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Court : Rajasthan

Decided On : Feb-08-1985

Reported in : 1985(1)WLN500

Judge : Dwarka Prasad Gupta and; S.K. Mal Lodha, JJ.

Appeal No. : D.B. Cr. Habeas Corpus Writ Petition No. 69 of 1985

Appellant : Babu Khan

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. N.N. Mathur

Disposition : Petition dismissed

Judgement :

Dwarka Prasad Gupta, J.

1. This is a petition of habeas corpus by Babu Khan, who has been detained under Sub-section (2) Section 3 of the National Security Act, 1980 (Central Act No. 65 of 1980) (for short 'the Act' here in after).

2. The District Magistrate, Jodhpur passed an order on September 12, 1984 under Sub-section (2) of Section 3 of the Act stating that he was satisfied that the detention of Babu Khan was necessary with a view to prevent him from acting in

any manner prejudicial to the maintenance of public order. The validity of the detention order passed by the District Magistrate, Jodhpur has been challenged by the petitioner.

3. The District Magistrate, Jodhpur, while passing the detention order dated September 12, 1984, relied on the following 9 instances, on the basis of which his satisfaction rested:

(1) that on July 9, 1982, Dr. Jitendra Sodi of Ratanada, Jodhpur filed a complaint that while he was on duty, some persons brought a child for treatment but when he found that the child was already dead he thought it necessary to report the matter to the police, then Babu Khan & his companion interfered in the performance of his duties and belaboured him with a view to take away the head body of the child by force without giving information to the Police. A case under Sections 353 and 332 I.P.C. was registered against Babukhan and his companion and is pending in the Court of Judicial Magistrate No. 3, Jodhpur;

(2) that on September 18, 1982 Babukhan along with other accomplices caused injuries by hurling stones and beating with Lathies to the brothers of Kailash Gehlot, in an organised manner, on the main road leading from Ghantaghar and in respect of that occurrence, a case under Sections 147, 148, 149, 336 and 323 I.P.C. was registered and is pending in the Court of Judicial Magistrate No. 5, Jodhpur;

(3) that on August 18, 1983, Babukhan along with his companion stopped the complainant Shaitansingh on the way and inflicted blows with hockey sticks and lathies in Makarana Mohalla, Jodhpur, and in respect of that occurrence, a case under Sections 147, 148, 149, 323 and 341 I.P.C. was registered against Babukhan and his companion and is pending in the Court of Judicial Magistrate No. 5, Jodhpur;

(4) that on August 29, 1983, Babu Khan along with his companion stopped complainant Om Prakash on the way and belaboured him, in respect of which a case under Sections 147, 148, 149 and 324 I.P.C. was registered and is pending in the Court of Judicial Magistrate No. 5, Jodhpur;

(5) that on November 1, 1983, Babu Khan along with his companion attacked Om Prakash and Ors. with hockey sticks and swords and a case under Sections 148, 149, 323 324, 325, 326 & 307 I.P.C. and Section 25 of the Arms Act was registered and is pending in the Court of Chief Judicial Magistrate, Jodhpur;

(6) that on December 6, 1983, Babu Khan along with his companion forcibly stopped complainant Rawal on the way while he was returning from the Roadways Bus Stand and caused injuries to him, in respect of which, a case under Sections 323-and 341 I.P.C. was registered and is pending in the Court of Judicial Magistrate No. 4, Jodhpur;

(7) that on December 9, 1983, Babu Khan along with his companion stopped complainant Madanlal on the way and inflicted injuries upon him, in respect of which, a case under Sections 323 and 341 I.P.C. was registered and is pending in the Court of Judicial Magistrate No. 4, Jodhpur;

(8) that on March 18, 1984, Babu Khan along with his companion assaulted Jai Prakash on the road near the temple of Teejaji and a case under Sections 148, 149, 324, 341 and 307 I.P.C. was registered and is pending trial before the Judicial Magistrate No. 5, Jodhpur; and

(9) that on July 13, 1984, while Police Constable Roopsingh went to the house of the accused along with constable Narpatsingh to serve a warrant of arrest upon him, the detenue Babukhan assaulted Roop Singh with a knife. In respect of this incident, a case under Sections 324, 332, 353 and 307 I.P.C. was registered and is pending in the Court of Judicial Magistrate No. 5, Jodhpur.

