

(1990) 06 BOM CK 0016

In the Bombay High Court

Case No : Criminal Writ Petition No. 371 of 1990

Lachhu Meghraj Vidhya

APPELLANT

Vs

R.D. Tyagi and others

RESPONDENT

Date of Decision : 29-06-1990

Acts Referred:

Arms Act, 1959 — Section 25
National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 324, 326, 34, 392, 451

Citation : (1991) CriLJ 236

Hon'ble Judges : S.P. Kurdukar, J; R.G. Sindhakar, J

Bench : Division Bench

Advocate : Shirish Gupte, for the Appellant; R.P. Desai, Public Prosecutor and M. K. Patwardhan, for the Respondent

Judgement

Kurdukar, J.—The 1st Respondent on being subjectively satisfied that the criminal activities of one Appu Harpal Meghraj Vidhya are prejudicial to the maintenance of public order, on 9th March 1990, issued an order of detention u/s 3(2) of the National Security Act, 1980, with a view to preventing him i.e. Appu alias Harpal Meghraj Vidhya the detenu, from engaging in criminal activities which are likely to disturb the public order. The petitioner is a brother of the detenu and he has filed the present petition challenging the legality and correctness of the order of detention. Order of detention came to be served on the detenu on 10th March 1990.

2. In the grounds of detention, the Detaining Authority has relied upon four incidents which are referred to in paragraphs 2(a) to 2(d). At the outset, it may be stated that the four incidents in question took place in Ulhasnagar area in Camp Nos. 2 and 3. The detenu is also resident of Ulhasnagar and is residing in Camp No. 3.

3. The first incident took place on 27th December 1988 at about 2315 Hours in Camp No. 2, Ulhasnagar when Shrichand Shamani, the complainant, in Crime

No. I-819/1988 was sitting with his friends in front of his closed shop. It is stated that the detenu and his two associates Ashok alias Hashu Ramchandra Ahuja and Tinku came in an auto rickshaw and went to the complainant. The two associates of the detenu caught hold of the hair of the complainant and assaulted him with fist blows and thereafter the detenu forcibly snatched away his golden chain which is valued at Rs. 3,000/- from his person. In this connection, offence u/s 392 read with Section 34 of the Indian Penal Code has been registered and the criminal case is subjudice. The detenu was arrested on 28th December 1988 and came to be released on bail on 29th December 1988.

4. The second incident occurred on 25th October 1989 in which one Nanikram Kansing Adwani, a cloth merchant was injured. One Hiralal Tejawani, partner of Nanikram Adwani, on 16th February 1989 filed a complaint against the detenu and his associates Suresh Kattu and others and the said case is pending. It is further stated that Nanikram Adwani was taking interest in the complaint filed by his partner Hiralal Tejawani. On 25-10-1989, at about 00.10 Hours Nanikram Tejawani and his friends were sitting in his office cum shop of one Kammu Seth at Khatanmal Chowk, Camp No. 3, Ulhasnagar, and they were discussing about their business. Suddenly, the detenu and his associates who were armed with deadly weapons like sword, razor and revolver entered the office room of Shri Kammu and one of associate of the detenu gave a knife blow on the head of Nanikram. Other associates also caused injuries with the weapons in their hands. The detenu and his associates thereafter fled away. An offence under sections 451, 324, 506(2) of the Indian Penal Code as also u/s 25(c) of the Indian Arms Act has been registered being Crime No. I-387/1989 and the same is pending. The detenu and his associates were arrested on 2-12-1989 and they were released on bail on 8-12-1989.

