Supreme Court of India
Alijan Mian And Another vs District Magistrate, Dhanbad on 13 September, 1983
Equivalent citations: 1983 AIR 1130, 1983 SCR (3) 939
Author: R Misra
Bench: Misra, R.B. (J)

PETITIONER:
ALIJAN MIAN AND ANOTHER

Vs.

RESPONDENT:
DISTRICT MAGISTRATE, DHANBAD

DATE OF JUDGMENT13/09/1983

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1983 AIR 1130 1983 SCR (3) 939
1983 SCC (4) 301 1983 SCALE (2)280
CITATOR INFO :
R 1984 SC1334 (21)
R 1985 SC 18 (13)
RF 1988 SC 596 (6,7,10,12)
RF 1988 SC1835 (8)
R 1989 SC2027 (20)
R 1989 SC2265 (13)
D 1990 SC 516 (8)
RF 1990 SC1196 (11)
RF 1990 SC1202 (10)

ACT:
National Security Act , 1980 (Act 65 of 1980)-Orders of detention, passed under sub-section (2) of Section 3 of the Act, on the ground that "the subject who is in jail and is likely to be released on bail, if allowed to be at large, will indulge in activities prejudicial to the maintenance of public order"-Whether the detention is bad either on the ground that there was no case made out for apprehension of breach of public order or that the criminal proceedings having been initiated, no case of preventive detention arises or that the case is one of law and order and not a case of public order or that there being no allegation in the First Information Report, the detaining authority cannot invent a new ground to fall under sub-section (2) of section 3 of the Act.

HEADNOTE:

Dismissing the petitions, the Court

^

HELD: 1. The clear words of the detention order show that the detaining authority was alive to the fact that the petitioners were in jail custody on the date of passing of the detention orders, but it was satisfied that if they were enlarged on bail, of which there was every likelihood, they would create problems of public order and, therefore, it was necessary to prevent them from doing so. The position would have been entirely different if the petitioners were in jail and had to remain in jail for a pretty long time, in which situation there could be no apprehension of breach of public order from them. [944 C-E]

2. Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. In the circumstances the pendency of a criminal prosecution is no bar to an order of preventive detention, nor is an order of preventive detention a bar to prosecution. It is for the detaining authority to have the subjective satisfaction whether in such a case there are sufficient materials to place the person under preventive detention in order to prevent him from acting in a manner prejudicial to public order or the like in future. [944 F-H]

K.M. Chokshi v. State of Gujarat, [1979] 4 SCC 14, applied.

3.1. The difference between 'law and order' and 'Public order' is now well settled. Applying the well settled law enunciated in Ram Ranjan Chatterjee

940

v. The State of West Bengal, [1975]3 SCR 301, to the two incidents, it is clear that throwing a bomb in a large gathering where a cultural programme was going on at the dead of night resulting in the public running helter and skelter to save their lives makes out a case of 'public order' inasmuch as it disturbed the tranquillity and the even tempo of life of the public. Therefore, if the detaining authority was satisfied that the two incidents make out a case of apprehension of breach of public order, the detention order cannot be faulted. [945 G; 946 E-G]

Ram Ranjan Chaterjee v. State of West Bengal, [1975] 3 S.C.R. 301 followed.

Saya Mala v. Home Secretary, Government of J & K , AIR 1982 SC. 1297, distinguished.

3:2. The two incidents in the instant case were sufficient for the detaining authority to initiate proceedings for preventive detention. It is for the detaining authority to have the subjective satisfaction

about the apprehension of the breach of public order from the incidents. Even one incident may be sufficient to satisfy the detaining authority. It all depends upon the nature of the incident. [947 G-H]

4. The absence of an allegation about the disturbance of public order in the two First Information Reports will not affect the position because there was additional material before the detaining authority which satisfied him about the apprehension of breach of public order from the petitioners in case they were enlarged on bail. [948 C-D]

JUDGMENT:

EXTRAORDINARY ORIGINAL JURISDICTION : Writ Petition (Criminal) Nos. 678 and 679 of 1983.

(Under article 32 of the Constitution of India) Miss R. Vaigai for the Petitioners.

