

## Asha Ram vs State on 8 June, 1950

**Equivalent citations: AIR1950ALL709, AIR 1950 ALLAHABAD 709**

### JUDGMENT

Sapru, J.

1. This is an application by Sri Asha Ram, a Lecturer in the Allahabad University, praying that this Court may be pleased to release him in the exercise of the powers of habeas corpus which it enjoys under Article 226 of the Constitution.

2. Mr. Asha Ram has been in preventive detention in pursuance of an order issued by the District Magistrate of Allahabad on 24th April 1950. This order was issued by the District Magistrate under Section 3, Preventive Detention Act. Section 3 (1) of that Act empowers the Central Government or the State Government to make an order directing a person to be detained if it is satisfied with respect to any person that it is essential to prevent him from acting in any manner prejudicial to--(i) the defence of India, the relations of India with foreign powers, or the security of India, or (ii) the security of the State or the maintenance of public order, or (iii) the maintenance of supplies, and services essential to the community. Sub-clause (2) of Section 3 empowers, inter alia, a District Magistrate or the Sub-Divisional Magistrate. . . if satisfied, as provided in Sub-clause (ii) and (iii) of Clause (a) of Sub-section (1) to exercise the power conferred by the said sub-section.

3. It will be noticed that under this Sub-section it is open to the District Magistrate to order preventive detention of persons whose actions are prejudicial to the maintenance of public order. The case, therefore, against Mr. Asha Ram is that his acts were prejudicial to the maintenance of public order.

4. On the date on which this order was passed by the District Magistrate of Allahabad, the Preventive Detention Act had been declared to be invalid by a Bench of this Court. An application for a writ of habeas corpus was moved on behalf of Mr. Asha Ram on 28th April 1950 and it first came up before Bind Basni Prasad J. That learned Judge did not appear to be satisfied with the correctness of the Bench decision of this Court and directed a reference of the question raised by the application of Mr. Asha Ram to a larger Bench. By an order of the learned Chief Justice, Mr. Asha Ram's application was referred to a Full Bench. The order of Bind Basni Prasad J. was passed on 8th May 1950. Thereafter, on 19th May 1950 the Supreme Court held that the Preventive Detention Act was not ultra vires of the Constitution. That Court further held that Section 14, Preventive Detention Act was ultra vires of the Indian Legislature. The position, as I see, is that on the date on which Mr. Asha Ram's detention was ordered by the District Magistrate of Allahabad there was a Bench decision of this Court which had held that the Preventive Detention Act, in so far as it had provided for preventive detention, for the maintenance of public order or maintenance of supplies and service essential to the community, was invalid. The Supreme Court has now held that the decision by a

Bench of this Court, in regard to the invalidity of the Preventive Detention Act, as a whole, was erroneous. That decision of the Supreme Court is binding upon me and I have to proceed, therefore, upon the assumption that the Act, under which Mr. Asha Ram is being detained, is valid in law. This being the position, it is unnecessary to comment on the propriety or - impropriety of the District Magistrate's assumption that the Bench decision of this Court was necessarily incorrect.

5. It strikes me that it is the peculiar privilege of Courts of law to interpret the laws of the Constitution and of the State and it is not for executive officers--high or low--to act upon the assumption that interpretations of law given by the highest Court of law within their jurisdiction are necessarily incorrect. As the matter has now been finally settled by the Supreme Court, it is unnecessary to make any comment on the procedure adopted by the District Magistrate of Allahabad.

