
(1994) 02 BOM CK 0053

In the Bombay High Court

Case No : Criminal Writ Petition No. 1413 of 1993

Smt. Jaya Daniel Lobo

APPELLANT

Vs

A.S. Samra and others

RESPONDENT

Date of Decision : 24-02-1994

Acts Referred:

Bombay Police Act, 1951 — Section 135, 37
Constitution of India, 1950 — Article 21, 22, 32
Penal Code, 1860 (IPC) — Section 387, 506

Citation : (1994) 2 BomCR 429 : (1994) CriLJ 2443

Hon'ble Judges : D.K. Trivedi, J; Ashok Agarwal, J

Bench : Division Bench

Advocate : Shirish Gupte, for the Appellant; Smt. R.P. Desai, Public Prosecutor, J.C. Satpute and R.V. Mehta, for the Respondent

Judgement

Ashok Agarwal, J.—Whether the activities of the detenu affect public order or merely Law and Order is the sole contention, which is advanced before us, in the present petition. In order to decide the question, the grounds of detention, which have been mentioned by the Detaining Authority in support of its subjective satisfaction for the purpose of clamping an order of detention may be scrutinised.

2. In the grounds of detention, the Detaining Authority has stated that the detenu is a weapon wielding desperado committing heinous crimes by using deadly weapon like Rampuri Knife. He has created a reign of terror in the minds of the public in certain areas of the city. His record shows that he is a person of violent character who has been indulging in the terrorising activities. He always moves with deadly weapons such as Rampuri knife and chopper and does not hesitate to use the same while committing various offences like criminal intimidation, extortion etc.

3. Three incidents have been relied upon for arriving at the above satisfaction. The first relates to one Dinesh Kumar Bhagchandra Agrawal, who has a readymade garment factory. The said Dinesh Kumar knows the detenu for the

last 3/4 years as a dangerous goonda having created terror by his activities in the said area. He also knows that the detenu forcibly collects Haptas from the shopkeepers and residents in the area and assaults them in case they refuse to give him Haptas. On 13th August, 1993 at about 10.30 hours the said Dineshkumar Agrawal and his friend Prakash Madhukar Wayangankar were standing and talking at Bhaskar Chowk, Daruwala Compound, Malad (West). At that time the detenu came there and abused Dineshkumar Agrawal and told him that he is instigating the people to lodge complaints against him with the police. Dineshkumar told him (detenu) not to threaten him. At that time the Detenu took out a Rampuri knife from his pocket and threatened to kill him. Dineshkumar Agrawal and his friend Prakash Wayangankar were terribly frightened on seeing the knife in the hands of the detenu and apprehended that the detenu will assault them with the knife. Hence both of them started running towards S.V. Road in order to save their lives from the detenu. They also shouted for help. The detenu started chasing them with the knife in his hand. Seeing him running with the knife in his hand the passers-by were frightened and started running helter skelter and the hawkers also ran away, leaving behind, their articles and hand carts. The shopkeepers in the area started pulling down the shutters of their shops apprehending that he will commit some untoward incidents. Dineshkumar Agrawal and his friend Prakash Wayangankar ran towards Marve Road Naka on S.V. Road where usually the Police are on duty. The detenu then returned to Daruwala compound threatening to see Dineshkumar Agrawal and his friend later on. Dineshkumar Agrawal and his friend then went to Malad Railway Station and thought for sometime whether to lodge the complaint against the detenu with the police or not. They apprehended that in case they returned to the place of the incident the detenu will definitely assault them. Hence they came to the Police Station to lodge a complaint against the detenu. After lodging a complaint Dineshkumar and his friend proceeded to stay with a relative at Bhayander as they were frightened of the detenu and they were not in a position to go to their residence at Daruwala compound, Malad because of the danger to their lives at the hands of the detenu. On the complaint filed an offence u/s 506, Part II of the I.P.C. was registered against the detenu. The detenu was arrested. In the statement of the detenu he confessed to have committed the above offence. On being produced in Court the detenu was released on bail.

