

Shri Noor Alam Naimulla Khan @ Pinto vs Shri M.N. Singh, Commissioner Of Police ... on 12 September, 2003

Bench: V.M. Kanade, S.R. Sathe

ORDER

Kanade, J .

1. The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order of detention passed by the Commissioner of Police, Mumbai dated 11th November 2002 while exercising powers vested in him under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (No. IV of 1981) hereinafter referred to as "MPDA". The brief facts which are relevant to decide this petition are as under:-

2. The order of detention was passed by the Detaining Authority on 11th November 2002. The order of detention as well as the grounds of detention were served on the petitioner on 14th November 2002. The detaining authority has relied upon two cases which have been filed against the petitioner as also on the basis of tow in-camera statements of two witnesses recorded.

3. It is stated in the grounds of detention that the petitioner was arrested on 15th April 2002 in connection with an offence which was registered vide C.R.No. 58 of 2002 registered by Agripada Police Station under Section 395, 397, 452, 342 read with Section 34 I.P.C. The petitioner was also arrested in connection with an offence which was registered vide C.R.No. 119 of 2002 by Kherwadi Police Station under Section 392, 397, 384 read with Section 34 I.P.C. In both these C.Rs. though the bail was granted by the Court, the Petitioner did not avail of the bail order. In the first case, i.e. C.R.No. 58 of 2002 an order of bail was passed on 25th September 2002 and in the other C.R. i.e. C.R.No. 119 of 2003 an order of bail was passed on 9th September 2002. The order of detention was served on the petitioner while he was still in custody.

4. The detention authority has also relied upon two in-camera statements, which were recorded on 28th August 2002 and 31st August 2003. In the statements of the witness A which was recorded on 28th August 2002 the witness has mentioned that the petitioner and his associates always possessed deadly weapons such as revolver, knife and chopper and that the petitioner and his associates pretended to be members of Rajan Gang and they terrorised and extorted money from the businessmen and common public of the same locality. The said witness has given the details of one incident which had taken place. In the second week of April 2002 at about 20.00 hrs. it is alleged that the petitioner had demanded Rs. 50,000/- from the owner of a garage and as a result thereof, the owner gave Rs. 10,000/- and thereafter, it is alleged that due to fear of retaliation the witness

did not lodge a complaint with the police. In the grounds of detention it is mentioned in para 4(c)(ii) that the statement of witness B was recorded on 31st August 2002 in which the witness has stated that the petitioner and his associates extorted ransom from shop keepers, businessmen and hawkers at the point of deadly weapons and committed robbery. It is also stated that the said witness had stated in his statement that the petitioner and his associates had on several occasions, extorted Rs. 1000/-, Rs. 2000/- from the witnesses under the threat in the name of Rajan Gang. It is also mentioned that the petitioner and his associates had created a reign of terror in the said locality as a result of which nobody dared to complain against the petitioner and his associates. The said witness also has stated about the incident in the second week of April 2002 which had happened at about 19.00 hrs. in the shop of the witness where the petitioner and his associates forcibly took out Rs. 15,000/- from the drawer of the shop.

5. The detaining authority in para 5 has stated that it was satisfied that the petitioner was a dangerous person within the meaning of Section 2(b)(1) of the MPDA and, therefore, he has become a potential threat to the society at large and that the even tempo of life in the society was disturbed and under these circumstances the order of detention was passed.

6. The petitioner has filed this petition challenging the said detention order. The petitioner has challenged the order of detention on several grounds. However, the learned Counsel for the petitioner has restricted his submissions to ground (d) and (e).

7. The petitioner in ground (e) has submitted that if the grounds of detention are examined and analysed, then by no stretch of imagination one could come to a conclusion that the alleged prejudicial activities have disturbed public order. He has further submitted that the detaining authority has not disclosed as to whether the statements of the members of public were recorded as a result of disturbance in the public order. It is submitted that even if all the incidents which are considered cumulatively by the detaining authority are analysed, it cannot be said that it would amount to disturbance of public order. The detaining authority has filed an affidavit in reply and in the said affidavit in reply it is stated that the order of detention is based on four incidents viz., two criminal complaints and the two in-camera statements. The detaining authority has stated that a case of robbery has a direct nexus to the maintenance of public order. It is averred in the said affidavit that though there is no previous animosity or previous enmity with the victim the said acts are committed in order to procure easy money. It is, therefore, submitted that the said C.R. has a direct nexus to disturb the even tempo of life in the said locality. It is also stated in the para 9 of the reply that when the news of such an offence is spread in the locality, the same would disturb the maintenance of public order and hence the said C.R. has a direct nexus to disturb even tempo of life of the people in the said locality.

8. The learned Counsel for the petitioner has relied upon the judgment upon the judgment of the apex Court in the case of *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta*, Commissioner of Police and Ors., reported in (1995) 3 S.C.C 237, wherein the Apex Court has considered the expressions law and order and public order and in para 9 has observed as under:-

".....In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order", then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities. would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of Arun Ghosh v. State of West Bengal this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. It its quality it may not differ from another but in its potentiality it may be very different. Again in the case of Piyush Kantilal Mehta v. Commissioner of Police, this Court took the view that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land."