6. What I have got to see in a case under the Preventive Detention Act is whether, as the law stands after the interpretation of the Supreme Court, it is open to the Court to look into the grounds, supplied to the detenu, in order to determine whether the detention is proper or improper. The position, as I understand it, is that Courts can look into the grounds to see whether they are precise and definite and that the principle laid down in *Rex v. Durga, Das*, 1948 A. L. J. 491: (A. I. R. (36) 1949 ALL. 148 : 50 Cr. L. J. 2141 F. B. ) is still good law. It was held in that case that they must be of such a nature as to enable the detenu to make an effective representation to the appropriate authority. In the Full Bench referred to above it was observed by Malik C. J. that "the clear intention of the Legislature is that the detenu should know why the detaining authority consider that he may act in a manner prejudicial to public safety, etc. Before the detaining authority can be satisfied that a person is likely to act in the future in a, manner prejudicial to public safety, etc., it must have some grounds on which that opinion is based. These grounds may, in some cases, be the previous conduct of the detenu or the information that the detaining authority has about his future intentions, or his association with an organisation that has been acting in a manner prejudicial to the public safety, etc. The detenu is not entitled to know the evidence, nor the source of the information but (this is important from the point of view of this case) he must be furnished with the grounds for his detention and sufficient details to enable him to make out a case, if he can for the consideration of the detaining authority."

According to the law laid down by the Full Bench of this Court, it is not open to the detaining authority to make the provisions of the section, requiring details of grounds, to be made nugatory by giving such vague, indefinite or incomplete information that the detenu is not able to make an effective representation. It is important to note that it was observed by Malik C. J. that "if only some of the grounds are conveyed to the detenu and others which have weighed with the detaining authority are not conveyed to him a fortiori he can not give any explanation about the grounds, that have not been conveyed to him."

It is, therefore, imperative that the grounds for detention which have weighed with the detaining authority must all be conveyed to the detenu. It was further laid down by the Full Bench that it was further competent to this Court to disserve for itself whether on the grounds supplied the detaining authority could be honestly satisfied that the detenu was about to act in a manner prejudicial to

public tranquillity. It is not suggested that it is open to the Court to question the reasonableness or otherwise of the satisfaction of the detaining authority but it is certainly competent to the Court to satisfy itself that, on the materials supplied to the detenu, the detaining authority could be honestly satisfied as to the correctness of the order passed by it.

7. In the able argument, which has been advanced to me by Mr. Dwivedi, it has been emphasised that it is for this Court to decide whether all or some of the grounds are, in fact, in connection with the maintenance of public order and whether the detaining authority could honestly believe that they had any such connection. It is further contended that it is for this Court to decide whether the grounds disclose as direct and causal connection with the maintenance of public order and whether they disclose only a remote and, what may be called, problematical connection with public order. It has to be remembered that 'maintenance of public order' is the reason mentioned in the order of detention. It is, therefore, incumbent upon me to examine the grounds to see whether there is any direct and causal connection between them and the maintenance of public order. If there is no direct and causal connection between them and the maintenance of public order, then the position that will follow is that it cannot be assumed, as a matter of course, that the detaining authority exercised its mind in an intelligent manner in regard to the case against the detenu and inasmuch as it did not do so it cannot be said to have acted in law honestly. With these remarks I proceed to examine the grounds of his detention.

8. The first ground alleged against him is that Shri Asha Ram attended a secret meeting on 17th October 1949 at the house of Asghar Ali and tried to chalk out a programme for the 'breach of peace'. The first thing to note about it is that the word "secret" is vague. It may mean much or nothing. It may mean a private meeting, a committee meeting or a meeting which is not open to the public. From the use of the word "secret" the necessary inference cannot be drawn that the meeting was of a conspiratorial character. Mr. Asha Ram is alleged to have attended this meeting at the house of Asghar Ali. Who this Asghar Ali is, what his activities are and whether he has been connected with any activity likely to disturb the peace or tranquillity of the country, is not stated in the grounds. The address of Asghar Ali, his whereabouts, and his occupation in life find no mention in the grounds supplied to him. It is assumed by the detaining authority that Mr. Asha Ram knows Mi Ali and it is on that basis, that the ground is founded. It is stated that what was attempted to be done at the house of Mr. Asghar Ali was to chalk out a programme for 'the breach of peace.' The words "breach of peace" are of the vaguest character possible. From the use of the words "breach of peace", the necessary inference cannot be drawn that what the detaining authority had in mind was a breach of public order. An attempt to commit an affray or assault would constitute a breach of peace. Some would go to the length of saying that a libellous statement might endanger peace. It was, in my opinion, incumbent on the District Magistrate to be more specific in his reference in this paragraph. He should have given an indication of the nature of the breach of peace he had in mind. 'Breach of public order' is an expression which I can understand. The use of the words 'breach of the peace' conveys nothing. A breach of peace may affect only a limited number of persons but breach of public order as was well argued by Mr. Dwivedi, conveys the idea of action on the part of individuals acting as a community calculated to disturb the peace. I am, therefore, clear in my mind that ground No 1 has no causal or direct connection with the maintenance of public order and is in any case, far too vague and indefinite for the detenu to make an effective representation.

