

(1987) 02 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : H. C. No. 1021 of 1986

S.Mohinder Singh Alias Papi	Vs	APPELLANT
District Magistrate Jammu and others		RESPONDENT

Date of Decision : 21-02-1987

Acts Referred:

Public Safety Act, 1978 — Section 8

Citation : (1987) JKLR 993 : (1987) KashLJ 738 : (1987) SriLJ 530

Hon'ble Judges : R.P.Sethi, J

Bench : Single Bench

Advocate : Ajay Kotwal, A.V.Gupta, Advocates appearing for the Parties

Judgement

1. The petitioner has been directed to be detained for a period of 12 months on the basis of grounds of detention filed with the petition as annexure

'2' which are enumerated herein below:

1. That on 24th Jan. 1985 at about 9 AM you alongwith your three companions, whose names could not be ascertained from the investigation held

so far all armed with lathal weapons, mounted a preplanned attack on a police officer, namely, SubInspector Isher Dutt, at village Gaddigarh and

inflicted serious injuries on his person leaving him behind almoiit dead. Luckily he was saved as a result of his timely removal to hospital and

medical aid provided to him, but his condition continued to be precarious for long and he has become handicapped for life due to the injuries. This

incident caused lot of panic and terror in the area and the people felt sense of insecurity.

2. In connection with this occurance a case FIR No. 6/85 U/S 307 was registered at P/S Satwari. Since you had 'absconded and gone

underground you could not be arrested in this case

Copies of FIR and statement of the injured police official are appended herewith as annexure 'A' and 'B' respectively

3. That on 27th Jan, , 1985 two criminals, subsequently identified as Swarn Singh and Balbir Singh, attempted to snatch away a brief case

containing cash from Bachan Lal been and Doulat Ram Cashier of Jammu Cooperative Bank Branch, R. S. Pura while they were proceeding

towards their bank after having drawn the amount of Rs. 89610.19 NP from the treasury R. S. Pura. They also fired Gun shots with revolvers

while escaping from the scene of occurrence. From the investigation of case FIR No. 17/86 U/s 307/394/34 RPC read with 3/25 Indian Arms Act

and section 3/4 of Terrorist and Disruptive Activities (Prevention) Act, 1985 P/S R. S. Pura registre in this behalf it transpired that you had

master minded this bank robbery and also provided a scooter as conveyance to the aforesaid criminals to facilitate them in the commission of the

offence and their escape from the place of occurrence.

Copies of FIR and statements of witnesses recorded U/s 161 Cr. P. C., are appended herewith as Annexures 'C' and 'E' respectively.

2. The petitioner has challenged the order of detention on the ground that the same was contrary to the provisions of law because the detaining

authority has not disclosed in the order of detention as to whether he is to be tried for the commission of offences referred to in the FIRs attached

with the grounds of detention. It is further submitted that the order of detention has been passed mechanically and without application of mind. It is

further submitted that the detention of the petitioner has been directed at the most with the object of maintaining law and order problem and not

public order as envisaged by the provisions of section 8 of the Public Safety Act. The order is alleged to be contrary to the provisions of section

8(4) of the P. S. Act and Articles 14 and 21 of the constitution of India. The said order has been termed as arbitrary and challenged on the basis

that the grounds of detention were vague and not meet the requirements of law.

3. The detaining authority in his affidavit has submitted that the petitioner was directed to be detained because his activities were considered highly

prejudicial to the maintenance of public order The petitioner was detained under the provisions of P. S Act by Harnam Singh Inspector of Police.

The order of detention was passed by the detaining authority after applying its mind in a judicious manner had also after going through the facts contained in the relevant record available in his office. The detaining authority came to the subjective satisfaction that the activities of the petitioner were highly prejudicial to the maintenance of public order and in order to prevent him from indulging in such activities, the order of detention was passed. The grounds of detention are stated to be quite definite, relevant and valid. Sh. Kesho Prakash, Addl. Secretary to Govt. Home Deptt has also justified the detention of the petitioner vide his counter affidavit filed in the case.

4. I have heard the learned counsel for the parties and perused the record.

5. Mr. Ajay Kotwal the learned counsel for the petitioner has submitted that as the petitioner is sought to be arrested on account of law and order

problem and not on the grounds of public Order, his detention is liable to be quashed. A perusal of section 8 (3) (b) (iii) (iv) of Public Safety Act

would show that the allegations incorporated in the grounds of detention amount to acting in any manner prejudicial to the maintenance of public

Order because the petitioner is alleged to have committed, instigated, provoked and abetted the commission of offences punishable with death or

imprisonment for life or imprisonment for a term extending to seven years or more and the nature of the offences is such which disturbs or is likely

to disturb the public order. Dealing with such a situation, it was held in Wasiuddin Ahmed Vs the District Magistrate, Aligarh AIR 1981 SC 2166

that:

On the merits, it is argued that the grounds of detention served on the detenue were not connected with 'maintenance of law and order' There is

no merit in the contention whatsoever. The distinction between 'law and order' and Public order"" has been brought out succinctly in Dr. Ram

