Smt.Shashi Agarwal vs State Of Up & Ors on 12 January, 1988

Equivalent citations: 1988 AIR 596, 1988 SCC (1) 436, AIR 1988 SUPREME COURT 596, 1988 (1) SCC 436, 1988 (1) ALLCRILR 406.2, 1988 (15) IJR (SC) 419, 1988 CRIAPPR(SC) 46, 1988 SCC(CRI) 178, 1988 (1) JT 83, (1988) 1 SCJ 325, (1988) ALLCRIR 226, (1988) ALLCRIC 122, (1988) 1 ALLCRILR 406(2), (1988) 1 CRIMES 542

Author: K.J. Shetty

Bench: K.J. Shetty, B.C. Ray

PETITIONER:
SMT.SHASHI AGARWAL

Vs.

RESPONDENT:
STATE OF UP & ORS.

DATE OF JUDGMENT12/01/1988

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
RAY, B.C. (J)

CITATION:
1988 AIR 596 1988 SCC (1) 436
JT 1988 (1) 83 1988 SCALE (1)40
CITATOR INFO :
R 1988 SC 934 (14,15)
E&F 1989 SC2027 (20)
D 1989 SC2265 (20)
R 1989 SC2274 (10)
F 1990 SC 516 (9)
RF 1990 SC1196 (15)
E 1990 SC1202 (8,12)
RF 1990 SC1763 (5)
RF 1991 SC1640 (12)

ACT:
National Security Act, 1980 : Sections 3 and 12-Detention-Detenu involved in Criminal Case-In jail-Whether order of detention can be made in respect of such detenu-Mere apprehension that, if enlarged on bail, likelihood of acting prejudicially to interest of public order-Whether

sufficient to justity the detention order. C

HEADNOTE:

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detention order was passed and served on the detenu on Augus
t 3, 1987, while he was in jail for five non-bailable offences alleged to have been committed by him on May 19,1987. The detention order alleged that as the detenu who was in jail was trying to come out on bail, and there was enough possibility of his being bailed out, it was necessary to detain him in order to prevent him from doing acts against maintenance of public order.

The detention was approved by the Government under s. 12 (1) of the National Security Act, 1980, after the receipt of the Advisory Board's opinion. The validity of the detention was challenged in the writ petition before this Court.

On the question: whether the detention could be justiaed solely on the ground that the detenu was trying to come out on bail and there was enough possibility of his being bailed out and he would then act pre judicially to the interest of the public order.

This Court quashed the detention order on December 18, 1987.

Giving the reasons for its decision,

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HELD: Section 3 of the National Security Act does not preclude the authority from making an order of detention against a person while he is in custody or in jail, but the relevant facts in connection with the making of the order would make all the difference in every case. The validity of the order of detention has to be judged in every individual case on its own facts. [597C-D]

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Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail, the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the court granting bail may not be suffi cient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order. [598B-C]

In the instant case, there was no material made apparent on record that the detenu, if released on bail, was likely to commit ac tivities prejudicial to the maintenance

of public order. The detention order cannot be justified merely on the ground that the detenu was trying to come out on bail and there was enough possibility of his being bailed out. [598F-G]

Poonam Lata v. M. L. Wadhawan, [1987] 4 SCC 48 relied on.

Alijan Mian and another v. District Magistrate, Dhanbad, [1983] 3 SCR 930; Ramesh Yadav v. DistrictMagistrate, Etah and ors., [1985] 4 SCC at p. 234 and Binod Singh v. District Magistrate, Dhanbad, [1986] 4 SCC 416 at 421, explained

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 735 of 1987.

(Under Article 32 of the Constitution of India). U.R. Lalit, P. Lal and Mrs. Rani Chhabra for the Petitioner.

Yogeshwar Prasad and Dalveer Bhandari for the Respondent.

The following order of the Court was delivered JAGANNATHA SHETTY, J. The arguments of this case conc luded at the close of the court hours on December 18, 1987. We then nlade the following order:

"We will give the reasons later. But we make the operative order here and now.

The detention order is quashed. The detenu will be set at liberty forthwith."

Here are the reasons:

In this writ petition, the validity of the detention of Arun Aggarwal has been challenged. He has been detained by the District Magistrate, Meerut by an order dated August 3, 1987 made under sec. 3(2) of the National Security Act, 1980. The Government, after the receipt of opinion of the Advisory Board, has approved the detention as required under sec. 12(1) of that Act. The impugned order reads as under:

"office of the District Magistrate, Meerut ORDER As I am satisfied as District Magistrate, Meerut that issue of order to prevent Shri Arun Aggarwal, son of Shri Rattan Singh, resident of 234, 'L' Block, Shastri Nagar, Police Station Medical, Meerut from doing act against the maintenance of public order is necessary.

