1986 All. L.J. 53 relying upon a decision of Supreme Court in *Ram Ranjan Challerji v. State of West Bengal* AIR 1975 SC 609 it was observed 'The 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 on society. 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'. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only.

8. In *Arun Ghosh v. State of West Bengal* 1970 SCC (Cri.) 67 : AIR 1970 SC 1228 the Supreme Court considered the concept of 'public order' and its difference with 'law and order' and held 'the 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 degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Public order was said to embrace more of the community than law and order. Public order was the even tempo of the life of the community taking the country as a whole or even a specified locality.

9. In a Full Bench decision in *Ashok Dixit v. State of Uttar Pradesh Habeas Corpus Writ Petition No. 11151 of 1984*, this Court after viewing all the decisions laid down 'Judicial consensus appears to be that an activity affecting public order would embrace an act which has the potentiality to affect public peace and tranquillity. In judging this question the effect of the activity on the community and its reach must also be considered. If it has the potentiality of disturbing the even tempo of the life of the community it would affect public order. However, even if an activity, amounts to serious breach of law, like murder, dacoity or robbery, but if it does not create terror, panic or if it does not affect the even tempo of the life of the community the offence or the crime, howsoever reprehensible cannot be said to affect public order.

10. Thus, the maintenance of public order requires that normal peace or tempo or tranquillity of the society or of a particular locality, as the case may be, be not disturbed by the repetition of act of a particular person. The public order is disturbed on account of acts of particular person, if there is simmering apprehension of fear or panic in the mind of public or repetition of such acts by the person, if he is not detained. The gravity of the crime or its heinous nature, if directed against a particular person or persons, may not affect the public in general or may not disturb the public order. One has to see the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to the breach of law and order. The stabbing of a person of another may cause shock to any one and disturb the people but the life of community keeps moving. But if stabbing is done to a member of another community where the communal tension is prevailing, its implication or ramification are likely to affect the common peace or tempo of life and likely to jeopardise the public order, because such an act can excite the other community to retribute and thereby disturb the public order. If the offences are committed in secrecy though heinous and directed against a particular person, may not disturb the public order although such a crime may be of extreme cruelty. In the case of *Ram Manohar Lohia v. State of Bihar* AIR 1966 S.C. 740 the Apex Court cited examples to show how similar acts in different context effect different law and order on one hand and the public order on the other. In case of *Arun Ghosh* (AIR 1970 SC 1228) (supra) it was observed 'It is always a question of degree of the harm and its effect upon the community. The question to ask is : Does it lead to disturbance of the current of life of the community so as to amount 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 facts.

11. It is to be determined if the acts complained of against the petitioner/detenu or the offence allegedly committed by him is against some individual or directed against public at large and it is likely to; affect the normalcy in locality and its potentiality, the grounds of detention are given in Annexure-3, which would indicate that allegations against the detenu/petitioner refer to the abduction of child with the help of Riksha Puller and taking him in secret place where the child was

done to death in a most cruel manner on 17-4-95. The dead body was recovered on 14-9-95 when noticed by a passerby. Petitioner was arrested on 15-9-95 and he got recovered the knife on his pointing out on 16-9-95. The copy of the confessional statement is also placed on record, wherein the petitioner allegedly confessed the commission of the crime solely on account of personal enmity with the official of Naveen Mandi Market, who had cancelled the 'Commission Agent' licence of his father's shop and he and his family was reduced to paupers on account of stoppage of income because of cancellation of the licence. The petitioner was actuated by revengeful intention of enmity against a particular person i.e. Supervisor of the Naveen Mandi. The crime was directed against a particular individual and not against public at large. The crime was committed in a secret place, away from the public eye. No such intention can be imputed to the petitioner/detenu that in case he was not detained, he was likely to commit a similar crime in respect of children at random. The act of petitioner/detenu was directed against a particular person and alleged conspiracy hatched by him along with alleged associates referred to the lifting of the child of a particular officer, so as to teach him lesson for causing financial hardship to the family of the petitioner. The act was not, thus, directed against public in general. In the case of *Amar Mani Tripathi v. State of Uttar Pradesh* 1986 All. L.J. 498 it was held that in cases where cause of attack were on account of personal animosity, the ground of detention did not relate to problem of public order but are problems of law and order. Similarly wherein the detenu along with his associates committed murder of a person in a shop in important business centre of the district on account of enmity, it was held that it had no reach on local community or public at large.

