

**(1987) 01 DEL CK 0020**

**In the Delhi High Court**

**Case No :** Criminal Writ Appeal No. 218 of 1986

Bhagat Ram

APPELLANT

Vs

The Administrator and Others

RESPONDENT

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**Date of Decision :** 27-01-1987

**Acts Referred:**

**Citation :** (1987) 31 DLT 239 : (1987) 12 DRJ 280 : (1987) 1 RCR(Criminal) 407

**Hon'ble Judges :** S. Ranganathan, J;H.C. Goel, J

**Bench :** Division Bench

**Advocate :** A.S. Ramachandra Rao, Yakesh Anand, R.M. Bagai and H.K. Jaggi, for the Appellant;

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## **Judgement**

S. Ranganathan, J.

(1) The petitioner challenges the validity of his detention and seeks a writ of habeas corpus directing his release. He was detained by an order passed by the Commissioner of Police, Delhi exercising his powers u/s 3(2) of the National Security Act, 1980 inasmuch as he was satisfied that with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain him under the said Act. This order was approved by the Administrator of Delhi u/s 13 of the Act. The result is that the petitioner has been detained for a period of twelve months from the date of detention, namely, 17/3/1986. The petitioner's representations to the detaining authority as well as the advisory board having failed, this writ petition has been filed by him.

(2) Though several contentions have been raised :.in the writ petition, learned counsel for the petitioner confined himself to two contentions. He pointed out that the grounds of detention principally relied upon three incidents dated 25/10/1983, 24/11/1985 and 12/3/1986. The contention of the learned counsel for the petitioner is that these incidents do not relate or affect the maintenance of public order and at best they are merely incidents which relate to the

maintenance of law and order. It is submitted that these three incidents do not give any ground for believing that the petitioner's activities are prejudicial to the maintenance of public order and it is, Therefore, contended that his detention was not justified. The second contention raised by the learned counsel is based on the following circumstances. It is pointed out that in the first two of these three incidents referred to above first information reports were lodged by the police and prosecution was initiated. The Metropolitan Magistrate who tried the petitioner for these offences, acquitted him by his order dated 17/7/1986 in respect of the incident dated 25/10/1983 and by the order dated 2/1/1987 in respect of the incident of 24/11/1985. It is submitted that, if at all, only these two incidents could be said to relate to public order and that since the petitioner has been acquitted in respect of these two offences, the whole basis of the detention order is knocked out and, whatever might have been the initial justification for detaining the petitioner, we should direct his release immediately as his continued detention after these acquittals cannot be countenanced.

(3) Taking up the first contention of the petitioner, we may mention that basically the argument of the learned counsel that the detention is based on the three incidents above mentioned is correct. In this connection we should mention that the grounds of detention start with an enumeration of as many as 11 incidents involving the petitioner in which first information reports have been lodged with the police in respect of incidents on various dates between 3/10/1974 and 22/2/1983. However, after narrating the above incidents the grounds of detention recite as follows :-

"KEEPING in view his aforesaid criminal activities he was detained u/s 3(2) of the National Security Act, 1980 on 23/6/83 under the orders of the then Commissioner of police, Delhi. His detention order was approved by the Administrator of Delhi on 2/7/83. Thereafter his case was placed before the Advisory Board, the Administrator of Delhi was pleased to revoke his detention order vide his order dated 18/7/83."

THE above recital shows that the earlier incidents have been referred to merely as the historical background and that they are not specifically relied upon, as indeed they cannot be after the earlier revocation order, to justify the present retention. After narrating the earlier incidents and the revocation of the earlier detention the grounds refer only to three incidents which we have mentioned above. It is, Therefore, clear to us that though the grounds of detention are long and mention a large number of incidents between 1974 and 1983, the detention of the petitioner presently in question has been based only on three incidents, i.e., 25/10/1983, 24/11/1985 and 12/3/1986.

(4) The charge against the petitioner was that on 25/10/1983 he was found traveling on a scooter carrying 12 packets of charas weighing 6 kgs. An F.I.R. was lodged and, as already mentioned, the petitioner was eventually acquitted by the Magistrate by the order dated 17/7/1986 on the ground that, as the prosecution had failed to prove its case beyond doubt, the petitioner was entitled