9. I come now to ground No. 2. In this ground it is alleged against the detenu that he attended a meeting on 25th October 1949 in the Communist Party office in which it was decided to take out a procession in defiance of an order under Section 144, Criminal P.C. and that as a result of this decision an illegal procession was taken out in Balaipur Railway Colony. There is nothing before me which would show that the Communist Party is an illegal organisation under any notification of the Uttar Pradesh Government, or that there is any ban on the Communist Party office. There is nothing in this ground to indicate whether the object with which the meeting was held had been notified to Mr. Asha Ram or whether Asha Ram knew what question the meeting was going to consider and what decision it was going to take. There is nothing to suggest that Mr. Asha Ram took any part in the formulation of policies at that meeting, or in the shaping of decisions at that meeting. The charge is, therefore, of a vague and indefinite nature.

10. I now come to ground No. 3. The allegation against the detenu is that he helped one Suryadutt Dube on 7th December 1949 to go 'underground'. There is nothing to indicate as to who this Surya Dutt Dube is, what his activities had been in the immediate past and how or why he had gone underground. From the mere use of the word "underground" it cannot be assumed that Suryadutt Dube had gone underground for a reason connected with the maintenance of public order. Suryadutt Dube might have gone underground because there was some charge of theft or robbery or dacoity or corruption pending against him. From the mere fact that Suryadutt Dube went underground, the conclusion does not necessarily follow that he went underground because of some activity connected with the maintenance of public order. This ground too is vague and indefinite and is not of a sufficiently precise nature to enable the appellant to answer the charge against him.

11. I come now to a more vital charge. It is alleged against Mr. Asha Ram that he organised a strike and a demonstration in the University on 29th January 1960 which would have resulted in a 'breach of peace.' Undoubtedly, it is extremely reprehensible on the part of a University lecturer to organise students' strike and demonstrations. Such strikes are subversive of discipline in Universities. While the right to strike or to organise strikes may be fundamental from the point of view of collective bargaining in a society based upon free enterprise, students can not be looked upon as workers employed in an industrial establishment. They are in statu pupillari and it is most objectionable to encourage them to go on strikes against University authorities. All this, however, is beside the point. Whether Mr. Asha Ram, on the assumption that the charge against him is true, was right or wrong in organising students' strikes, appears to me to be wholly irrelevant from the point of view of the maintenance of public order. It is nowhere alleged that the strike organised by him, objectionable as it may have been, from an educational point of view, was of an illegal nature. It is nowhere alleged that the demonstration organised by him was of an illegal nature. The argument that the strike would have led to a breach of the peace is, if I may say so without meaning any disrespect to the learned District Magistrate who passed the order, of a purely legal character. If this argument is accepted then the position has to be faced that there is a risk of 'breach of peace' in every strike. If this argument is accepted, then the position will necessarily have to follow that all strikes must be declared illegal because all strikes, accompanied as they are by picketing, have a tendency to lead to a breach of peace. The argument can be pushed a little further and one can even arrive at the conclusion that even constitutional agitation may lead, if it is pushed too far, to some breach of the peace. I am unable, therefore, to understand the reasoning by which the District Magistrate came to

the conclusion that there was a causal connection between a University strike, which can be tackled by University authorities, and the maintenance of public order. There is nothing in this ground to suggest that the strike which Mr. Asha Ram was organising, reprehensible as it was from an educational point of view, condemnable as it may have been from the point of view of University discipline, was an illegal strike such as would have resulted in a breach of public peace. So far as this ground is concerned, no causal and direct connection has been established between the strike and the maintenance of public order.

