
(1982) 08 GUJ CK 0026
In the Gujarat High Court

Abdul Hamidkhan and Amirkhan Pathan	APPELLANT
Vs	
Manmohansing, Commissioner of Police and Another	RESPONDENT

Date of Decision : 11-08-1982

Acts Referred:

National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 114, 143, 147, 148, 149

Citation : (1982) CriLJ 2274 : (1982) GLH 1075 : (1982) 2 GLR 615

Hon'ble Judges : P.D. Desai, J;A.S. Qureshi, J

Bench : Division Bench

Judgement

P.D. Desai, J.—By an order made on May 7, 1982, Annexure "A", by the first respondent (the Commissioner of Police, Ahmedabad), the petitioner was detained in the purported exercise of the powers conferred by Sub-section (2) of Section 3 of the National Security Act, 1980 with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad city. The grounds of detention dated May 7, 1982, Annexure "C" were served upon the petitioner on May 12, 1982. On May 17, 1982, the second respondent (State of Gujarat) approved the order of detention under Sub-section (4) of Section 3 of the National Security Act, 1980. The present petition was instituted on May 25, 1982. Rule was ordered to issue on the petition on May 27, 1982 and it was made returnable on June 21, 1982. The petition reached hearing before" this Court on August 6, 1982 and the hearing having been concluded today, it is being disposed of by this judgment.

2. The following grounds were urged in support of the petition on behalf of the petitioner:

(1) The subjective satisfaction upon which the order of detention is founded is not arrived at in accordance with law because the detaining authority has taken into consideration an incident which is relatable to the "law and order" situation and which has no relevance to the "public order" situation.

(2) The subjective satisfaction, upon which the order of detention is founded,

suffers from the vice of non-application of mind because:

- (i) it has been arrived at on the basis of non-existent facts,
- (ii) it is based on casual approach to the appreciation of facts and betrays lack of diligence; and
- (iii) it is founded on stale incidents.

(3) The subjective satisfaction upon which the order of detention is founded is vitiated because the detaining authority has failed to consider whether less sterner measures could be taken against the petitioner even assuming that it was necessary to put the petitioner out of the harm's way for the purpose of maintenance of public order.

3. Though all the grounds set out above were urged at the hearing of the petition, it is not necessary to deal with all of them. The petitioner is entitled to succeed on the strength of the first ground alone. We shall, therefore, deal with only the said grounds.

4. The grounds of detention, Annexure "C, served upon the petitioner disclose that the following facts and circumstances weighed with the detaining authority in arriving at its subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad City:

(1) On October 16, 1981, a complaint was registered at the Karani Police Station (Crime Register No. 327 of 1981) against the petitioner alleging that he had committed offences punishable under Sections 143, 147, 148, 149, 336, 436, 427 and 307 I.P.C. Pursuant to the said complaint, the petitioner was arrested and a charge-sheet was submitted against him in a Court of law.

(2) On December 8, 1981, a complaint was registered at the Kalupur Police Station (Crime Register No. 380 of 1981) against the petitioner alleging that he had committed offences punishable under Sections 307, 504 and 114 I.P.C. and Section 25A of the Arms Act. Pursuant to the said complaint, the petitioner was arrested and the case was under investigation.

(3) On April 14, 1982, in the Bhukhdi Maholat area of Halimni Khadki, Shahpur, at about 20-10 hours, the petitioner with his associates Sardarkhan Amir-khan and Mehboobkhan Usman Khan instigated (1) Mahmudhusain Rahimbhai, (2) Basirbhai Abdulkarim, (3) Munaf Mahrnadmiya, (4) Faizdinkhan Murad-khan, (5) Nasirahmad Noormohammad, (6) Liyakal Faizmahmad, (7) Mahmudhusain @ Fiddle Kalubhai, (8) Ayubkhan Amir-khan and about 50 to 60 other Muslims to attack Hindus and they, having formed an unlawful assembly, indulged in heavy stone-throwing on the houses of Hindus situated in Vadikotdi Pole, Shahpur. This generated an atmosphere of terror in the area. Pedestrians started running helter-skelter and shop-keepers closed their shops. In this manner, normal life of the people was disrupted. The police was compelled to use tear-gas. Strict

Bandobast of police and S.R.P. was arranged in the area which continued even on the day on which the order of detention was made. In connection with the said incident, a complaint was lodged on April 14, 1982 at the Karani Police Station (Crime Register No. 138 of 1982) for the offence of rioting "and, more particularly, for offences punishable under Sections 143, 147, 149, 337, 426 and 332 I.P.C, The petitioner was arrested pursuant to the said complaint.