4. The second incident relates to one Shri Usman Haji Sidattar, who owns a scooter and auto-rickshaw garage. The said Usman knows the detenu for the last 5/6 years as a notorious goonda who extorts haptas from the residents and shopkeepers of the area. On 14th August, 1993 at about 9.30 hours the said Usman and his servant Yusuf were working at the Garage. At that time the detenu came there and asked Usman to pay him Rs. 500/- per month as Hapta as Usman has earned lot of money. The detenu threatened to kill him if he refused to give the detenu Hapta. He took out a Rampuri knife from his pocket and told Usman that he will come tomorrow at 10.00 hours to receive the money.

He threatened him with a knife that he will see him if he lodged a complaint with the Police. On a complaint lodged by Usman, a case u/s 387 of the I.P.C. was registered against the detenu. The detenu was arrested and in his statement the detenu admitted having committed the above offence. On his being produced in Court, he was initially remanded to judicial custody and was, thereafter, released on bail.

5. The third incident is in respect of an event, which had occurred on 15th August, 1993 at about 22.30 hours. At that time P.S.I. Talkar and P.S.I. Mane received information that the Detenu is moving at S.V. Road, Daruwala compound with a chopper in his hand and creating terror in those areas. Due to this the shops and houses in the said areas were closed out of fear and the people are running helter-skelter. On receipt of the information P.S.I. Talekar, P.S.I. Mane and staff immediately left for Daruwala compound to verify the information. When the staff reached the said place they came to know from enquiries that the detenu was in the said area with a chopper in his hand and he was threatening the people and creating terror in the area. The staff also came to know that the detenu had gone towards Shahid Bhaskar Chowk. The staff then apprehended the detenu who was then armed with a chopper. On seeing the police he tried to hide himself but the police were successful in apprehending him and seizing the chopper. A complaint u/s 37(a)(i) read with Section 135 of the Bombay Police Act was lodged against him. In his statement he admitted to have committed the aforesaid offence. On his being produced in Court he was released on bail.

6. Based on the aforesaid facts and material, the Detaining Authority has arrived at the subjective satisfaction in the following terms :-

"I am subjectively satisfied that you being a weapon wielding desperado and a notorious criminal is a perpetual danger to the society at large. Because of your above mentioned activities the peace loving and law abiding citizens of the localities of Daruwala compound and S.V. Road and its adjoining areas in the jurisdiction of Malad Police Station in Greater Bombay are experiencing a sense of insecurity and are living and carrying out their daily avocations under a constant shadow of fear, whereby the even tempo of life of the society is disturbed. Action taken against you under the ordinary law of the land is found to be inadequate to prevent you from indulging in criminal activities which are prejudicial to the maintenance of public order in the localities and areas mentioned above."

7. The Detaining Authority has thereafter found, on a careful consideration of the material placed before him that he is subjectively satisfied that the detenu is acting in a manner prejudicial to the maintenance of public order. He has observed that in view of the detenu's tendencies or inclinations reflected in the offences committed by him, he is further satisfied that he is likely to indulge in activities prejudicial to the maintenance of public order in future and it is necessary to detain him under the National Security Act, 1989 in order to

prevent him from acting in such a prejudicial manner in future. After arriving at the above subjective satisfaction the Detaining Authority has proceeded to detain the detenu.

8. In order to decide whether the activities of the detenu, as are reflected by the material, which was placed before the Detaining Authority, were sufficient to arrive at a subjective satisfaction; that the activities of the detenu are prejudicial to the maintenance of public order or merely affect law and order, a reference of certain cases, which have been relied upon by the learned Counsel appearing for the contending parties, can usefully be made.

