

(1969) 11 J&K CK 0001
In the Jammu And Kashmir High Court

Prem Avtar Bakshi

APPELLANT

Vs

State of Jammu and Kashmir and Others

RESPONDENT

Date of Decision : 18-11-1969

Acts Referred:

Preventive Detention Act, 1950 — Section 3(1)(a)(i), 3(2)

Citation : AIR 1970 J&K 137 : (1970) CriLJ 1229

Hon'ble Judges : S.M.F. Ali, C.J

Bench : Single Bench

Judgement

S.M.F. Ali, C.J.—This is a writ of Habeas Corpus directed against an order of detention passed by the District Magistrate, Jammu dated

13-9-69, The petition arises in the following circumstances.

2. The petitioner is a journalist by profession and is the editor of a fortnightly news magazine called the Kashmir Post. The petitioner was arrested

and detained in the Special Jail on the morning of 14-9-69 under a detention order passed by the District Magistrate Jammu dated 13-9-69. The

petitioner seeks to challenge this order before me mainly on two grounds. In the first place the counsel for the petitioner submitted that the order

not being in terms of Section 3 (2) of the Preventive Detention Act (hereinafter to be referred to as the Act) was clearly invalid and therefore the

detenu was entitled to be released. Secondly it was submitted that the grounds served on the petitioner are extremely vague and ambiguous and on

this ground also the order of detention was bad. In order to appreciate the contentions of the petitioner it will be necessary to quote the detention

order gassed by the District Magistrate which runs thus:

Whereas I, Ashok Jaitly, District Magistrate, Jammu am satisfied that with a view

to preventing Shri Prem Avtar Bakshi s/o Late Bakshi Hukum

Chand r/o Moholla Pratap Garh Jammu P/S City Jammu, District Jammu from acting in a manner prejudicial to the maintenance of law and order,

it is necessary so to do.

Now therefore in exercise of the powers conferred by Section 3 (2) read with Section 5 of the J, and K Preventive Detention Act, 1964, I Ashok

Jaitly District Magistrate, Jammu, hereby direct that the said Shri Prem Avtar Bakshi be detained in Central Jail, Jammu, subject to such conditions

as to maintenance of discipline and punishment for breaches of discipline as have been specified in the Jammu and Kashmir Detenu's General

Order of 1968. He be placed in Class (B).

3. The relevant portion of this order which impelled the District Magistrate to detain the petitioner is that according to him the petitioner was acting

in a manner prejudicial to the maintenance of law and order. Section 3 (2) of the Act under which the detention order purports to have been

passed does not authorise the detaining authority to detain any person for maintenance of law and order at all, but the words used in Section 3 (1)

(a) (i) of the Act are as follows:

The Government may

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to

(i) the security of the State or the maintenance of public order it is necessary so to do, make an order directing that such person be detained.

4. The District Magistrate appears to have been under the impression that maintenance of public order and of law and order are synonymous. In

my opinion the view taken by the District Magistrate is wholly incorrect and cannot be supported. The right of liberty is an extremely valuable and

cherished right of a citizen under our democracy. The right is a fundamental right and has been guaranteed by the Constitution of India, It is

therefore manifest that any curb or restriction on a citizen's right to free movement or to the freedom of speech must be very carefully and

cautiously scrutinized by the courts and if any technical flaw is found in the order of detention which does not fall within the spirit and letter of the

law of detention, the detenu must be given the benefit of such a lacuna. While it may be necessary in the large interests of the country to detain a

person whose activities are dangerous to the security of the State or whose existence may lead to public disorder affecting the entire community,

yet in the garb of exercising this power the executive should not be allowed to take recourse to the machinery of the Act, to solve law and order

problems arising out of a local breach of the peace. Furthermore, an order of detention is passed on the subjective opinion of the detaining

authority and is incapable of being tested by cross-examination of that authority or by production of other evidence in defence. This is an additional

reason why the orders of detention should be meticulously examined by the courts with a view to finding out whether or not they are within the

ambit of the relevant law. In *Rameshwar Lal Patwari Vs. State of Bihar*, their Lordships of the Supreme Court made the following observations:

However, the detention of a person without trial merely on the subjective satisfaction of an authority however high is a serious matter. It must

require the closest scrutiny of the material on which the decision is formed, leaving no room for errors or at least avoidable errors. The very reason

that the courts do not consider the reasonableness of the opinion formed or the sufficiency of the material on which it is based indicates the need

for the greater circumspection on the part of those who wield this power over others.

5. Similar observations were made by Sarkar J. in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, where his Lordship observed as

follows:

If a man can be deprived of his liberty under a rule by the simple process of the making of a certain order, he can only be so deprived if the order

is in terms of the rule. Strict compliance with the letter of the rule is the essence of the matter. We are dealing with a statute which drastically

interferes with the personal liberty of people, we are dealing with an order behind the face of which a Court is prevented from going.

