

(1988) 05 AHC CK 0031

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 7030 and 8985 of 1988

Vashishth Narain Karwaria alias Bhukkhal Maharaj and Others **APPELLANT**
Vs

P.C. Chaturvedi and and Others **RESPONDENT**

Date of Decision : 31-05-1988

Acts Referred:

National Security Act, 1980 — Section 3, 3(2), 3(3), 8(1)
Penal Code, 1860 (IPC) — Section 307, 506

Citation : (1988) 2 AWC 1005

Hon'ble Judges : B.N. Sapru, J; B.N. Misra, J

Bench : Division Bench

Advocate : Jagdish Singh Sengar, for the Appellant;

Final Decision : Dismissed

Judgement

1. These two petitions have been instituted by the four Petitioners, who are common to both these petitions and arose out of an incident which occurred on 30-3-1988, at the auction site for liquor shops, which was being conducted in the Collectorate at Allahabad. The two petitions have been heard together and, by the consent of the parties, affidavits filed in one petition have been read in the connected petition.

2. In connection with the incident, the Station Officer of Colonelganj Police Station, Allahabad, lodged a first information report at the Police Station on 30-3-1988. On the basis of the FIR lodged by Sri Kana Pratap Singh. Station Officer, P.S. Colonelganj, a case crime No. 221 of 1988 has been registered at Police Station Colonelganj, against the four Petitioners u/s 307/506 of the Indian Penal Code. The prayer in the Writ Petition No. 7030 of 1988 is for the quashing of the first information report and to restrain the Respondents in the writ petition from arresting the Petitioners in pursuance of the aforesaid FIR.

3. Because of the incident which occurred on 30-3-1988, the District Magistrate of Allahabad, Sri P.C. Chaturvedi, passed an order of detention against the

Petitioners under the National Security Act, the power of detention (order) having been delegated to him by the State Government. The relevant order of delegation by the State Government has been produced before us. The prayer in the Writ Petition (Civil Misc. Writ No. 8985/88) is that a writ in the nature of certiorari be issued to quash the detention order dated 31-3-1988. A further prayer has been made that the Respondents be directed not to arrest the Petitioners in pursuance of the detention order.

4. The facts which are not in dispute between the parties are that an auction of country and Indian made foreign liquor shops was being held in an enclosed place protected by the police in the Collectorate at Allahabad on 30-3-1988. The four Petitioners were present on the occasion. The Petitioner Vashishth Narain Karwaria alias Bhukkhal Maharaj is the father of Petitioner No. 2 Kapil; while Petitioner No. 3 Ram Chandra Tripathi alias Kallu and Petitioner No. 4 Santosh Kumar Tripathi are sons of Gaya Prasad Tripathi and the sister of Vashishth Narain Karwaria. Petitioners Nos. 1 and 2 are residents of 1184, Kalyani Devi, P.S. Attarsuiya, district Allahabad, and Petitioners Nos. 3 and 4 are residents of village Ghauspur,, P.S. Puramufti, district Allahabad. The District Magistrate, Sri P.C. Chaturvedi, was conducting the auction. The auction started at 10.30 A.M. The Petitioners had made a bid of Rs. 51 lakhs for the Chail Sector country liquor shop, which was not accepted. At about 3.30 P.M., the Mooratganj Indian made foreign liquor shop was to be auctioned. Only two persons, namely, Ajai Kumar and Chhedilal offered bids of one lakh and one lakh ten thousand only. At this point, divergent versions have been given by the parties before this Court.

5. According to the version of the Petitioners the District Magistrate, Allahabad, was frustrated at the low bids and remarked that proper offers were not coming because of Petitioner No. 1 Vashishth Narain Karwaria. According to the Petitioners' version, Vashishth Narain Karwaria stood up and said that as the District Magistrate was not liking his presence on the auction site, he was leaving the Pandal. And after saying this, all the Petitioners went away leaving the Pandal. The Petitioners' case is that thereafter a false case was fabricated by the police at the instance of the District Magistrate.

