
(2004) 03 AHC CK 0080

In the Allahabad High Court

Case No : Criminal Misc. Habeas Corpus Petition No's. 26552 and 26554 of 2003

Sanjay alias Sanju

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2005) 1 JCR 121

Hon'ble Judges : M.C. Jain, J;K.K. Misra, J

Bench : Division Bench

Advocate : V.P. Srivastava, for the Appellant; B.N. Singh, SSC and Arvind Tripathi, AGA, for the Respondent

Judgement

K.K. Misra, J.—In both these Habeas Corpus Writ Petitions the impugned detention orders in respect of both the petitioners have been passed on the basis of the one and same incident, hence they are taken up together and are disposed of by a common order,

2. By means of the instant petitions filed under Article 226 of the Constitution of India, the petitioners have challenged the detention order dated 22.3.2003 (Annexure-1 to the petition) passed by the District Magistrate, Jhansi u/s 3(2) of the National Security Act. 1980 (briefly, the Act).

3. In the grounds of detention, Annexure-II to the petition, it is stated that on 18.12.2002 Shiv Kumar Tiwari and Ram Sewak Tiwari were sitting in the shop of Deen Dayal, situate in Katra Bajar of town Gursharai at about 4 p.m., the petitioners along with Mahesh came on a motor cycle. The petitioners were armed with country made pistols. It is further stated that the petitioner Sanjay alias Sanju fired a shot upon Ram Sewak Tiwari on his left temple. A second fire was made by the petitioner Upendra on Ram Sewak. As a result, he died on the spot and Deen Dayal Soni who was sitting in his shop also sustained injuries as some pellets entered his chest. By this act of the petitioners, there was panic in the market and people ran here and there to save them. On the shouts of the

public, the petitioners ran- away flaunting their pistols. Terror was created in the locality and public order was disturbed. On the next day also the shops in the locality remained closed and people were confined in their houses. General public was terror stricken and additional police force had to be deployed on the place of occurrence and in the locality. Attempts were made by the police to nab the petitioners but they could not be apprehended as they had fled out of district Jhansi and were arrested in district Datia for keeping illegal arms and a case was registered against them under the Arms Act. Finding sufficient case against the petitioners, charge-sheet was also filed in the murder case. It is further stated in the grounds of detention that this dare devil criminal act was done by the petitioners with an intention to grab the property of the deceased Ram Sewak Tiwari and to establish their terror and muscle power in the entire area. The news of this incident was published in the papers of national level and terror was created In the adjoining districts also. At the time of the passing of the orders, the petitioners were detained in Jail in connection with the murder case. It is further stated that the petitioners were trying to be released on bail. The bail application of the petitioners had been rejected by the District and Sessions Judge and they were trying to be released on bail by the High Court and there is strong possibility of their being released on bail and after being released on bail, they would again involve themselves in criminal activities and disturb the public order. On the above grounds, the impugned detention order was passed against the petitioners.

4. We have heard Sri V.P. Srivastava, learned counsel for the petitioners and Sri Arvind Tripathi, learned A.G.A as well as, Standing Counsel for the Union of India.

5. Counter and rejoinder affidavits have been exchanged between the parties.

6. Sri V.P. Srivastava, learned counsel for the petitioner argued that in the grounds of detention only one incident has been mentioned which was result of personal enmity. It was further argued that the act was against an individual and not against the public at large and hence it is a question of law and order having nothing to do with the public order. In support of his contention, learned counsel for the petitioners relied upon the cases reported in 1993 JIC 82 : 1988 JIG 210: 1989 JIC 281 (SC): 1989 JIC 286 (SC): 1992 Cri LJ 702 (SC): 1992 Cri LJ 707 (SC) and 1990 JIC 832 (SC).

7. On the other hand, Sri Arvind Tripathi, learned A.G.A argued that the incident and its effect was clearly prejudicial to the maintenance of public order and even tempo of the society as the act was daring. It was done in the daylight and in open market. There was no earlier enmity between the parties and the petitioner-Sanjay"s intention was to grab the land of the deceased and when the said petitioner pressurised him to transfer his land, he started living with the informant. The other petitioner-Upendra Singh was not related to the petitioner-Sanjay or the deceased. He was like a hired criminal. Learned A.G.A further submitted that the incident created panic and terror in and around the area on

that day and even on the next day the market remain closed. Additional force was deployed to control the situation, hence the present case was clear case of breach of public order and even tempo of the society was disturbed by the act of the petitioner and his associates. Learned A.G.A placed reliance on the cases reported in Alijan Mian Vs. District Magistrate, Dhanbad and Others, .

