
(1989) 04 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Writ Petition (Habeas Corpus) , No. 3463 of 1988

Subhan Mohammad

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 17-04-1989

Acts Referred:

Arms Act, 1959 — Section 25
Central Excises and Salt Act, 1944 — Section 16
Criminal Procedure Code, 1973 (CrPC) — Section 107, 110
National Security Act, 1980 — Section 5A
Penal Code, 1860 (IPC) — Section 120B, 153A, 224, 225, 295A

Citation : (1990) CriLJ 2658 : (1990) 1 WLN 264 : (1989) 2 WLN 208

Hon'ble Judges : R.S. Verma, J;K.S. Lodha, J

Bench : Division Bench

Advocate : Ravi Bhansali, for the Appellant; J.P. Joshi, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

K.S. Lodha, J.—We have heard the learned counsel for the parties at some considerable length.

2. The petitioner Subhan Mohammad has challenged the detention of his son Noor Mohammad by order dated 6th May, 1988 passed by the District Magistrate, Udaipur under the National Security Act (hereinafter to be referred as the Act) and which has been confirmed by the State Government by order dated 7th July, 1988. 24 grounds have been mentioned in the grounds of detention which have been handed over to the detenu. The detenu's representation against those grounds was rejected by the Advisory Board. In these grounds, the first 11 grounds relate to the various criminal cases which have pending against the detenu from 1981 to date. They include two cases u/s 307, I.P.C., two of theft; one under Sections 224, 225, 352, 353, I.P.C., one under Sections 384, 392 four u/s 16/34 Excise Act, and one under Sections 153A, 295A, I.P.C. and Section 25 Arms Act. The next 8 relate to cases which were tiled against the detenu but in

those the detenu had been acquitted on account of the fact, that the witnesses turned hostile. Then there are cases in which proceedings under Sections 107 and 110, Cr. P.C. had been taken against the detenu and also one in which the detenu was externed from the district for six months. The last ground is that a petition has been filed by the residents of Udaipur showing that the detenu was a terror and a desperado.

3. The first contention of the learned counsel for the petitioner is that all these grounds go to show that they relate to only law and order situation and not disturbance of a public order and, therefore, on the basis of these grounds he could not have been detained. In our opinion, this contention is fully met by the decision of their Lordships reported in *Ashok Kumar Vs. Delhi Administration and Others*, wherein the distinction in matters relating to law and order problem and that of public order problem has been clearly brought out. It has been pointed out to (at pp. 1195 to 1197 to Cri. LJ):--

"13. The true distinction between the areas of public order and law and order lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of law and order and public order is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and, therefore, touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. 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. That test is clearly fulfilled in the facts and circumstances of the present case. The prejudicial activities of the detenu leading to public disorder, as revealed in the grounds of detention, consist of a consistent course of criminal record. Although the criminal activities of the detenu in the past pertained mostly to breaches of law and order, they have now taken a turn for the worst. From the facts alleged it appears that the detenu has taken to a life of crime and become a notorious character. His main activities are theft, robbery and snatching of ornaments by the use of knives and fire arms. The area of operation is limited to South Delhi such as greater Kailash, Kalkaji and Lajpat Nagar. A perusal of the FIRs shows that the petitioner is a person of desperate and dangerous character. This is not a case of a single activity directed against a single individual. There have been a series of criminal activities on the part of the detenu and his associates during a span of four years which have made him a menace to the society. It is true that they are facing trial or the matters are still under investigation. That only shows that they are such dangerous characters that people are afraid of giving evidence against them. What essentially is a problem relating to law and order may due to sudden sporadic and intermittent acts of physical violence on innocent victims in the metropolitan city of Delhi result in serious public disorder. It is the length, magnitude and intensity of the terror wave unleashed by a particular act of violence creating disorder that

distinguishes it as an act affecting public order from that concerning law and order. Some offences primarily injure specific individuals and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. The question is of the survival of the society and the problem is the method of control. Whenever there is an armed hold up by gangsters in an exclusive residential area like Greater Kailash, Kalkaji or Lajpat Nagar and persons are deprived of their belongings like a car, wrist watch or cash, or ladies relieved of their gold chains or ornaments at the point of a knife or revolver, they become victims of organised crime. There is very little that the police can do about it except to keep a constant vigil over the movements of such persons. The particular acts enumerated in the grounds of detention clearly show that the activities of the detenu cover a wide field and fall within the contours of the concept of public order."

