

(1981) 11 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 204 of 1981

Sobran Singh Rajaram Goojar

APPELLANT

Vs

State of M. P. and others

RESPONDENT

Date of Decision : 04-11-1981

Acts Referred:

National Security Ordinance, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 380, 457

Citation : (1983) JLJ 40 : (1982) MPLJ 363

Hon'ble Judges : R. C. Shrivastava, J;A. R. Navkar, J

Bench : Division Bench

Advocate : A. B. Mishra, for the Appellant; M. A. Shah, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Navkar, J.

This is a petition under Article 226 of the Constitution of India for issuance of the writ of Habeas Corpus, quashing the order of detention of the petitioner dated 3-2-1981, passed by non-petitioner No. 1 and ordering his immediate release.

The petitioner, in his petition, says that he is a peace-loving citizen of India and a resident of Moodartpur, village Kuwarpur, Tahsil Jora, District Morena. The grounds for passing the said order, as mentioned by the petitioner, are that the Station House Officer, Police Station, Jora, Pargana Jora, District Morena, submitted a report to non-petitioner No. 2 that non-petitioner No. 2 should order the detention of the petitioner u/s 3 (2) of the National Security Ordinance, 1980. In his aforesaid report, he stated that the petitioner is disturbing the peace and security of Jora and the area around it. The report was based on the ground that there was a theft of golden and silver ornaments and clothes alleged to have been taken away from the house of Balwant Singh Rawat of village Yodi. The Crime case was registered as Case No. 162 of 1975 u/s 457/380 of the " Indian Penal Code and the petitioner was arrested and during the investigation, the

stolen property was recovered from him. The case is pending before the competent Court. The other ground is that the petitioner supplied food to the dacoit Shiv Narain Singh and his gang near village Balmani during the night intervening 11th and 12th December 1980. The gang committed the murder of Sukhdeo Kirar during the same night. A case u/s 302 of the Indian Penal Code is registered and that case is under investigation. During the night of 7-11-1980, the same gang fired at the house of Charunu Gusai and looted his property. This, case is also under investigation. The above mentioned crimes were committed because the petitioner gave shelter to the said gang of dacoits and, therefore, a crime case No. 312 of 1980 under sections 212/216 of the Indian Penal Code is registered against the petitioner and it will be challenged before the proper Court. The copies of the report are filed along with the petition. In support of the said report, the non-petitioner No. 2 took down the statements of the aforesaid Station House Officer of the Police Station, Jora on 13-12-1980. Taking into consideration the above incident on 16-12-1980, non-petitioner No. 2 passed the impugned order of detention of the petitioner u/s 3 (2) of the National Security Ordinance and further ordered that the petitioner be detained in the Central Jail, Gwalior and presently he is being kept there under detention. The petitioner was given a list of the reports which were received against him and also the First Information Report dated 16-11-1980 and the the First Information Report dated 13-12-1980. He was given a copy of the statement given by Harpal Singh also.

The Advisory Board, on 17-1-1981 after considering the propriety of the aforesaid detention order, confirmed it. Thereupon, non-petitioner No. I confirmed the order on 3-2-1981 and it was to be continued upto 16-12-1981. Aggrieved by the said order, this petition is filed. It is urged that the order is unconstitutional, illegal and void and it has no effect. Therefore, it should be quashed and the petitioner be released immediately. The grounds, on which the order is attacked are that: (1) it does not come within the scope of the provisions of section 3(2) or section 3 of the National Security Act; (2) the provisions of the aforesaid section relate to the "public order", but none of the grounds reveal the same. All the grounds relied upon relate to law and order and as such, the impugned order is in contravention of the provisions of the said Act; (3) that it is clear from the contents of the order that the non-petitioner No. 2 did not apply his mind while passing the said order; (4) the impugned order contravenes the fundamental right of personal freedom guaranteed under Article 19 of the Constitution of India; (5) none of the grounds of detention relate to the disturbance of public order and (6) lastly, it is said that it is not clear whether the impugned order was sent by the non-petitioner No. 2 or No. I to the Central Government of Union of India as required under the Act.

