

(1982) 01 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 644 of 1981

Gurdeep Singh

APPELLANT

Vs

District Magistrate, Jammu, and anr.

RESPONDENT

Date of Decision : 27-01-1982

Acts Referred:

Public Safety Act, 1978 — Section 8(3)(b)(ii)

Citation : (1982) SriLJ 285

Hon'ble Judges : I.K.Kotwal, J

Bench : Single Bench

Advocate : A.K.Sawhney, Advocates appearing for the Parties

Judgement

1. The petitioner, Gurdeep Singh alias Babbi, has been detained u/s 8 (1) of the Jammu & Kashmir Public Safety Act, 1978 (hereinafter the Act),

pursuant to the order of District Magistrate Jammu, dated 17101981, passed by him with a view to preventing the petitioner from acting in any

manner prejudicial to the maintenance of public order The grounds of detention which were served upon him on 10101981 read as under :

1. That on 14.6.81 at 2100 hours you alongwith your associates including Mohinder Singh and Mohinder Makhi went to Apsra Theatre and

disturbed the que near the ticket window and when objected by Sh. Bahadur Singh and other cinagoers, who were purchasing tickets, you

exhibited your dagger (Dha). With this act of yours panic was caused in cinema premises and cinagoers including ladies rushed out side the

premises of Apsra Theater. You also shouted that if anybody reported the matter anywhere he would be no more.

2. That on 22981 at 1930 hours you alogwith your 4/5 associates including Mohinder Singh & Mohinder Makhi visited the shop Sh. Sudesh

Kumar Prop. Kashmir Ice Cream Factory, Nanak Nagar, Jammu and took Ice cream and when Prop, demanded its price, you beat the

employees of Sh. Shudershan Kumar. You were armed with Khokhri in your hand and while leaving the place you threatened Shri Sudesh Kumar

and Ms employees with dire consequences.

3. That on 23.9.81 at 2300 hours you alongwith your associates namely, Mohinder Singh & Mohinder Makhi armed with Khokhri and knife

attacked Rehariwallas, namely, Romesh and Girdhari Lal at Nanak Nagar with the intention to extort money from them. The Rehari wallas saved

them selves by rushing towards the Railway Station and stayed for the night at the Railway Station, This act of yours created terror in the minds of

Romesh and Girdhari Lal and also other residents of the area.

From all these facts and recurring commission of your acts of violence, it is evident that you have created a sense of insecurity in the minds of

peace loving citizens in Jammu city and your remaining at large is highly prejudicial to the maintenance of Public Order. It is necessary to detain you

under the Public Safety Act, 1978 for a period of one

He has challenged his detention on the grounds: firstly, that the acts imputed to him, even if true, would not tantamount to disturbing public order,

and secondly, that these acts being subject matter of F. I. Rs. his order of detention was passed by the District Magistrate mechanically, without

applying his mind to the question whether he should be, put on regular trial for these offences or merely kept in preventive detention.

2. Public order has been defined by Sec, 8 (3) of the Act, clause (b) (ji) whereof reads as under :

(ii) Making preparations for using or attempting to use, or using or instigating, inciting, provoking, or otherwise abetting the use of force were such

preparation, using, attempting, instigating, inciting, provoking or abetting disturbs or is likely to disturb public order.

3. Reliance on behalf of the State has been placed upon this Clause to show that the different acts attributed to the petitioner clearly bring his case

within the four corners of the said clause defining the expression ""public order"". On behalf of the petitioner, however, it has been contended that

these acts, even if proved, would still not lead to disturbing the current of the life of the community so as to amount to disturbance of public order.