9. In the case of Ram Ranjan Chatterjee Vs. The State of West Bengal, the Supreme Court inter alia observed that qualitatively the acts which affect "law and order" are not different from the acts which affect "public order". Indeed, a state of peace or orderly tranquillity which prevails as a result of the observance or enforcement of internal laws and regulations by the Government, is a feature common to the concepts of "law and order" and "public order". The distinction between the areas of "law and order" and "public order" is one of degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only. These concentric concepts of "law and order" and "public order" may have a common "epicentre", but it is the length, magnitude and intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting "public order" from that concerning "law and order".

10. In the case of Sharad Kumar Tyagi Vs. State of Uttar Pradesh and Others, the Supreme Court was concerned with acts of extortion. They are mentioned in paragraphs 10, 11 and 12 of the judgment. After referring several decisions, the Supreme Court, quoted a passage from the case of Gulab Mehra Vs. State of U.P. and Others, which reads as follows at page 2337 :-

"Thus from these observations it is evident that an act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted to particular individuals or a group of individuals it breaches the law and order problem but if the effect and reach and potentiality of the act is so deep as to affect the community at large and/or the even tempo of the community then it becomes a breach of the public order."

The Court then reproduced the observations in the case of Ashok Kumar Vs. Delhi Administration and Others, which reads as follows :-

"Conceptually there is difference between law and order and public order but what in a given situation may be a matter covered by law and order may really turn out to be one of public order. One has to turn to the facts of each case to

ascertain whether the matter relates to the larger circle or the smaller circle.

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Thus whether an act relates to law and order or to public order depends upon the impact of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order."

After considering the aforesaid and several other cases, this is what the Supreme Court observed in relation to the allegations of extortion in respect of the detenu before it :

"Viewed in this perspective, it cannot be said that the demands made and threats given by the petitioner to the contractors and shopkeepers as mentioned in the grounds would have its reach only to the limited extent of affecting the law and order situation and not go so far as to affect the maintenance of public order."

11. In the case of Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others, , the SC observed thus at page 944; of Cri LJ :

"The law is plain and the decided cases are concordant. A criminal act hitting a private target such as indecent assault of a woman or slapping a neighbour or knocking down a pedestrian while driving, may not shake up public order. But a drunk with a drawn knife chasing a woman in a public street and all women running in panic, a Hindu or Muslim in a crowded place at a time of communal tension throwing a bomb at a personal enemy of the other religion and the people, all scared, fleeing the area, a striking worker armed with a dagger stabbing a blackleg during a bitter strike spreading terror - these are invasions of public order although the motivation may be against a particular private individual. The nature of the act, the circumstances of its commission, the impact on people around and such like factors constitute the pathology of public disorder. We cannot isolate the act from its public setting or analyse its molecules as in a laboratory but take its total effect on the flow of orderly life. It may be a question of the degree and quality of the activity, of the sensitivity of the situation and the psychic response of the involved people. To dissect further is to defeat the purpose of social defence which is the paramount purpose of preventive detention."

12. It is to be remembered that no straight jacket formula can be evolved to find out as to whether certain incidents or the criminal activities fall within "law and order" or "public order". It is the gravity and magnitude of the incidents and the impact of such incidents upon the even tempo of the localities which is a decisive factor. As far as the present detenu is concerned, he is found to be a weapon wielding desperado committing heinous crimes by using deadly weapon like Rampuri knife or a chopper. He has created a reign of terror in the minds of the public in specified areas. His criminal records show that he is a person of violent character who has been indulging in terrorising activities. He always moves with

