YOGENDRA MURARI

*v.*

STATE OF U.P.

AUGUST 8, 1988

[LALIT MOHAN SHARMA AND N.D. OJHA, JJ.]

*National Security Act, 1980: Section 3(2)—Detention Order—Not to be mechanically struck down if passed after delay—Circumstances of case to be considered—Allegation that detaining authority making detention order for defeating bail order by Court—Consideration of by Court—Deteriorating law and order situation—Witnesses not having courage in assisting the administration of justice by appearance in Court.*

**The petitioner was involved in two incidents of attempt to murder which created a public order problem. In a third incident the petitioner with his colleagues killed one person. The party, when challenged, hurled bombs and the petitioner fired indiscriminately. This incident seriously disturbed public order. Criminal cases were registered against the petitioner in respect of each of the three incidents, but the evidence against the petitioner was not forthcoming.**

**The District Magistrate after considering the relevant circumstances came to the conclusion that the petitioner was likely to be enlarged on bail, and since he was further of the view that if the petitioner was not detained, he would be indulging in activities prejudicial to the maintenance of public order, the District Magistrate made the impugned order of detention under section 3(2) of the National Security Act, 1980.**

**The order of detention has been challenged on the following grounds: (1) that only the third incident could be connected with the public order problem and the mention of the first two incidents in the grounds of detention renders the order bad; (2) the order having been passed more than four months after the third incident must be set aside on the ground of undue delay alone; (3) in view of the fact that the petitioner's bail application was not opposed, the District Magistrate had no jurisdiction for detaining the petitioner with a view to frustrate the Court's order enlarging him on bail; (4) the authority had illegally discriminated against the petitioner in detaining him while the others have been left free; (5) the relevant records were not placed before the**

A District Magistrate before passing the detention order; (6) the copy of the application filed at the instance of the petitioner by way of counter case was not served on him; and (7) the petitioner's representation was not considered and disposed of by the Central Government at all.

B Dismissing the petition, it was,

HELD: (1) The impugned order could not be struck down because the grounds of detention referred to the first two incidents also, specially when the first incident appeared to have created a public order problem. [255B-C]

C (2) An order of detention has not to be mechanically struck down if passed after some delay. It is necessary to consider the circumstances in each individual case whether the delay has been satisfactorily explained, which, in this case, has been done. [255D]

D (3) A perusal of the detention order and of the affidavit of the District Magistrate in the instant case makes it abundantly clear that he did not act for defeating the bail order. He was of the view that having regard to the entire circumstances appearing from the records placed before him, the petitioner when let out on bail was likely to create public order problem. [256C-D]

E (4) The roles of the petitioner and that of others were not identical and the reasonable apprehension as to their future conduct must depend on the relevant facts and circumstances which differed from individual to individual. It would have been wrong on the part of the detaining authority to take a uniform decision in this regard only on the F ground that the persons concerned were all joined together as accused in a criminal case. [256G-H]

(5) The detaining authority has denied the allegation that relevant material was not placed before it and there is no reason to disbelieve the said authority. [257A-B]

G (6) It cannot be presumed that the petitioner was prejudiced for non-service of a copy of his own application. [257B]

(7) The error in the date referred to by the petitioner was clerical in nature, and the Central Government, in fact, rejected the peti- H tioner's representation after duly considering it. [257E]

*Shibban Lal Saksena* **v.** *The State of U.P.,* **[1954] SCR 418;** *K. Aruna Kumari* **v.** *Government of Andhra Pradesh,* **[1988] 1 SCC 296;** *Rajendrakumar Natvarlal Shah* **v.** *State of Gujarat,* **[1988] 3 SCC 153;** *Maledath Bharathan Malyali* **v.** *The Commissioner of Police,* **AIR 1950 Bom. 202;** *Alijan Mian & Anr.* **v.** *District Magistrate, Dhanbad,* **[1983] 3 SCR 939 and** *Poonam Lata* **v.** *M.L. Wadhawan,* **[1987] 4 SCC 48, referred to.**

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 259 of 1988.

(Under Article 32 of the Constitution of India).

B. Datta, Additional Solicitor General and Ms. A. Subhashini for the Petitioner.

Yogeshwar Prasad and Dalveer Bhandari for the Respondents.

The Judgment of the Court was delivered by

**SHARMA, J.** 1. The writ petitioner has by the present application under Article 32 of the Constitution challenged the order of his detention dated 7.12.1987, passed under Section 3(2) of the National Security Act, 1980. Earlier he had unsuccessfully moved the Allahabad High Court under Article 226.