6. According to the first information report lodged by Sri Rana Pratap Singh, Station Officer, Police Station Colonelganj, at 4.30 P.M. in police station Colonelganj, it is alleged that after Ajai Kumar and Chhedilal had made their bids at the Mooratganj Liquor Shop, the four Petitioners stood up and threatened Chhedilal and Ajai Kumar and all the prospective bidders in the Pandal saying that the shop belonged to their area and if anyone dared to bid at the shop, they would shot him and his family and destroy his entire family. This created terror in the audience and immediately thereafter Vashishth Narain Karwaria and other three Petitioners stood and advanced towards Chhedilal and Ajai Kumar saying that these people had had the courage to bid for the shop, they would kill them and they should not be allowed to run away. Thereupon, Rana Pratap Singh, Station Officer, along with other police officials accosted and advanced towards

the Petitioners to arrest them. Seeing the police party coming, Vashishth Narain Karwaria fired at the police party with his country made pistol. Thereupon, the police party readied their weapons; whereupon the four Petitioners escaped from the Pandal and were followed by the police party. Another shot was fired by the country made pistol on the police party by Vashishth Narain Karwaria. The police party persisted the chase and more shots were fired and bombs were hurled by the four Petitioners. The firing and the noise of the bomb created panic in the Pandal. People sitting in the Pandal panicked and on the Kutchery road, people started running away and the shops started closing down. Public order was disturbed.

7. As far as Civil Misc. Writ No. 7030 of 1988 is concerned, the first information report discloses the commission of cognizable offences. It is not the function of this Court in a writ petition to determine which of the two rival versions in regard to the incident are correct. This is a matter for the trial court to determine. The writ petition will have to be dismissed.

8. We now come to writ petition No. 8985 of 1988.

9. In this petition, the detention order under the National Security Act by the District Magistrate, Allahabad, on 31-3-1988 is challenged. Here again the truth or otherwise of the rival version given by the parties cannot be decided in the writ petition.

10. Sri S.P. Gupta has submitted that the acts attributed to the four Petitioners at the most amounted to a disturbance of law and order and did not involve an act which affected public order. He submits that the said acts did not disturb the even tempo of life outside the Pandal as the incident was confined to the auction site.

11. The learned Counsel referred to certain judgments of the Supreme Court. The case first referred to is the case of Subhash Bhandari Vs. District Magistrate, Lucknow and Others, . In that case one Surya Kumar lodged the first information report with the Hazaratganj police station Lucknow that he had made a tender for the supply of ballast in PWD. His tender had been accepted as it was lower than the Petitioner's tender which had been submitted in the name of K.P. Singh and for this reason the Petitioner and K.P. Singh bore a grudge against Surya Kumar. On 25-9-1984 at about 3.45 P.M. when Surya Kumar was going in his car in connection with his tender on the National Highway Khand, he stopped to talk to someone when Subhash Bhandari along with others came there and fired at him and threw grenades but he escaped unhurt. On the basis of the FIR, a criminal case had been registered against Subhash Bhandari and a charge-sheet had been submitted. The detaining authority made a detention order and said in the order that the Petitioner had applied for bail and if the Petitioner came out of jail on bail, there was a possibility of his acting in a manner prejudicial to the maintenance of public order. The order of detention was challenged. The order of detention was quashed by the Supreme Court. The Court observed in paragraph

10 of its judgment as follows:

In the instant case the alleged act of assault by fire-arms is confined to the complainant Surya Kumar and not to others. It is an act infringing law and order and the reach and effect of the act is not so extensive as to affect considerable members of the society. In other words, this act does not disturb public tranquility nor does it create any terror or panic in the minds of the people of the locality nor does it affect in any manner the even tempo of the life of the community. This criminal act emanates from business rivalry between the detenus and the complainant. Therefore such an act cannot be the basis for subjective satisfaction of the detaining authority to pass an order of detention on the ground that the impugned act purports to affect public order, i.e. the even tempo of the life of the community which is the sole basis for damping the order of detention. Moreover, no injury was caused to the person of the complainant, Surya Kumar by the Appellants nor any damage was caused to the car though hand grenade was alleged to have been thrown on the car. No mark has been caused to the car also. It is relevant to mention in this connection that the Appellants were released on bail by this Court after duly considering the facts and circumstances of the case in July, 1985. The period of one year has also expired. We have already held hereinbefore that a solitary act of omission or commission can be taken into consideration for being subjectively satisfied by the detaining authority to pass an order of detention if the reach, effect and potentiality of the act are such that disturbs public tranquility by creating terror and panic in the society or a considerable number of the people in a specified locality where the act is alleged to have been committed. Thus it is the degree and extent of the reach of the act upon the society which is vital for considering the question whether a man has committed only a breach of law and order or has acted in a manner likely to cause disturbance to public order.

12. The case cited by Sri S.P. Gupta is distinguishable inasmuch as in the present case the allegations are that the incident took place in the Pandal where the auction was being held and firing was resorted to by the Petitioners both in the Pandal and outside and bombs were also thrown on the road which created panic. In the case cited by Sri S.P. Gupta, the general public was not affected and the incident took place at an isolated place on National Highway.

