

Smt. Bimla Rani vs Union Of India And Others on 25 September, 1989

Equivalent citations: 1989 SCR, SUPL. (1) 241 1989 SCC (4) 509, AIRONLINE 1989 SC 163

Author: M.M. Dutt

Bench: M.M. Dutt, K.N. Saikia

PETITIONER:
SMT. BIMLA RANI

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 25/09/1989

BENCH:
DUTT, M.M. (J)
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DUTT, M.M. (J)
SAIKIA, K.N. (J)

CITATION:
1989 SCR Supl. (1) 241 1989 SCC (4) 509
JT 1989 (3) 737 1989 SCALE (2) 660

ACT:
National Security Act, 1980 Section
3--Detention--Detenu in jail in a case registered under
Section 307 I.P.C.--Detention Order--Based on solitary inci-
dent, but gave rise to communal tension and apprehension of
communal riot--Whether valid and legal.

HEADNOTE:

A detention order under sub-section (2) read with sub-section (3) of Section 3 of the National Security Act, 1980 was passed against the detenu on the ground that the detenu, who was in jail in a case registered under Section 307 IPC was trying for release on bail, and there was every possibility of his being released, and that he was likely to indulge in activities prejudicial to public order and public life. The order was confirmed by the State Government on the

report of the Advisory Board.

In a Writ Petition filed in this Court it was contended that as the grounds of detention did not disclose any past history of any crime by the detenu, nor was there any material on record to show that the incident referred to in the grounds would be repeated in future, the detention order based on a solitary incident and on an apprehension that the detenu was likely to act prejudicially to the interest of public order, in the event of his being released on bail, was illegal.

Dismissing the writ Petition, the Court,

HELD: When an incident was such that it created communal tension and the authorities were apprehensive of the breaking of a communal riot, such incident in itself may be sufficient, and may afford justification for the satisfaction of the detaining authority for the detention of the detenu in order to prevent him from indulging in such activity prejudicial to public order even though there is no antecedent act of similar nature or past history of commission of crime by the detenu. [246C-D]

In the instant case, the situation that emerged as a result of the incident was grave and serious and prejudicially affected public order.

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It may be a solitary incident but it gave rise to communal tension and there was apprehension of a communal riot. The police report on the incident is a sufficient material for the subjective satisfaction of the detaining authority that there was disturbance of tranquility and harmony of public life. The detaining authority had taken into consideration all the circumstances including the grave and serious situation that emerged as a result of the incident. There were cogent reasons apparent on the face of the record for justifying the order of detention. [245H; 246A-B]

Alijan Mian v. District Magistrate, Dhanbad, [1983] 3 SCR 939 and Ayya v. State of U.P. and another, [1989] 1 SCC 374, relied on.

Ramesh Yadav v. District Magistrate, Etah, [1985] 4 SCC 232 and Smt. Shashi Aggarwal v. State of U.P. and others, [1988] 1 SCC 436, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 296 of 1989.

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

B. Dutta, Additional Solicitor General, Yogeshwar Pd., Ms. Sucharita, Ms. A Subhashini, Dalveer Bhandari, Ms. Rachna Joshi and Rachna Gupta for the Respondents. The Judgment of the Court

was delivered by DUTT, J. In this writ petition under Article 32 of the Constitution of India, the mother of the detenu, Shri Pra-veen Kumar Gupta, has prayed for the quashing of the detention order of her son dated May 6, 1989 passed under sub-section (2) read with sub-section (3) of section 3 of the National Security Act, 1980, as confirmed by the order dated May 11, 1989 of the State of U.P. on the report of the Advisory Board. There is also a prayer for issuance of an appropriate writ in the nature of habeas corpus directing the respondents to release the said Praveen Kumar Gupta forthwith.

The grounds of detention, as communicated to the detenu by the District Magistrate, Meerut, are as follows:

"That on 30.4.89 at about 9.15 P.M. at Delhi Road, Kesarganj, P.S. Delhi Gate, Meerut, you along with your other accomplice with the common intention to kill Babli showing your wrath gave him a gun injury and also threatened to give gun shot to those persons who came in his rescue. On the basis of informa-

1 was registered against you u/s 307 IPC in P.S. Delhi Gate, Meerut, which is pending. By your above misdeed fear and terror was spread in the hearts of public in the markets, Mela Manchandi and in the city of Meerut. Thus you have committed an act which is prejudicial to the maintenance of public order. You are at present in jail and are trying to be released on bail and there is every possibility of releasing you on bail. On the basis of above grounds and reasons I am satisfied that you are likely to indulge in the activities prejudicial to the public order and public life and with a view to prevent you from acting in any manner prejudicial to the public order and public life, it has become necessary to detain you."

It is apparent from the grounds of detention that a crime case was registered against him under section 307 IPC and he was arrested and detained in jail.