Manohar Lohia Vs. State of Bihar (1966) ISCR 609: (AIR 1966 SC 740) Arun Ghosh Vs. State of West Bengal (1970) 3 SCR 288 (AIR 1970

3 SCR 1228). Pushkar Mukerjee Vs. State of West Bengal, (1969) 2 SCR 635: (AIR 1970 SC 862) and Nagendra Nath Mondal Vs. State of

West Bengal (1972) 1 SCC 498: (AIR 1972 655). As to what is meant by 'public order', Hidayatullah J (as he then was) said in Ram Manohar

Lohia's case (Supra) that any contravention of law always affects order but

before it could be said to effect 'public order', it must affect the community or the public at large. He went on to consider the three concepts viz: "Law and order", "Public Order" and "the security of the State", generally used in preventive detention laws and indicated that to appreciate the extent and scope of each one of them, we should have three concentric circles, the largest of them representing "law and order" and the smallest representing "the security of the state. An act may affect "law and order", but not "public order", just as an act may affect "public order" but not "the security of the State". The true distinction between the areas of law and order and public order lies not merely in the nature of (or? quality of the act but upon the degree and extent of its reach upon the society. The acts similar in nature but committed in different reactions. In one case, it might affect specific individuals and, therefore, touches the problems of law and order only, while in another it might affect public order.

In Arun Ghosh's case (AIR 1970 SC 1228), the concepts of "law and order" and "public order" were pointed out and it was observed that the distinction is one of the degree and the extent of the reach of the act upon the society. The Court, speaking through Hidayatullah, C. J. observed an act by itself is not determinant of its gravity. In its equality it may not differ from another but in its potentiality it may be very different. "The principles laid down in Ram Manohar Lohia's case (AIR 1966 SC 740) were reiterated in Arun Ghosh's case. So it has to be seen in the instant case whether the petitioners activities have any impact upon the local community, or to put in words of Hidayatullah, CJ in Arun Ghosh's case (supra) "disturb the even tempo of the life of the community of that specified locality.

Similarly this court held in 1982 KLJ 257 that:

"Where a person has chosen a way of life wherein he should eat, drink or get himself entertained not by spending any money on it, but by showing force or by using the same, it is idle to contend that his acts would be directed against a particular individual or individuals, at whose cost he would like to eat, drink or be entertained. If unchecked he may be encouraged and his inclination may assume alarming proportions. Such a person would be a security hazard not only for a few individuals, but for all the inhabitants of the locality in which he lives or operates, as any person living or

carrying on business in that locality is bound to feel panicky of him It cannot be gain said that every one is scared of an outlaw

5. A perusal of the grounds of detention would clearly show that the activities of the detenue are prejudicial to the maintenance of public order and

is not merely a law a ad order problem, as argued by the learned counsel for the petitioner.

6. The affidavit of the detaining authority and the perusal of the grounds of detention would clearly show that the order has not been passed

mechanically but is based upon the subjective satisfaction of the detaining authority.

7. The learned counsel for the petitioner has argued on the basis of observations made in para 6 of the judgment reported in 1982 KLJ 257 that

unless and untill the detaining authority discloses its mind as to whether he has decided not to put the petitioner on trial in a criminal case, the order

of detention cannot be justified. Elaborating his argument he has submitted that in view of this judgment a citizen can either be put on trial or

detained if the detention is based upon the allegations of the commission of the criminal offence. He submits that the criminal trial and preventive

detention cannot be resorted to simultaneously. He has also relied upon a judgment of the Supreme Court reported in AIR 1974 SC 1161. In my

opinion the judgment reported in 1982 KLJ 257 para 6 and AIR 1974 SC 1161 cannot be considered to be a good law in view of a latter

judgment of Five judges of the Hon'ble Supreme Court reported in AIR 1974 SC 2154. While dealing with this question the Supreme Court held:

The recent decisions of this court on this subject are many. The decisions in Borjahan Gorey v. State of West Bengal, reported in AIR 1972 SC

2256, Ashim Kumar Ray v. State of West Bengal, reported in AIR 1972 SC 2561, Abdul Aziz v. The District Magistrate Bardwan, reported in

AIR 1973 SC 770 = 0973 Cri LJ 590) and Debu Mahto v. State of West Bengal, reported in AIR 1974 SC 816= (1974 Cri LJ 699) correctly

lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand Vs. State of Uttar Pradesh,

reported in AIR 1974 SC 1161=0974 Cri LJ 817) which is a Division Bench decision of two learned Judges is contrary to the other Bench

decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First; merely because a detenue is

liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing

offences dealt with Chapter VII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention

under the Act. Second, the fact that the police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the

Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the

preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and

is not likely to be released for a fair length of time, it may be possible to contend that there could be no authority as to the likelihood of such a

person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere Circumstance that a detention

order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is

based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances

8. No other point was raised or agitated before me by the learned counsel for the petitioner. In view of this there is no merit in this petition which is

hereby dismissed.