

2008 (8) SCR 709

Bhupendra
v.
State of Maharashtra & Anr.

(Criminal Appeal No.890 Of 2008)

May 14, 2008

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Bombay High Court dismissing the Habeas corpus Petition filed under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') by one Bhupendra (hereinafter referred to as the 'detenu')

3. Prayer in the writ petition was to quash and set aside the decision and order passed by the District Magistrate, Ahmednagar dated 23.4.2007 and the decision and order passed by the Under Secretary to the Government of Maharashtra, Home Department (Special) by order dated 12.6.2007. The order of detention was passed by the respondent No. 2 in purported exercise of powers conferred under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981(in short the 'Act'). The detaining authority detained detenu under the Act. Grounds of detention were served on 23.4.2007. Several acts of the detenu were highlighted which according to the detaining authority warranted detention.

The appellant primarily took the stand that the order of detention indicated cases relating to law and order situation and had nothing to do with maintenance of public order and were stale to be considered relevant for the purpose of detention. It was submitted that there was no material to show that the alleged acts of the detenu disturbed the even tempo of life. The High Court did not find any substance and noted that the several offences were registered from 2005 till a few days before the order of detention. Preventive action taken against the detenu proved to be ineffective, he was called upon to execute bonds on various dates, but even after executing bonds for good behavior for a period of three years, the detenu breached the conditions of bond and the show cause notice was issued. In Camera statement of witnesses reference was made to an incident of 24.3.2001 and taking into account the activities of the detenu in the past there was a live link between the activities of the detenu and the date of passing of the impugned order of detention. This observation

came
to be made because of the stand of the detenu that there was no live
link.
Ultimately the habeas corpus petition was dismissed.

In support of the appeal learned counsel for the appellant submitted
that
there was no live link. Reference was made to some of the incidents
which
to allegedly took in 2005 and in any event when preventive action in
terms
of Section 107 of the Code of Criminal Procedure, 1973 (in short the
'Cr.P.C.') and Section 110 Cr.P.C. have been taken, there was no need
for
passing the order of detention. It was also pointed out that the
alleged
acts at the most related to law and order situation and having nothing
to
do with public order. It was further submitted that the statement of in
camera witnesses should not have been relied upon by the detaining
authority without forming an opinion as to whether that they represented
the truth.

5. Learned counsel for the respondent-State and its functionaries on the
other hand supported the order of detention.

6. The order of detention shows that the appellant is often hired on
payment by anti-social elements for commission of violent crimes. The
detenu and his associates always possessed deadly weapons and the
instances
highlighted related to 1.5.2005, 1.6.2005 and 24.2.2006 and a dispute
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land
and the activities of the detenu, and lastly on 24.3.2007 it has been
noted
that serious riotous situation developed at a particular high school
ground
where hundreds of members of a particular community and assembled. It
resulted in intense fear and panic situation because of the activities
of
detenu. It was also pointed out in the order of detention that various
preventive action taken under Sections 107 and 110 Cr. P.C. yielded no
positive results and the detenu continued his violent and criminal
activities. Reference was also made to the witnesses who were examined
in
camera. So far as the truthfulness of these witnesses are concerned
reference was made to Section 8(2) of the Act which permits withholding
the
statement of certain witnesses in public interest.

7. The crucial issue is whether the activities of the detenu were
prejudicial to public order. While the expression 'law and order' is
wider in scope inasmuch as contravention of law always affects order.
'Public order' has a narrower ambit, and public order could be affected
by
only such contravention which affects the community or the public at
large.
Public order is the even tempo of life of the community taking the
country
as a whole or even a specified locality. The distinction between the
areas
of 'law and order' and 'public order' is one of the 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 life of the community which makes it
prejudicial to the maintenance of the public order. If a contravention
in
its effect is confined only to a few individuals directly involved as
distinct from a wide spectrum of public, it could raise problem of law
and
order only. It is the length, magnitude and intensity of the terror wave
unleashed by a particular eruption of disorder that helps to

distinguish it as an act affecting 'public order' from that concerning 'law and order'. The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?" This question has to be faced in every case on its facts.

8. "Public order" is what the French call 'ordre publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? (See Kanu Biswas v. State of West Bengal (AIR 1972 SC 1656)).

9. "Public order" is synonymous with public safety and tranquility: "it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State". Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. (See Dr. Ram Manohar Lohia v. State of Bihar and Ors. (1966 (1) SCR 709))

10. 'Public Order', 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both

public

order and the security of the State. [See Kishori Mohan Bera v. The State of West Bengal (1972 (3) SCC 845); Pushkar Mukherjee v. State of West Bengal (1969 (2) SCR 635); Arun Ghosh v. State of West Bengal (1970 (3) SCR 288); Nagendra Nath Mondal v. State of West Bengal (1972 (1) SCC 498).

11. The distinction between 'law and order' and 'public order' has been pointed out succinctly in Arun Ghosh's case (supra). According to that decision the true distinction between the areas of 'law and order' and 'public order' is "one of degree and extent of the reach of the act in question upon society". The Court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different". (See Babul Mitra alias Anil Mitra v. State of West Bengal and Ors. (1973 (1) SCC 393, Milan Banik v. State of West Bengal (1974 (4) SCC 504).

12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State". [See Kuso Sah v. The State of Bihar and Ors. (1974 (1) SCC 185, Harpreet Kaur v. State of Maharashtra (1992 (2) SCC 177, T.K. Gopal v. State of Karnataka (2000 (6) SCC 168, State of Maharashtra v. Mohd. Yakub (1980 (2) SCR 1158)] and Commissioner of Police v. C. Anita (2004(7) SCC 467).

14. Coming to the question of live link it is to be noted that the provision empowering detention relates to habitual activities of the proposed detenu. Therefore there has to be instance which may not be of immediate proximity but may indicate that pattern. In the instance case the incidence cannot be said to be of remote past to warrant conclusion

of
the absence of live link.

15. Further Section 8(2) of the Act permits withholdings of identity of the witnesses. We therefore find no substance in this appeal, which is accordingly dismissed.