12. The fifth ground alleged against Mr. Asha Ram was that he participated in a meeting on "Independence Day" i. e., 26th January 1950, in Mohammad Ali Park in defiance of an order under Section 144, Criminal P. C. There is no indication in this ground that the order was ever served upon him. There is no indication that he ever knew of the existence of this order. There is no indication that he wilfully and intentionally, knowingly and deliberately defied the order. There is no indication of the part, if any, that he took in the meeting alleged to have been held in Mohammad Ali Park. The ground, therefore, is not of a sufficiently precise nature to enable any detenu to make any effective representation to the detaining authority or to the advisory tribunal which has been set up under the Act.

13. I now come to the last ground of detention against the applicant Asha Ram. It is alleged that on 13th March 1960 he helped one Sant Singh Yusuf to go 'underground'. Who this Sant Singh Yusuf is, what the activities of this Yusuf are, for what reason he had gone underground, the detenu is left to guess for himself. It is assumed that the detenu knows all about Sant Singh Yusuf and would be able to represent to the detaining authority, without any farther details, his own case, so far as this charge is concerned. How and why some description of the activities of Sant Singh Yusuf would have endangered public order, particularly when the Act had, as originally framed, even made a disclosure of the grounds not possible to Courts of law is something which I am completely unable to understand.

14. On the material which I can gather from the grounds supplied to Mr. Asha Ram, it cannot be said that the detaining authority was not influenced largely by irrelevant and inadmissible considerations. On this part I may be permitted to quote Chagla Ag. C. J. in *In re Rajdhar Kalu Patil*, 50 Bom. L. R. 183; (A. I. R. (85) 1948 Bom. 334: 49 Cr. L. J. 465 F. B.):

"If a reason is given for the detention of a person which is not within the scope and ambit of the Act conferring the power upon the Government to detain, then the whole order is vitiated, notwithstanding the fact that the other reasons given are good, because something may have operated upon the mind of the detaining authority which is foreign and extraneous to the purpose of the Act."

In this case I have not been able to discover even one good solid reason which, I can say, is completely free from extraneous considerations. I may also quote on this point the recent observation of a learned single Judge of the East Punjab High Court in the case of *Har Tirath Singh v. The Crown*, A. I. R. (87) 1950 (East) Punjab 222: (51 Cr. L. J. 1237). Kapur J. observed as follows:

"If a reason is given for detention to the person which is not within the scope and ambit of the Act conferring the power upon the detaining authority then the whole order is vitiated notwithstanding the fact that other reasons given are good, because one can never say what it was that operated upon the mind of such authority, whether it was something which was within the power of that authority or something which is foreign and extraneous for the purposes of the Act."

Before I part with the case I may point out that as far as I have been able to gather, according to the law laid down by the Supreme Court in its recent decision on preventive detention, in the case of Gopalan, (A.I.R. (37) 1950 S. C. 27) the grounds must be connected with the order of preventive detention. The position is that if it is found that they are not so connected, it cannot be said that the requirements of Article 22(1)(3)(5) of the Constitution had. been complied with. Failure to establish a connection between them and the order of detention would make the order invalid. Thus, according to the latest view of the Supreme Court, it is open to a detained person to contend before this Court that the grounds on which the order has been made have no connection at all with the maintenance of public order or have no connection with the circumstances or class of cases under which a preventive detention order could be supported under Section 12.

15. The result is that I have come to the conclusion on an analysis of the grounds supplied to Mr. Asha Ram, that the order of detention is not justified. I hold, therefore, that the order of detention is illegal and direct that he be released forthwith.