13. The next case relied upon by Sri S.P. Gupta, learned Counsel for the Petitioners is Gulab Mehra Vs. State of U.P. and Others, . In this case an order of detention passed against Gulab Mehra under the National Security Act by the District Magistrate, Allahabad, was challenged. The Appellant Gulab Mehra had already been arrested and detention order was served on him in jail. The two grounds of detention were : (1) that Gulab Mehra was extorting money from the people of Khalasi Line locality and was telling that if money was not given he would shoot them; (2) the second ground that on 3-10-1986, Gulab Mehra armed with bombs went towards Uttam Talkies, Kydganj, Allahabad, with intention of committing heinous crime. The police on getting information went to

arrest him. Gulab Mehra threw a bomb at the police party which exploded. Gulab Mehra was arrested on the spot and three bombs were recovered from his possession. The bomb explosion had created panic in the locality. The Supreme Court referred to a similar judgment in the case of *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, , from where the following passage was extracted:

The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. There are three concepts according to the learned Judge (Hidayatullah, J.) i.e. "law and order", "public order" and "security of the State." It has been observed that to appreciate the scope and extent of each of them, one should imagine three concentric circles. The largest of them represented law and order next represented public order and the smallest represented the security of the State. An act might affect law and order but not public order just as an act might affect public order but not the security of the State.

It also referred certain other decisions of the Court.

In paragraph 20 it was observed as follows:

On a conspectus of all these decisions it has been observed by this Court in the case of *State of U.P. Vs. Hari Shankar Tewari*, , that conceptually there is difference between law and order and public order but that 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. An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquility. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention made in such a situation has to take note of the potentiality of the act objected to. 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.

14. The Supreme Court found that in regard to the first incident alleged to have occurred on 2-10-1986, the ground of detention was vague. In regard to the second incident, it observed that the case had been registered and was pending.

15. In Gulab Mehra's case the counter-affidavit had been filed by a Sub-Inspector of Police and not by the District Magistrate unlike the instant case. On the facts that a Sub-Inspector of Police filed counter-affidavit, the Court found that there was a serious apprehension as to whether the District Magistrate had completely arrogated his function in favour of the Sub-Inspector of Police. It also observed that the District Magistrate had not come forward to state that he had taken the fact into consideration that Gulab Mehra was already in judicial custody in connection with the case.

16. In the instant case, the District Magistrate has filed a counter-affidavit saying that he was satisfied that the Petitioners were likely to disturb public order in future also and had created a terror which was persistent.

17. Another decision relied upon by Sri S.P. Gupta is the case of Fazal Ghosi and Others Vs. State of U.P. and Others, . Here again the detention order had been made as against Fazal Ghosi and Ayaz Ahmad under the National Security Act. The two Petitioners were addressing Muslim gatherings at two places and made speeches in connection with the opening of the Ram Janam Bhumi Temple at Ayodhya, Faizabad, about which there was considerable agitation among Muslims. The consequence of the speeches was that stones were pelted at the police personnel and the Government officials and firearms were discharged. As a result of which some police personnel and some other persons had received injuries. The only argument considered by the Supreme Court which had been urged by the Petitioners and which was accepted was that there was no material before the District Magistrate on the basis of which he could form the opinion that the detenus would act in future in a manner prejudicial to the maintenance of public order. The Supreme Court observed: "There is no doubt that preventive detention is not intended as a punitive measure, us a curtailment of liberty by way of punishment for an offence already committed. Section 3 of the Act clearly indicates that the power to detain thereunder can be exercised only with a view to preventing a person from acting in a manner which may prejudice any of the considerations set forth in the section. In the instant case, we are unable to discover any material to show that the detenus would act in the future to the prejudice of the maintenance of public order. Even if it is accepted that they did address the assembly of persons and incited them to lawlessness there is no material to warrant the inference that they would repeat the misconduct or do anything else which would be prejudicial to the maintenance of public order. The District Magistrate, it is true, has stated that the detention of the detenus was effected because he was satisfied that it was necessary to prevent them from acting prejudicially to the maintenance of public order, but there is no reference to any material in support of that satisfaction. We are aware that the satisfaction of the District Magistrate is subjective in nature, but even subjective satisfaction must be based upon some pertinent material. We are concerned here not with the sufficiency of that material but with the existence of any relevant material at all." The detention order was quashed by the Supreme Court.

18. Sri S.P. Gupta submits that in the instant case like the above referred case, there was no material before the District Magistrate on the basis of which he could be even subjectively satisfied that the Petitioner would act in future in a manner likely to prejudice public order.

