

(1973) 02 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 46 of 1973

Mohammad Anwar alias Rusi

APPELLANT

Vs

District Magistrate, Sehore and others

RESPONDENT

Date of Decision : 26-02-1973

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3(2)

Citation : (1977) ILR (MP) 514 : (1973) JLJ 687 : (1973) 18 MPLJ 733

Hon'ble Judges : J.S. Verma, J;A.P. Sen, J

Bench : Division Bench

Advocate : L.S. Sinha, for the Appellant; M.V. Tamaskar, Govt. Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, J.

This order will also govern the disposal of Miscellaneous Petition No. 107 of 1973 Ajai Singh v. District Magistrate, Bhopal and another.

The petitioner in each of these cases is under detention by virtue of the powers contained in the Maintenance of Internal Security Act, 1971 (Act No. 26 of 1971), hereinafter referred to as "the Act", and these petitions are filed under Article 226 of the Constitution of India for the issue of a writ in the nature of Habeas Corpus.

Except for the particulars of the grounds upon which the petitioners detention is based, in all other respects the two petitions are identical. In both cases the detention has been ordered by the District Magistrate in exercise of the power conferred by section 3 (2) of the Act on the satisfaction that it was necessary to detain the petitioners with a view to preventing them from acting in any manner prejudicial to the maintenance of public order as provided in section 3 (1) (a) (ii) of the said Act. Thereafter, in accordance with section 8 of the Act, the grounds on which the detention was ordered were furnished to the petitioners and they

were afforded an opportunity to make a representation against their detention before the Advisory Board constituted u/s 9 of the Act. After hearing the petitioners the Advisory Board was of the opinion that the detention in each case was for sufficient cause. Thereafter an order dated 7th December 1972 (Annexure "C" in M.P. No. 46/73 and "E" in 107/73) was passed by the State Government in exercise of powers conferred by section 12 (1) of the Act, confirming the detention and directing that the same was to continue for a period of 12 months. The petitioners challenged the validity of their detention in this manner and also seek to have the aforesaid order dated 7th December 1972 quashed by these petitions.

Shri L.S. Sinha has advanced common arguments in both cases. His contentions are these:

- (1) That, as stated in the return, the District Magistrate was initially of the view that action under the Maintenance of Public Order Act, 1965, was contemplated against the petitioners whereunder the petitioners would have been only externed. However, instead of taking that action, the petitioners have been detained under the Maintenance of Internal Security Act, 1971, which admittedly is more onerous;
- (2) That the detention order in both cases is ex facie bad inasmuch as it was passed for the maintenance of "law and order" and not for the maintenance of "public order", as provided in section 3 (1)(a)(ii) of the Act;
- (3) That the grounds of detention furnished to the petitioners u/s 8 of the Act clearly show that they relate to "law and order" and not to "public order";
- (4) That the aforesaid grounds of detention are vague and irrelevant. It is also contended that even if one of these grounds is so defective, the whole order is vitiated in the case of both the petitioners ;
- (5) That the instances quoted against the petitioners relate to ordinary crimes which are punishable under various provisions of the criminal law and preventive detention is not justified in these circumstances.

The first argument of Shri Sinha does not need any elaborate discussion. There can be no doubt that if an authority is conferred with two powers, both of which are available in a given case, then the action taken under any one of them cannot be challenged on the ground that the other should have been resorted to. This is a matter entirely within the discretion of that authority. The only question which would in fact arise is the validity of the action taken under the Maintenance of Internal Security Act, 1971, and it is of no consequence that the District Magistrate was also empowered to act under the Madhya Pradesh Maintenance of Public Order Act, 1965, which power he did not choose to exercise. Thus, this argument has absolutely no force.

The second argument advanced by Shri Sinha is that the detention order is ex facie bad. This argument also does not withstand close scrutiny. The impugned

order dated 7-12-1972 does not suffer from the alleged defect. In fact, this is the only order against which relief has been claimed in the petitions before us. It nowhere says that the same has been passed for maintenance of "law and order" and not for the maintenance of "public order". In the said impugned order reference has been made to section 12 (1) of the Act under which it has been passed and it has been further stated that the Advisory Board constituted u/s 9 of the Act was of the opinion that the petitioners' detention was for sufficient cause. However, reliance was placed at the hearing before us on certain portions of the prior communication (Annexure "A" in both the petitions) sent to the petitioners u/s 8 of the Act, to support this contention, wherein at the end the last sentence is as follows:

