Supreme Court of India
Dr. Ramakrishna Rawat vs District Magistrate, Jabalpur ... on 11 October, 1974
Equivalent citations: AIR 1975 SC 90, 1975 CriLJ 46, (1975) 4 SCC 164
Author: R Sarkaria
Bench: A Gupta, R Sarkaria
JUDGMENT R.S. Sarkaria, J.

1. The petitioner was detained by an order, dated June 4, 1973, under Section 3 of the Maintenance of Internal Security Act, 1971 (to be hereinafter called the Act) by the District Magistrate, Jabalpur, on the ground that it was necessary to do so to prevent him from acting in any manner prejudicial to the maintenance of public order. This detention order was revoked by the State Government in September, 1973 and the petitioner was released from custody.

2. On January 25, 1974, he was again arrested by the police under Section 151 of the CrPC on the ground that he was designing to commit cognizable offences, the commission of which could not otherwise be prevented. He was produced before a Magistrate the same day and was remanded to jail custody till January 31, 1974. In the meantime, on January 2%, 1974, the District Magistrate, Jabalpur made an order of his detention under Section 3(1)(a)(ii). It was with a view to prevent him "from acting in a manner prejudicial to the maintenance of public order". The order was served on him in jail the same day. The grounds of detention were supplied to the petitioner on February 1, 1974. They run as under:

(i) That for sometime past you have been persistently engaged in the commission of acts involving breaches of law and public peace and highly prejudicial to maintenance of public order.

(ii) That, as the leader of a section of students at Jabalpur, you have been persistently encouraging and inciting the local students to commit acts of indiscipline, defiance of authority, breach of law, including violence as well as similar other acts highly prejudicial to maintenance of public order; This has actually disturbed public peace and order in the city on a number of occasions, more particularly on the 23rd January 1974, when considerable loss of public and private property occurred, injuries were caused to several persons and imposition of prohibitory orders including 'Curfew' became necessary.

(iii) The boldness and determination with which you have acted leaves no doubt that if you are allowed to remain at large any longer, you would act in furtherance of these prejudicial acts, thereby further seriously endangering maintenance of public order. Hence, with a view to prevent you from acting in such manner, your detention in jail has been considered necessary.

3. Particulars of these grounds were given in the Schedule annexed thereto. The material part of those particulars reads:

(1) to (5) ...

6. Soon after your release, you again became busy in organising the students and encouraging and inciting them to commit acts which are highly detrimental to public peace and order.

7. On the night of 10-11-1973, vou and your associates gathered a crowd of about 300 students at Police Station Lordganj and created a highly explosive situation by raising provocative and inflammatory slogans and shoutincg filthy abuses. On the night of 14-11-1973 you and your associates gathered a crowd of about 200 students at Police Station Civil Lines,. some of whom were carrying iron rods and sticks. Incited and led by you, they not only shouted provocative and inflammatory slogans and abuses but also threatened violence and arson if the rival students' leaders were not arrested immediately.

8. On the night of . 15-12-1973, you and your associates led a crowd of students, which was armed with iron rods and sticks, to the Natraj Hotel near Karam Chand Chowk and caused extensive damage to property there. Thereafter, you and your associates assaulted and grievously injured one Santosh Rahul, belonging to the rival group of students, and as a result an offence under Sections 307/ 147/148/149/506, I.P.C. was registered at Police Station Lordganj and you are now facing prosecution for the aforesaid offence.

9. After the above-mentioned incident, you and your associates tried to pressurise the Administration not to prosecute you all under Section 307, I.P.C. \part from other tactics, a relay hunger strike was organised from 3-1-1974 to 10-1-1974 in front of the Collector's residence in Pachpedi. Each day provocative and filthy slogans and abuses were shouted and meetings of students were held in which inflammatory speeches were given. This hunger strike was given up on 11-1-1974 when a procession was taken out and a meeting was again held. In this meeting, apart from other provocative and inflammatory utterances, it was openly announced that the Chief Minister would be burnt alive if he comes to Jabalpur.

10. More recently, you have taken very active part in the agitation of the Madhya Pradesh Madhyamik Shikshak Sangh, although you have no direct connection with this body or their demands. On the 19th & 20th January, 1974, you and your associates declared that the students would fully support the agitation of the teachers and would also organise a 'Band' in Jabalpur on the 23rd January. On 21-1-1974, 60 students of your group headed by you resorted to 24 hours hunger strike at Malviya Chowk and the call for Jabalnur Band was reiterated and published. This campaign was kept up on 22nd January and, as a result, on the morning of 23rd January, 1974, a large number of students collected at Malviya Chowk and & big procession was formed which was headed by you and your associates This procession passed through the main parts of the city raising very provocative and inflammatory slogans. Ultimately, near the Collectorate an explosive situation was created when the miscreants disturbed public peace and order and indulged in heavy stone-pelting. As a result, prohibitory orders under Section 144, Criminal P. C. had to be imposed and the mob had to be dispersed by use of mild force. Thereafter, there was further trouble in certain parts of the city where smaller crowds collected and indulged in unruly and violent behavior. At Bada Fuwara the situation became more serious and it was with considerable difficulty that control was established after use of tear gas and mild lathi-charge. The anti social elements committed grave acts of damage to public and private property worth about Rs. 30,000/-, caused injuries to 74 persons and even

attempted looting of shops. Ultimately, curfew had to be insposed to control the situation. Thus, the incidents of 23rd January, 1974 caused serious dislocation and disturbance of public peace and order in the city and were occasioned mainly because of the efforts made by you and your associates in this direction.