Therefore, in exercise of power given in sub- section 3 of sec. 3 of National Security Act, 1980 (Act No. 65/ 1980), I hereby give order that the above said Shri Arun

> Aggarwal, son of Shri Rattan Singh, resident of 234, 'L' Block, Shastri Nagar Police Station Medical, Meerut be detained in general category in District Meerut Jail in the custody of the Supdt. Of the said jail under sub- section 2 of Sec. 3 of the above said Act.
>
> Passed today dated 3.8.1987 under my signature and seal "

There are as many as five grounds of detention set out in the order. All relate to the offence said to have been committed by Arun Aggarwal on May 19, 1987. Two of the offences are said to have been committed at 9.OO A.M. On that day, the other two offences at 9.30 A.M. and the fifth one was alleged to have been committed between 9.30 A.M. to 1.00 P.M. On the same day. In each of the grounds there is a mention to the following effect:

> "Due to your above ill acts there broke out com munal riots causing heavy loss to properties and lives of the people and your this ill act has spread fear and terror in the general public of Meerut City. In this manner, you have corrlmitted such an act which is against public law and order. "

All the cases referred to in the grounds are non- bailable offences. In relation of those offences, Arun Aggarwal was arrested as an accused on August 2, 1987. The detention order was passed and served on August 3, 1987. The order particularly stated: "At present you are detained in District Jail, Meerut and you are trying to come out on bail and there is enough possibility of your being bailed out."

Before we consider the main ground raised in the petition, we may make one point clear. The order of detention repeatedly states that the detenu committing the alleged five offences set out in the detention order was the cause for breaking out communal riot in Meerut City. But in the counter-affidavit filed on behalf of the respondents, it has been stated "that the communal riots broke out in Meerut on April 14, 1987 on the occasion of Shab-e-Earat. That was controlled by the Administration. However, in the night intervening between 13/19 May, 1987, again a communal riot broke out." But all the offences said to have been committed by the detenu were after 9.00 A.M. on May 19, 1987. It was not in the intervening night between May 18/19. It was, therefore, inaccurate to state that the communal riot broke out due to the incidents attributed to the detenu on May 19, 1987.

The primary question however, is whether the detention of Arun Aggarwal could be justified solely on the ground that he was trying to come out on bail and there was enough possibility of his being bailed out and he would then act prejudicially to the interest of the public order. Mr. Yogeshwar Prasad, learned counsel for the State, sought to justify the detention order relying upon the decision of this Court in Alijan Mian and another v. District Magistrate, Dhanbad, [1983] 3 SCR 930. The counsel also said that the subsequent two decisions of this court to which we will make reference later, are not in tune with the ratio of the decision in Alijan Mian's case.

We will first consider what the case about in Alijan Mian case. The detention order considered in that case contained statement that the District Magistrate was satisfied that the detenu was likely to be released on bail and if he was allowed to remain at large, he would be indulging in activities prejudicial to the maintenance of public order. This court refused to interfere with that detention order on the ground that the detaining authority was justified in forming that opinion. The conclusion of this Court was evidently on the basis of material placed before the detaining authority in that case.

The principles applicable in these types of preventive detention cases have been explained in several decisions of this Court. All those cases have been considered in a recent decision in Poonam Lata v. M. L. Wadhawan, [1987] 4 SCC 48. The principles may be summarised as follows.

Section 3 of the National Security Act does not preclude the authority from making an order of detention against a person while he is in custody or in jail, but the relevant facts in connection with the making of the order would make all the difference in every case. The validity of the order of detention has to be judged in every individual case on its own facts. There must be material apparently disclosed to the detaining authority in each case that the person against whom an order of preventive detention is being made is already under custody and yet for compelling reasons, his preventive detention is necessary.

We will now refer to the two decisions which according to Mr. Yogeshwar Prasad are not in tune with the ratio of the decision in Alijan Milan's case (supra). In Ramesh Yadav v. District Magistrate Etah and Ors., [1985]4 SCC 232 at p. 234, this Court observed:

> "On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raisec;. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed."

What was stressed in the above case is that an apprehension of the detaining authority that the accused if enlarged on bail would again carry on his criminal activities is by itself not sufficient to detain a person under the National Security Act.

Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the Court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order. That has

been made clear in Binod Singh v. District Magistrate Dhanbad, [1986] 4 SCC 416 at 421, where it was observed:

> "A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Etemal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens. "

There is, to our mind, nothing in these two decisions which runs counter to the decision in Alijan Mian's case (supra).

In the instant case, there was no material made apparent on record that the detenu, if released on bail, is likely to commit activities prejudicial to the maintenance of public order. The detention order appears to have been made merely on the ground that the detenu is trying to come but on bail and there is enough possibility of his being bailed out. We do not think that the order of detention could be justified only on that basis.

These were the reasons upon which we quashed the order of detention.

N.P.V.