Ayub @ Pappu Khan Nawab Khan Pathan vs S.N. Sinha And Anr on 21 August, 1990

Equivalent citations: 1990 AIR 2069, 1990 SCR (3) 927

Bench: A.M. Ahmadi, M.M. Punchhi

PETITIONER:
AYUB @ PAPPU KHAN NAWAB KHAN PATHAN

Vs.

RESPONDENT:
S.N. SINHA AND ANR.

DATE OF JUDGMENT21/08/1990

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
AHMADI, A.M. (J)
PUNCHHI, M.M.

CITATION:
1990 AIR 2069 1990 SCR (3) 927
1990 SCC (4) 552 JT 1990 (3) 50
1990 SCALE (2)273

ACT:
Gujarat Prevention of Anti-Social Activities Act, 1985: Sections 2(c) and 3(1)--"Dangerous person"--Habitually committing offences --What is--Not such a person--Detained--Detention order--Validity of.
Words and Phrases: 'Habitually'--Meaning of.

HEADNOTE:
The Petitioner was detained under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985. The grounds were served within time and referred to 3 crimes registered in various police stations, on the allegation that the petitioner and his associates armed with deadly weapons committed offences punishable under sections 307,451,143, 147 and 148 IPC, and section 25(1) of the Arms Act. The grounds also referred to 8 crimes under the provisions of the Prohibition Act where he was described as a bootlegger. Earlier detention under the Act and release by

the High Court were also mentioned. It was specifically mentioned that in one of the three cases, the petitioner was remanded to judicial custody and since there were chances of his being released, the detention was ordered to prevent him from acting prejudicially to the maintainance of public order.

In this Writ Petition, the Petitioner has challenged the validity of the detention order passed by the Commissioner of Police.

It was contended on behalf of the petitioner that the detaining authority has not applied his mind inasmuch as relevant material has not been taken into account and there were absolutely no grounds warranting detention.

This Court allowed the Petition on. 7.8.1990 for reasons to be given later.

Giving reasons for allowing the Writ Petition,

HELD: 1. A person is said to be a habitual criminal who by force

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of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be a continuity in the commission of those offences. [931C-D]

Vijay Narain Singh v. State of Bihar and Ors., [1984] 3 SCC 14 and Rashidmiya @ Chhava Ahmedmiya Shaik v. Police Commissioner, Ahmedabad and Anr., [1989] 3 SCC 32 1, relied on.

2. Unless there is material to show that the detenu committed any one of the acts mentioned in the definition, he can not come within the meaning of 'Bootlegger'. Though in the grounds there is a reference to 8 crimes under the provisions of the Prohibition Act, the detenu, does not figure in any one of these cases. There is no material whatsoever of his involvement in any manner in any of these prohibition cases. Therefore, he can not be said to be a bootlegger. [930F-G]

3. Admittedly, the detenu was acquitted in two of the three criminal cases against him. The third case, viz., Crime No. 96/90 was pending investigation and the detenu was granted bail. Thus. this is the only case pending against him, and the main allegation was that he, out of sudden excitement, fired the revolver and as a result of which one Mehbub Khan received injury on his leg and again he fired a shot into the air and that he and his associates were moving around in a jeep threatening the people in the area. But in the order passed by the learned Sessions Judge on 13.3.90 while releasing the petitioner on bail, it is noted that the said Mehbub Khan had no fire-arm injury at all and as a matter of fact, the public prosecutor conceded the same. The learned Sessions Judge has also noted that no medical evidence is produced to prove that any one was injured during the alleged occurrence. If such is the only crime pending in which the detenu is alleged to have participated in, it can

by no stretch of imagination be said that he comes within the meaning of 'dangerous person' and the conclusions drawn by the detaining authority are bereft of sufficient material as required under Section 2(c) of the Act. This betrays non-application of mind by the detaining authority. Consequently, the grounds on which the detention order is passed. are irrelevant and non-existing. [932B-E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 687 of 1990.

(Under Article 32 of the Constitution of India). B .K. Mehta, Ms. Shalini Soni and P.H. Parekh for the Peti- tioner.

D.A. Dave, A. Sachthey, C.B. Nath, B.K. Jad, Ashish Verma and M.N. Shroff for the Respondents.

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J. We allowed the Writ Petition vide our Order dated 7.8.90 and released the detenu for the reasons to be given later. We accordingly proceed to give the reasons.

The petitioner was detained under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('Act' for short) by an Order dated 13.3.90 passed by the Commissioner of Police, Ahmedabad City. The grounds were served within time. The said order is challenged in this Writ Petition. It is mainly contended that the detaining authority has not applied his mind in passing the detention order inasmuch as the relevant material has not been taken into account at the time of passing the order. Even other- wise, according to the learned counsel, there are absolutely no grounds which warrant detention. It is also further submitted that the provisions of the Act are not attracted even if all the averments in the grounds are accepted. To appreciate this contention it becomes necessary to refer to the contents of the grounds in brief.