5. The 3rd incident which has been referred to by the Detaining Authority took place on 8th November 1989 at about 10.30 p.m. when one Prakash Chhabildas Punjabi, the complainant, resident of Barrack No. 950/12, Camp No. 3 Ulhasnagar was standing on the road near Barrack No. 1010 at that time, at about 10.45 p.m. the detenu and his associates Suresh Kattu went to the complainant and all of sudden the detenu and his associate Suresh Kattu took out knife from his pocket and gave knife blow on thigh of the complainant because he was suspected to be informant about the activities of the detenu and his associate. The detenu and his associate started assaulting the complainant. The complainant sustained injuries. An offence u/s 324 r/w 34 of the I.P.C. came to be registered against the detenu and his associate Suresh Kattu. The detenu and his associate came to be arrested on 5-12-1989, but they were released on bail on 8-12-1989.

6. The last incident which was relied upon by the Detaining Authority took place on 13th November 1989 at about 21.15 Hrs. when complainant Santosh Udhavadas Jethchand, residing in Barrack No. 586/1 Ulhasnagar Camp No. 2 was assaulted by the detenu and his associate. This incident took place when the

complainant Santosh Jethanand and his friend Prem Kelwani were standing in front of the Durgamata temple in Camp No. 3 at Ulhasnagar. The detenu and his associate Suresh Kattu assaulted the complainant with iron pipe on his leg and gave him head dash. Suresh Kattu, the detenu's associate gave a knife blow on the head of Prem Kelwani. The other associate of the detenu Ashok Motiram Dhone gave a sword blow on the head of Prem Kelwani. The said Prem Kelwani was removed to the Central Hospital, Ulhasnagar, for treatment. In this connection offence u/s 326 read with 34 of the I.P.C. has been registered against the detenu and his associate and the same is pending in Court. The detenu and his associates were arrested on 2-12-1999 and 10-12-1989 and they were released on bail on 8th December 1989.

7. On the basis of these criminal activities of the detenu and his associates, the Detaining Authorities formed subjective satisfaction and came to the conclusion as follows :

"From the abovementioned incidents, it will be seen that you and your associates are always moving with deadly weapons such as knife, swords, iron bar/pipe and do not hesitate to use the same against any person with whom you have no enmity or grudge. You and your associates have created a reign of terror in Camp Nos. 2, 3 and 4 and its surrounding areas in the jurisdiction of Ulhasnagar Police Station and Vithalwadi Police Station in Ulhasnagar Township in Thane Police Commissionerate. You and your associates are indulging in violent and terrorising activities due to which the residents of the said areas are feeling insecure and they are constantly living under the shadow of fear. Your above mentioned violent and terrorising activities mentioned in Grounds 2(a) to (d) are found to be prejudicial to the maintenance of public order in Camp Nos. 2, 3 and 4 and its surrounding areas in the jurisdiction of Ulhasnagar and Vithalvadi police stations in Ulhasnagar Township. Action taken against you under the ordinary law of the land found to be inadequate to curb your violent and terrorising activities. I am, therefore, satisfied that with a view to preventing you from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain you under the provisions of the National Security Act, 1980."

Since the contention raised before us is confined to the issue as to whether the incidents in question relate to law and order or public order, it is not necessary to recite rest of the contents of the grounds of detention.

8. Mr. Gupte, learned Counsel appearing in support of this writ petition, urged that assuming that all these incidents have taken place in the localities referred to in the grounds of detention and assuming that the complainant and other persons involved in the respective criminal cases were injured, with the deadly weapons yet, neither cumulatively nor individually these incidents fulfil the test of "public order" and consequently detention order is unsustainable. Counsel further urged that the material relied upon by the Detaining Authority even does not remotely suggest that the even tempo of the society at large in the locality or localities was disturbed by reason of repeated criminal activities of the detenu in

these areas. With the assistance of the learned Counsel for the petitioner, learned Public Prosecutor and the learned Counsel for the Union of India, we went through the entire material on record and we are unable to record a finding that the material on record does not fulfil the test of "public order" as laid down by this Court as well as by the Supreme Court in various reported and unreported judgments. It is true that the complainant and witnesses in the respective cases have referred to the incident and criminal assault on the part of the detenu and his associates, but the whole question is whether these criminal activities of the detenu disturb the even tempo of public at large. Mr. Gupte drew our attention to a judgment of the Supreme Court in *Ajay Dixit Vs. State of U.P. and Others*, . This was a case where question as to whether criminal activities of the detenu fell within the sphere of "law and order" or "public order". The incidents in that case were referred to in paragraphs 1(1) to (6). The incidents referred to therein were of serious nature wherein the detenu had used deadly weapons like Tamancha and other fire arms. While construing these criminal activities, the Supreme Court in para 10 has observed as follows :