At the very outset we would like to point out that Annexure "A" is a document which was meant only to convey the grounds of detention along with the particulars thereof and even assuming that the petitioners could be permitted to refer to any document other than the aforesaid order dated 7-12-1972, the document more relevant for this purpose would be the initial order of detention passed in exercise of the powers contained in section 3 (2) of the Act. Such order passed in both the cases by the District Magistrate, Sehore, was placed before us by Shri M.V. Tamaskar, learned Government Advocate, when this argument was advanced during the course of hearing. In this initial order of detention passed in both the cases, apart from expressly referring to section 3 (1)(a)(ii) of the Act, it was further stated that the appropriate authority was fully satisfied that the petitioners' detention was necessary for the maintenance of "public order". The exact words used in the order in this connection are as follows:

Shri Sinha has not been able to suggest that this order does not refer to exercise of power for the maintenance of "public order". In our opinion, even Annexure "A", on which reliance is placed by Shri Sinha, does not support this contention. Annexure "A" at the very outset mentions the initial order of detention already stated and refers to section 3 (1)(a)(ii) of the Act. Thereafter, in stating the grounds of detention, once again reference is made to "public order" and not to "law and order", and to the maintenance of public order only. Some extracts from Annexure "A" relevant for this purpose are as follows:

From the above extracts of Annexure "A" itself it is clear that the reference throughout therein was only to the maintenance of "public order" and not to the maintenance of "law and order". The document has to be read as a whole and not the last sentence in isolation. So read, we have no doubt that even while furnishing the grounds of detention as required by section 8 of the Act, the authority all along referred only to the maintenance of "public order", although at this stage the only thing necessary to be communicated to the petitioner were the grounds of detention and nothing more. The power in exercise of which detention was ordered had already been communicated to the petitioner by the initial order of detention, as already pointed out. Moreover, even in the final order passed u/s 12 (1) of the Act, which in fact is the only order under

challenge, admittedly no such defect could be even be suggested. For these reasons we are of opinion that even this argument of the learned counsel for the petitioners is without substance.

The next argument on behalf of the petitioner in both the cases is, that the grounds of detention do not relate to "public order" and that they in fact relate only to "law and order". On this basis it is contended that the power exercised was not available to justify detention. In order to decide this contention it is necessary to first state the difference between "public order" and "law and order". This distinction is now well settled by several decisions of the Supreme Court and we would only refer to some recent decisions wherein the actual guideline for determining when the ground relates to "public order" has been set out. While dealing with a similar argument as advanced before us, their Lordships of the Supreme Court in Arun Ghosh Vs. State of West Bengal, laid down as follows:

.....Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance

amounts only to a breach of law and order....

..It means therefore 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 that society" "A large number of acts directed against person or individuals may total up into a breach of public order....

..The question to ask is : Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed ? This question has to be faced in every case on facts There is no formula by which one case can be distinguished from another.

(Para 3 at pp 1229-30).

It is significant that the judgment of the Court was delivered by Hidayatullah, C.J., who was also a party to the earlier decision, Dr. Ram Manohar Lohia Vs. State of Bihar and Others, certain portions of which were relied on in that case by the petitioner (Arun Ghosh) as has been done by the learned counsel for the petitioners before us. There is no doubt that the observations in Ram Manohar Lohia's case (supra) are to be read in the light of this decision of the Supreme Court. In a later decision of the Supreme Court in Shri Amiya Kumar Karmakar Vs. The State of West Bengal, once again reference was made to the earlier

decisions of that Court and their Lordships laid down as follows:

The criterion thus being the potentiality of the act in question or the degree of its impact on members of the community in the locality in which the act in question is committed,....

(Para 6 at p. 2261).

And once again in a very recent judgment of the Supreme Court, Babul Mitra Vs. State of West Bengal and Others, the principles laid down in Arun Ghosh's case (supra) were reiterated as follows:

The last argument is that the grounds of detention are not connected with "public order": at worst they may be connected with "law and order". The distinction between "law and order" and "public order" has been pointed out succinctly in Arun Ghosh v. State of West Bengal (supra). According to that decision the true distinction between the area of "law and order" and "public order" is "one of degree and extent of reach of the act in question upon society." The Court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different". So it is to be seen in the instant case whether the petitioner's acts have any impact upon the local community or, to put it in the words of Hidaytullah C.J. in the aforesaid case, disturb the even tempo of the life of the community of that specified locality.

(Para 7 at pp. 199-200).