to benefit of doubt and hence the acquittal. The second incident of 24/11/1985, however, appears to be a little more serious. Here, the complaint was lodged by the manager in a guest house in New Delhi. The petitioner is stated to have come to the guest house along with a companion and asked about the owner of the guest house and also about one Rashid. One of the two managers of the guest house replied that the owner of the guest house had gone home and that he had not seen Rashid for the last several months. On this the petitioner is stated to have become aggressive and started abusing and threatening of dire consequences saying that he will burn all the vehicles standing there. He is further alleged to have gone out and fired a shot from his pistol and broken the front side glass of a car standing in front of the guest house and then run away. On this incident also a first information report was lodged, investigation was made and prosecution followed. Eventually the Metropolitan Magistrate after examining six prosecution witnesses who were produced came to the conclusion that there was no incriminating material even to record the statement of the accused u/s 313 of the Code of Criminal Procedure and so acquitted him. The third incident, reflected in a daily diary of a police station, records that the petitioner was found by the patrolling officials to be addressing a number of persons gathered there threatening, others that in case any one reported to the police against him he would not spare him and in this respect reference was made to one Makhnu who was alleged to have reported against him and whom the petitioner threatened to liquidate. Apprehending the breach of peace, the petitioner was arrested and an entry was made in the daily diary of 12/3/1986. Immediately thereafter, instead of launching any prosecution against the petitioner, steps were taken under the National Security Act leading to his detention. The Commissioner of Police recorded his satisfaction in the following words :

"FROM the above said criminal and violent activities it is clear that Bhagat Ram is a restless criminal. His activities have proved to be dangerous for the peace logging and law abiding persons. His detention under the National Security Act, 1980 and arrest prosecution in number of cases have not deterred him from his such like activities and he is continuously indulging in such activities which are prejudicial to the maintenance of public order. Therefore, his being at large is hazardous to the public and is. detrimental to the maintenance of public order."

(5) We are of opinion that, whatever maybe the position in respect: of the incidents of October, 1983 and March, 1986, the incident dated 24/11/1985 was certainly one on the basis of which the detaining authority could very well have reached satisfaction that the detention of the petitioner was necessary to prevent him from indulging in activities prejudicial to the maintenance of public order. It will be seen that the first accident related to an allegation that the petitioner was carrying charas and the third incident alleges merely that the petitioner was making some speech of a vituperative nature and it is possible to accept the petitioner's contention that these were minor incidents of a possible criminal offence which could be met by the normal processes of law for the maintenance

of law and order. In fact the petitioner was arrested and tried for the first of these offences and was apprehended u/s 107/151 Criminal Procedure Code for the third. But even assuming this to be so, the second incident, as already mentioned by us, was of a more serious nature. On this date the petitioner is alleged to have created disturbance at a guest house to which public have access. Apart from becoming merely aggressive and abusive, he is also said to have fired a pistol and broken the glass of a car belonging to a member of the public which was standing in front of the guest house. This, in our opinion, is of a more serious nature and if the detaining authority came to the conclusion that this indicated an activity on the part of the petitioner prejudicial to the maintenance of public order, we cannot review his conclusion in these proceedings. It is common ground that after the Amendment Act of 1984 introducing Section 5A the grounds of detention are severable and if the order of detention can be sustained even in respect of one of the grounds mentioned in it, it cannot be set aside.

(6) The contention of the learned counsel for the petitioner that none of the grounds referred to relate to the maintenance of public order cannot be accepted. Learned counsel referred to some decisions in support of his contention but it is sufficient to refer to the latest of these reported as *Ajay Dixit Vs. State of U.P. and Others*, . In this case, after referring to the earlier decisions in the case of *Arun Ghosh Vs. State of West Bengal*, , *Ram Ranjan Chatterjee Vs. The State of West Bengal*, and *Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others*, , the Supreme Court held that the question whether a man had only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The test is, does it lead to the disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it effect merely an individual leaving the tranquillity of the society undisturbed? This is a question which has to be faced in every case on facts and there is no formula by which this question can be decided. Looking at the facts of the present case, as we have indicated above, it is quite possible to take the view that the alleged conduct of the petitioner in the guest house was not confined in its facts to one or two individuals but has to be looked at in a wider Spectrum in view of the fact that the offence is said to have been committed at a guest house and also in view of the allegation that the petitioner fired and broke the glass of a car belonging to a person who was not in any way involved with any alternation with the petitioner. We are, Therefore, of the opinion that the detention order passed by the Commissioner of Police is not liable to challenge. The sufficiency of the ground for the conclusion reached by the Commissioner is not open to review in writ petition and, since we are unable to say that the detaining authority could not have at all drawn the inference which he did, we are constrained to uphold the detention order passed by the Commissioner of Police and approved by the Administrator.

