

Balram Gupta Vs. Superintendent, District Jail and ors.

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Court : Allahabad

Decided On : Feb-20-1999

Reported in : 1999CriLJ1894

Judge : R.R.K. Trivedi and ;Lakshmi Bihari, JJ.

Acts : [National Security Act, 1980](#) - Sections 3, 3(2), 3(4), 3(5), 10 and 11; Defence of India Act; Schedule Castes and the Schedule Tribes Act - Sections 3(1)(10) and 3(2)(7); Defence of India Rules, 1962 - Rule 30 and 30(1); Indian Penal Code (IPC) - Sections 120B, 109, 147, 201, 302, 364, 504 and 506; Code of Criminal Procedure (CrPC) - Sections 164

Appeal No. : Habeas Corpus Writ Petn. No. 20786 of 1998

Appellant : Balram Gupta

Respondent : Superintendent, District Jail and ors.

Advocate for Def. : Sr. Standing Counsel and ;Addl. Govt. Adv.

Advocate for Pet/Ap. : Daya Shanker Mishra, Adv.

Disposition : Petition allowed

Judgement :

R.R.K. Trivedi, J.

1. In both the aforesaid petitions questions of fact and law are similar and both the petitions can be decided by a common judgment against which learned counsel for the parties have no objection. Writ Petition No. 20786 of 1998 shall be the leading case.

2. Writ Petitions have been filed challenging orders dated 23-3-1998, which are Annexure 1 to both the writ petitions, passed by respondent No. 2, under Section 3(2) of the [National Security Act, 1980](#) (hereinafter referred to as the Act) under which the petitioners have been detained. Petitioners have also challenged the legality of their continued detention.

3. Along with the orders of detention, petitioners were also served with the grounds on which basis the detaining authority formed the subjective satisfaction for detaining them. From perusal of the grounds it appears that petitioner Balram Gupta was serving as Junior Engineer in mechanical branch of Jal Nigam, Banda. Petitioner Mustaq Ali was working as contractor in the same Branch of Jal Nigam. M. A. Khan was Executive Engineer in the Mechanical Branch of Jal Nigam, Banda. He was transferred on 29-10-1997 from Banda to the head office of Jal Nigam, U. P., Lucknow, but he continued to stay at-Banda and was trying to get his transfer cancelled. From the grounds, it appears that there was bungling of about Rs. Fifty lakhs of government money during the period Shri M. A. Khan was posted at Banda. Unauthorised payments were made to petitioner Mushtaq Ali though he had not done any work. Deceased Prem Singh on transfer joined as Executive Engineer in place of Shri M. A. Khan. He noticed large scale bungling of government money by his predecessor in league with petitioner Balram Gupta and Mushtaq Ali. All the three pressurised Prem Singh not to inquire into the matter of alleged embezzlement of government money but Prem Singh continued to discharge his duties faithfully and honestly. Then he was threatened for life. Prem Singh felt so much harassed that he, at one point of time, decided to resign from the post and proceeded on leave. However, on persuasion of his wife and considering the future of his children, he resumed his duties.

4. It is further stated that in the night of 4/5-2-1998, between 9.00 p.m. and 6.00 a.m., the accused persons assembled at the residence of Shri M. A. Khan,

