
(1982) 03 AHC CK 0012
In the Allahabad High Court

Shyam Narain

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 31-03-1982

Acts Referred:

National Security Act, 1980 — Section 10, 11, 3, 8

Citation : (1982) CriLJ 1413

Hon'ble Judges : P.N. Harkauli, J;M. Wahajuddin, J

Bench : Division Bench

Judgement

M. Wahajuddin, J.—Petitioner Shyam Narain by this Habeas Corpus petition has challenged his detention, seeking his release. It is prayed that the order of the District Magistrate, Ghazipur, as well as the order dated 24-11-1981 of the State Government may be set aside. The grounds taken are as enumerated below:

(1) Ram Narain Dube and Vindhya Chal Dube are on inimical terms and the petitioner worked with the latter. Sri K. N. Tripathi, earlier posted as Superintendent of police Azamgarh, and later transferred to as Superintendent of Police, Ghazipur, is a relation of Ram Narain Dube and has a bias against the petitioner.

(2) The State Government did not extend the period for exercise of powers by the District Magistrate, Ghazipur, u/s 3(2) of the National Security Act (hereinafter mentioned as Act). Hence, the District Magistrate, Ghazipur, had no authority to detain the petitioner under the Act.

(3) The two incidents, which were cited in the grounds of detention, both were of District Azamgarh; hence the District Magistrate, Ghazipur, could not pass any order of detention and his order is without jurisdiction.

(4) The incidents concerned law and order and not public order.

(5) The State Government did not approve the order of detention passed by the District Magistrate, Ghazipur, within 15 days and the report of its approval was

not communicated to the Central Government within the scheduled period.

(6) The order of detention has been passed on irrelevant consideration and on non-existent facts and in particular on the basis of mala fide of Superintendent of Police and the incidents complained of had no immediate proximity. The District Magistrate did not pass a formal detention order.

(7) The State Government did not place the representation of the petitioner and the report of the District Magistrate, Ghazipur, before the Advisory Board till 27-10-1981 (this plea was raised in supplementary affidavit).

2. While it was also pleaded initially in the petition and the affidavit in support of it, that the Advisory Board did not provide any legal assistance to the petitioner, nor afforded any opportunity to have himself represented by a Counsel, this ground was not pressed during the arguments.

3. It would appear from the counter-affidavits filed in this case that the detention order was passed by the District Magistrate, Ghazipur, on 26-8-1981 and the grounds upon which it was based were also laid down on that very date, but they could not be executed and served earlier upon the petitioner, as the petitioner was on bail, and they were served on 5-10-1981, when the petitioner was arrested. The copy of the detention order dated 26-8-1981 of the District Magistrate, Ghazipur, with the grounds of detention and other material was forwarded by the District Magistrate to the State Government and the State Government received it on 28-8-1981 approving the same by its order dated 5-9-1981. The State Government informed the Central Government also of this detention on 10-9-1981, forwarding the relevant papers. The representation dated 10-10-1981 with the comments of the District Magistrate dated 13-10-1981 was received by the State Government on 15-10-1981. The representation and other relevant materials were sent to the Advisory Board. The State Government itself after considering the representation of the detenu rejected it on 17-10-1981. The Advisory Board after giving a personal hearing to the detenu furnished its opinion dated 16-11-1981, which was received by the State Government on 18-11-81, and the State Government by its order dated 24-11-1981 confirmed the petitioner's detention.

4. It would appear that any supplementary-counter-affidavit could not be filed on behalf of the State Government, as arguments commenced without adjourning the case and directing furnishing of supplementary-counter-affidavit. However, at the fag-end of the arguments to avoid unnecessary delay the records of the State Government concerning this case were procured.

5. A counter-affidavit of Sri K. P. Tripathi, Superintendent of Police, Ghazipur, who is also a respondent in this case, was also filed maintaining that he is K. P. Tripathi and not K. N. Tripathi, He denied any bias and also denied that Ram Narain Dube is his relation, maintaining that he even does not know him. The District Magistrate also in his counter-affidavit maintained that he based his satisfaction on the two incidents (specified in the grounds) on his subjective

satisfaction.

6. Any arguments thereafter were not addressed in support of the plea in the petition that the detention has been directed under the influence of the Superintendent of Police, Sri Tripathi, on account of any bias entertained by Sri Tripathi.