It has thus been pointed out that there is a very thin line between the question of law and order situation and a public order situation and some times the acts of a person relating to law and order situation can turn into a question of a public order situation. In this case it will be pertinent to note that the detenu appears to have been engaged in criminal activities almost of all sorts from 1979 to 1988. The cases include cases of offences under Sections 307, 224, 225, 332, 353, 384, 153A, 392, 295A, 120B, I.P.C. then there are cases under Arms Act and also cases under the Excise Act where illicit liquor to the extent of 625 bottles in one case had been recovered from him, they also include a case u/s 302, I.P.C. and cases in which he has alleged to have raised slogan which may have spread communal hatred as also cases of other nature. As already stated above, he had also been externed from the district of Udaipur for six months. Therefore, the activities of the detenu cannot be said to be restricted only up to the extent of a question of law and order but they can easily be inferred to involve the disturbance of public order. In these circumstances the first contention must fail.

4. The second contention of the learned counsel for the petitioner was that the detaining authority had taken into consideration old and stale cases running back to 1979, 1980 and 1981 etc. Such cases could not have been taken into account for the detention of the detenu in the year 1988. But we do not find force in this contention also. There appears to be continuity of the criminal activities of the detenu since 1979 and it cannot be said in the circumstances of this case that only some old and stale cases had been picked up in order to detain the detenu. The learned counsel referred to Kamlakar Prasad Chaturvedi Vs. State of M.P. and Another, but that authority in the circumstances of this case is not at all applicable. There while passing the order in the year 1983 some stale cases of 1978, 1980 were also taken into account and it was observed by their Lordships that the ground relating to an incident of 1978 was too remote and not proximate to the order of detention but it was further observed that Section 5A of the Act which is now available was not then in force and, therefore, the whole order had to be set aside. In the present case, old and stale case only had not been picked up for the detention of the detenu they are in the continuity of the

criminal activities of the detenu with recent cases which have also been taken into account. In Ashok Kumar's case 1982 Cri LJ 1191 (SC) (supra) it has been observed that a consistent course of criminal activities can be taken into consideration and it may show that the detenu is of a notorious and desperate character and has become a threat to the society at large. In any case the order can certainly be sustained on the basis of the recent cases at least, by virtue of Section 5A of the Act. In these circumstances, this contention must also fail.

5. The third contention of the learned counsel for the petitioner is that there has been a non-application of mind of the detaining authority to the ground of detention inasmuch as it has been observed in ground No. 14 that the detenu had been acquitted as witnesses turned hostile but this was not correct and as a matter of fact the Court had found that the case was not proved otherwise. In the first place it may be mentioned that although the Court had observed that the cases had not been established against the detenu. It has also found that some witnesses had also turned hostile. Therefore, the observation of the detaining authority cannot be said to be wholly incorrect and even if this ground is taken to be imperfect it would not affect the order of detention in view of Section 5A of the Act.

6. The next contention of the learned counsel for the petitioner was that cases in which the detenu had been acquitted could not have been used as grounds of detention and in this connection he has placed reliance upon Smt. Prem Kaur v. State of Rajasthan (1987) 1 Rajasthan LR 1000 as also Ramesh Yadav Vs. District Magistrate, Etah and Others, It may at once be stated that the authority reported in Smt. Prem Kaur's case (supra) does not at all support the contention of the detenu. In that case the fact of the acquittal of the detenu in criminal case had been concealed and on that ground it was observed that this ground was not available to the detaining authority. In Ramesh Yadav's case (supra) it was, of course, observed that admittedly a trial had taken place and there has been acquittal and, therefore, that ground was not available to be used. But it appears that the acquittal in that case was on merits and in our opinion this authority does not lay down that in no case a criminal case in which the detenu has been acquitted can be taken into account for his detention. In certain circumstances it can be used e.g. where the acquittal has been on the ground that the witnesses had turned hostile and it is found that the witnesses had been threatened or overawed by the detenu. In Ashok Kumar's case (1982 Cri LJ 1191) (SC) (supra) it has been observed as under (at p. 1196 of Cri LJ):--

"There is no reason why the Executive cannot take recourse to its power of preventive detention in those cases where the Court is genuinely satisfied that no prosecution could possibly succeed against the detenu because he is a dangerous person who has overawed witnesses or against whom no one is prepared to depose."

We find that in the present case, the detaining authority was quite aware of the fact that the detenu had been acquitted in the cases mentioned in grounds Nos.

12 to 19 and it is alleged that the acquittals in most of these cases was on account of the fact that the witnesses turned hostile on account of the undue terror of the detenu who is a desperado. Therefore, this contention also cannot be said to be of any help to the detenu.

7. Lastly it was contended that the last ground is based on an anonymous report which is unsigned and undated and, therefore, the detaining authority could not have used it in order to arrive at his subjective satisfaction. To us, this ground appears to be equally untenable. The report was of course unsigned and undated but the detaining authority has put the date 11-4-88 of its representation on it. Therefore, the fact of its presentation could certainly have been taken into account, along with the other grounds.

8. No other ground has been pressed before us.

9. Having regard to all the fact and circumstances of the case, we are of the view that the detention of the detenu does not call for any interference by us.

10. The writ petition is, accordingly, rejected.