5. Having set out the particulars of the involvement of the petitioner in the aforesaid three incidents, the detaining authority proceeded to state in the grounds of detention as follows:

From the facts set out above, I am satisfied that you are causing obstruction in the maintenance of public order and that since the actions taken against you under the ordinary law of the land have proved ineffective, it is imperative to detain you to prevent you from committing acts which result in obstruction to the maintenance of public order. The order of detention is, therefore, passed against you.

6. On a fair and comprehensive reading of the grounds of detention, there is no manner of doubt that the order of detention in the instant case is based on the involvement of the petitioner in all the three incidents which have been set out above. In other words, the petitioner's alleged involvement in all the said three incidents has collectively weighed with the detaining authority in passing the detention order. All the said three incidents, therefore, constitute the grounds of detention and if there is any vice in any of them, the order of detention must fail. The challenges levelled against the detention order have to be considered against the aforesaid background.

7. Now, it is submitted on behalf of the petitioner that the second incident, which gave rise to the complaint which is registered at the Kalupur Police station (Crime Register No. 380 of 1981), has no nexus with the "public order" situation and that it is relatable only to the "law and order" situation and that, therefore, the order of detention which is passed after taking into consideration the petitioner's involvement in the said incident is ultra vires. The submission, in other words, is that the subjective satisfaction upon which the order of detention is based is vitiated because the detaining authority has failed to appreciate the distinction between "public order" and "law and order" and it has, inter alia, detained the petitioner for his involvement in an incident which has no bearing on the maintenance of "public order" but which is connected, if at all, with the maintenance of "law and order". In this connection, the petitioner has invited our attention to the contents of the complaint dated December 8, 1981 lodged at the Kalupur Police Station in connection with the second incident, a copy whereof was supplied to him along with the grounds of detention. It would be convenient to refer to the contents of the said complaint at this stage.

8. The complaint is lodged by one Gulamahmed Abdulrehman Sheikh. In the said complaint, the petitioner is cited as one of the accused. The complainant stated

that he had known the petitioner since about 15 years and that in course of time, he and the petitioner had become good friends. About two months prior to the lodging of the complaint, the petitioner was detained under the provisions of the Maintenance of Internal Security Act, 1971 in connection with the riot which took place in Halimni Khadki situate in Shahpur area. The complainant, who was a taxi-driver, had to run about in his taxi in order to get the petitioner released and on that account, he had to incur an expenditure of about Rs. 1400/- to Rs. 1500/-. After the petitioner was released from jail pursuant to the success of the writ petition, he was repeatedly requested to reimburse to the complainant the expenditure incurred as aforesaid for getting him released from detention. However, the petitioner failed to oblige. On the day of the incident in question, at about 0-30 hour, the complainant and his two friends, viz. Gulamayuddin Gulamnabi Malampatlawala Sheikh and Abdulhamid Abdulrehman were seated on a bench on the foolpath opposite the Royal Stores in Chandan Talavdi area of Dariapur. At that time, the petitioner, who was seated in a side car of a scooter, approached him in the company of two other persons one of whom was riding another scooter. All the said three persons started abusing the complainant. The petitioner told the complainant that he was released on account of his own efforts and that it was not true that the complainant had incurred an expenditure of Rs. 1400/- to Rs. 1500/- for securing his release. The complainant thereupon retorted and told the petitioner that he was indulging in such talks because he had already been released. Thereupon, the petitioner threatened the complainant that if he indulged in such talks, he would be finished. As a result of the altercation which took place, residents of the locality gathered on the spot, including one Mohmadhusain Barejiya, a local M.L.A. The said Barejiya persuaded the parties to disperse and led the complainant to his own house. However the petitioner and his friends continued to shower abuses and they followed the complainant and Barejiya on scooters. Near Kamar Masjid, where the complainant was standing opposite the house of Barejiya, the petitioner spoke loudly to one of his companions and asked him to give him the revolver. Immediately thereafter he dismounted from the scooter and took the revolver from the said companion and again mounted he scooter. The petitioner then fired three shots from the revolver with the end in view of finishing the complainant. Soon thereafter the petitioner and his two companions left on the scooter. Neither the complainant nor any person of the locality was injured as a result of the shots which were fired. The police who were informed by Barejiya immediately reached the spot. The complainant cited his two companions and Barejiya as witnesses to the incident.