19. We are aware that detention under the National Security Act is not to be resorted to as a punishment for a crime punishable under the ordinary laws of the land but can be ordered only in order to prevent the commission of acts prejudicial to the law and order in future. In the instant case, the District

Magistrate was personally present when the incident started and had reports before him of the Senior Superintendent of Police and the Station Officer, Police Station Colonelganj, Allahabad, about the incident in the Pandal and the incidents which are said to have taken place in the Collectorate and on the roads. From the nature of the acts said to have been committed by the Petitioners, he was satisfied that the Petitioners were inherently such persons who could repeat such acts in future. The satisfaction of the District Magistrate is subjective and cannot be said to have been arrived at on irrelevant considerations. In the case cited by Sri S.P. Gupta, the Supreme Court has found as a fact that there was no material at all on the basis of which the District Magistrate who made the detention order could have arrived at a conclusion that the two persons before the Supreme Court were likely to act in future in a manner prejudicial to the public order.

20. Another case on which strong reliance was placed by Sri S.P. Gupta is *Ramveer Jatav Vs. State of U.P. and Others*, . In this case there was only one ground of detention, viz., that the detenu was alleged to have committed the murder of Atrna Ram Shukla by firing at him in broad day light, near the clinic of Dr. Laxmi Narayana Gupta with an object of getting the land vacated. This act of the detenu created panic in the area and consequently disturbed public order. The Court was not satisfied that from this allegation alone, the District Magistrate, who was the detaining authority, could infer that the Petitioner was likely to commit acts in future which would disturb public order. The Court observed:

Now, it cannot be laid down as a bald proposition that one ground can never be sufficient for founding the satisfaction of the detaining authority for detaining a person. There are cases where one ground may be regarded as sufficient if the activity alleged is of such a nature that the detaining authority could reasonably infer that the detenu must be habitually engaged in such activity or there may be other circumstances set out in the grounds of detention from which the detaining authority could reasonably be satisfied even on the basis of one ground that unless the detenu is detained, he might indulge in such activity in future but here the only ground alleged against the Petitioner is that he, along with others, jointly committed murder in broad day light. This is the only ground given in the grounds of detention without any other circumstances from which any inference could be drawn that the Petitioner could be likely to commit such act, if left free.

21. So, this is also an authority for the proposition that a person can be detained only on one ground if the ground is such that the detaining authority can infer from the incident which led to the detention that the detenu was likely to disturb the public order again. Each case turns on its own facts.

22. Strong reliance was also placed by Sri S.P. Gupta on the Supreme Court case *Arun Ghosh Vs. State of West Bengal*, . It was observed by the Supreme Court in para 3 of its judgment as follows:

It is always a question of degree of the harm and its effect upon the community.

The question to ask is : Does it lead to disturbance of the current of life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.

23. In the case of State of U.P. Vs. Hari Shankar Tewari, , the Supreme Court observed in paragraph 8 as follows:

In the final analysis, therefore, one has to turn to the facts of each case to ascertain whether the matter relates to the larger circle or the smaller circle. An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquility. When communal tension is likely to disturb or dislocate the even tempo of the life of the community, an order of detention made in such a situation has to take note of the potentiality of the act objected to. No hard and fast rule can really be evolved to deal with problems of human society. Every possible situation cannot be brought under watertight classifications and a set of tests to deal with them cannot be laid down. As and when an order of detention is questioned, it is for the court to apply these well-known tests to find out whether the impugned activities upon which the order of detention is grounded go under the classification of public order or belong to the category of law and order.

24. On an examination of the facts of the present case, we are satisfied that when the Petitioners held out threats to the bidders at the public auction and accompanied the threats by acts which led to the disruption of the auction and panic in the Collectorate compound and on the public road, the Petitioners committed acts which disturbed public order and the acts were not merely of disturbing of law and order. It must be noticed here that what the Petitioners are alleged to have done is to have threatened two business rivals and some other potential bidders in the auction. This action, according to Mr. S.P. Gupta, learned Counsel for the Petitioners, can never amount to a disturbance of public order. An attempt to commit murder because of business rivalry, as in the case of Subhash Bhandari (supra), has been held not to be an act of disturbing the public order. But the action of the Petitioners when beyond merely threatening business rivals, they actually disrupted the auction and created panic in the area near about, amounts to disturbing public order. We, therefore, reject the argument of Sri S.P. Gupta that on the facts of this case, the threats held out by the Petitioners did not constitute a disturbance of public order. We must add here that not only the Petitioners threatened their business rivals but accompanied this with alleged firings at the police and the throwing of bombs. These acts coupled together do constitute disturbance of public order.

25. Sri S.P. Gupta then urged that the detaining authority, namely, Sri P.O. Chaturvedi, the District Magistrate of Allahabad, was disqualified from making the detention order as he was an eye witness at the initial stages of the incident in the pandal.