The petition is opposed by the State. First, it was submitted before this Court that the order was sent to the Central Government and the Central Government has confirmed it within the statutory -period and that is Annexure R/2. After going through the Annexure R/2, we are of the opinion that the order is confirmed as required under sub-section (2) of section 3 of the National Security

Ordinance, 1980. Therefore, the objection raised by the learned counsel for the petitioner cannot be accepted. From the record, it is clear that the provisions of the said Ordinance are followed while passing the order of detention.

The other submission it is not clear from the order that respondent No. 2 has applied his mind while passing the order. The reply of the learned Deputy Government Advocate is that it is the subjective satisfaction of the District Magistrate which is relevant in the matter and after going through the record, respondent No. 2 has passed the said order and thought it fit after his subjective satisfaction that the detention of the petitioner is essential for maintaining public order. The point is whether we can substitute our subjective satisfaction instead of the satisfaction of respondent No. 2. In our opinion, we cannot interfere in the subjective satisfaction of the District Magistrate. This Court has held in *Mahipat Singh v. The State of Madhya Pradesh and two others* Misc. Petition No. 178 of 1981, decided on 17-9-1981 are under:

The first point to be decided is whether we can interfere in the opinion expressed by the District Magistrate when he is satisfied on the evidence produced before him that the petitioner should be detained, taking into consideration his activities. There is no dispute that it is subject to the satisfaction of the concerned authority which is of vital importance and we cannot go behind it. We may refer to *Krishna Murari Aggarwala Vs. Union of India (UOI) and Others*, , in which it is held as under:

It is true that the Court cannot go behind the subjective satisfaction of the detaining authority, but such satisfaction does not confer blanket power which may authorise the detaining authority to act in a ruthless or arbitrary fashion and the subjective satisfaction of the detaining authority can be tested on the touchstone of objectivity. It is obvious that the subjective satisfaction of the detaining authority is a sine qua non for the exercise of power of detention and it has got to be exercised properly and discreetly. So, the Supreme Court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power will not be fulfilled and the exercise of the power will be bad " Nothing was brought to our notice by the learned counsel for the petitioner that the subjective satisfaction is ruthless or is made in an arbitrary fashion. Therefore, as the respondent No. 2 was satisfied and he has passed the said order, we cannot put our satisfaction in his place. Therefore, the ground submitted by the learned counsel we will have to reject and we reject the same. For subjective satisfaction, there is one more aspect to be considered and that is the concept of preventive detention. This concept was explained in *Haradhan Saha Vs. The State of West Bengal and Others*, in which the use of power of preventive detention was considered and it was held therein as under:-

The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of reasonable

probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished to prove (sic) (on proof of ?) his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent.

The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a pre-cautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

If this concept of the Ordinance and the Act is taken into consideration, then the submission of the learned counsel that certain prosecutions have been launched under the Indian Penal Code against the petitioner and, therefore, the order of detention is bad in law, cannot be accepted. From the above observations, it is clear that there can be parallel proceedings under the law of crimes as well as under the National Security Act and one is not a bar to the other. The main point to be decided is whether the activities of the petitioner are such that they will disturb the public order. The learned counsel for the petitioner relied on *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, in which the difference between "public safety" and "public order" was considered and it was held as under:-

It is commonplace that words in a statutory provision take their meaning from the context in which they are used. In the case of detention under Rule 30(1)(b), the context is the emergent situation created by external aggression. It would, therefore, be legitimate to hold that by maintenance of public order what was meant was prevention of disorder of a grave nature, a disorder which the authorities thought was necessary to prevent in view of the emergent situation. It is conceivable that the expression "maintenance of law and order" occurring in a detention order under Rule 30(1)(b) may not have been used in the sense of prevention of disorder of a grave nature. The expression may mean prevention of disorder of comparatively lesser gravity and of local significance only.