deadly weapons such as Rampuri knife and Chopper and does not hesitate to use them while committing various offences like criminal intimidation, extortion and the like. These are the findings of the Detaining Authority. The findings are based on the incidents which we have already reproduced. The detenu is known to be a dangerous goonda. He has created terror by his activities. He is known to be forcibly collecting Haftas from shop-keepers and residents in the area. He is also known to be assaulting them in case they refuse to give haftas. He is a regular extortionist. In regard to the first incident, the complainant Dineshkumar and his friend Prakash, after the incident, had run away in order to save their lives from him. They also shouted for help. The detenu chased them with a knife in his hand. Seeing him running with a knife in his hand the passers-by were frightened and they started running helter skelter and the hawkers also ran away leaving behind their articles and hand carts. The shopkeepers in the area started pulling down the shutters of their shops apprehending that he will commit some untoward incident. After the incident, the complainant and his friend apprehended that in case they returned near the place of the incident he would definitely assault them. After lodging a complaint at the Police Station they did not dare to return to their respective houses. They proceeded to stay with their relative at some distance away as they were frightened of the detenu. They were not in a position to go to their residences because of the danger to their lives at the hands of the detenu.

13. In regard to the second incident, the complainant is one Usman. He is a scooter and autorickshaw garage owner. According to him, he knows the detenu for the last 5/6 years as a notorious goonda who extorts Haptas from the residents and the shopkeepers of the area. On the day in question, the detenu went to his garage and demanded a sum of Rs. 500/- per month as Haptas. He threatened Usman to kill him if he refused to give Haptas. At that time he took out a Rampuri knife from his pocket and told Usman that he would come on the following day to receive money. He threatened Usman with a knife that he will see if he lodged a complaint with the police.

14. As far as the third incident is concerned, the complainant is a Police Sub-Inspector, Talkar. He and his associate, P.S.I. Mane received information that the detenu is moving about with a chopper in his hand and creating terror. Due to this, the shops and houses of the said areas are closed out of fear and people are running helter skelter. The detenu is a known goonda listed on the record of the Police Station.

15. We have given our anxious consideration to the above facts and we are satisfied that the aforesaid activities of the detenu affect public order. These are not stray incidents against individuals. The incidents have a far reaching effect. They affect a section of the Society at large. The detenu is a known extortionist. He has been extorting money on threats of assault by dangerous weapons such as Rampuri knife and Chopper. On account of his activities terror is created in the minds of the residents and the shopkeepers of the concerned areas. On the sight

of the detenu with a knife in his hand passers-by start running helter skelter and the hawkers run away leaving behind their merchandise as also handcarts. The presence of the detenu drive the people to stay away from their place of residence so as to be out of the reach of the detenu. Such is the reach of the detenu's activities on the residents of the area. On the aforesaid materials the Detaining Authority has arrived at a subjective satisfaction and has concluded that the activities of the detenu affect the public order. He has reached the further satisfaction that the detenu is likely to indulge in activities prejudicial to the maintenance of public order in future also. Therefore, in order to prevent the recurrence of the prejudicial activities he has directed the detention of the detenu.

16. In the case of Ram Bali Rajbhar Vs. The State of West Bengal and Others, it has been observed as follows at page 597; of Cri LJ :-

"On a Habeas Corpus Petition, what has to be considered by the Court is whether the detention is prima facie legal or not, and whether the detaining authorities have wrongly or rightly reached a satisfaction on every question of fact. Courts have no doubt, to zealously guard the personal liberty of the citizen and to ensure that the case of a detenu is justly and impartially considered and dealt with by the detaining authorities and the Advisory Board. But, this does not mean that they have to or can rightly and properly assume either the duties cast upon the detaining authorities and Advisory Boards by the law of preventive detention or function as Courts of Appeal on questions of fact. The law of preventive detention, whether we like it or not, is authorised by our Constitution presumably because it was foreseen by the Constitution-makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subvert or disrupt the bases of an established order may outweigh the claim of personal liberty.

Every petitioner under Article 32 of the Constitution has to establish an infringement of a fundamental right. Hence, this Court cannot order a release from detention, upon a Habeas Corpus Petition, until it is satisfied that a petitioner's detention is really unwarranted by law. This means that, in a case of detention under the Maintenance of Internal Security Act, 1971, the petitioner has to show a violation of either Art. 21 or Art. 22 of the Constitution. That personal liberty of the citizen which the law so sedulously and carefully projects can also be taken away by the procedure established by law when it is used to jeopardise public good and not merely private interests."

