
(2009) 02 MP CK 0040
In the Madhya Pradesh High Court

Sunil Tiwari

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 120B, 147, 201, 294, 302

Citation : (2009) ILR (MP) 1679 : (2009) 2 MPHT 297

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.—In this writ petition filed under Article 226 of the Constitution, the petitioner has challenged the order of detention, detaining him u/s 3(2) of the National Security Act, 1980 (for short "the Act").

2. The facts briefly are that on 3-4-2008 the District Magistrate, Katni, in exercise of powers conferred under Sub-section (2) of Section 3 of the Act passed an order of detention, detaining the petitioner in the Central Jail, Jabalpur. The matter was referred to the Advisory Board and pursuant to the opinion given by the Advisory Board the State Government confirmed the order of detention and directed that the petitioner shall continue to be under detention for a period of 12 months from the date of detention till 2-4-2009. Aggrieved, the petitioner has filed this writ petition praying for quashing the order of detention.

3. Mr. Manish Tiwari, learned Counsel for the petitioner, submitted that the detention order has been passed against the petitioner for political reasons and was not necessitated u/s 3(2) of the Act and this would be clear from the grounds of detention served on the petitioner.

4. Mr. Vivekanand Awasthy, learned Deputy Government Advocate, on the other

hand, submitted that the grounds of detention served on the petitioner would show that right from 1987, the petitioner has been indulging various criminal acts and considering the propensity of the petitioner to commit repeated violent acts, the District Magistrate, Katni, passed the order of detention under Sub-section (2) of Section 3 of the Act and on the basis of the opinion given by the Advisory Board, the State Government has confirmed the order of detention.

5. The law is well settled in *Lakshman Khatik Vs. The State of West Bengal*, , *Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others*, and in *Gora Vs. State of West Bengal*, that there must be a close proximity between the offending acts mentioned in the grounds of detention and the order of detention and there should not be too long and unexplained intervals between the offending acts and the order of detention. The Supreme Court has, however, held that no mechanical test by counting the months of the interval is sound and it all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation.

6. The Supreme Court has also held in series of cases that there is a clear distinction between "law and order" and "public order". In *Smt. Victoria Fernandes Vs. Lalma Sawma and others*, , the Supreme Court held:

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 life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it would raise the problem of law and order only. 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". The question to ask is: Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed ? This question has to be faced in every case on its facts. [See : *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, ; *Arun Ghosh Vs. State of West Bengal*, , *Ram Ranjan Chatterjee Vs. The State of West Bengal*, ; *Ashok Kumar Vs. Delhi Administration and Others*, .

7. Keeping in mind the law, as laid down by the Supreme Court, we will have to see whether in the grounds of detention there are some alleged offending acts of the petitioner which have close proximity to the order of detention and whether such alleged offending acts of the petitioner affect public order or are only acts of contravention of law not disturbing public order.

8. The order of detention, as we have seen, was passed in the present case on 3-4-2008 and from the grounds of detention we find the following three alleged

offending acts of the petitioner committed on 30-8-2006, 17-11-2007 and 31-3-2008 which can be said to have close proximity to the order of detention:

(i) On 30-8-2006 the petitioner with his companions without legal permission had staged riotous demonstration by blocking the road at Subhash Chowk. Offence No. 502/06 under Sections 341, 147, IPC was registered against them and challan was filed in the Court in Case No. 5390/06 which is pending.

(ii) On 17-11 -2007 the petitioner - his brother - Mukesh Tiwari and companions - Bhawanikant Dubey, Rakesh Chowdhary, Sunil Vishwakarma, Shrichand Kori, Dharmendra alias Pappu Tiwari, Deepak Tiwari, Banty alias Shailendra Tiwari through criminal conspiracy had kidnapped Sagar Singh s/o Guman Singh Thakur, r/o Gayatri Nagar, Katni, from Shivhare Complex and took him to the jungle where they brutally murdered him. On the report of Sonu Ben, s/o Lal Ben, r/o Gayatri Nagar, Katni, offence No. 853/07 under Sections 365, 368, 34, IPC was registered and investigation was carried out. When dead body of the kidnapped Sagar Singh was recovered, Sections 302, 364, 201, 120-B, IPC was added therein. Charge-sheet No. 57/08, dated 12-2-2008 was prepared and filed in the Court of CJM Katni, in Case No. 460/08 which is pending.

(iii) On 31-3-2008 the petitioner with his companions had abused and threatened to kill family of the applicant - Sardar Singh, s/o late Mangal Singh, r/o Village Badkhera, PS Kuthla. On the applicant's report offence No. 88/08 under Sections 294, 506, 34, IPC was registered in the PS Kuthla, which is under investigation.

9. The alleged act, which the petitioner has committed on 30-8-2006, is a staged riotous demonstration by blocking the road at Subhash Chowk, Katni, for which offence u/s 341/147, IPC has been registered against him. This may be an offence under the IPC but cannot be held to be one which unleashed a terror wave so as to affect the even tempo of life in the locality. In fact, there is no narration whatsoever in the grounds of detention that the aforesaid alleged act committed by the petitioner on 30-8-2006 created any terror in the locality so as to affect its peace and tranquillity.

10. The second act alleged to have been committed by the petitioner is on 17-11-2007. It is alleged that the petitioner along with his companions kidnapped Sagar Singh from Shivhare Complex and brutally murdered him in the jungles. There is no mention whatsoever in the grounds of detention that the petitioner created terror in and around the Shivhare Complex while kidnapping Sagar Singh. As per the allegation in the grounds of detention the murder of Sagar Singh was committed in the jungles and not in any place so as to cause a terror amongst people of the locality. This alleged incident cannot also be said to have affected the even tempo of life of any locality and thus has no nexus with the public order.

11. The last incident mentioned in the ground of detention is alleged to have been committed by the petitioner on 31-3-2008 and as per the allegations in the ground of detention the petitioner and his companions abused and threatened to

kill the family of Sardar Singh. There is no mention whatsoever in the grounds of detention that the petitioner allegedly abused Sardar Singh and threatened to kill him in presence of the public in a locality so as to create a terror amongst them. This alleged act of the petitioner also cannot be said to have affected the even tempo of the life of the community and, thus, has no nexus with the public order.

12. The rest of the grounds mentioned in the grounds of detention relate to acts alleged to have been committed by the petitioner in the years 1987, 1988, 1989, 1990, 1991, 1993, 1994, 1995, 1997, 1999, 2000, 2002 and 2004 which have no proximity to the impugned order of detention passed in the year 2008 and cannot constitute the basis of detention of the petitioner for maintenance of public order. In our considered opinion, there was no immediate necessity for detaining the petitioner under the Act in the interest of maintenance of public order. The grounds of detention reveal that the petitioner is alleged to have committed large number of offences from 1987 to 2008 but for such alleged offences, the petitioner has to be tried by the Ordinary Criminal Courts. These offences may be acts of contravention of law and may be cases of law and order but have no rational nexus with public order so as to warrant the detention of petitioner under the Act.

13. For the aforesaid reasons, we allow this writ petition and quash the impugned orders of detention passed by the District Magistrate, Katni, as well as the State Government and direct that the petitioner be forthwith set at liberty unless he is arrested in connection with some other case.