7. As the jurisdiction of the District Magistrate, Ghazipur, to pass the detention order has been assailed, also referring to the grounds of the detention furnished to the detenu, that point may be considered first laying down the grounds. The grounds furnished by the District Magistrate, upon which his satisfaction was based, recited as follows:

The District Magistrate has thereafter stated that on the aforesaid grounds he has got satisfied that the detenu is likely to act in a manner prejudicial to the public order and to prevent the detenu from acting in a manner prejudicial to the maintenance of the public order, it is necessary to detain him. Thereafter the provisions of Sections 8 and 11(1) have been pointed out to the detenu, so that the detenu may avail of all the protections and safeguards made available to him under the Act. It is argued that as u/s 3(3) of the Act, which contains the provisions for empowering the District Magistrate to exercise the powers u/s 3(2) of the Act, the stress is upon the circumstances prevailing or likely to prevail in any area within the local limits of the District Magistrate concerned, the District Magistrate cannot take into consideration the incidents of any other district. It can only take into consideration the incidents attributing activity of the detenu in his own district. Section 3(3) of the Act runs as follows:

3(3). If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (2), exercise the powers conferred by the said Sub-section:

Provided that the period specified in an order made by the State Government under this Sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

8. Punitive actions and preventive actions are not parallel and cannot be equated. Punitive action is taken for the acts already committed. Preventive action is taken on the satisfaction of the District Magistrate that any person is likely to indulge in future in such activities, which may be prejudicial to the maintenance of the public order. The preventive detention is directed in the ends of public tranquillity. So past incidents and activity are simply an indication to the tendency of an individual to act in the like manner disturbing the public order. In

the case of Haradhan Saha Vs. The State of West Bengal and Others, , the following observations made by the Supreme Court gives the genesis of the preventive detention:

In preventive detention that past act is merely the material for inference about the detenus' course of probable conduct on the part of the detenu.

Stress was laid during the arguments that as the phrase "circumstances prevailing or likely to prevail...within the local limits of the jurisdiction of the District Magistrate" has been used, the District Magistrate's power is confined to directing detention in pursuance of the past activities of the detenu in his own district. Section 3(3) has nothing to do With individual activity of any particular detenu. Actually, it lays down the criteria for empowering the District Magistrate to exercise powers u/s 3(2) of the Act. The circumstances prevailing or likely to prevail relate to the time when the State Government passes the order empowering the District Magistrate to exercise the powers u/s 3(2) of the Act and the circumstances referred to in Section 3(3) should prevail or should be likely to prevail in the particular local limits over which the District Magistrate concerned exercises jurisdiction. But once the State Government has got satisfied and passed orders u/s 3(3) of the Act empowering the District Magistrate to pass orders u/s 3(2) of the Act, it is Section 3(2), which will call for interpretation, whether exercise of powers under that Sub-section are limited to any territorial limits.

9. Section 3(3) does not state that the District Magistrate or Commissioner of Police may be empowered to exercise powers under Sub-section (2) of Section 3 of the Act. confined to the activities within their local limits only. It is Sub-section (2) of Section 3 which provides for directing preventive detention and in that Sub-section in addition to the Central Government or the State Government, the expression "District Magistrate or Commissioner of Police" would also be read whenever such powers are conferred upon them by issuing directions under Sub-section (3) of Section 3 of the Act. Once such powers are conferred, they exercise it. at par with the State Government. True, that the power is conferred having regard to the circumstances prevailing or likely to prevail within their local limits, but that fact is to weigh only at the stage of issuing direction under that Sub-section and once that direction is issued, any further limit upon their power would not be imposed, when they would be equally empowered to exercise the same powers u/s 3(2) of the Act.

10. There is another weighty consideration for such interpretation. As observed earlier, there is a marked distinction between punitive and preventive actions. The very object of preventive action would be defeated, if the District Magistrate is called upon to wait for any further activity within his own district. True, "that there must be some activity, on the part of the individual concerned, but that activity has relevance only for an indication of the tendency to act in future in a manner prejudicial to the maintenance of the public order. The past act has a relevancy to that extent only. It is not disputed that Ghazipur and Azamgarh are

adjoining districts. A person operating in one of such districts may be likely to operate in the like manner in the adjoining district also. The crucial test is whether there is subjective satisfaction supported by materials concerning activity and the activity itself, and, if it is so, the mere circumstance that any activities in the adjoining district are relied upon for the satisfaction that the detenu is likely to act in any manner prejudicial to the maintenance of the public order would not vitiate the order. The circumstances prevailing are likely to prevail having relevancy and bearing with regard to the conditions existing, when the direction empowering the District Magistrate is made without, at the same time, linking it with the activity of any individual detenu.