(7) This takes us on to the second contention of the learned counsel for the

petitioner on the basis of the acquittal of the petitioner in respect of two of the charges subsequently. We are informed that there is no reported decision on this aspect though we believe that such a situation must have arisen at some point of time, and we have also not been able to come across any judicial decision dealing particularly with this aspect. However, there are decisions which deal with cases where the detenu has been discharged or acquitted before the detention order is made in respect of incidents which form part of the grounds of detention. Sri Bagai, learned counsel for the State, submitted that if a detention order could be validly made irrespective of the fact that, even before its being passed, the detenu had been discharged or acquitted in respect of the incidents in question or even where the police itself did not pursue the matter by way of a criminal prosecution, the position cannot be worse and the detention order become subject to challenge merely because, subsequent to the passing of the detention order validly, the detenu has been acquitted of an offence in respect of one or more of the incidents which form the grounds of detention. His argument was that in such a case the remedy of the detenu was to apply to the detaining authority and the State for revocation of his detention and that the State was entitled to consider these representations and revoke the detention on its own or refer the matter again to the advisory board for its opinion regarding the validity of the continued detention in the light of the new facts and the acquittal relied upon by the detenu.

(8) We are of opinion that the contention of the learned counsel for the State is correct and should be upheld. As pointed out by him, the Supreme Court has held in a large number of cases that the mere fact that a detenu is discharged or acquitted in a criminal case or that the prosecution instituted against him in respect of some incidents has not been pursued or has been withdrawn by the prosecution does not mean that a valid order of detention could not be passed against him in connection with those very incidents nor can such an order be characterised malafide. These cases are so many that we refrain from citing them. They show that mere non-prosecution, discharge or acquittal itself does not render the detention invalid even where the fact of such non-prosecution, discharge or acquittal is known to the retaining authority before detention. In cases where the detention order is passed with full knowledge of what has happened to the criminal prosecution, it is for the detaining authority to consider the circumstances of the nonprosecution, discharge or acquittal and it may pass a detention order in respect of incidents covered by such non-prosecution, discharge or acquittal if satisfied that despite the same an order of preventive detention is called for. Where the non-prosecution or discharge is due to insufficiency of evidence consequent on witnesses being frightened away from, or scared of, testifying against the detenu or the acquittal is on technical grounds or because of the suborning of the prosecution witnesses, a case for preventive detention may survive. On the other hand, where the discharge or acquittal proceeds on the footing that the charge is false or baseless, preventive detention on the same condemned facts may be also equally vulnerable. When a court

considers the detention order passed in such a case, the detaining authority is obliged to inform the court how it reached its subjective satisfaction and the court may find such detention justified or unjustified depending upon the facts.

(9) In our opinion, it follows, on the logic of the above decisions, that, where such discharge or acquittal happens subsequent to the order of detention, it cannot automatically entitle the detenu to be released by the court. In such a case, the hypothesis is that the original order of detention was validly passed. The subsequent order of acquittal or discharge can at best only entitle the detenu to seek a review of the earlier order of detention but such review can in the first instance be only by the detaining authority and not by the court. As pointed out on behalf of the State, the validity of the order of detention has to be adjudged as on the date on which the return to the writ petition is filed (see in this connection the discussion in *Kanu Sanyal Vs. District Magistrate, Darjeeling and Others*, ). It is not open to the court to hold the order to be invalid by a reference to subsequent events particularly since, as explained above, the subsequent event does not per se knock out the validity or existence of the grounds of detention, but is merely a fact to be taken note of by the detaining authority to consider whether having regard to the circumstances and nature of the order passed subsequently the detention order should continue to hold the field or not. If the Court does this, it will be appropriating to itself the function of the detaining authority of weighing the effect of the non-prosecution, discharge or acquittal vis-a-vis the need for preventing detention. If the court could not have exercised this function where a detention order is passed with knowledge of such event, it is difficult to see how it can proceed to consider for itself the impact of such result on the preventive detention when this result comes to light after the detention. We think that the appropriate remedy for the detenu in such a situation is to seek a review of the detention order u/s 14 and it is not only open to, but also the duty of, the Government to consider any representation that the detenu might make bringing to its notice such subsequent events as, he contends, have a relevance to the continued detention of the petitioner in jail. Possibly, if the detaining authority considers the representation and rejects it, the detenu may have a right of recourse to the court seeking a judicial review of the order refusing to revoke the detention in the light of the subsequent events but, for the reasons above discussed, we are of opinion that it is not possible for this court in the first instance to consider the order of acquittal either as per se a ground to set aside the order of detention or as justifying, on merits, the revocation of such order.

(10) For the reasons above stated, we are of opinion that the present writ petition should be dismissed and we direct accordingly.