They affected merely an individual or individuals, leaving the community as a whole unperturbed. For this, reliance has been placed upon *wasiuddin*

Ahmed Vs The District Magistrate, Aligarh, AIR 1981 S. C. 2166 wherein their Lordships had brought out the distinction between the three

expressions: "law and order", "public order", and "security of the State", in these terms :

On the merits, it is argued that the grounds of detention served on the detainee were not connected with "maintenance of public order", but they

relate to maintenance of law and order" There is no merit in the contention whatsoever. The distinction between "law and order" and "public order

has been brought out succinctly in *Dr. Ram Manohar Lohia Vs. State of Bihar*, (1966) 1 SCR 709 : (AIR 1966 SC 740), *Arun Ghosh Vs. State of*

West Bengal, (1970) 3 SCR 288 : (AIR 1970 SC 1228), *Pushkar Mukherjee Vs, State of West Bengal*, (1969) 2 SCR 635 : (AIR 1970 SC

852) and *Nagendra Nath Mondal Vs. State of West Bengal*, (1972) 1 SCC 498 : (AIR 1972 665). As to what is meant by "public order",

Hidayatullah J. (as he then was) said in *Ram Manohar Lohia's case* (supra) that any contravention of law always affects order but before it could

be said to affect "public order", it must affect the community or the public at large. He went on to consider the three concepts viz. "law and order",

"public order" and "the security of the State", generally used in preventive detention laws, and indicated that to appreciate the extent and Scope of

each one of them, we should have three concentric circles, the largest of them representing "law and order" the next representing "public order" and

the smallest representing "the security of the State". An act may affect "law and order", but not "public order", just as an act may affect "public

order" but not "the security of the State". The true distinction between the areas of law and order and public order lies not merely in the nature of

or quality of the act but upon the degree and extent of its reach upon the society. The acts similar in nature but committed in different contexts and

circumstances might cause different reactions. In one case, it might affect specific individuals and, therefore, touches the problems of law and order

only, while in another it might affect public order.

In *Arun Ghosh's case* (AIR 1970 SC 1228), the concepts of "law and order" and "public order" were pointed out and it was observed that the

distinction is one of the degree and the extent of the reach of the act upon the society. The Court, speaking through Hidayatullah, C. J ; observed

an act by itself is not determinant of its gravity. In its quality it may not differ from another but in its potentiality it may be very different". The

principles laid down in Ram Manohar Lohia's case (AIR 1969 SC 740) were reiterated in, Arun Ghosh's case. So it has to be seen in the instant

case whether the petitioner's activities have any impact upon the local community, or to put in words of Hidayatullah, C. J. in Arun Ghosh.s case

(supra) ""disturb the even tempo of the life of the community of that specified locality.

4. Keeping in view the different acts attributed to the petitioner, I cannot accept the contention raised on his behalf that these acts merely created a

problem of law and order, as these were directed against an individual, leaving the tranquility of the community undisturbed. These acts do not appear

to have been committed by the petitioner merely with a view to settle scores with an individual or a few individuals. These were clearly an outcome

of his attitude towards his own life as well as towards the general public, and were obviously aimed at creating a scare in the mind of the

community that he was law unto himself. Where a person has chosen a way of life wherein he should eat, drink, or get himself entertained not by

spending any money on it, but by showing force, or by using the same, it is idle to contend that his acts would be directed against a particular

individual, at whose cost he would like to eat, drink or be entertained. If unchecked, he may be encouraged and his inclinations may assume

alarming proportions. Such a person would undoubtedly be a security hazard not only for a few individuals but for all the inhabitants of the locality

in which he lives or operates, as any person living or carrying on business in that locality is bound to feel pain of him. It cannot be gainsaid

that every one is scared of an outlaw. The first ground urged on behalf of the petitioner is, therefore, over ruled.

5. There appears to be, however, some force in the other ground. Admittedly, detention of the petitioner has been based upon the same facts on

which the three F. I. Rs. have been registered against him. The District Magistrate has not disclosed his mind as to whether he has decided not to

put the petitioner on trial in these three cases, He appears to have passed the order of his detention mechanically. Possibility of the petitioner being

put on a regular criminal trial cannot thus be ruled out. The order of detention having been passed by District Magistrate without application of mind, it is set aside accordingly and the petitioner is directed to be set at liberty forthwith unless required to be kept in judicial lock up in any of the aforesaid three cases. JAMMU ; January 27 1982 Sd/I. K. Kotwal. J.