D. Goburdhan for the Respondent.

The Judgment of the Court was delivered by MISRA J. These two connected petitions seek to challenge the orders of detention dated 2nd December, 1982 passed by the District Magistrate, Dhanbad in exercise of powers conferred by subs. (2) of s. 3 of the National Security Act, 1980 (No. 65 of 1980) read with notification No. 3183/C dated 15th of October, 1982 of the Government of Bihar.

Alijan Mian, the petitioner in the first petition, is an employee of the Eastern Coalfields Limited working at Khudia Colliery as a dumper driver. Jadunandan Sah, the petitioner in the second Petition, is also a dumper driver in Gopi Nathpur Colliery.

The object of the order of detention as indicated in the impugned order was to prevent the petitioners from acting in any manner prejudicial to the maintenance of public order. The grounds of detention supplied to the petitioners are in identical terms and they are as follows:

> "1. That on 15/16.10.82, at about 2.30 A.M. the subject alongwith Jadunandan Sah and 3 others went to Khudia Colliery and dragged one Shri Ram Briksh Chauhan who were witnessing a cultural programme and started assaulting him in presence of large gathering who were there to see the cultural programme. This created great panic and alarm in the area and adversely affected the public order. Hearing the cry, Mussafir Chauhan came there but seeing the subject and his associates engaged in the assault of his brother started running away for his life. The subject and his associates, with an intention to establish criminal supremacy and to kill him threw two bombs on him, resulting in grievous injury to Mussafir Singh. This adversely affected the public order and persons who were witnessing the cultural programme started running helter and skelter for their lives. This refers to Nirsa P.S. Case No.

189 dated 6.10.1982 u/s 307/34 IPC, 3/5 Explosive Sub. Act. Thus the subject acted in a manner prejudicial to the maintenance of the public order.

2. That on 8.11.82, at about 11.30 A.M. the subject alongwith Rambriksh Singh, Jadunandan Mahato and Chandra Shekhar Singh armed with bombs, gun, etc. went to the house of Ram Naresh Chauhan in Khudia Colliery. One of his associates under the direction and guidance of the subject opened fire on Shri Chauhan resulting in grievous injury to him. Opening of gun fire in a thickly populated residental colony of Khudia Colliery created great panic and alarm in the area and adversely affected public order. This refers to Nirsa P.S. case No. 208 dated 8.11.82 u/s. 307/34 I.P.C. and s. 27 Arms Act. Thus the subject acted in a manner prejudicial to the maintenance of public order. The subject is in jail and is likely to be released on bail. As such the detention order was served in jail. In the circumstances I am satisfied that if he is allowed to remain at large, he will indulge in activities prejudicial to the maintenance of public order.

For prevention of such activities, I consider his detention necessary. Shri Alijan Mian is informed that he may make a representation in writing against the order under which he has been detained. His representation, if any, may be addressed to the Deputy Secretary, Home (Spl.) Department, Govt. of Bihar, Patna and forwarded through the Superintendent of jail, Dhanbad as early as possible."

The orders of detention were sequal to two incidents of 15/16th October and 8th November, 1982 giving rise to two criminal cases, Nirsa P.S. Case No. 189 and Nirsa P.S. Case No. 208 of 1982 respectively. The petitioner Alijan Mian was arrested on 8th November, 1982 while the petitioner Jadunandan Sah was arrested on 12th of November, 1982 in connection with the aforesaid incidents.

The petitioners made representation against the order of detention in both the cases and the representations were on the same pattern. Their stand was that they were active members of the union of workers of the colliery, viz., the Colliery Mazdoor Sabha There were other unions in the said collieries and due to some inter union rivalry a first information report against them was lodged by persons belonging to a rival union for an alleged offence under ss. 307/34 IPC and 27A of the Arms Act. In the first information report it was alleged that on 8th November the informant was shot in his hand near his house by one Ram Bilas Singh and that at that time the petitioners were with the said Ram Bilas Singh. Their intention was to kill him because he did not participate in the strike in the colliery. In the first information report regarding the other.

incident under ss. 307/34 IPC and ss. 3/5 of the Explosive Substances Act it was alleged that on the night of 15/16th October 1982 around 2 A.M. the petitioners were beating the brother of the informant near a school, where some function was going on. On seeing the petitioners in the company of others the informant started running but he was chased by others and a bomb was thrown at his back but he escaped. But Alijan Mian, the petitioner, threw another bomb and the informant was injured at his back and fell. The said persons intended to kill him. The petitioners in

both the cases were later on granted bail but the two criminal cases mentioned above are still going on.