Executive Engineer and hatched up a conspiracy to kill Prem Singh. Petitioner Balram Gupta went to Prem Singh and brought him from his house to Jeep No. U.S.G. 2987 which belonged to the Executive Engineer M. A. Khan and Santosh Kumar, son of Chunnoo was its driver. Shri Prem Singh was brought under the pretext that there is an urgent telephone call from his family and some one in his family has fallen ill. Prem Singh was brought to Railway crossing on that Jeep. Petitioner Mushtaq Ali pierced a screw driver in his stomach and he was killed. Thereafter, body of the deceased Prem Singh was tied in a woollen shawl and was put on the railway track with the design that it will be cut into pieces by a passing train and it shall be treated as a case of accident. Body of late Prem Singh was found in the morning of 5-2-1998, at 7.00 A. M. The body was identified and a case was registered as case crime No. 20 of 1998, under Sections 302/201 I.P.C. No body was named in the First Information Report. A special police team was deputed to investigate this offence. On 9-2-1998, Executive Engineer M. A. Khan, petitioner Mushtaq Ali, Siraj Khan, petitioner Balram Gupta and driver Santosh Kumar were arrested. The screw driver which was used in committing the offence and blood-stained clothes of the deceased were also recovered. Subsequently, the investigation of this case was transferred to the Kotwali Police, Banda, where it was registered as case crime No. 86 of 1998, under Sections 364/302/201/109/120B, I.P.C. and Section 3(2)(7) of the S.C. S.T. Act Petitioners were sent to district jail, Banda under judicial custody on 10-2-1998. It appears that Santosh Kumar driver turned approver and his statement was recorded under Section 164, Cr.P.C. before Judicial Magistrate on 19-2-1998. By this statement, entire conspiracy and manner in which the offence was committed, was disclosed. In the grounds, it is further alleged that the petitioners along with other accused persons, on 22-2-1998, harassed aforesaid Santosh Kumar and he was given a beating and was also abused. Complaint regarding this occurrence inside jail was made by Santosh Kumar before C.J.M. on 23-2-1998. Santosh Kumar, was medically examined and then a case crime No. 125 of 1998, under Sections 147/504/506, IPC and 3(1)(10) of S.C. S.T. Act was registered at Police Station Kotwali, Banda. It is stated that in view of this occurrence Santosh Kumar was shifted from the district Jail, Banda to Children Hospital, Banda for security reasons.

5. The detaining authority has mentioned in the grounds that on account of the murder of Prem Singh, the officers and employees from different departments of the district approached the detaining authority on 6-2-1998 and apprised him of their fear and feeling of insecurity. They also threatened to boycott the Parliamentary Elections. The detaining authority has said that in view of the aforesaid reaction among the employees, maintenance of public order and law and order was seriously threatened. It is also said that by the aforesaid occurrence of murder of the Executive Engineer, persons employed in technical services in the entire State, Officers and employees of other departments and the public at large fell in a grip of fear and terror. It is also said that petitioners are trying for bail and if they are released on bail, they may again indulge in similar activities which shall be prejudicial to the maintenance of law and order.

6. Petitioners were also informed that against the order of detention, under the Act they have a right to make a representation to the Central Government and State Government which may be sent through the Superintendent, District Jail, at the earliest. They were also informed that their matter will be referred to the Advisory Board under Section 10 of the Act within three weeks and they may submit their representation within that period. They were also informed that they have right of personal hearing under Section 11 of the Act and if they so desire, this may also be specifically stated in an application submitted through the jail superintendent.

7. The aforesaid detention order dated 23-3-1998 was approved by the State Government on 31-3-1998, under Section 3(4) of the Act. The State Government reported the matter to the Central Government, under Section 3(5) of the Act on 1-4-1998 which was received by the Secretary, Ministry of Home Affairs, New Delhi, on 5-4-1998. Case of the petitioners was referred to the Advisory Board on 1-4-1998, under Section 10 of the Act. The Advisory Board heard petitioners personally on 13-4-1998 and gave its opinion on 22-4-1998 that there was sufficient cause to detain the petitioners. The opinion was received by the State Government on 23-4-1998. Petitioners submitted their representations on 3-4-1998 which were forwarded to the State Government along with the comments of the District Magistrate on 11-4-1998 and were received by the State Government on 13-4-1998. The representations were rejected by the State Government on 19-

4-1998. On receipt of the opinion of the Advisory Board, the order of detention was confirmed for 12 months on 5-5-1998.

8. The representation dated 4-4-1998 of the petitioners received by the Central Government on 6-4-1998, were processed for consideration and by a communication dated 20-4-1998 certain information (parawise comments on the representation and opinion of the Advisory Board) was required from the State Government. The requisite information was received on 29-4-1998. The representations were then again examined by the Deputy Secretary, Ministry of Home Affairs, on 1-5-1998, who put up the same with his comments before the Joint Secretary on 5-5-1998. The Joint Secretary in his turn considered the matter and with his comments put up the representations before the Home Minister, Government of India, on 5-5-1998. The representation was rejected by the Home Minister on 13-5-1998.

9. In these petitions counter affidavits have been filed by Shri S. B. Singh, Deputy Jailor, District Jail, Banda on behalf of respondent No. 1, by Shri Chandra Narain Dubey, the then District Magistrate, Banda, as respondent No. 2, Shri R. S. Agarwal, Joint Secretary, Government of Uttar Pradesh, Home and Confidential Department, on behalf of respondent No. 3 and Bina Prasad, Under Secretary, Ministry of Home Affairs, Government of India, has filed counter affidavit on behalf of respondent No. 4, Union of India.