The District Magistrate also noted that on August 8, 1983, proceedings under Section 107 Cr. P.C. were initiated against the detenue by the City Magistrate, Jodhpur which were pending. Further, it was also noticed by the District Magistrate, while passing the detention order, that on December 24, 1983, proceedings under Section 110 Cr. P.C. were initiated against the detenue by the City Magistrate, Jodhpur and the same were pending. Thereafter on February 24, 1984, proceedings under Sections 3/7 of the Rajasthan Gunda Control Act, 1975 were also initiated against the detenue Babukhan, which were also pending before

the District Magistrate, Jodhpur.

4. Learned counsel appearing for the detenue submits that in respect of the instances which took place on November 1, 1983, March 18, 1984 and July 13, 1984 charges in respect offences under Section 307 I.P.C. were dropped on the ground that no injuries were caused on the vital parts of the body, but it is not denied that the criminal cases in respect of the aforesaid nine instances were pending against the petitioner (detenue) before various criminal courts at Jodhpur.

5. We have heard Mr. N.N. Mathur, learned Counsel for the petitioner (detenue) and Mr. H.N. Calla, learned Government Advocate.

6. The argument of the learned Counsel for the petitioner is that the grounds alleged against the petitioner may constitute instances of breach of law and order and in respect of those instances criminal prosecutions were pending against the petitioner but such conduct on the part of the petitioner could not possibly endanger maintenance of public order. Learned counsel submitted that all the offences in respect of which the petitioner has been charged in the various cases are bailable and compoundable and in all those cases the petitioner was released on bail. He further submitted that in respect of the occurrence dated July 13, 1984, an anticipatory bail was allowed to the petitioner by the Sessions Judge, Jodhpur.

7. On the other hand, learned Public Prosecutor submits that the instances considered and relied upon by the District Magistrate clearly go to show that the activities in which the petitioner indulged himself were seriously prejudicial to the maintenance of public order and as such, the detention order is valid.

8. The question as to the difference between law and order' and 'public order' has been the subject matter of decision by their Lordships of the Supreme Court in several cases during the last two decades. As early as in the year 1966, in Dr. Ram Manohar Lohia v. State of Bihar(1) it was observed by their Lordships of the Supreme Court that the Court should consider the substance of the matter and a breach of law and order did not in each and every case amount to causing the disturbance to public order. It was pointed out in that case although contravention of law always affected order but it could not always be said to have affected public

order, it could only be in a case when the acts alleged to have been indulged by the detenue affected the community or the public at large.

9. In Arun Ghosh v. State of W.B.(2), a person was detained for breach of 'public order' for molesting two young ladies and threatening their father's life and assaulting two other individuals. The Lordships of the Supreme Court pointed out that the question whether a man had committed a breach of law and order or had acted in a manner likely to cause a disturbance of the public order, is one of degree and the extent of the reach of the act upon society. The test laid down in that case by their Lordships was; did the acts complained of lead to a disturbance of the even tempo and current of life of the community so as to amount to a disturbance of public order, or did these acts affected merely on individual without affecting the tranquility of society. It was held in that case that the conduct of the detenue did not create a situation where it may be said that the community at large was being disturbed and as such, it could not be said to amount to an apprehension of breach of public order.

10. The law on the subject was reiterated in Ram Ranjan Chatterjee v. State of West Bengal(3) as under:

It may be remembered that qualitatively, the acts which effect 'law and order' are not different from the acts which effect 'public order'. Indeed a state of peace or orderly tranquility which prevails as a result of the observance or enforcement of internal laws and regulations by the Government, is a feature common to the concepts of 'law and order' and 'public order'. Every kind of disorder or contravention of law affects that orderly tranquility. The distinction between the areas of 'law and order' and 'public order' as pointed by this Court in Arun Ghosh v. State of West Bengal : 1970 CriLJ1136 , 'is one of degree and extent of 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. These concentric concepts of 'law and order' and 'public order' may have a common 'epicenter', but it is the length, magnitude and

intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as on act affecting 'public order' from that concerning 'law and order.