11. Reliance was placed upon the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, . The relevant paragraph concerning Section 3(3) of the Act is contained in para 72 SCC 322 : (73 Cri LJ 369, 370) as follows:

The answer to this contention is that the said power is conferred upon these officers only if the State Government is satisfied that having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of these officers, it is necessary to empower them to take action under Sub-section (2). The District Magistrate or the Commissioner of Police can take action under Sub-section (2) during the period specified in the order of the State Government only. Another safeguard provided is, that the period so specified in the order made by the State Government during which these officers can exercise the powers under Sub-section (2) cannot, in the first instance, exceed three months and can be extended only from time to time not exceeding three months at any one time.

It has not been laid down that the activity of the particular detenu must also be within the territorial limits of the district. On the contrary the observation relates to circumstances prevailing in the district while issuing direction empowering any District Magistrate to act u/s 3(2) of the Act; meaning thereby that only such District Magistrates are to be empowered where prevailing circumstances or circumstances likely to prevail call for the District Magistrate to exercise the powers u/s 3(2) of the Act. Such circumstances should exist when the notification empowering the District Magistrate is made and once that is done, the District Magistrate functions u/s 3(2) of the Act, which does not place any limitation that the activities of the detenu should also be in his very territorial jurisdiction.

12. It was next urged that at the time the detention order was passed, the District Magistrate, Ghazipur, was not vested with such powers. Proviso to Sub-section (3) of Section 3 of the Act provides that the period for which the District Magistrate is empowered shall in first instance not exceed three months, but it also provides that such period may be extended from time to time not exceeding three months at a time.

13. Annexure "I" to the counter-affidavit is the notification dated June 20, 1981,

whereby powers already conferred upon the District Magistrate, Ghazipur, besides all the District Magistrates in U.P. under Sub-section (2) of said Section 3 was extended for a further period of three months with effect from. June 23, 1981, which was to expire on September 22, 1981. The order for detention was passed on 26th August, 1981. In fact there has been a later notification further extending such period. So the argument that the District Magistrate, Ghazipur, did not have the powers to pass the detention order is unconvincing. 14. The next argument urged is that the activities are related to law and order and the detention is vitiated on account of the same. Reliance in that connection has been placed upon the case of Shiv Parsad Bhatnagar Vs. State of M.P. and Another, , holding that incident mentioned in that case related to law and order and not to public order. The distinction between concept to "law and order" and "public order" is a fine one and is dependent upon the degree and the extent of the reach of the act upon the society. The potentiality of the act is always vital. The matter has been elaborately considered in the case of Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, . The following observations made in that case are of great significance and importance:

The acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case, it might affect specific individuals and, therefore, touches the problem of law and order only, while in another it might affect public order. In order to see whether an act has affected "public order" what has to be seen is whether the detenu's activities have any impact upon the local community, or in other words "disturb the even tempo of the life of the community of that specified locality.

As per grounds set up, in the night intervening 14/15th February, 1980, in village Kishunpur, Police Station Chi-raiya Kot, District Azamgarh. the detenu is said to have committed dacoity at the house of Ram Narain Dwivedi in which heavy firing was done creating terror. This act was followed by another act of grave nature on 14th March, 1981, when at 5 P. M. in the fair in village Jasra, Police Station Chiraiya Kot, the detenu accompanied by 4 or 5 others armed with deadly weapons indulged into firing creating so much panic and terror as to lead to closure of shops. The shopkeepers are said to have fled away. It would, thus, appear that an activity of the nature, having an impact upon the community disturbing the even tempo of life of the community, was repeated. The potentiality and impact of the act is to be considered and when the matter is approached from that angle, it would appear that both activities were such as would necessarily create horror and panic not affecting only an individual but the community as such.