From the aforesaid decisions of the Supreme Court it is obvious that the true test for determining whether the acts are connected with "public order" or with "law and order" is not each individual act by itself but its potentiality. In other words it is the impact upon the local community which has to be seen and, as quoted in Babul Mitra's case (supra) in the words of Hidaytullah, C.J., used in Arun Ghosh's case, where the acts have the effect to "disturb the even tempo of the life of the community of that specified locality", those acts relate to "public order" and not to "law and order". It is in this light that the acts relied on for ordering detention in the cases before us have to be judged.

The particular acts enumerated in Annexure "A" to the petition, which contains the grounds for detention, show that the activities of the petitioner covered a wide field. The incidents referred therein show that there is danger to the womenfolk and the public officers in general and there is also apprehension of disturbance of the community from incitement of communal feeling. It has been further expressly stated in Annexure "A" that anyone who dares to disobey the petitioner or tries to interfere with his nefarious activities is in danger. The District Magistrate has further stated that the cumulative result of the activities of the petitioner has been to disturb the public order in that locality and for the purpose of the maintenance of public order it has become necessary to order the petitioner's detention. In our opinion, the various acts attributed to the

petitioner, which are detailed in Annexure "A" are by their nature capable of disturbing the even tempo of the life of the community in that area. An express statement of such being the result of the petitioner's activities has been made in the affidavit filed in support of the return in this case by the District Magistrate himself, wherein it has also been stated that the order of detention of the petitioner was made only on such satisfaction. This is also the statement made in the order of detention itself. What in fact is the cumulative effect of these acts of the petitioner is ultimately for the District Magistrate of that area to determine and state. So far as this Court is concerned, it has only to be seen whether the acts relied on are by their nature capable of producing the result which the detaining authority said they do. We have already stated that the acts by their nature are such that they are capable of producing the result which the District Magistrate says they have done.

We shall now deal with the grounds of detention relating to the petitioner Ajai Singh in Miscellaneous Petition No. 107 of 1973. As already stated, the only difference in these two petitions relates to the instances of acts attributed to the two petitioners, the ultimate ground being the same, i. e., for maintenance of public order as provided in section 3 (1) (a) (ii) of the Act. The instances in the case of the petitioner Ajai Singh are confined to an even smaller locality, i. e., H.E.L. colony. The instances quoted in Annexure "A" in his petition are as many as 19 in number. All these instances indicate that the petitioner Ajai Singh has become a tyrant in that locality and the entire community of that locality is continuously oppressed by this petitioner. These instances cover a large period as in the case of the other petitioner Mohammad Anwar, which only go to indicate that the detention of the petitioner has been ordered as a last resort and not on some stray incidence alone. It is enough to state that the acts relating to this petitioner are equally capable of disturbing the even tempo of the life of the community in that locality and, as in the other case, the District Magistrate has throughout stated his satisfaction regarding this being the ultimate effect upon the community in that area. It was only on such satisfaction of the authority that the order was passed in this case also. We are of opinion that in both these cases the instances quoted are capable of producing the effect which the detaining authority says they had, and in these circumstances the satisfaction of the detaining authority is not open to challenge on this ground.

The next contention of Shri Sinha is that the grounds are vague and irrelevant. His further argument in this connection is that even if one ground is bad, the entire order is vitiated. So far as the grounds contained in Annexure "A" in Ajai Singh's case are concerned, Shri Sinha has not been able to point out any ground therein which may be vague. In this connection it may also be mentioned that in the reply (Annexure "B"), given by Ajai Singh, to the order dated 30-9-1972 (Annexure "A"), he has nowhere complained of any such vagueness. So far as the petitioner Mohammad Anwar is concerned, even though in his reply (Annexure "B") in paragraph 7 vagueness relating to one incident was mentioned, yet there was an emphatic reply regarding that allegation being