Again in the case of Jaya Mala v. Home Secretary, Govt. of J & K : 1982 CriLJ1777 , the Supreme Court observed as under:

But it is equally important to bear in mind that every minor infraction of law cannot be upgraded to the height of an activity prejudicial to the maintenance of public order... if every infraction of law having a penal sanction by itself is a ground for detention danger looms large that the normal criminal trials, and criminal courts set up for administering justice will be substituted by detention laws often described as lawless law.

11. In the case of Ashok Kumar v. Delhi Administration AIR 1982 SC 1147, while dealing with the difference between 'law and order' and 'public order', their Lordships of the Supreme Court observed as under:

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 context 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 determinant 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

12. The law on the subject was again reviewed and reiterated by their Lordships of the Supreme Court in the case of Ajay Dixit v. State of U.P. : 1985 CriLJ487 and after considering, the earlier decisions on the subject, it was observed as under:

It is important to bear in mind the difference between law and order situation and maintenance of public order. The act by itself is not determinate of its gravity. In its

quality, it may not differ from another but its potentiality may be very different. Therefore, the question whether a man had only committed a breach of law and order or acted in a manner likely to cause disturbance of public order is a question of degree of the reach of the act upon society....

It is, therefore, necessary in each case to examine the facts to determine not the sufficiency of the grounds nor the truth of the ground, but nature of the grounds alleged and see whether these are relevant or not for considering whether the detention of the detenue is necessary for maintenance of public order.

13. It is, thus well established on the basis of the aforesaid decisions that while detaining a person Under Section 3(2) of the Act, the question which should be considered is as to whether the detenue has only committed a breach of law and order or his activities are of such a nature which are likely to cause disturbance of public order. The difference between the two is a matter of degree of the reach of the act upon society. A line of demarcation must be drawn between mere acts against individuals amounting to breach of law and order on the one hand and serious and aggravated forms of breach of public order on the other hand, which may affect the community at large and may endanger public interest in general. In the former case, isolated acts of an individual may amount to minor breaches of peace or law and order which may not affect the public at large but a considerable number of acts by the same person, though directed against different persons or individuals, may collectively amount to breach of public order. Thus, the question which should be considered before detaining a person for activities prejudicial to the maintenance of public order is whether the acts of the person concerned would lead to disturbance of the current of life of the community so as to amount to disturbance of public order of it would affect merely an individual or some individuals, leaving the tranquility of the society undisturbed.

14. The prejudicial activities of the detenue in the present case leading to public disorder, as revealed in the grounds of detention, consist of a consistent course of criminal record. The criminal activities of the detenue in the past undoubtedly pertained mostly to breaches of law and order. It appears that the detenue has taken to a life of crime and appears to be a person of dangerous character. In the

case before us, there are charges of serious criminal activities on the part of the detnue and his associates during the last two years, from which it appears that the detenue has become a danger to the society at large. A number of sudden, sporadic and intermittent acts of physical violence on innocent victims in specified localities of the City of Jodhpur gives rise to the conclusion that although the offences alleged to have been committed by the detenue directly injured specified individuals, yet the number of instances, their frequency as well as the magnitude and intensity of the terror wave unleashed by such acts of violence, seriously disturbed public tranquility and were prejudicial to the maintenance of public order. In such cases the question arises about the survival of the society and when people going on the road or discharging their duties are made victims of organised crime and are beaten up and terrorised, it can hardly be said that those acts do merely lead to disturbance of law and order. Such activities on the part of the detenue, as are illustrated by the 9 instances considered by the District Magistrate, are acts which do fall within the purview of activities prejudicial to the maintenance of public order.

15. We are, therefore, unable to hold that the order of detention passed by the District Magistrate in the present case was invalid on the ground that the acts complained of did not amount to activities leading to disturbance of public order. If on the basis of such acts of the detnue, as were considered by the District Magistrate, he held that activities of the detenue were prejudicial to maintenance of public order, we do not feel inclined to interfere in the order of detention passed by the District Magistrate.

16. No other point was argued before us.

17. In the result, the writ petition fails and is dismissed.

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