9. In the said case the detinue and his associates had dragged out the complainant from an hair cutting saloon and had thereafter fired four rounds from the revolver injuring the complainant and one another person. The second incident in that case was dated 11th April 1994 when it was alleged that the detinue therein was harbouring an offender which is an offence under Section 212, 214 of I.P.C. The Apex Court in the said case allowed the petition and quashed the order of detention. In the said case the order of detention was passed under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985 which is more or less similar to the provisions of MPDA. The learned

Counsel for the petitioner, further, has relied upon a judgment of the Apex Court in the case of Ajay Dixit v. State of U.P. and Ors., . The Apex Court has in the said case in para 11 observed as follows:-

"11. The law on this point was stated by this Court in the case of Ram Ranjan Chatterjee v. State of West Bengal as follows:-

..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 or orderly tranquillity which prevails as a result of the observance or enforcement of internal laws and regulations by the Government, is a feature common to the concepts 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 by this Court in Arun Ghosh v. State of West Bengal "is order of degree and extent of the reach of the act in question on 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."

10. The Apex Court has also in the said judgment taken into consideration observations which are made by the Apex Court in the case of Jaya Mala v. Home Secretary, Government of J & K wherein at page 540 the Apex Court has observed as follows:-

"... If every infraction of law having a penal sanction by itself is 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 learned Counsel for the petitioner also has relied upon a judgment in the case of State of U.P. v. Kamal Kishore Saini reported in 1988 CRI.L.J. 405, wherein the Apex Court in para 12 has, after taking stocks of various reported judgments, observed as under:-

"...That whether an act relates to law and order or to public order depends upon the effect of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order."

The learned Counsel for the petitioner, therefore, submitted that in the present case, the petitioner is involved in two cases of robbery and decoity. In both the cases it is an admitted position that no person was injured and neither the plaintiff nor the witnesses have suffered from either grievous or

simple injury. In both these case, though the petitioner was released on bail, he could not avail of the bail order. It is submitted that even in respect of in-camera statements, it is not alleged that any person was grievously or seriously injured when the petitioner and his associates allegedly committed acts of decoity. It is submitted that in the facts of the present case at the most it can be stated that the incidents which are mentioned in the grounds of detention, either individually or cumulatively, cannot be said to have disturb the even tempo of life and from the ratio oft he decisions of the Apex Court, it is submitted that at the highest law and order situation had arisen and, therefore, it was a case of total non application of mind on the part of the detaining authority in issuing the order of detention. It is further submitted that there was no material before the detaining authority on the basis of which it could have arrived at a conclusion that the even tempo of life was disturbed or that the petitioner was an habitual offender.

11. The learned A.P.P. vehemently opposed the said submission made by the learned Counsel for the petitioner. He submitted that there was sufficient material for the detaining authority on the basis of which it had reached to a conclusion that there was serious problem disturbing even tempo of life and as a result the order of detention was passed. It is submitted that if there is an act of extortion by a habitual offender such an act would disturb the even tempo of life and public order would be disturbed. He has relied upon a division bench judgment of this Court in the case of Kailash Laxman Joshi v. B. Akashi, Police Commissioner, reported in 1995 CRI.L.J. 231, wherein this Court had held that the demand from a particular shop keeper as a part of a scheme to extort money from shop keepers under a threat would affect the even tempo the life in the market and would be prejudicial to public order. The learned A.P.P. has further relied upon a judgment in the case of Sharad Kumar Tyagi v. State of Uttar Pradesh and Ors., reported in 1989 CRI.L.J.830 as also the judgment in the case of Prabhakar Shetty v. S. Ramamurthy Commissioner of Police reported in 1993 CRI.L.J.1981. He submitted that, therefore, an act of extortion from a shop keeper or from a citizen would fall within the category of disturbance of public order. He submitted that under these circumstances, the detaining authority was fully justified in issuing the said order of detention as, apart from the two incidents in which an offence was registered against the petitioner, two in-camera statements are also recorded of two witnesses who have in terms stated that the petitioner and his associates had created a reign of terror in the said locality. He further submitted that, therefore, the said situation could not have been tackled as a law and order problem and it was necessary to prevent the petitioner from continuing with his unlawful activities in order to end the reign of terror.

12. We have heard the learned Counsel for the petitioner and learned Addl.P.P. for respondents at length. We have perused the copy of the petition. The order of detention and the grounds of detention as also the reply which is filed by the Commissioner of Police Shri R.S. Sharma dated 3rd March 2003, Shri M.N. Singh, the then Commissioner of Police dated 27th March 2003 as also the Desk Officer, Home Department dated 26th March 2003 and the affidavit of Shivaji N. Pophale, A.P.I. attached to Agripada Police Station dated 29th March 2003 and further affidavit of the Commissioner of Police dated 7th August 2003. In the present case, the detaining authority in the grounds of detention has stated that it has relied upon two C.Rs and the two in-camera statements of the witnesses. It is an admitted position that in respect of the two C.Rs. viz., 58 of 2002 and 119 of 2002 in both these cases though the accused was released on bail, he could not avail the same. In both these cases the bail was granted on 9th September 2002 and 25th September 2002. The order