17. In our view the subjective satisfaction arrived at by the Detaining Authority, in the circumstances, is justified on the materials on record and the same does not call for any interference in the present petition.

18. The facts, similar to the ones in the present case, are to be found in the case of Laxman Karande v. Shri S. Ramamurthi (Criminal Writ Petition No. 1278 of 1991 decided by S. P. Kurdukar and M. B. Ghodeswar, JJ.) on 22nd January,

1992. There also it was contended that the case rested on three incidents and the same were referable to three businessmen. Hence the question related to law and order and did not fall within the domain of public order. Ordinary law of the land can adequately deal with the detenu and there is no reason to clamp down detention order on the detenu. On facts of that case it was observed that it is well settled that the impact of such criminal activities on public at large and potentiality thereof are decisive factors to find out whether they fall in "law and order" or "public order". The Court placed reliance on the case of Sharad Kumar Tyagi v. State of Uttar Pradesh (supra) and has found that the activities of the detenu in that case affected public order and not merely law and order. In the light of the above decision, we are inclined to hold that the present case falls within the domain of public order and not merely law and order.

19. Shri Gupte, the learned Counsel appearing on behalf of the detenu has placed reliance on the case of Ajay Dixit Vs. State of U.P. and Others, . In that case the Supreme Court has observed thus at page 489; of Cri LJ :-

"Preventive detention is an exception to the normal procedure. It is sanctioned and authorised for very limited purpose under Article 22(3)(b) with good deal of safeguards. The exercise of that power of preventive detention must be with circumspection and care. We are governed by the Constitution and our Constitution embodies a philosophy of Government and a way of life. The working of this Constitution requires understanding between those who exercise power and the people over whom or in respect of whom such power is exercised. The purpose of all Government is to promote common well being and it must subserve the common good and it is necessary therefore to protect individual rights as far as consistent with security of the society and an atmosphere where the even tempo of the community is least endangered. These provisions should be so read as to imply grant of power and also limit the use of the power. The observance of a written law about the procedural safeguards for the protection of the individual is the normal and high duty of a public official. But in all circumstances is not the highest. The law of self-preservation and national security often claimed a higher priority. "To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us, thus absurdly sacrificing the end to the mean" Thomas Jefferson Writings (Washington) pp. 542-545. Sometimes the executive may have to act without normal safeguards for ordinary detention and resort to preventive detention when the necessity demands it, but it must explain its action when called upon in judicial review and ask for acquittance.

The question of difference between "law and order" and "public order" has come up many a time in judicial decisions. In the case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, a Full Bench of this Court had to consider this controversy in the context of Rule 30(i)(k) of the Defence of India Rules, 1962. Mr. Justice Sarkar who was a party of the majority view observed that it was not

necessary to take too technical a view but one should proceed in a matter of substance, if a man could be deprived of his liberty by the simple process of making of an order he could only be so deprived of it if the order is in terms of rule. If for the purpose of justifying the detention such (sic) is enough non-compliance must have a contrary effect. A mere reference in the detention order to the rule is not sufficient to show that by "law and order" what was meant was public order. The learned Judge observed that the order no doubt mentioned another ground of the detention namely prevention of acts and so far as it did so, it was clearly within the rule. But the order had notwithstanding this, to be held illegal, though it mentioned a ground on which a legal order of detention could have been passed, because it could not be said that in what manner and to what extent the valid and invalid grounds operated on the mind of the detaining authority. Of course, at the present law as it stands is if one of the orders is invalid the order of detention cannot be set aside merely on that ground.