10. We have heard Shri D. S. Mishra, learned counsel for petitioners, Shri A. K. Tripathi, learned Additional Government Advocate, for respondents Nos. 1 to 3 and Shri N. K. Sharma, holding brief of Shri A. K. Gaur, and Shri S.C. Mishra on behalf of respondent No. 4 in the above writ petitions.

11. Shri D. S. Mishra, while questioning the legality of the impugned orders of detention and the continued detention of petitioners under the said orders, has made the following submissions :

1. That the facts disclosed in the grounds of detention at the most relate to the disturbance of law and order and not public order.

2. That before the detaining authority State Government and the Central Government relevant materials (which shall be mentioned at the relevant places, if necessary) were not placed and the impugned orders have been passed mechanically on the basis of non-existent facts and the impugned orders stand vitiated.

3. That the continued detention of the petitioners has been rendered illegal on account of unreasonable and unexplained delay in deciding the representation of the petitioners by the Central Government, respondent No. 4.

12. Learned counsel for the petitioners as well as learned Addl. Government Advocate have placed before us the grounds of detention in both the cases extensively. The submission of the learned counsel for the petitioners is that the grounds only disclose a law and order problem and there is nothing on which basis the detaining authority could have satisfaction regarding the disturbance of the public order.

13. Learned Addl. Government Advocate, on the other hand, submitted that the petitioners committed heinous murder of a high ranking officer of district level which created panic and fear among the officers and employees in the district and in that connection a representation was made and the employees even threatened to boycott the Parliamentary Elections. Learned counsel has submitted that the public order was definitely disturbed and the impugned orders do not suffer from any illegality.

14. Learned counsel have placed reliance on several decisions of this Court as well as of Apex Court in support of their submissions.

15. The distinction between the two phrases, namely 'law and order' and 'public order' has been dealt with in a catena of decisions of the Apex Court and this Court. A Full Bench of this Court in case of Sheshdhar Mishra v. Superintendent, Central Jail, Naini 1985 All LJ 1222 considered the question of distinction between 'law and order' and 'public order' under Section 3 of the Act and expressed its opinion in the following words :-

Where in a detention order the detenu was alleged to have committed murder of an Advocate at a public place as a result of which local residents closed the doors of their houses and shops and it was further alleged to have threatened the prosecution witnesses to desist from tendering evidence in the murder case pending against him, the two grounds being intimately connected with the incident of murder committed on account of personal animosity and there being no material on record to suggest that the detenu would have indulged into similar activities of murder, in future, it could not be said that the single act of murder had its impact on the society to such an extent as to disturb the normal life of the community, thereby rudely shocking the ordinary tempo of the normal life of the public. Merely because the local residents closed the doors of their houses and shops did not mean that the balanced tempo of the life of the general public was disturbed as a result of which the members of the public could not carry on normal avocation of their life.

The power under Section 3 can be exercised only if the detaining authority on the basis of the past prejudicial conduct of the detenu is satisfied about the probability of the detenu acting similarly in future. This means that the past activity of the detenu on the basis of which such a prognosis is made must be reasonably suggestive of a repetitive tendency or inclination on the part of the detenu to act likewise in future.

A single murderous assault on an individual on account of personal animosity and holding out threat to individual witness to desist from deposing in Court do not justify exercise of power under Section 3(2) of the Act for detaining the detenu. Preventive detention under Section 3 of the Act cannot be invoked to deal with the crimes and criminals who can adequately be proceeded against under the Penal Code and under other ordinary laws of the land.

15. The Constitution Bench of Hon'ble Supreme Court in case of Ram Manohar Lohia v. State of Bihar AIR 1966 SC 740 : 1966 Cri LJ 608 while considering the case of preventive detention under Rule 30(1) (b) of Defence of India Rules, 1962, held as under (at page 758-759, of AIR):

We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the Maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression 'public order' take in every kind of disorders or only some of them 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. By using the expression 'maintenance of law and order' the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

16. In case of Dipak Bose alias Naripada v. State of West Bengal 1973 SCC (Cri) 684 : AIR 1972 SC 2686 Hon'ble Supreme Court observed (at page 2688, of AIR):

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, pertain 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.