of detention was passed on 11th November 2002. Thus for a period of almost two months, in spite of having an order of bail in his hands, the petitioner could not avail the same. So far as these two C.Rs are concerned in the first C.R. i.e. 58 of 2002, the allegation against the petitioner is that he along with other associates had entered the house of the complainant in the said case and had committed act of decoity by threatening the images of the said house. The said offence of decoity, therefore, was committed inside the house. So far as the second incident is concerned, it is alleged that the petitioner and his associates had threatened one Imran Khan while they were travelling in a car and had demanded certain amount. The said incident was also an act of robbery which was committed by pointing a deadly weapon such as chopper at the complainant. so far as these two incidents are concerned, the detaining authority has relied upon two in-camera statements of the two witnesses and stated that a reign of terror was created by the petitioner and his associates by extorting money from businessmen. In the said two statements two incidents are mentioned. In the first incident an amount of Rs. 10,000/- was robbed from the garage owner and in the second incident an amount of Rs. 15,000/- was forcibly taken from the owner of the shop. In both these statements, the witnesses have alleged that the petitioner and his associates by pretending to be members of the Rajan Gang had extorted money from the businessmen and had created reign of terror.

13. In the affidavit in reply filed by the Commissioner of Police, in para 9 it is mentioned that if the news of these incidents had spread, it would create panic in the minds of public and, therefore, the order of detention was passed on the basis of the said material.

14. In our view, the detaining authority has clearly erred in holding that the said incidents, if are taken cumulatively, would amount to creating a disturbance in the even tempo of life and, therefore, would come under the realm of being an act which is prejudicial to the public order.

15. The Apex Court had an occasion to consider the distinction between the term "law and order" and "public order" in the case of Ram Manohar Lohia v. State of Bihar reported in 1966 S.C. 740. It will be profitable to consider the relevant observations of the Apex Court in para 52 which are as follows:-

"52. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order." One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. by using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

16. The question whether the particular incident would amount to law and order problem or the public order has been a vexed question and it has been considered by the Apex Court and this Court in several judgments. The test from the ratio of these judgments appears to be that whether in a

given set of facts the said incident would point to a situation of complete chaos which is creating a disrupting social life and the business transactions in a community is paralysed. As observed by the Apex Court the law and order problem and the public order in some cases would tend to overlap with each other and, therefore, while attempting to analyse any situation a fine distinction will have to be drawn between the two. The Apex Court in the case of *Jaya Mala* (Supra) has laid down that if every infraction of law having a penal sanction by itself is a ground for detention, then danger looms large that the normal criminal trials and criminal courts set up for administering justice will be substituted by detention laws.

17. It is no doubt true that the Apex Court in the case of *Prabhakar Shetty* (Supra) has observed that a case of extortion by a habitual offender can be termed as an act which is prejudicial to public order. There cannot be any doubt regarding the ratio laid down by the Apex Court. However, each case will have to be examined on the basis of the facts and circumstances of that particular case. In the present case the petitioner was arrested on 30th May 2003 in connection with C.R.No. 119 of 2002 which was registered by Kherwadi police Station and during the course of investigation of the said C.R. it transpired that the petitioner was also involved in an earlier case of decoity which was committed on 15th April 2002 and which was registered vide C.R. No. 58 of 2002 by the Agripada Police Station. These two incidents are an act of robbery and or decoity and one is committed within the four walls of the house and other is committed in a vehicle which was in motion. These two incidents, in our view, by themselves cannot be said to disturb the even tempo of life and the said to create law and order situation. So far as two in-camera statements are concerned, it is no doubt true that the two witnesses have stated that the petitioner and his associates had created a reign of terror and that they had extorted money from business and shop keepers in the locality. However, apart from the two incidents which are mentioned by the said two witnesses, the statement of the other witnesses, shop keepers or public at large have not been recorded and even if they are recorded, they are not before the detaining authority. The short question, therefore, which will have to be considered by this court is as to whether these four incidents either individually or cumulatively would fall under the category of an action which is prejudicial in maintaining public order.

18. In the City of Mumbai which has an official population of more than Ten Millions, several offences are registered by the police. These offences also include cases where robbery and decoity are committed. However, these cases by themselves do not disturb the even tempo of life and it is the duty of the police machinery to control the said situation by exercising a power which is given to them by the various statutes for the purpose of controlling law and order. Laxity in investigation and/or in the process of maintaining law and order can never be an excuse for treating every infraction of law and order as a public order situation. In the facts and circumstances of the present case, in our view, there was no sufficient material before the detaining authority on the basis of which it could have come to a conclusion that the said acts either individually or cumulatively, amounted to actions which are prejudicial to public order.

19. In this view of the matter, in our view, the order of detention cannot be sustained and, therefore, the same will have to be quashed and set aside. The detenue has already remained in jail for more than ten months. Under these peculiar circumstances, the order of detention is quashed and set aside and Rule is made absolute in the above terms. The petitioner is, therefore, directed to be

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released forthwith unless he is required in any other case.