Along with the grounds of detention, a copy of the report of the Inspector-in-Charge, P.S. Delhi Gate, Meerut, was also supplied to the detenu in jail. The relevant portion of the report is extracted below:

"On 30.4.89 at busy road (Delhi Road) at about 21.15 P.M. he without any reasons gave a gun shot to one Babli S/o Sh. Bhura R/o Mohalla Purwa Hamidnagar who had come for reading Namaz, as a result of which he was seriously injured. At present he is in serious condition in the hospital. This site is the most sensitive area of the city for communal point of view. On receiving the information of the gun injury to Babli by the Muslim community on the pious occasion of Ramzan there spread great excitement. Thousands of people from community gathered. There was an apprehension of communal threat in the city and area. People closed their shops feeling threat of communal riots and the road became quiet due to fear and terror. Above all, on receiving the news of this incident the people of famous Manchandi Mela started running to their houses. This news of fear and terror created due to this

incident was also published in the newspaper Amar Ujala on 1.5.89. Sh. Bhura S/o Dilsad R/o 29, Purwa Hamid Hussain got lodged one report in the Police of 89 under section 307 IPC is pending consideration. Sh. Praveen Kumar is in jail for commission of this offence.

Praveen Kumar has given application for bail in the above matter and there is every possibility of his release on bail. He is a man of strong means. After release on bail he would again commit such serious act which would be prejudicial to communal harmony and cause adverse reaction in general public especially in Muslim community. Therefore the detention under National Security Act is recommended to above Praveen."

At this stage, it may be mentioned that the detenu has since been granted bail, but in view of the order of detention, he is not released. Mr. Lalit, learned Counsel appearing on behalf of the petitioner, has strongly urged that as the grounds of detention does not disclose any past history of commission of any crime by the detenu and the incident that has been referred to in the grounds being the solitary incident and there having been no materials on record to show that such an incident would be repeated in future, the order of detention is illegal and should be quashed. Counsel submits that the only ground on which the detaining authority had placed reliance for making the order of detention was that there 'was a chance of the detenu being released on bail by the criminal court and, in that event, it was apprehended that he would act prejudicially to the interest of public order. It is submitted that such apprehension is not supported by any material on record and, accordingly, the detention order should be quashed.

In support of the above contention, learned Counsel has placed much reliance upon a decision of this Court in Smt. Shashi Aggarwal v. State of U.P. and others, [1988] 1 SCC

436. In that case, this Court observed as follows:

"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."

In laying down the above proposition of law, this Court has placed reliance upon its two earlier decisions in Alijan Mian v. District Magistrate, Dhanbad, [1983] 3 SCR 939 and in Ramesh Yadav v. District Magistrate, Etah, [1985] 4 SCC

232. It is true that the incident on April 13, 1989 was a solitary one so far as the detenu was concerned, but the question is whether the incident had prejudicially affected the public order. In other words, whether it had affected the even tempo of life of the community. As observed in Alijan Mian's case (supra), it is for the detaining authority to have the subjective satisfaction about the apprehension of the breach of the public order and that even one incident may be sufficient to satisfy the detaining authority in that regard depending upon the nature of the incident. It is not disputed by Mr. Lalit that a single incident may disturb the tranquility and the even tempo of life of the community.

In the grounds of detention, it has been stated "By your above misdeed, fear and terror was spread in the hearts of public in the markets, Mela Manchandi and in the city of Meerut. Thus you have committed an act which is prejudicial to the maintenance of public order." This is not a mere bald statement of the detaining authority without any material in support of the same. We have already extracted above the report of the Inspector-in-Charge, P.S. Delhi Gate, Meerut, which has been taken into account by the detaining authority at the time he passed the order of detention. It has been already noticed that a copy of the said report was served on the detenu along with the grounds of detention. A situation that emerged as a result of the incident, as stated in the said report, was grave and serious and prejudicially affected public order. It may be a solitary incident, but it gave rise to communal tension and there was apprehension of a communal riot as alleged in the report. The report, in our opinion, is a sufficient material for the subjective satisfaction of the detaining authority that there was disturbance of tranquility and harmony of public life. It is not correct to say that there is no material for the apprehension that if released on bail, the detenu will indulge in such criminal acts affecting public order. Really, the detaining authority had taken into consideration all the circumstances including the grave and serious situation that emerged as a result of the incident. In our opinion, when an incident was such that it created communal tension and the authorities were apprehensive of the breaking of a communal riot, such incident in itself may be sufficient and may afford justification for the satisfaction of the detaining authority for the detention of the detenu in order to prevent him from indulging in such activity prejudicial to public order even though, as submitted by the learned Counsel, there is no antecedent acts of similar nature or past history of commission of crime by the detenu. In this connection, we may refer to a recent decision of this Court in *Ayya v. State of U.P. and Another*, [1989] 1 SCC 374. In that case, this Court observed as follows:

"Even a single instance of activity tending to harm "public order" might, in the circumstances of its commission, reasonably supply justification for the satisfaction as to a legislative apprehension of a future repetition of similar activity to the detriment of "public order"."

The above observation fully supports the view we have taken. In our opinion, there were cogent reasons apparent on the face of the record justifying the order of detention. In the circumstances, we are of the view that the detention of the petitioner was justified. The rule nisi is discharged and the writ petition is dismissed.

N.P.V.
missed.

Petition dis-