12. Likewise the instant case of petitioner/detenu also partakes the commission of a crime against an individual and not against the public and the alleged disturbance, if any can be the breach of law and order as against public order. The further allegations in Annexure-3 that on account of the murder of the child in the manner alleged the children were not being permitted to go out of houses and the people were not sending their children to the Schools, are vague in nature, when admittedly the crime was actuated by revengeful intention against a particular person.

13. The detention order of the petitioner is also challenged on the basis of its being discriminatory and violative of Article 14 of the Constitution. Similar and on same very grounds detention orders were passed against Nanak Chandra, father of the petitioner and Sunil, brother of the petitioner by the same detaining authority. However, admittedly these were revoked when the Advisory Board did not recommend the detention on the basis of same very allegations. The reading of the grounds of detention of present petitioner, which are given in Annexure No. 3 and that of grounds of detention of Nanak Chandra and Sunil, copies of which are Annexures-C-A- 2 and C- A-3 annexed with the counter affidavit filed by the opposite party, the District Magistrate, Meerut, shows that they are identical and same in verbatim with the only distinction that in the grounds of detention of present petitioner (Annexure-3), he is attributed with the role of kidnapping and thereafter committing the murder of the child. A common reading of detention orders of Nanak Chandra and Sunil, referred to above, finds mention 'In the planning and conspiracy for kidnapping the child Tushar you played an active role. You also conspired actively in getting the child killed with knife and by putting a hot brick on his body at 1.30 P. M. ' and thereafter' your act of entering into a conspiracy with your father, mother, brother Anil and Riksha Pullers Raju alias Raj Kumar and Kaluwa alias Sunil for kidnapping a four year child Tushar and then getting him murdered in most cruel and daring manner has created a sense of fear and terror among the people of the locality. Out of fear the children are not being permitted to go out of their houses and also the people are feeling scared of sending their children to their schools.

14. These are in verbatim the same allegations against the petitioner Anil in his detention order. There could be no reason for the authority not to have considered the case of the petitioner in the light of the report of the Advisory Board in respect of Nanak Chandra and Sunil. While approving the detention of the petitioner, the Government was required to keep in mind the fact that in similar circumstances detention of two other detenus was revoked. If the grounds of detention are identical, the revocation of detention orders in respect of two and confirming the same in respect of third one can result in gross discrimination from person to person. This view is strengthened from the decision of this Court in *Wazir Yadav v. State of U.P.* reported in 1992 (2) E.F.R. 637 : 1993 Cri LJ 1220 and decision in

Aruna Shankar v. State of U.P. 1984 All. L.J. 1031. In another case of Charan Singh Yadav v. State of U.P. Writ Petition-No. 494 (H/C) of 1995 decided on 3-4-96 the Division Bench of this Court quashed the detention order of the petitioner wherein the detention of similarly situated two other detenus was revoked by the Government and the case of the petitioner was found to be discriminated. It may be recalled that in the counter affidavit filed on behalf of the State Government the allegations of the petitioner that ' he has been discriminated in the matter of detention, as his co-detenus Nanak Chandra and Sunil have been let off, as their detention orders have been revoked by the State Government, which fact was not kept in mind or considered by the State Government while confirming the detention of the petitioner' has gone unrebutted as such a plea was never replied in counter affidavit and the presumption is that the allegations of the petitioner that the revocation of detention orders of Nanak Chandra and Sunil were not kept in mind by the State Government while confirming the detention of the petitioner have been accepted. There is, thus, every reason to hold that the detention of the petitioner has been passed in most mechanical manner without the application of mind. If Nanak Chandra and Sunil are equally responsible for the murder of small child and if their release is not likely to be prejudicial to the maintenance of public order, the release of the petitioner, if at all on bail was not likely to jeopardise the maintenance of public order in any manner. The challenge to detention order on both the grounds i.e. it has no nexus to the public order and secondly that the detention of the petitioner is discriminatory in nature, is full of merit. The allegations mentioned in the ground of detention are not of such a nature as to lead to any apprehension that the even tempo of the community would be disturbed. The detention of the petitioner under Section 3(2) of the, Act is hereby held as illegal.

15. In the light of the discussion above, this petition is allowed. The detention order of the petitioner dated 20-9-95. passed by the opposite party No.3. contained in Annexure-1 is quashed. He shall be set at liberty forthwith, unless he is detained or is wanted or required to be detained in connection with some other case.