11. Even after the grave incidents of the 23rd January, 1974, you and your associates have now given a call for 'Band' on the 1st February, 1974. You have also asked the students and people to collect in large numbers at Bada Fuwara at 10.00 A. M. on the 1st February, 1974. This call is in flagrant violation of the prohibitory orders under Section 144, CrPC.

Sd/.- Samar Singh District Magistrate, Jabalpur.

4. The petitioner moved the High Court of Madhya Pradesh for a writ of habeas corpus under Article 226 of the Constitution on the ground that his detention was illegal. That petition was dismissed by a Division Bench of the High Court on April 3, 1974. He has now moved this Court under Article 32 of the Constitution for the same relief.

5. The first contention of Mr. Santokh Singh, learned Counsel for the petitioner is that an order of preventive detention cannot be validly made and served upon a person who is in jail custody. Since on January 28, 1974, proceeds the argument, the petitioner was in jail custody, the detention order was invalid. Counsel has referred to the decisions of this Court in Rameshwar Shaw v. District Magistrate Burdwan (1964) and Makhan Singh Tarsikka v. State of Punjab (1964) in support of this contention.

6. A careful examination of these decisions would show that it was not laid down as an absolute proposition of law that a valid detention order cannot be made in any circumstances against a person in jail custody. In Rameshwar Shaw's case (1964) AIR 1964 (supra), Gajendragadkar, J. (as he then was) speaking for the Court stated the position thus:

As an abstract proposition of law, there may not be any doubt that Section 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail: but the relevant fact in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be pased against a person in jail. Take for instance, a case where a person has been sentenced to rigorous imprisonment for ten years. It cannot be seriously suggested that soon after the sentence of imprisonment is pronounced on the person, the detaining authority can make an order directing the detention of the said person after he is released from jail at the end of the period of the sentence imposed on him. In dealing with this question, again the considerations of proximity of time will not be irrelevant. On the other hand, if a person who is undergoing imprisonment, for a very short period, say for a month or two or so, and it is known that he would soon be released from jail, it may be possible for the authority to consider the antecedent history of the said person and decide whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released the question as to whether an order of detention can be passed against a

person who is in detention or in jail, will always have to be determined in the circumstances of each case.

7. To the same effect are the observations in Makhan Singh Tarsikka's case (1964) (supra).

8. These two cases are distinguishable from the instant case. Both Rameshwar Shaw and Makhan Singh Tarsikka were in jail as undertrial prisoners. That was why it was held that it could not be rationally postulated that if they were not detained they would act in a prejudicial manner. Here in the present case, the petitioner at the time of the service of the order of detention was in jail neither as an undertrial prisoner for an indeterminate period nor as a convict serving a long distance, but as a detenu in proceedings under Sections 151/117, Criminal P. C. The ratio of the aforesaid cases is therefore not applicable. The case in point is Masood Alam v. Union of India . There Masood Alam was arrested under Sections 151/117/107, Criminal P. C. and committed to jail custodv. He was in such custody when the order of detention was served on him. The order was made on the ground that his detention was necessary to prevent him from acting in a manner prejudicial to the security of State and maintenance of pub-lie order. Two of the contentions urged on behalf of Masood Alam were : Firstly, that on the facts of that case preventive proceedings under Chapter VIII of the CrPC only could be taken and simultaneous action under Section 3(1) of the Act amounted to an abuse and misuse of the Act; Secondly, that the service of the detention order on the petitioner whilst he was in jail custody, was bad. Reliance for this contention was placed on Rameshwar Shaw's case (1964) AIR 1964 and Makhan Singh Tarsikka's case (supra).

9. The first contention was negatived in these terms:

If the grounds are relevant and germane to the object of the Act then merely because the objectionable activities covered thereby also attract the provisions of Chapter VIII, Criminal P. C, the preventive detention cannot for that reason alone be considered to be mala fide provided the authority concerned is satisfied of the necessity of the detention as contemplated by the Act The jurisdiction of preventive detention sometimes described as jurisdiction of suspicion depends on subjective satisfaction of the detaining authority This jurisdiction is thus essentially different from that of judicial trials for the commission of offences and also from preventive security proceedings in criminal courts, both of which proceed on objective consideration of the necessary facts for judicial determination by courts of law and justice functioning according to the prescribed procedure. Merely because such jurisdiction of courts can also be validly invoked does not by itself exclude the jurisdiction of preventive detention under the Act.