false. It is difficult to appreciate how the particulars could be vague in that case if the petitioner had been able to understand the allegation in order to emphatically deny the same. Moreover, that incident which is stated in sub-paragraph 7 of Annexure "A" does not suffer from any vagueness, in our opinion. The date of the incident as also the place and the specific act done by the petitioner have all been expressly stated. No other particular was necessary to enable the petitioner to give any effective reply and in any case he was able to give an effective reply as already stated. Similarly in sub-paragraphs 9 and 11 of Annexure "B", the petitioner has expressly denied the particular instances, even though in one case it was alleged that the name of the police station was not mentioned and in the other case the name of the place was said to be absent. So far as the name of the police station where the offence was registered is concerned, that was not a necessary particular inasmuch as the date, the name of the complainant and the offence complained of were given which were sufficient to enable the petitioner to give a reply. Similarly, in the case of the other instance, the date, the name of the person to whom injury was caused by the petitioner and the offence committed thereby were all stated. It is needless to add that the locality to which all these incidents related has been particularized at many places in Annexure "A". In these circumstances the vagueness complained of cannot be understood. In our opinion, there was no such vagueness even in the view of the petitioner as is apparent from the fact that he did not ask for the same to be clarified in order to enable him to make an effective reply and in fact he replied to all these charges by emphatically denying them. What other reply the petitioner wanted to give has not been indicated even to us at this stage. These are the only instances in respect of which vagueness has been alleged on behalf of the petitioner. As such, it is not necessary to deal with the particulars of the other incidents mentioned in Annexure "A". As already stated, in Ajai Singh's case vagueness has not been alleged or shown in respect of any instance detailed in Annexure "A" therein. In *SK. Hasan Ali Vs. State of West Bengal*, it was laid down as follows:

.....What has to be seen by the Court is that the ground of detention supplied to the petitioner was not BO vague as to prevent him from making an effective representation.

(Para 6 at p. 2592).

Similarly in *Naresh Chandra Ganguli Vs. The State of West Bengal and Others*, their Lordships of the Supreme Court observed as follows:

.....If the statement of facts is capable of being clearly understood and is sufficiently definite to enable the detained person to make his representation, it cannot be said that it is vague.....

(Para. 13 at p. 1341)

We have already pointed out that there is no vagueness in respect of the only allegations pointed to us in this connection. It has already been pointed out

earlier that none of the grounds is irrelevant and that they only indicate the range of petitioner's activities in each case, as also that their cumulative effect is to disturb the even tempo of the life of the community in the locality. For these reasons it is obvious that none of these grounds is irrelevant in the present context. It necessarily follows that the order of detention does not suffer even from this infirmity as alleged on behalf of the petitioner.

The last argument of Shri Sinha is similarly without force. He contends that the various incidents attributed to the petitioner in each case are ordinary crimes for which he can be dealt with suitably in every case and that his detention under these special powers was not called for. A similar argument was advanced in Arun Ghose's case (*supra*) wherein it was contended that the incidents relied on for ordering detention were stray acts directed against individuals and were not subversive of public order and therefore the detention was not justified. It was while dealing with this argument, that their Lordships of the Supreme Court had laid down the test for determining when the individual acts of the person detained could amount to disturbing the public order. The relevant extracts from their Lordships' judgment have already been quoted above. That decision has consistently been followed in the later decisions of the Supreme Court, which also are quoted above. It is, therefore, sufficient to say in this connection that the cumulative effect of the individual acts has to be seen in order to determine this question and they have not to be judged, each in isolation. The cumulative effect of the individual acts of the petitioner in each of these cases has already been elaborately dealt with earlier. For this reason such an argument is not available to the petitioner in any of these two cases.

In this connection a very recent decision of the Supreme Court in *Mohd. Subrati alias Mohd. Karim Vs. State of West Bengal*, is quite instructive. In that case it has been observed:

.....If, therefore, for any reason it is not possible to successfully try and secure the conviction and imprisonment of the persons concerned for their past activities, which amount to an offence, but which are also relevant for the satisfaction of the detaining authority for considering it necessary that a detention order u/s 3 be made for preventing such persons from acting in a prejudicial manner as contemplated by that section, then the act would indisputably be attracted and a detention order can appropriately be made. The detention order in such a case cannot be challenged on the ground that the person ordered to be detained was liable to be tried for the commission of the offence or offences founded on his conduct, on the basis of which the detention order has been made or that proceedings under Chapter VIII Criminal Procedure Code could be initiated against him. The object, scheme and language of the Act is clearly against the petitioner's submission. The Act creates in the authorities concerned a new jurisdiction to make orders for preventive detention on their subjective satisfaction of grounds of suspicion of commission in future of prejudicial to the community in general. This jurisdiction is different from that of

judicial trial in Courts for offences and of judicial orders for prevention of offences. Even unsuccessful judicial trial or proceeding would, therefore, not operate as a bar to a detention order, or render it mala fide. The matter is also not res integra.

(Para. 4 at pp. 209-10.)

This decision of the Supreme Court was also in connection with the same provision of law with which we are concerned in the present petitions.

For the reasons stated above there is no merit in any of the contentions advance on behalf of each of the petitioners in both these cases and the detention order does not suffer from any of the alleged infirmities. Accordingly, both these petitions are dismissed with costs. Counsel's fee Rs. 100, if certified.