6. I have already pointed out above that the order of detention (*Supra*) does not purport to be in terms of the Act and on this ground alone the

order of detention cannot be supported. The Addl. Advocate General, however, submitted that the terms 'public order' and 'maintenance of law

and order' connote one and the same thing and therefore even if the words 'maintenance of public order' have been inadvertently omitted by the

District Magistrate in his order, that would not vitiate the detention of the petitioner. In support of his proposition the Addl. Advocate General

relied on a decision of the Supreme Court in *Romesh Thappar Vs. The State of Madras*, , This decision appears to have been noticed by the

Supreme Court on several later occasions particularly in *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, where

Subba Rao, J. (as he then was) observed as follows:

Public order is synonymous with public safety and tranquillity : it is the absence of disorder involving breaches of local significance in

contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State.

7. The term 'public order' was again considered by the Supreme Court in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, and the

previous decisions on the point were distinguished thus:

These observations determine the meaning of the words "'public order'" in contradistinction to expressions such as 'public safety', "'security of the

State.'" They were made in different contexts. The first three cases dealt with the meaning of the legislative Lists as to which it is settled, we must

give as large meaning as possible. In the last case the meaning of 'public order'" was given in relation to the necessity for amending the Constitution

as a result of the pronouncement of this Court. The context in which the words were used was different, the occasion was different and the object

in sight was different.

Their Lordships pointed out that on the previous occasions the court was considering the term 'public order'" appearing in the Legislative Entry List

and therefore a wider connotation had to be given to the words 'public order', but the definition of the term appearing in the Defence of India Rules

or in any other provision relating to detention of a person would have to be construed differently. In this connection Hidayatullah, J. (as he then

was) observed as follows:

We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act

in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result.

Disorder is no doubt prevented by the maintenance of law and order also but

disorder-is a broad spectrum which includes at one end small

disturbances and at the other serious and cataclysmic happenings, Does the expression public order take in every kind of disorders or only some

of them? The answer to this serves to distinguish 'public order' from 'law and order' because public order if disturbed must lead to public disorder.

When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order

but cannot be detained on the ground that they were disturbing, public order. Suppose that the two fighters were of rival communal passions. The

problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. 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 Defence of India Act but disturbances which subvert the public

order are, A District Magistrate is entitled to take action under Rule 30 (1) (b) to prevent subversion of public order but not in aid of maintenance

of law and order under ordinary circumstances.

It is therefore clear that the terms public order and law and order cannot be regarded as synonymous, but there is a well-marked distinction

between these two terms and this distinction must be clearly borne out when construing the provisions of a detention statute.

8. The Supreme Court decision (Supra) was followed by Bedi, J. in a decision of the Punjab High Court in Mohan Lal Suri Vs. S.G. Bose

Mullick, District Magistrate, .

9. For the reasons given above the argument of the Addl, Advocate General is overruled.

10. It was next contended by the Addl. Advocate General that even though the order of detention does not mention the words 'maintenance of

public order', in his affidavit the District Magistrate has clarified the position that his intention was to detain the petitioner, in order to prevent him

from acting in a manner prejudicial to the maintenance of public order. In this connection my attention was drawn to para (9) of the counter-

affidavit of the District Magistrate which runs thus:

Contents of paragraph 9 of the petition are denied. It is further added that the

deponent after applying his mind independently was satisfied that with a view to preventing the petitioner from acting in a manner prejudicial to the maintenance of public order, it was necessary to detain him.

I am of the view that where the order of detention itself is not in terms of the requirements of the statute, no extraneous evidence can be given to

cover up the lacuna. The intention of the detaining authority has to be gathered from the language used by it in the detention order and not by what

it would like to say at a later stage. It is well settled that where a statute requires certain things to be done in a particular manner, there can be no

departure from such a manner.

11. In the instant case the provisions of Section 3 (1) (a) (i) of the Act empower the District Magistrate to pass an order of detention only on the

limited grounds mentioned in the section and it is not open to the District Magistrate to detain any person on a ground which is foreign to this

provision and then later on seek to justify the same on the ground that he meant what was contained in the statute and not what was contained in

the order. Such a course will amount to stultifying the right of liberty of a citizen. This point was also taken by Hidayatullah J. (as he then was) in his

majority judgment whose similar view was expressed in the following words;- 'Law and order represents the largest circle within which is next

circle representing public order and the smallest circle represents security of State. It is then easy to see that 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. By using the expression 'maintenance of law and order' the

District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

x x x x x

In our judgment the order of the District Magistrate exceeded his powers. He proposed to act to maintain law and order and the order cannot now

be read differently even if there is an affidavit the other way.

12. In view of the reasons given by me the second contention of the Addl, Advocate General is also overruled.

13. As the petition, in my opinion, succeeds on the first point raised by the petitioner, it is not necessary for me to go into the other points relating

to the vagueness of the grounds of detention at all, A bare perusal of the

grounds of detention would leave no manner of doubt that the grounds are both vague and ambiguous. The petitioner is said to have incited some persons to indulge in acts of violence because their demands had not been met, but no details have been given in the grounds as to who these people were, what were the nature of the demands made by them, and why it was not possible to concede these demands, Unless these details are supplied to the detenu, it is not possible for him to make an effective representation to the Government against his detention.

14. For the reasons given above, the petition is allowed, the order of detention is held to be invalid ""and the petitioner is directed to be released from custody forthwith.