17. Similar were the observations of Hon'ble Supreme Court in case of Ram Veer Jatav v. State of U.P. 1987 A Cr R 110 : AIR 1987 SC 63 which are being reproduced below (at page 64, of AIR):.it cannot be laid down as a bald proposition that one ground can never be sufficient for founding the satisfaction of the detaining authority for detaining a person. There are cases where one ground may be regarded as sufficient if the activity alleged is of such a nature that the detaining authority could reasonably infer that the detenu must be habitually engaged in such activity or there may be other circumstances set out in the grounds of detention from which the detaining authority could reasonably be satisfied even on the basis of one ground that unless the detenu is detained, he might indulge in such activity in future but here the only ground alleged against the petitioner is that he, along with others, jointly committed murder in broad daylight. This is the only ground given in the grounds of detention without any other circumstances from which any inference could be drawn that the petitioner could

be likely to commit such act, if left free. It is no doubt true that in the counter affidavit filed by the District Magistrate several circumstances have been set out which might go to suggest that the petitioner is habitually indulging in criminal activity and some instances have also been set out by the District Magistrate in the counter affidavit. But none of these circumstances finds a place in the grounds of detention. It is well settled that the detaining authority cannot by an affidavit filed in Court supplement what is stated in the grounds of detention or add to it. It is difficult to infer from the solitary ground set out in the grounds of detention that the act alleged to have been committed by the petitioner would have disturbed public order as distinct from law and order or that one single act committed by the petitioner was of such a character that it would reasonably be inferred by the detaining authority that if not detained, he would be likely to indulge in such activity in future.

18. In the case of *State of U.P. v. Kamal Kishore Saini* AIR 1988 SC 208 : 1988 Cri LJ 405 the Apex Court held that whether an act relates to law and order or to public order depends upon the effect of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order.

19. If the facts of the present case are tested on the touchstone of the principles laid down by Hon'ble the Supreme Court and this Court in the decisions noted above, the conclusion which comes out is that facts stated in the grounds of detention, in the absence of any other circumstances, could not be reasonably used as basis for forming subjective satisfaction that the petitioners were involved in an act which disturbed public order. The undisputed facts are that the incident took place in the night of 4/5-2-1998, at 1.00 p.m. The body of the deceased was found in the morning, at about 7.00 a. m. No body had witnessed the occurrence. The First Information Report was lodged against unknown persons. Involvement of the petitioners could be found during investigation on 9-2-1998. They were arrested along with incriminating articles and sent to judicial custody. The detaining authority formed its subjective satisfaction on the basis of the representation of the officers and employees made before him on 6-2-1998, who

expressed their fear and sense of insecurity and also threatened to boycott the Parliamentary Elections. No body can dispute that the sentiments of the offices and employees may have been affected and they may also have feeling of insecurity, but there is nothing to indicate that people living in the locality where the murder was committed, were prevented from following their usual avocations of life. The officers and employees may have assembled to pressurise the administration to take swift action and to find out the criminals. Such pressures are usually exercised on the administration but on the basis of such agitational approach, it cannot be said that public order was disturbed. It continued to be a problem of law and order. The place, time and the manner in which the criminal act was performed, is not such which could have such potentially and reach so as to disturb the even tempo of life. It may also be noted that the impugned orders were passed much after the Parliamentary Elections were over.

20. Similarly, the second incident which relates to 22-2-1998 took place inside the jail in which it is stated that Santosh Kumar driver was abused and beaten by petitioners in collusion with other co-accused. This could at the most be a threat to a witness. Learned counsel for the petitioners has been questioned the existence of any such occurrence on the basis of certain documents. However, in our opinion, even if the occurrence is assumed to be correct, it could hardly be an incident which could have any effect on the public order. Necessary corrective steps were taken and the witness was removed from the jail. It was purely a problem of law and order and had no connection with the public order. Both the incidents thus, in our considered opinion, could not afford basis for forming a subjective satisfaction that detention of petitioners is required to prevent them from acting in any manner which may be prejudicial to the maintenance of the public order. In our opinion, it was not justified on the part of the detaining authority to invoke the provisions of the Act as the ordinary penal law of the land was sufficient to deal with the situation. Since the writ petitions deserve to be allowed on the first ground, in our opinion, it is not necessary to enter into discussion of the remaining two grounds.

21. For the reasons stated above, both the writ petitions are allowed. The impugned orders dated 23-3-1998, which have been filed as Annexure 1 in both

the writ petitions, are quashed. The respondents are directed to set the petitioners at liberty forthwith, if their detention is not required in any other case.

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