9. It is not in dispute that there was no material with the detaining authority other than the aforesaid complaint in regard to the second incident relied upon in the grounds of detention. The question which arises for consideration, therefore, is whether the distinction between the concepts of "public order" and "law and order" was present to the mind of the detaining authority and whether the second incident could have been legitimately relied upon in arriving at the

subjective satisfaction with regard to the need of detaining the petitioner for the maintenance of public order.

10. The distinction between the concepts of "public order" and "law and order" is clearly drawn by a series of decisions of the highest Court. (See Dr. Ram Manohar Lohia Vs. State of Bihar and Others, , Arun Ghosh Vs. State of West Bengal, , Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, and Ashok Kumar Vs. Delhi Administration and Others, . In the leading decision in Ram Manohar's case, Hidayatullah, J., speaking for himself and Bachawat, J., succinctly explained the meaning of the words "public order" in contradistinction to the expression "law and order". The learned Judge pointed out that "public order", if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. 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 Preventive Detention Laws but disturbances which subvert the public order are. The learned Judge went on to observe that to appreciate the extent and scope of "law and order", "public order" and "security of State", it would be necessary to have three concentric circles, the largest of them representing "law and order", the next representing "public order" and the smallest representing "security of State". 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. The true distinction between the areas of "public order" and "law and order" lies not merely in the nature or quality of the act but in the degree and extent of its reach upon society. Acts similar in nature but committed in different contexts 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 clear distinction made between the concepts of a "public order" and "law and order" in the decision in Ram Manohar's case has been consistently followed and it is in the light of the tests evolved in that decision that the question posed above requires to be answered.

11. The particulars of the second incident enumerated in the grounds of detention and in the complaint clearly indicate that the offending act of the petitioner was the result of a quarrel between himself and the complainant both of whom were members of the same community. The petitioner is alleged to have fired shots from the revolver and they were meant to scare only the complainant. The conduct may be reprehensible but it does not add up to the situation where it might be said that the community at large was being disturbed or, in other words, there was a breach of "public order" or likelihood of a breach of "public order". It cannot be overlooked in this connection that the incident in question is alleged to have occurred at the mid-night hour and that even in the text of the complaint, it is not mentioned that the even tempo of the normal life of the locality was disturbed as a result of the, offending acts of the petitioner. The conclusion, therefore, is inevitable that the second incident relied upon in the

grounds of detention has no nexus or connection with the maintenance of "public order". At best, it can be treated as having an impact on the law and order situation.

12. Once the aforesaid conclusion is reached, there is no escape from the further conclusion that one of the grounds on which the subjective satisfaction of the detaining authority is based is irrelevant inasmuch as it has no connection with the exercise of power of detention for the purpose of maintenance of "public order". Since the said irrelevant ground was taken into consideration for making the impugned order, the detention order must be held to be invalid because in a series of decisions it has been held that even if one of the grounds of detention is irrelevant that is sufficient to vitiate the order. The reason is that it is not possible to assess in what manner and to what extent that irrelevant ground operated on the mind of the appropriate authority and contributed to provide the satisfaction that it was necessary to detain the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. (See AIR 1943 1 (Federal Court) . Tarapada De and Others Vs. The State of West Bengal, . Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, . Shibban Lal Saksena Vs. The State of Uttar Pradesh and Others, . Rameshwar Lal Patwari Vs. State of Bihar, . Motilal Jain Vs. State of Bihar and Others, . Pushkar Mukherjee and Others Vs. The State of West Bengal, . Ram Bahadur Rai Vs. The State of Bihar and Others, and Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, .