Relying on this, the learned counsel for the petitioner submitted that there is no evidence in the present case to come to a conclusion that the activities of the petitioner are such that they will subvert public order. For the same purpose, he relied on *Dipak Bose alias Naripada Vs. State of West Bengal*, in which it is held

as under :-

The grounds of detention alleged that the detenu along with his associates armed with certain weapons including bombs committed murders of two specified individuals in a public road on two different dates and thereby created panic and terror in the locality and disturbance of public order but nowhere it was stated that bombs were used in the commission of crime. Held that the grounds related to and fell within the area of law and order and were not relevant to the object of the Act viz. maintenance of public order for which the Act permits preventive detention. The detention was therefore, illegal.

Very strong reliance was placed on Division Bench case submitting that if the petitioner has committed any offence, he should be punished for it, but his personal liberty cannot be taken away which is guaranteed to him under Article 19 of the Constitution of India. Similarly, he referred to *Sudhir Kumar Saha Vs. The Commissioner of Police, Calcutta and Another*, in which it is held as under:-

Maintenance of "law and order" is a conception much wider than the conception of maintenance of "public order". The latter is the prevention of a disorder of grave nature. Every act that affects "law and order" need not affect "public order". "Public order" is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of "law and order". So, the main point to be decided in this case is whether the activities of the petitioner are such that prevention of those activities is necessary for maintenance of public order. The meaning of "public order" was considered in *Lachhi v State of Madhya Pradesh* 1975 MPLJ 549 : 1975 J LJ 617, in which it is held as under :-

"Breaches of law and order have to be distinguished from disturbances of public order; and the distinction between the two is to be made on the basis of the following principles:

- (1) A contravention of law always affects order; but before it can be said to affect public order, it must affect the community or public at large.
- (2) Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality.
- (3) It is the degree of disturbance and its effect upon the life of the community in general or in a particular locality which determines whether the disturbance amounts only to a breach of law and order or a disturbance of public order.
- (4) 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.

(5) If the contravention in its effect is confined only to a few individuals directly involved as distinguished from wide spectrum of the public, it would raise a problem of law and order only.

Further, before taking into consideration the facts, we may refer to Smt. S. Gayathri Vs. Commissioner of Police, Madras and Others, , in which it is mentioned as under:-

3. At first blush we were impressed with the argument. But, a closer look at the grounds of detention has satisfied us that there is no real substance in the submission. What has been described by the learned counsel as the third ground of detention is really not a ground of detention distinct from grounds Nos. 1 and 2. It has to be necessarily read in conjunction with the earlier two grounds and so read it only means that the detenu has been continuing the type of unlawful activities mentioned in grounds No. 1 and 2 and that the victims were not willing to come forward to lodge complaints for fear of harm to themselves. If it is treated as a distinct ground of detention and if it is isolated from the rest of the grounds there might be force in the submission of the learned counsel. But in the circumstances of the case it is not possible to isolate the so-called third ground of detention from the rest of the grounds. It is not possible to style it as a ground of detention all by itself. We are, therefore, unable to agree with the submission of the learned counsel.

From the above discussion, the points which become clear are that (i) it is the subjective satisfaction of the district Magistrate which is to be taken into consideration, (ii) The Act is meant to prevent the commission of the crime or to prevent the disturbance of public order (iii) there can be parallel proceedings under the Act as well as under the law of crimes and proceedings under one is not a bar to proceedings against the same person under the National Security Act. In the case in hand, the first condition is fulfilled. As to the second condition, it is sufficient to refer to the order passed by the District Magistrate; which is Annexure P/3, which clearly shows that the petitioner was engaged in supplying ammunition and food to the absconding dacoits Shiv Narayan Singh and his associates. Thirdly, Shiv Narayan Singh, the alleged dacoit, killed Sukhdeo Kirar and on 7-11-1980, he committed dacoity in the house of one Charunu Gusai. If all these facts are taken into consideration along with the evidence and the exhibits which we have referred to above, there is no dispute that the activities of the petitioner as alleged, are sufficient to disturb the even tempo of the life of the Society or at least of the locality of which the petitioner is a resident. Therefore, we are of the opinion that the order passed by the learned District Magistrate against the petitioner is legal and no interference therein is required.

As regards the third point of the parallel proceedings, we may mention that proceeding under the law of crimes is no bar to proceed against the petitioner under the Ordinance or the Act.

The result, therefore, is that there is no force in this petition and it is dismissed accordingly.