
(2010) 08 MP CK 0026
In the Madhya Pradesh High Court
Case No : Writ Petition No. 784 of 2010

Sayeed Mohd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 12(1), 3(2), 5A
Penal Code, 1860 (IPC) — Section 294, 323, 506

Citation : (2010) ILR (MP) 2500

Hon'ble Judges : Rakesh Saxena, J; Gulab Singh Solanki, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Saxena, J.—By this petition filed under Article 226 of the Constitution of India, the Petitioner prays for quashment of order dated 9th November, 2009 (Annexure P/1) passed by Respondent No. 3/District Magistrate, Bhopal and to quash the order dated 14.12.2009 (Annexure P/3) passed by Respondent No. 2/State of Madhya Pradesh and to revoke the detention order of his relative Athar S/o Babu Khan-detenu.

2. The facts recited in the petition as well as in the return submitted by the Respondent No. 2/State, in brief, are that the Petitioner's relative Athar has been detained by virtue of order dated 9th November, 2009 passed by Respondent no-3/ District Magistrate Bhopal in exercise of powers conferred by Sub-section (2) of Section 3 of the National Security Act (hereinafter referred to as the "Act" for short). This order was confirmed by the order dated 14.12.2009 (Annexure P/3) passed by Respondent No. 2/State Government in exercise of powers confirmed u/s 12(1) of the Act after receiving the report from the Advisory Board.

3. The detention of the detenu Athar is based on the grounds referred to in Annexure P/2 as follows:

4. It has been mentioned in the detention order that the detention of the detenu is necessary for preventing his criminal activities, affecting the maintenance of public order and peace and tranquility of public at large.

5. Learned Counsel for the Petitioner has challenged his detention mainly on the ground that the grounds number 1 and 2 were stale as they pertained to the offences alleged to have been committed by him on 10.1.1998 and 16.5.2008 and that all the grounds right from ground number 1 to ground number 5 pertained to law and order and not to the maintenance of public order as they did not disturb the public tranquility at large.

6. Per contra, in its return Respondent/State submitted that the order of detention was passed by District Magistrate/Bhopal after being satisfied that the detention of Athar under the provisions of the Act was essential for maintenance of the public order. The Advisory Board as well as Govt. of M.P., Home Department confirmed the detention order after appreciating the facts. The grounds on which the detention order was passed were clear, relevant and pertained to disturbance of public order and not merely the law and order. Since there was continuity in commission of the offence by the detenu, grounds number 1 and 2 cannot be said to be stale.

7. We have heard the learned Counsel for the parties and perused the grounds and the material on record produced by the counsel for the State.

8. On perusal of ground number 1, which pertains to offence under Sections 294, 323, 506 of the Indian Penal Code, it is revealed that in the night of 10.1.1998, detenu abused, assaulted and intimidated complainant Ritesh Kumar in front of his house situated at Shavri Nagar, Bhopal. On perusal of facts enumerated in the ground, it is apparent that it was a case which at the most affected law and order. It does not appear that it had any effect of disturbing the public tranquility. It may be said to be an infraction of law affecting the complainant individually, but it cannot be described to affect the even tempo of life of public at large. This ground apparently appears not relevant for forming the basis of subjective satisfaction for passing the detention order.

9. Ground number 2 is an incident in which on 16.5.2008 at about 12.30 O'clock in the night detenu with his associates entered the house of complainant Rohit Meena and abused and intimidated him. Apparently the acts of detenu as described in the ground are merely individual as they affect the complainant only and do not trouble rest of the community in any manner. Thus, they cannot be termed to be breaches of public order.

10. Ground number 3 is that on 4.11.2009 at about 8.30 P.M. detenu along with his seven associates armed with swords and sticks, entered in the Hanuman Temple situated on the public road in front of Peoples Hospital and committed brutal murder of Pt. Deen Dayal Sharma. When other people tried to intervene, they were also assaulted. This offence was committed at the time of worship. From the facts narrated in the first information report of the incident, it is

apparent that this crime was committed by detenu at a public place in the presence of number of people. It can be assumed that it would have affect of disturbing the public tranquility and creating terror in the locality. This would certainly come within the ambit of the concept of the public order and not merely the law and order. The true distinction between the areas of "law and order" and "public order" lies upon the degree and extent of the reach of an act upon the community or specified locality. The acts causing disturbance of public order need not necessarily differ in nature and quality, but must differ in the degree and extent of reach upon the community or public at large. In our opinion, this sole incident is enough to form the basis of subjective satisfaction of the Detaining Authority for passing the detention order. Committing murder at the time of worship in the temple in presence of number of people would certainly have affect of disturbing even tempo of the life of community in a locality. It cannot be held that it affected merely an individual.

11. The other grounds taken into consideration by the Detaining Authority comprised of the acts of detenu on 6.11.2009, wherein he is said to have terrorized the public near Chola Mandir and Bhanpur by brandishing sword and holding out threats that he had committed murder of the Priest of Hanuman Temple, who was supporter of Hindus and if any body spoke against him, he would do away with him. From the Rojnamcha entries No. 213 of 6.11.2009 and 529 of 6.11.2009, it appears that because of terror caused by the act of detenu shops of locality were closed and that people were not ready to lodge the report out of fear. The aforesaid activities of detenu clearly demonstrate that by his acts panic and terror was created in a large section of community/society.

12. In our opinion, ground numbers 3, 4 and 5 were the kind of incidents which were definitely prejudicial to the maintenance of public order and the Detaining Authority was fully justified in forming the subjective satisfaction on the basis of these grounds.

13. Though we have found that grounds No. 1 and 2 were not relevant for forming the basis of subjective satisfaction for passing the detention order, yet the detention order passed by the detaining authority is not rendered invalid by virtue of Section 5(A) of the "Act", as the other grounds which have been found valid are clearly separable from them.

14. For the reasons stated above, we find no ground to interfere in the impugned detention order passed by the District Magistrate, Bhopal. This petition is, accordingly, dismissed.