
(1952) 10 AP CK 0004
In the Andhra Pradesh High Court

Sadat Jahan

APPELLANT

Vs

The State of Hyderabad

RESPONDENT

Date of Decision : 21-10-1952

Acts Referred:

Penal Code, 1860 (IPC) — Section 124A

Citation : AIR 1953 AP 295 : (1954) CriLJ 52

Hon'ble Judges : Srinivasachari, J; Mohammed Ahmed Ansari, J

Bench : Division Bench

Judgement

Srinivasachari, J.—This case came on for hearing before the Division Bench and an urgent application for the grant of interim relief was filed on behalf of the petitioner praying that she might be released on bail and not allowed to continue to be kept in jail because of the bad condition of her health. This application was argued by the Counsel for the respective parties and an order was passed by a bench of this Court on 19-9-1952 directing the release of the petitioner on bail on condition that she furnished security to the extent of Rs. 10,000/- and two sureties of Rs. 5,000/-. There were other conditions also imposed on the petitioner and she is, therefore, on bail now. The petition filed by her for the issue of a writ of Habeas Corpus has now come up for hearing. We heard the arguments of the learned Counsel for the petitioner and the Government advocate.

2. The petitioner was arrested on 9-9-1952. An order of detention under the Preventive Detention Act was passed on 7th September 1952 and the same was served on her on 9-9-1952 and the grounds of detention were served on 15-9-1952.

3. Analysing the grounds of detention, the grounds state that she is the Editor of an Urdu Weekly called "Khatoon" and the lady Editor of -another daily called "Iqdam". The learned Counsel for the petitioner admits that his client is the Editor of the Urdu Weekly "Khatoon" while he denied that she was the editor of the daily "Iqdam". He submitted that she was only the managing Editor of the

paper (Iqdam) and the editor was her husband. We called upon the Government advocate to make enquiries and inform us as to who it was that made the necessary declaration as required by the Press Act as being the editor of the paper. This step we took in order to satisfy ourselves as to whether the petitioner; was really a joint editor of the paper called "Iqdam" because the articles which the petitioner is said to have written and with regard to which objection was taken were all written in the paper called "Iqdam" and not in "Khatoon" of which she is admittedly the editor. The Government Advocate was not able to satisfy us as to whether she had made the required declaration & under the circumstances it could not be said that she was the editor & as such could be held responsible under the law for the alleged objectionable articles.

4. It would appear from the grounds of detention that have been served on the petitioner that the two main grounds on which the Government has come to the conclusion, that it is necessary that the petitioner should be detained with a view to preventing her from acting in a manner prejudicial to the public safety of the State are (a) that she wrote a number of objectionable articles in the paper called "Iqdam" (The major portion of the grounds relates to her writing objectionable articles in the paper Iqdam) and (b) that she addressed a gathering of about 2000 persons on 4-9-1952 at Victory Play Grounds when she severely criticised the police for opening fire on the students. It is also stated that she remarked that the police should have disobeyed the order of opening fire. This meeting which she addressed appears to have been convened in connection with an agitation said to have been started on behalf of the students against the appointment of non-domiciled citizens of Hyderabad in Government Offices.

5. So far as the first ground which relates to her contributing objectionable articles to the paper called "Iqdam" is concerned, I am of opinion that she cannot be held responsible and if any action could be taken by the Government under the Press Objectionable Matters Act, Act 61 of 1951, the action could be taken only against the editor who is admittedly her husband.

6. As regards the alleged inflammatory speech made by her at the Victory Play Grounds on 4-9-1952, even granting that she made a speech in the identical terms in which the police officer who was present at the meeting has reported, I must say that such speech cannot be regarded as one calculated to create disaffection in the minds of the people as against the Government so as to create a disturbance of public peace. Speeches of the kind attributed to the petitioner could never be regarded as likely to affect the maintenance of public order within the meaning of Section 3(1), Preventive Detention Act.