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Justice Hidayatullah, as the learned Chief Justice then was, and justice Bachawat observed in the said decision that the satisfaction of the detaining authority cannot be subjected to objective tests and Courts are not to exercise appellate powers over such authorities and an order proper on its face, passed by a competent authority in good faith, would be a complete answer to a petition for a writ of habeas corpus. But when from the order itself circumstances appear which raise a doubt whether the officer concerned had not misconceived his own powers, there is need to pause and enquire. The enquiry then is, not with a view to investigate the sufficiency of the materials but into the officer's notions of his power. If the order passed by him showed that he thought his powers were more extensive than they actually were, the order might fail to be a good order. When the liberty of the citizen is put within the reach of authority and the scrutiny by Courts is barred, the action must comply not only with the substantive requirements of law but it should be with those forms which alone can indicate the substance. The learned Judges further observed that the contravention "of law" always affects "order" but before it could be said to affect "public order", it must affect the community or the public at large. One has to imagine three concentric circles, the largest representing "law and order", the next representing, "public order" and the smallest representing "security of State". An act may affect "law and order" but not "public order", just as an act may affect "public order" but not "security of the State". Therefore one must be careful in using these expressions.

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The test is : Does it lead to a disturbance of the even tempo and current life of the community so as to amount to a disturbance of the public order, or does it affect merely an individual without affecting the tranquillity of society. This Court found in that case that however reprehensible the appellant's conduct might be, it did not add up to the situation where it may be said that the community at

large was being disturbed. Therefore, it could not be said to amount to an apprehension of breach of public order, and hence he was entitled to be released.

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It is, therefore, necessary in each case to examine the facts to determine, not the sufficiency of the grounds nor the truth of the grounds alleged and see whether these are relevant or not for considering whether the detention of the detenu is necessary for maintenance of public order."

20. In regard to the above observations, there can be no dispute. As has been observed, it is necessary in each case to examine the facts to determine not sufficiency of the grounds nor the truth of the grounds, but nature of the grounds alleged and see whether these are relevant or not for considering whether the detention of the detenu is necessary for maintenance of public order. We have in the foregoing paragraphs given the details of the facts and incidents, which are alleged against the detenu. In our view, the same cannot be treated merely as affecting law and order. In our view, the same adversely affected the public order.

21. A reference to the recent decision of the Supreme Court in the case of Smt. Kamlabai v. Commissioner of Police, Nagpur, reported in AIR 1993 SCW 2305 may be made. The case relates to an incident when a police Sub-Inspector was patrolling, he saw people gathered near detenu's stable and on seeing him they tried to run away. The Sub-Inspector caught hold of one of them who admitted that he was selling illicit liquor in the detenu's stable and thereafter the Sub-Inspector took search of the stable and found liquor bottles. When the Sub-Inspector was about to take the arrested person and the liquor bottles, the detenu and his associates came there, questioned the Sub-Inspector and forcefully broke the liquor bottles on the spot. When the Sub-Inspector told them that he was performing his duty, the detenu threatened him that they will finish him if he does not act according to their wishes. So saying the detenu caught hold of the Sub-Inspector, and surrounded him. The Sub-Inspector, however, got released and went to the Police Station. Based on the solitary ground, which came to be accepted, the Supreme Court observed, "this act and conduct of the detenu was considered to be nothing but display of goondaism, by the detaining authority. We cannot say that his is a stray act affecting law and order. Catching hold of a Sub-Inspector and threatening him in a public place like that naturally would have created panic in his locality. We cannot say that the ground has no nexus to the public order." It would thus be seen that even a solitary incident of threat and assault of a Police Officer in a public place has been considered to affect public order.

22. Having regard to the facts and circumstances of the present case and viewing the incidents attributed to the detenu in the light of the aforesaid decisions we have no hesitation in holding that the present case falls within the realm of public order and not merely law and order.

23. In the circumstances, we find that the order of detention, which is impugned

in the present petition is fully justified and does not call for an interference in the present petition. We find that the petition is without merit and the same is, therefore, dismissed. Rule is discharged.

24. Petition dismissed.