In regard to the second, the Court said:

There is no legal bar in serving an order of detention on a person who is in jail if he is likely to be released soon thereafter and there is relevant material on which the detaining authority is satisfied that if freed, the person concerned is likely to indulge in activities prejud- cial to the security of the State or maintenance of public order The real hurdle in making an order of detention against a person already in custody is based on the view that it is futile to keep a person in dual custody under two different orders but this objection cannot hold good if the earlier custody is without doubt likely

to cease soon and the detention order is made merely with the object of rendering it operative when the previous custody is about to cease.

10. Recently in Haradhan Saha v. The State of West Bengal W. P. No. 1999 of 1973, D/- 21-8-1974 : the learned Chief Justice speaking for the Court reiterated the same principle thus:

Merely because a detenu is liable to be tried in a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the CrPC would not by itself debar the Government from taking action for his detention under the Act.

11. In the case in hand, as already noticed, the petitioner was in jail custody in proceedings under Section 151, Criminal P. C. That custody was obviously of a short duration. The mere service of the detention order on the petitioner in jail would not therefore invalidate the order. On the basis of the antecedent activities of the petitioner in the proximate past, the detaining authority could reasonably reach its subjective satisfaction about his tendency or inclination to act in a manner prejudicial to the maintenance of public order, after his release on the termination of the security proceedings under the Code.

12. We therefore reject this contention.

13. Next it is contended that the detention order is illegal inasmuch as grounds Nos. 2, 3, 4 and 5 in the Schedule are the same on the basis of which the previous order of detention, dated June 4, 1973 (that had been revoked) was founded. Since it cannot be predicated, proceeds the argument, how far the subsequent detention is based on those old, stale grounds, the impugned order of detention stands vitiated as a whole. Support for this contention is sought from the decisions of this Court in Shibban Lal Saxena v. The State of Uttar Pradesh AIR 1954 and Masood Alam's case AIR 1973 (supra).

14. Although attractive, the argument is not based on sound premises. What the Counsel characterises as Grounds in paragraphs 2, 8, 4 and 5 of the Schedule, are not, in fact, the grounds on which the impugned order of detention is based. These paragraphs contain only a narration of the antecedents or the past history of the detenue. The conclusion of fact with particular reference to the incident of January 23, 1974 which embraces large scale disturbance of public order caused by the students at the instigation of the petitioner finds specific mention in Clause (ii) of the grounds of detention which have been quoted in extenso earlier. There is no specific reference therein to any incident which happened prior to June 4, 1973. The particulars of the grounds are given in paragraphs 7, 8, 9, 10 and 11 of the Schedule annexed to the 'grounds of detention'.

15. Paragraph 1 of Schedule recites that the petitioner was from 1957 to 1970 a student and then from January, 1971 to November, 1972, a lecturer in Jabalpur University. Paragraph 2 narrates how in the years 1970, 1971 and 1972 the petitioner was on three separate occasions proceeded against under Sections 107/117, Criminal P. C. and was facing prosecution, under Sections 294/506/337, I.P.C. in respect of an incident that took place on September 3, 1972. Paragraph 3 refers to an incident of September, 1972 and paragraph 4 to a happening of January 16, 1973 and consequent

proceedings under Sections 107/117, Criminal P. C. against the petitioner and others. Paragraph 5 also refers to acts done by the petitioner in May, 1973. After reciting this chain of events in paragraphs 2, 3, 4 and the opening part of paragraph 5, it is stated that as a consequence of these, the petitioner was by an order dated June 4, 1973, ordered to be detained under Section 3(1) of the Act and that this order was subsequently revoked by the State Government in September, 1973. The petitioner was released accordingly. The past events recited in paragraphs 2, 3, 4 and 5 constitute one chain culminating in the previous detention of the petitioner. They constitute only the background and not the grounds of detention on which the present order is based. It is the particulars given in paragraphs 7 to 11 of the Schedule that truly relate to the grounds on which the detaining authority based its satisfaction for the purpose of the impugned order. The rule in the cases cited by the learned Counsel has therefore no application here.

16. Lastly, it is urged that the matter mentioned in paragraph 10 of the Schedule is irrelevant and not germane to public order. The organizing of a Band or a hunger strike simpliciter, it is argued, is an innocuous act and does not by itself have any direct connection with the maintenance of public order. It is further stressed that it is nowhere mentioned in that paragraph that the petitioner himself committed any violent act or indulged in the looting. These were the acts of antisocial elements with whom the petitioner, according to the Counsel, had nothing in common. The petitioner had admittedly no connection with the Madhya Pradesh Madhyamik Shikshak Sangh and he was not responsible for anything done by the said Sangh.

17. We do not find any substance in this contention, also. The contents of paragraph 10 are to be read as a whole and as a part of the series of incidents enumerated in the preceding paragraphs 7, 8 and 9. The truth or otherwise of what is mentioned in those paragraphs cannot be tested objectively by judicial standards. We have to accept the correctness of the incidents and the facts stated therein. The petitioner has been painted in all these incidents as the prime-mover of the gear which resulted in disturbances accompanied by violence, looting and mischief on a wide scale. These particulars are neither vague, nor are they irrelevant to the object of the detention. On the basis of these activities, the detaining authority could reasonably gauge the tendency of the petitioner to act in a manner prejudicial to the maintenance of public order in future. For all the foregoing reasons, the petition fails and is dismissed.