13. On behalf of the detaining authority, it was strenuously contended that two other incidents relied upon in the grounds of detention clearly related to the "public order" situation because they were calculated to disturb public peace and tranquility by incitement of communal violence and that, therefore, the exclusion from consideration of the second incident could not reasonably have affected the subjective satisfaction of the detaining authority. The submission was that merely because one of the three incidents, which was comparatively of a minor significance, was found to be irrelevant to the exercise of the power of detention, the subjective satisfaction ought not to be held invalid. Strong reliance was placed in support of this submission upon the following observations in Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir, , which were made after reviewing the decisions dealing with the question whether the invalidity of one of the several grounds could vitiate the entire order of detention:

The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant, the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based, if some of them are found to be non-existent or irrelevant the Court

cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the Court for the subjective satisfaction of the statutory authority. In applying these principles, however, the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid. The Court while anxious to safeguard the personal liberty of the individual will not lightly interfere with such orders. It is in the light of these principles that the validity of the impugned order has to be judged.

In the light of the observations contained in the latter part of the abovequoted observations, the detaining authority invited us to consider whether the second incident which weighed in making the impugned order of detention and which has been found to be not relevant for the exercise of the power of detention, was of such a nature that, if excluded, it might reasonably have affected the subjective satisfaction of the detaining authority. The plea, in terms, was that there should be no interference with the impugned order in view of the fact that even on the basis of the other two incidents, which were calculated to incite communal violence, the detaining authority could have legitimately reached the subjective satisfaction with regard to the need to detain the petitioner because, as held in *Fitrat Raza Khan Vs. State of Uttar Pradesh and Others*, , the incitement of the members of a particular community to communal violence in a town where the population of the said community predominates gives rise to a situation which pertains to public order and not merely to law and order.

14. For the reasons which follow, we are unable to accede to the submission made on behalf of the detaining authority. In the first place, in a large number of cases decided by the highest Court before and after the decision in *Dwarka Das*'s case, it has been held that even if one of the grounds of detention is irrelevant, that is sufficient to vitiate the order. The rationale behind the evolution of this principle is that the court is precluded from adjudicating upon the sufficiency of the ground and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. In other words, the reason behind the rule is that it is not possible to assess in what manner and to what extent that irrelevant ground operated on the mind of the appropriate authority and contributed to provide the satisfaction that it was necessary to detain the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of the public order in future. It is too late in the day to contend, therefore, that the Court should decline to interfere with the impugned order on the ground that even on the basis of the two incidents, namely, the first and the third incidents, which were designed to incite communal violence, the detaining authority could have legitimately reached the subjective satisfaction with regard

to the need to detain the petitioner. To undertake such an exercise would require the court to substitute its own subjective satisfaction in place of that of the detaining authority which it is not open to us to do. In the next place, the observations in Dwarka Das's case must be read in the proper context, The principle which is enunciated in those observations must be carefully applied bearing in mind the guidelines and limitations therein indicated. It is only in cases where a ground or reason of a "comparatively unessential nature" is found to be defective and the court is satisfied that such ground, if excluded, might not have reasonably affected the subjective satisfaction that it might be open to sustain an order of detention based: inter alia, upon such defective ground or reason. But even in such a case, express or implied indication must be available in the grounds themselves that the detaining authority considered the defective ground or reason to be of a comparatively unessential nature and that if such ground or reason were excluded from consideration, the subjective satisfaction would not have been affected. As we shall presently point out far from there being any indication to that effect in the grounds of detention in the instant case, there is a clear pointer in the opposite direction. In the last place, as earlier pointed out, the order of detention in the instant case is founded on all the three incidents each one of which individually weighed, with the detaining authority and taken together constituted grounds of detention. In a case where the order of detention is founded on distinct and separate grounds, if any one of the grounds is irrelevant, the entire order must fail (see *Ram Bahadur v. The State of Bihar* (supra)). The reason is that in such a case, it would be impossible to hold that the defective ground was of a comparatively unessential nature and that if it were eliminated from consideration, the detaining authority would still have passed the detention order. Indeed, in such a case, to enter upon the exercise which the detaining authority desires us to undertake in the present case would be to adjudicate upon the sufficiency of the grounds and to substitute the objective decision of the court for the subjective satisfaction of the detaining authority.

15. In view of the foregoing discussion, there is no escape from the conclusion that the impugned order of detention having been based upon the subjective satisfaction which is not arrived at in accordance with law inasmuch as it is founded on an incident which is irrelevant to the law and order situation and which has no relevance to the public order situation it must be held to be invalid.

16. Rule is, therefore, made absolute by quashing the impugned order and the petitioner is directed to be set at liberty forthwith, so far as the present case is concerned.