By an order dated 13th December, 1982 the Government approved the detentions order and informed the petitioners by letter dated 30th December, 1982 of the reference of their representation to the Advisory Board asking them to appear in person before the Board. The petitioners appeared in person before the Advisory Board.

The Advisory Board eventually gave an opinion that the order of detention was justified. On the basis of that report the Government ordered detention of the petitioners upto 2nd December, 1983. The petitioners challenged the order of detention by filing writ petitions in the High Court but the same were dismissed in limine. The petitioners instead of filing an appeal against the order of the High Court rejecting the writ petitions have chosen to file the present petitions under Art. 32 of the Constitution.

The contentions raised on behalf of the petitioners are fourfold:

> 1. The petitioners were in jail when the detention orders were passed, when there was absolutely no apprehension of breach of public order from them.
>
> 2. The two incidents on the basis of which the proceedings for preventive detention had been started were already the subject matter of criminal proceedings and in the circumstances the proceedings for preventive detention were absolutely uncalled for.
>
> 3. At the most the two incidents make out a case of law and order and not a case of public order.
>
> 4. In the absence of any allegation in the first information reports of the two incidents about the apprehension of the breach of public order from the petitioners the detaining authority could not invent a ground regarding apprehension of breach of public order from the petitioners.

It may be pointed out at the very outset that the detaining authority was alive to the fact that the petitioners were in jail custody on the date of the passing of the detention orders as will be clear from the following statement in the grounds of detention:

> "The subject is in jail and is likely to be released on bail. In the circumstances I am satisfied that if he is allowed to remain at large, he will indulge in activities prejudicial to the maintenance of public order."

The position would have been entirely different if the petitioners were in jail and had to remain in jail for a pretty long time. In such a situation there could be no apprehension of breach of 'public order' from the petitioners. But the detaining authority was satisfied that if the petitioners were enlarged on bail, of which there was every likelihood, they would create problems of public order. It

was, therefore, necessary to prevent them from acting in any manner prejudicial to public order.

As regards the contention that the criminal proceedings as well as the proceedings for preventive detention could not go together, it may be pointed out that preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. In the circumstances the pendency of a criminal prosecution is no bar to an order of preventive detention, nor is an order of preventive detention a bar to prosecution. It is for the detaining authority to have the subjective satisfaction whether in such a case there are sufficient materials to place the person under preventive detention in order to prevent him from acting in a manner prejudicial to public order or the like in future.

The learned counsel for the petitioners relied upon K.M. Chokshi v. State of Gujarat(1) in support of the contention that in view of the criminal prosecution of the petitioners for the two incidents, proceedings for the preventive detention were uncalled for. In that case the Court after an analysis of the various cases cited observed:

> The principles energing from a review of the above cases may be summarised in the following way: The ordinary criminal process is not to be circumvented or short-circuited by ready resort to preventive detention. But, the possibility of launching a criminal prosecution is not an absolute bar to an order of preventive detention. Nor is it correct to say that if such possibility is not present to the mind of the detaining authority the order of detention is necessarily bad. However, the failure of the detaining authority to consider the possibility of launching a criminal prosecution may, in the circumstances of a case, lead to the conclusion that the detaining authority had not applied its mind to the vital question whether it was necessary to make an order of preventive detention."

It is obvious from the above observation in the case cited on behalf of the petitioners that criminal prosecution is not an absolute bar to an order of preventive detention. If the detaining authority has the subjective satisfaction that it was necessary to detain the petitioners to prevent them from indulging in activities prejudicial to public order, he could certainly order detention of the petitioners. In the instant case the detaining authority clearly stated that although the petitioners were in jail, they were likely to be enlarged on bail and in that case there would be apprehension from the petitioners regarding the breach of public order.