26. The National Security Act confers power of making detention orders on the Central Government and the State Governments by Section 3 thereof. Under Sub-section (3) of Section 3, the State Government, may, in the circumstances mentioned in the sub-section, direct that during such period as may be specified in the order, the District; Magistrate or a Commissioner of Police may also, if satisfied as provided in Sub-section (2), exercise the powers conferred under Sub-section (2), under which powers of detention are conferred on the Central Government or the State Government. There is an order of delegation of powers by the State Government in favour of all the District Magistrates in Uttar Pradesh. Sri P.C. Chaturvedi, the District Magistrate, Allahabad, has, therefore, power to make an order of detention. He is, in fact, the only person authorised by the State Government to make orders of detention within the territorial area of the district of Allahabad. There is no other authority which can order a detention except the State Government. The doctrine of necessity applies fully in this case.

27. Sri S.P. Gupta has suggested that in the circumstances that have arisen, the District Magistrate could have made a request to the State Government to make an order of detention, There is no manner of doubt that he could have done so but he was not required to do so. He was competent authority to make an order of detention and he has rightly made it. Accepting Sri S.P. Gupta's argument means delay in making the detention order as a reference could have been made to the State Government and the State Government not being aware of the local circumstances would have taken time in making enquiries before making the detention order. Delay defeats the very purpose of making the detention order.

28. Another argument of Sri S.P. Gupta is that in the instant case the satisfaction of the District Magistrate was personal and as such the Petitioner is being denied an opportunity of making a proper representation against the grounds of detention communicated to him. Representation, of course, lies to the State Government u/s 8(1) of the National Security Act, 1980. The detenu can make a representation even against the personal satisfaction of the District Magistrate even when the District Magistrate has witnessed a part of the incident as in the instant case. We see no difficulty in this. The detenu can bring to the attention of the State Government circumstances which would go to show that the personal satisfaction of the District Magistrate was misconceived or was otherwise vitiated.

29. Sri S.P. Gupta has then urged that the District Magistrate of Allahabad could not have made the detention order as he was a witness in the case.

30. The District Magistrate of Allahabad was the competent detaining authority to pass the order of detention if he was satisfied that the necessity of making the detention order exists. He may come to the satisfaction either on the basis of personal knowledge or on the basis of information received by him through any source. He was the only competent authority to make an order of detention within the District of Allahabad, the power of detention having been conferred on all the District Magistrates within the territory of Uttar Pradesh by the State

Government.

31. Sri S.P. Gupta suggests that in the circumstances where the detaining authority is a witness to the incident, he should make a reference to the State Government instead of making an order of detention. The District Magistrate could do so but he may also make an order of detention himself. If a serious situation arises which disturbs the public order, making a reference to the State Government may lead to a very dangerous situation. The State Government would naturally take time before it completes its enquiry and makes an order of detention. Delay may defeat the very purpose of an order of detention. The State of Uttar Pradesh has considered it fit and proper that all the District Magistrates should exercise the powers of detention. There is an order of delegation of powers by the State Government in favour of all the District Magistrates in Uttar Pradesh. In view of the fact that Sri P.C. Chaturvedi, the District Magistrate of Allahabad, was the only competent authority to make an order of detention within the District of Allahabad, the doctrine of bias is excluded. This is itself recognised by the Supreme Court, in the case of *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, . The Supreme Court in paragraph 26 of its judgment has said:

The objection on the ground of bias would have been excluded if the statute had expressed itself to the contrary. But nowhere do we find in the Act any evidence to establish such exclusion.

32. In view of this observation of the Supreme Court in the case cited by the learned Counsel for the Petitioner, we cannot accept the submission made on the doctrine of bias.

33. We agree with the learned Counsel for the Petitioners that the doctrine of fairness is now being recognised as applying to administrative action also. We do not find anything unfair in what has been done by the detaining authority in the facts and circumstances of the present case. It is unnecessary to refer the large number of cases cited by the learned Counsel for the Petitioners.

34. Sri R.P. Singh, Chief Standing Counsel, had urged at the outset of the case that these two writ petitions be not heard on the ground that the Petitioners were absconding. In view of a decision of a Division Bench of this Court holding that a person against whom a detention order has been passed but who has not been arrested can move a writ petition, we heard the writ petitions on merits. We express no opinion as to whether such petitions can or cannot be entertained.

35. In the result, writ petitions Nos. 7030 of 1988 and 8985 of 1988 fail and are dismissed. There will be no order as to costs. The interim orders made by this Court on 8-4-1988 and 21-4-1988 and which have been extended from time to time are vacated.