The detenu is a resident of Ahmedabad City. There is a reference in the grounds to about three crimes registered in various police stations and they are Crime Nos. 122/86, 70/88 and 96/90. In all these cases it is alleged that the detenu and his associates armed with deadly weapons like Swords, Dhariya and fire-arms committed offences punishable under Sections 307, 45 1, 143, 147, 148 I.P.C. and Section 25(1) of the Arms Act. So far as the first two crimes are concerned admittedly the detenu was acquitted. In Crime No. 96/90, in which investigation is pending, bail was granted. Then there is a reference to 8 crimes under the provisions of the Prohibition Act registered in Kagdapith Police Sta- tion on the basis whereof he is described as a 'bootlegger' within the meaning of Section 2(b) of the Act. Some ended in conviction and some are pending in trial but admittedly the detenu does not figure in any one of these cases. Thereafter it is stated in the grounds in general that the detenu was having dangerous weapons and with the aid of his associates, has been subjecting innocent citizens to physical beating causing physical injuries and that he and his associates have been threatening and beating the peace loving citizens and people residing and doing their business in the said area

are afraid and an atmosphere of fear, danger and terror prevails and that the detenu comes within the meaning of 'dangerous person' as defined under Section 2(c) of the Act The detain- ing authority has also referred to an earlier detention order dated 20.8.85 passed against the detenu and noted that he was released by the High Court. Then the detaining au- thority proceeds to mention that taking action under Section 59(1) of the Bombay Police Act, 1951 is not possible and also is not appropriate under the circumstances. In the concluding paragraph it is particularly mentioned that the detenu was a strong-headed 'dangerous person' and he was using the dangerous weapons creating an atmosphere of ter- ror. Towards the end it is specifically mentioned that in respect of Crime No. 96/90 registered with the Sattelite Police Station. the Chief Judicial Magistrate had remanded him to the judicial custody till 15.3.90 and there are chances of his being released, therefore to prevent him from acting prejudicially to the maintenance of public order, the detention was ordered.

Section 2(b) of the Act defines 'bootlegger' which reads thus:

> "bootlegger" means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contra- vention of any provision of the Bombay Prohibition Act, 1949, (Bom. XXV of 1949) and the rules and orders made thereunder, or any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any recepta- cle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing;"

Unless there is material to show that the detenu committed any one of the acts mentioned in the definition, he can not come within the meaning of 'bootlegger'. Though in the grounds there is a reference to 8 crimes under the provi- sions of the Prohibition Act, the detenu, as already men- tioned, does not figure in any one of these cases. There is no material whatsoever of his involvement in any manner in any of these prohibition cases. Therefore, he can not be said to be a bootlegger.

Now we shall consider whether he comes within the mean- ing of 'dangerous person' as defined in Section 2(c) of the Act which reads as under:

> "2(c) "dangerous-person" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (45 of 1860), or any of the offences punishable under Chapter V of the Arms Act, 1959 (54 of 1959)".

As per this definition, a person, who 'habitually' commits or attempts to commit or abets the commission of offences mentioned therein either by himself or as a member of or leader of a gang is a "dangerous person". The expression 'habitually' is very significant. A person is said to be a habitual criminal who by force of habit or inward disposi- tion is accustomed to commit crimes. It implies

commission of such crimes repeatedly or persistently and prima facie there should be a continuity in the commission of those offences. In Vijay Narain Singh v. State of Biharand Ors., [1984] 3 SCC 14 the majority explained the meaning of the word 'habitually' thus:

> "The expression 'habitually' means 'repeatedly' or 'persist- ently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated. individual and dissimilar acts are neces- sary to justify an inference of habit. It connotes frequent commission of acts or commissions of the same kind referred to in each of the said sub-clauses or an aggregate of simi- lar acts or commissions".

Rashidmtva (C) Chhava Ahmedmiya Shaik v. Police Commission- er, Ahmedabad and Another, [1989] 3 SCC 321 is yet another case where the scope of Section 2(c) of the Act came up for consideration before this Court and it is held that:

> "Therefore, this solitary incident would hardly be suffi- cient to conclude that the detenu was habitually committing or attempting to commit or abetting the commission of of- fences."

It is submitted that in the instant case except Crime No. 96/90 there is no other case pending and the other two crimes which are referred to in the grounds ended in acquit- tal and the definition of 'dangerous person' in Section 2(c) does not include cases under the Prohibition Act. Therefore the detenu is not a habitual offender so as to come within the meaning of 'dangerous.person'. We find considera- ble force in this submission. We have gone through the entire record. The learned counsel appearing for the State could not place any material from which it can be inferred that the petitioner was a habitual offender. No doubt a lengthy counter is filed in which it is repeatedly averred in general that the detenu was indulging in prejudicial activities but as already mentioned, only Crime No. 96/90 is pending investigation and from this alone we can not infer that the petitioner is a dangerous person' within the mean- ing of Section 2(c) of the Act. To satisfy ourselves we have also carefully perused the FIR in Crime No. 96/90 and the complaint annexed to the same. The main allegation against the detenu was that he, out of sudden excitement, fired the revolver and as a result of which one Mehbub Khan received injury on his leg and again he fired a shot into the air and that he and his associates were moving around in a jeep threatening the people in the area. But in the order passed by the learned Sessions Judge on 13.3.90 while releasing the petitioner on bail, it is noted that the said Mehbub Khan had no fire-arm injury at all and as a matter of fact, the public prosecutor conceded the same. The learned Sessions Judge has also noted that no medical evidence is produced to prove that any one was injured during the alleged occur- rence. If such is the only crime pending in which the detenu is alleged to have participated in, it can by no stretch of imagination be said that he comes within the meaning of 'dangerous person' and the conclusions drawn by the detain- ing authority are bereft of sufficient material as required under Section 2(c) of the Act. This betrays non-application of mind by the detaining authority. Consequently, the grounds on which the detention order is passed, are irrele- vant and non-existing. These are the reasons which weighed with us for not upholding the detention.

G.N. Petition allowed.