7. It is now well established that courts must lean in favour of fundamental rights and surely freedom of speech and expression is a fundamental right conferred by the Constitution. In the present day, meetings and processions are held lawful which about 50 years ago would have been held unlawful. Times have changed. These are not days when the mere criticism of Government was sufficient to

constitute sedition. The right to utter a reasonable criticism is a privilege and source of strength to a community. The acts or utterances of a person ought not to be inimical to public welfare tending to incite people to crime or disturb the public peace. Criticism of the Government however strong it may be or deprecating the action of the Government is not to be regarded as a justifying ground for taking action under the Preventive Detention Act, unless it is such as to undermine security or would tend to overthrow the Government. Freedom of speech and of the press lies at the foundation of all democracy. Disapprobation and criticism of any policy or administrative action of the Government with a view to obtaining redress by lawful means cannot be regarded as an act which is likely, to create disaffection in the minds of the people so as to result in disturbance of public safety and the maintenance of public order.

8. Applying the above test to the utterances of the petitioner at the meeting, I am of opinion that the utterances attributed to the petitioner do not satisfy the test and cannot justify any action under the Preventive Detention Act. I am therefore of opinion that the order of detention passed on the petitioner should be quashed and this application for the issue of a writ of Habeas Corpus be allowed and the petitioner set at liberty. The writ- will issue for the petitioner being set at liberty.

Mohd. Ahmed Ansari, J.

9. This application for the writ of Habeas Corpus is against the order of the Commissioner of Police of Hyderabad City, u/s 3, Sub-section (1) (a) (ii) of the Preventive Detention Act. As my learned brother Mr. Chari has mentioned, the order is dated 7-9-1952, and the grounds of detention were served on 15-9-1952, that is on the date the application for the writ has been made to this Court. Broadly the grounds may be classified into two parts : One consisting of series of articles published in the Newspaper called "Iqdam" of which admittedly the petitioner's husband is the Editor, and the responsibility for the publication of these articles as against the petitioner is alleged to be that she is the Managing Editor. In her statement before the Division Bench, which admitted this writ application, she denied being the Managing Editor and admitted her editing Khatoon. The offending articles have no connection with the latter and all are from the Newspaper "Iqdam" alone. The Bench consisting of his Lordship the Chief Justice and my learned brother Mr. Chari, thereupon asked the Government Pleader in charge of the case to furnish information about any declaration of the petitioner relating to the Editorship of the Newspaper. But the Counsel appearing for the Government has failed to furnish to this Bench any declaration about her being Editor. Obviously, the legal responsibility which attaches to editing of prejudicial articles in the Newspapers does not arise in her case. Then the petitioner had during her cross-examination before the Division Bench, which admitted the bail application, denied any responsibility of either publishing or editing the paper from which the offending articles have been incorporated in the grounds and that denial is unchallenged. Therefore, the articles mentioned in the

grounds do not, in my opinion, constitute relevant basis for the conclusion of the Commissioner of Police that the conduct of the petitioner so far as the articles are concerned was such as can be deemed prejudicial to the security of the State or to the maintenance of public order.

10. The other part of the grounds of detention is a speech delivered by the petitioner on 4-9-1952, which was made after the firing on an unruly mob in the city, at a public meeting in the Victory Playgrounds. This speech also, I am afraid, fails to sustain the conclusion of the Commissioner of Police about the conduct of the petitioner being prejudicial to the security or the maintenance of public order. The authority issuing the order has limited statutory powers given by Section 3 (1) (a) (i) and (ii) of the Preventive Detention Act, and in this case no question arises about the conduct being prejudicial to the maintenance of supplies or services essential to the community. Therefore, the order will stand if the particular speech is construed to be covered by Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 3. Now the security of the State or the maintenance of public order is riot synonymous with the offence of sedition as defined by Section 124A, Indian Penal Code. The Legislature has not authorised the particular official to preventively detain a person for bringing or for attempting to bring into hatred or contempt the Government of the State or exciting or attempting to excite disaffection towards it. Obviously, the Word "security" or the maintenance of public order means some effort or intention on the part of the detenu to incite violence. Mere expression of opinion disapproving the administrative actions of a Government would not, in my opinion, constitute a conduct covered by the aforesaid sub-clause. Judged from this standard, the speech mentioned in the grounds of detention is not capable of the interpretation placed upon it by the detaining authority. In the last part of the speech the applicant appeals to the public to be peaceful and the particular passage relied upon is nothing but the expression of opinion about the conduct of the policemen who participated in the firing, namely, that they should have refused to fire. On these grounds, I agree with my learned brother Mr. Chari that the petition for the Habeas Corpus should be allowed and the order of detention be quashed. As the petition is allowed, the order regarding her bail is also discharged.