8. The question for consideration is whether the act of the petitioners was such that it could have created terror and panic in the locality disturbing the even tempo of life. The further question for consideration is whether the panic and terror in the locality was of such magnitude that it could have disturbed the maintenance of public order. For deciding these questions, the nature of the act of detenus, the place where it is committed and motive force behind it are to be seen. If the act is confined to an individual without directly or indirectly affecting the tempo of the life of the community it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquillity, it may fall within the orbit of the public order. What might be an otherwise simple "law and order" situation might assume the gravity and mischief of a "public order" problem by reason alone of the manner or circumstances in which or the place at which it is carried out. Necessarily, much depends upon the nature of the act, the place where it is committed and the sinister significance attached to it.

9. Coming to the facts of the present case, we find that it is not in dispute that the incident took place in Katra Bajar in town Gursarai. Being a market, it must have been crowded. Thus the place of incident was certainly a public place. The incident must have been seen by a large members of general public. The manner of committing the act had the effect of creating terror in the mind of general public. The petitioners along with one another came on a motor cycle and both the petitioners fired one shot each on the deceased who was sitting in the shop which resulted in his instantaneous death and the owner of the shop also sustained injuries. On the shouts of the public, the petitioners left the place waving their country made pistols in the air.

10. The intention of the petitioners in committing such a crime was to grab the land of the deceased. When the deceased did not succumb to the pressure of the petitioners for transferring the land, the petitioners took recourse to this crime. Due to the fear of the petitioners, the deceased had started living with the informant. Thus it was not simply a case of murder but the petitioners by show of force wanted to create terror in the locality and establish their muscle power. This is apparent from their manner of committing the crime. It was most daring act committed on a public place. The incident created terror and panic in and around the area on that date and even on the next day the market remained closed. Additional force was deployed to control the situation. Thus, it was not merely a case of "law and order" but it was a case of "public order."

11. It will be relevant to mention here two decisions of the Hon"ble Supreme Court. In Mohd. Dhana Ali Khan Vs. State of West Bengal, , the detenu and his

associates boarded a train in the night. They put the passengers of the compartment to fear of death and snatched away a wristwatch and gold necklace from a passenger. Then they decamped with booty from the running train. It was contended in that case that the said single incident did not have even causal connection with the disturbance of public order. The Supreme Court while rejecting that contention observed as under:

"From a perusal of this we are unable to accept the contention of the petitioner that this ground has no nexus with the disturbance of public order. It is true that the ground contains a single incident of theft of valuable property from some passengers travelling in a running train and may amount to robbery. But that does not by itself take the case out of the purview of the provisions of the Maintenance of Internal Security Act. There are two pertinent facts, which emerge from the grounds which must be noted. In the first place the allegation is that the petitioner had snatched away a wristwatch and a gold necklace after putting the passengers of the compartment to fear of death. Secondly, the theft had taken place at night in a running train in a third class compartment and the effect of it would be to deter peaceful citizen from travelling in trains at night and this would undoubtedly disturb the even tempo of the life of the community."

12. Similarly in the case of Alijan Mian Vs. District Magistrate, Dhanbad and Others, , it was held that throwing bornb on a person and assaulting another amongst the large gathering witnessing a cultural programme at dead of night on the occasion and opening of gun fire in a thickly populated residential area on another occasion causing panic and alarm in the area amounted to breach of public order as the incidents disturbed the tranquillity and the even tempo of life of public.

13. From the above two decisions of Hon"ble Supreme Court, it is apparent that emphasis is on the place where the crime is committed and the nature of the act committed and its effect on the general public. In the case in hand, the place of incident was a public place and nature and intention of the act of the petitioners was to grab the land and show their muscle power and thus to crate terror in general public.

14. In Rana alias Parvindar v. Union of India (44) 2002 ACC 757, two persons who were involved in a criminal case were being taken in police custody to District Court. At that time the petitioner and his associates came and said that they would take revenge for the murder. They fired with their pistols due to which one accused person and a constable died and the other accused person sustained injuries. When some persons tried to intervene they were also fired upon. The petitioner and his associates then ran away waving pistols in their hands. They also fired in the air while running away. This caused panic and terror in the Bazar and shopkeepers closed their shops and residents entered into their houses due to terror in the locality. It was held by a Bench, consisting of Hon"ble M. Katju and Hon"ble S.K. Singh, JJ. as follows :

"In our opinion, this is clear case affecting public order. In our view, if this kind of activity is tolerated no criminal trial can ever be held, and witnesses will be unwilling to give evidence out of fear."

15. In view of what has been discussed above, we find that it was a case of "public order" and the District Magistrate, Jhansi was justified in passing the impugned detention order.

16. In the result, both the petitions fail and are dismissed.