"In the decision of this Court in the case of *Arun Ghosh Vs. State of West Bengal*, , the question was whether the grounds mentioned could be construed to be breach of public order and as such the detention order could be validly made. There the appellant had molested two respectable young ladies threatened their father's life and assaulted two other individuals. He was detained u/s 3(2) of the Preventive Detention Act, 1950 in order to prevent him from acting prejudicially to the maintenance of public order. It was held by this Court that the question whether a man has 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 society. The test is : Does it 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 does it affect merely an individual without affecting the tranquillity of society. This Court found in that case that however reprehensible the appellant's conduct might be, it did not add up to the situation where it may be said that the community at large was being disturbed. Therefore, it could not be said to amount to an apprehension of breach of public order and hence, he was entitled to be released."

In paragraph 11, the Supreme Court reiterated the principle laid down by the said Court, in the case of *Ram Ranjan Chatterjee Vs. The State of West Bengal*, . The emphasis laid down by the Supreme Court is that the detention order could be issued on the basis of such criminal activities which would affect the maintenance of public order. It must affect the community or public at large. One has to imagine the concentric concept of "law and order" and "public order". Applying this test, we have to see whether a man has committed only breach of law and order or has acted in manner which is likely to disturb the public order. It is a question of degree and the extent of the reach of the act upon the society. The Court has to examine whether acts of the detenu lead to disturbance of the current of life of the community so as to amount to a disturbance of the public

order. If it affects merely an individual, then surely such criminal activities although serious, may not fall within the domain of "public order". It is needless to refer to other authorities except making reference to Supreme Court judgment, Gulab Mehra Vs. State of U.P. and Others, . The same principle has been reiterated in this decision.

9. Mrs. Desai, learned Public Prosecutor however, while countering the contention of Mr. Gupte, urged that it is for this Court to consider whether activities fall within the domain of "public order" or "law and order" and for this purpose, she urged that four factors may be taken into account : (i) potentiality of the detenu (ii) place of criminal activities (iii) nature of criminal activities and the (iv) manner in which activities were undertaken by the detenu. The learned Public Prosecutor urged that here is a detenu who has been involved in as many as four criminal cases of assaults. Complainants and witnesses in these cases have been seriously injured and were required to be hospitalised. She further urged that the detenu and his associates move always armed with deadly weapons and this criminal potentiality is really a serious matter which is bound to affect the public order in the said locality or localities. This potentiality is deep-rooted in the detenu and his associates and, therefore, the present acts must fall within the sphere of "public order" and not "law and order". She also emphasised the place of incidents, nature of the incidents and the manner in which assaults took place. It is undoubtedly true that these are four factors the Court will take into account while considering the criminal activities of a person who has been sought to be detained. Mrs. Desai in support of her contention relied upon judgment of the Supreme Court in State of U.P. Vs. Hari Shankar Tewari, and in case of Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others, . We have gone through both these judgments of the Supreme Court and we do not think that both these decisions lay down any other principle than the one which we have referred to above. It is for the Court to satisfy itself as to whether criminal activities of the detenu would fall within the domain of "public order" or "law and order". No watertight compartment or hard and fast rule can be laid down in this behalf and each case has to be decided on the facts of that case. After going through the material before us, we are satisfied that the criminal activities of the detenu do not fall within the domain of "public order" but will appropriately fall under "law and order". If that be so, in our opinion, the detention order cannot be sustained.

In the result, writ petition succeeds. Rule is made absolute. Detenu be set at liberty if not required in any other criminal case. No order as to costs.

10. Petition allowed.