This leads us to the third contention that the two incidents makes out a case of law and order and not a case of public order. The difference between 'law and order' and 'public order' is by now well settled. In Ram Ranjan Chatterjee v. The State of West Bengal(1) this Court observed:

> "It may be remembered that qualitatively, the acts which affect 'law and order' are not different from the acts which affect 'public order'. Indeed, a state of peace of orderly tranquillity which prevails as a result of observance of enforcement of internal laws and regulations by the Government, is a feature common to the concept of 'law and order' and 'public order. Every kind of disorder or contravention of law

> affects that orderly tranquillity. The distinction between the areas of 'law and order' and 'public order' as pointed out by this Court in Arun Ghosh v. State of West Bengal, "is one of degree and extent of the reach of the act in question of society." It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only. These concentric concepts of 'law and order' and 'public order' may have a common 'epicentre', but it is the length, magnitude and intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting 'public order' from that concerning 'law and order'."

Applying the well-settled law on the question we have to determine whether the two incidents make out a case of 'law and order' or 'public order'. It was for the detaining authority to have the subjective satisfaction that there was apprehension of breach of public order from the petitioners. In one incident one of the petitioners threw a bomb in a large gathering where a cultural programme was going on at the dead of night whereupon the public started running helter and skelter to save their lives. That will in our opinion make out a case of 'public order' in as much as it disturbed the tranquillity and the even tempo of life of the public. The second incident was also of the same nature. If the detaining authority in the circumstances was satisfied that the two incidents make out a case of apprehension of breach of public order we find no infirmity in the order.

Reliance was also placed upon Jaya Mala v. Home Secretary, Govt. of J. and K.(1). In that case also a criminal case was started on the basis of an incident and there being no suggestion that the witnesses were not forthcoming in connection with the alleged infraction of law it was not clear why normal procedure of investigation, arrest and trial was not found adequate to thwart the criminal activities of the detenu, and in these circumstances this Court held that there was non-application of mind of the detaining authority which became evident from the frivolity of grounds on which the detention order was founded. The order of detention was, therefore, invalid. But this Court did lay down the law in the following terms:

> "It is not for a moment suggested that power under the preventive detention law cannot be exercised where a criminal conduct which could not be easily prevented, checked or thwarted, would not provide a ground sufficient for detention under the preventive detention laws. But it is equally important to bear in mind that every minor infraction of law cannot be upgraded to the height of an activity prejudicial to the maintenance of public order. If every infraction of law having a penal sanction by itself is a ground for detention danger looms large that the normal criminal trials and criminal courts set up for administering justice will be substituted by detention laws often described as lawless law."

The facts of that case were distinguishable from the facts of the present case. In the present case the detaining authority had the subjective satisfaction that if the petitioners are allowed to remain at large, they will indulge in activities prejudicial to the maintenance of public order.

Now the question arises whether the two incidents were sufficient for the detaining authority to initiate proceedings for preventive detention. It is for the detaining authority to have the subjective satisfaction about the apprehension of the breach of the public order from the incidents mentioned above. Even one incident may be sufficient to satisfy the detaining authority. It all depends upon the nature of the incident. In the case in hand the detaining authority was fully satisfied that there was apprehension of breach of public order from the petitioners in case they were bailed out, of which there was every likelihood. This contention in our opinion has no force.

This leads us to the last contention that in the absence of any allegation in the first information report in the two cases about the disturbance of public order the detaining authority could not invent a ground regarding the apprehension from the petitioners about the disturbance of public order. A counter affidavit has been filed on behalf of the detaining authority and in paragraph 3 it has been averred that apart from the first information report in the two cases there was the supervision note of the Deputy Superintendent of Police, Dhanbad and the detaining authority was satisfied on the basis of materials before him that there was apprehension of breach of public order from the petitioners. The absence of an allegation about the disturbance of public order in the two first information reports will not effect the position because there was additional material before the detaining authority which satisfied him about the apprehension of breach of public order from the petitioners in case they were enlarged on bail. This contention has, therefore no substance.

For the foregoing discussion we find no force in any of the contentions and the petitions must fail. They are accordingly dismissed.

S.R. Petitions dismissed.