15. It is also not a case of single activity directed against single individual. Had the -detention order been passed on the strength of the first activity alone, without repetition of the activity of the like nature, it may have been urged that single incident would not indicate a tendency to act in a manner which may disturb the public order. The activity was repeated in a more grave form as to

indulge into a firing in a fair. In the circumstances both the activities would become relevant as to be linked for coming to a satisfaction that the detenu is likely to act in a manner disturbing the public order. When the matter is approached from such angle the first activity relied upon also cannot be termed as stale as to attract the application of the pronouncement made in the case of Shiv Prasad Bhatnagar (supra). Each case has to be examined in the light of its individual facts and circumstances. The facts of the case of Shiv Prasad Bhatnagar are distinguishable. In that case the detention order was after lapse of about five years from the incidents relied upon. It is not so in the present case.

16. True, that the acts likely to disturb the public order were not committed in Ghazipur itself, but having been committed in the adjoining district and one of the incidents having related to the fair, the District Magistrate, Ghazipur, would be justified in his subjective satisfaction that the detenu is likely to act in the like manner in his district disturbing the public order. In the case of Kishori Mohan Bera Vs. The State of West Bengal, , the following observations have been made, which are important (at p. 1752 of AIR:

The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. (See Arun Ghosh Vs. State of West Bengal, also Nagendra Nath Mondal Vs. The State of West Bengal, . This does not mean that there can be no over-lapping, in the sense that an act cannot fall under two concepts at the same time.

So it is the impact of the act and its potentiality which is vital in judging the matter.

17. Reliance was also placed by the counsel for the petitioner upon the case of Harnek Singh Vs. State of Punjab and Others, . The facts of that case were different. In that case the detenu was appearing before the Magistrate on all dates in criminal case pending against him. Even after the passing of the detention order, he was not yet taken into custody and there was nothing to convince why action was not taken earlier. So far as the present case is concerned, as observed earlier, the first activity may have accounted as a single incident, but when similar type of activity was repeated, the tendency became self-evident and after considering its impact upon the society, the District Magistrate appears to have based his satisfaction; and when that is the position, the first activity is also relevant as to be linked with the second activity. In the case of Muralidhar Malla Vs. The State of West Bengal, , the matter and the nature of the act, the weapons possessed and actually used by the detenu were considered as important for determining that the incident must have had an impact not only on the victim but others also. In the present case, the nature of the two acts, mentioned in the grounds, and the weapons used and the fact that while involved in the second incident firing was resorted to in a fair, where large number of people of different localities are likely to be present, the impact will be upon the community as such and not upon any particular individual alone. In the

circumstances of the present case, therefore, the scope of the activity is not limited to law and order, but it covers public order as well.

18. As discussed earlier, any grounds of malice on the part of the Superintendent of Police, Ghazipur, is not borne out. The Superintendent of Police, Ghazipur, did send a report, which is Annexure "2-A" to this petition also enclosing the report of the Station Officer, Police Station Murpura, district Ghazipur (Annexure "2-B"), mentioning of some other incidents. The District Magistrate, however, based his satisfaction only on the two grounds relating to the incident of Azamgarh, which he has laid down in the grounds of detention. At the same time all the materials including the report of the Superintendent of Police, Ghazipur, and that of the aforesaid Station Officer were furnished to the detenu. The detenu had, thus, all the papers, which the District Magistrate had received in this connection as a further safeguard to his right to make an effective representation. In the circumstances of this case, it can safely be held that there is no illegality or Suppression. It is the District Magistrate who has to form his subjective satisfaction and the District Magistrate, thus, formulated the grounds confining the grounds to the matters regarding which he was satisfied.

19. Having considered the first four grounds raised in this petition, the other three grounds laid down as grounds Nos. 5 to 7 may also be dealt with. It is established by the counter-affidavit that the State Government approved the order of detention, passed by the District Magistrate, vide its order dated 5-9-1981, i.e. within 15 days of the passing of the order. In fact, the approval was made even within 12 days and there is, thus, a complete compliance of the provisions contained in Section 3(4) of the Act. The matter was communicated to the Central Government on 10-9-1981, i.e., within seven days of the approval of the detention order along with the relevant papers and a compliance of Section 3(5) of the Act has been made.

20. So far as the sixth ground is concerned. It has already been held that the order was passed on the grounds laid down in the order of detention. Materials existed and were communicated in support of such grounds. There is also no mala fide of the Superintendent of Police. The matter of proximity has also been considered and repelled. On a perusal of the records, which were made available to us, it is found that a formal order of detention was also passed, as required,

21. A perusal of the record further shows that reference to the Advisory Board was also made within the period specified u/s 10 of the Act, i.e., within three weeks from the date of detention.

22. We, therefore, find no force in this petition and it is hereby dismissed.