2. The District Magistrate has mentioned three incidents in the grounds served on the petitioner: (i) the petitioner is alleged to have fired with his revolver at one Sri Azam with the intention to kill him but he narrowly escaped. As a result of this attack at 5.00 P.M. on 17.12.1986, according to the detaining authority, "terror spread over in the entire area and all the shopkeepers who had their shops in the nearby locality closed down their shops out of panic and fear. This incident created a public order problem."; (ii) the petitioner is said to have made another bid on 21.6.1987 to kill another person named Aziz who also narrowly escaped; and (iii) on 27.7.1987, at about 7.45 P.M. the petitioner with his colleagues killed Shri Aziz in front of the Lucknow District Jail. The persons who were present there ran away out of fear. The jail authorities returned the fire and the petitioner then threw a handgrenade. On being challenged again, the party hurled bombs and the petitioner indiscriminately fired from his pistol. This incident seriously disturbed the public order. The details of the panic which struck the locality are mentioned in the grounds.

A 3. Criminal cases were registered against the petitioner with respect to each of the three incidents but it appears that evidence against the petitioner was not forthcoming, although several persons supported the prosecution version of the third incident dated 27.7.1987 by their statements recorded under Section 161 of the Criminal Procedure Code. The petitioner was, however, in custody and B moved an application for bail. The District Magistrate after considering the relevant circumstances came to the conclusion that the petitioner was likely to be enlarged on bail by the Criminal Court and since he was further of the view that if the petitioner was not detained, he would be indulging in activities prejudicial to the maintenance of public order, the order of detention was made.

C 4. Mr. R.K. Garg, learned counsel for the petitioner has contended that the order of detention is vitiated on several counts. The learned counsel argued that as only one of the three incidents, mentioned in the grounds, can be held to be connected with the public order problem, the order must be held to be bad and further it was D wrong for the District Magistrate and the High Court to have referred to the first two incidents. Besides, the order having been passed on account of the third incident which happened more than four months earlier ought to be set aside on the ground of undue delay alone. It was further said that the order was vitiated as the petitioner's bail application in the Criminal Court was not opposed by the State; and in any E view the District Magistrate had no jurisdiction for detaining the petitioner with a view to frustrate the Criminal Court's order enlarging the petitioner on bail. Referring to the first information report about the July occurrence it was pointed out that 14 persons besides the petitioner were made accused in the case and the authority has illegally discriminated against the petitioner in detaining him while the others F have been left free. It was also stated that all the relevant records were not placed before the District Magistrate before passing the detention order and a copy of the application filed at the instance of the petitioner by way of counter case was not served on him. Lastly it was suggested that in view of the respondent's reply it appears that probably the petitioner's representation was not considered and disposed G of by the Central Government at all.

5. The High Court has not considered it essential to decide whether the first two incidents mentioned in the grounds served on the petitioner are referable to public order problem as the third ground by itself is capable of sustaining the order. Although Mr. Garg indicated H that in his view the provisions of Section 5A introduced in the Act by

an amendment in 1984 must be held to be *ultra vires*, and referred to the observations in *Shibban Lal Saksena* v. *The State of U.P. & Ors.*, [1954] SCR 418, he did not invite us to decide this point and suggested that we may refrain from making any observation on this aspect, as the question may have to be decided by a larger Bench. Since the Act before the Court in the above case did not contain any provision corresponding to Section 5A of the present Act, the decision cannot be of any help to the petitioner. However, so far as the first incident of the 17th December, 1986 is concerned, it appears to have created a public order problem. In any view the impugned order cannot be struck down on the ground that the second incident or for that matter both the first and the second incidents did not relate to disturbance of public order.

6. We also do not find any merit in the plea that the impugned order is bad on account of delay. It is true that the ground which led the District Magistrate to pass the detention order became available in July and the order was passed only in December but it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay. (See *K. Aruna Kumari* v. *Government of Andhra Pradesh & Ors.*, [1988] 1 SCC 296 and the cases mentioned there) It is necessary to consider the circumstances in each individual case to find out whether the delay has been satisfactorily explained or not. In the present case the petitioner was in custody and there could not be any apprehension of his indulging in illegal activities requiring his detention until the grant of bail by the Criminal Court became imminent. Besides, enquiry was also proceeding. This aspect has been explained in the detention order itself as also by the District Magistrate in his affidavit and it is clear that there has been no undue delay on his part in taking action. Besides, the distinction between such delay and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution as pointed out in *Rajendra Kumar Natvarlal Shah* v. *State of Gujarat & Ors.*, [1988] 3 SCC 153, is also relevant here especially because of the background of the petitioner's antecedents taken into account by the detaining authority showing his propensity for acts which were likely to disturb public order. We do not see any objection to the District Magistrate referring the first two incidents in this context, specially when the first incident related to disturbance of public order.

7. So far the allegation that the petitioner's prayer for bail was not opposed, it is strongly denied in the Counter Affidavit. The apprehension of the District Magistrate that the prayer in this regard was likely to be granted does not mean that the application was

A unopposed. The District Magistrate was expecting an adverse order on account of the fact that the witnesses of the incident appeared to be reluctant to support their earlier statements. The situation can be well appreciated as it is common knowledge that due to deteriorating law and order situation in the country and mounting aggressive intimidating postures of accused persons, witnesses are failing to summon cour-
B age in assisting the administration of justice by going before a court of law to state what they have seen or heard.

8. It has been contended on behalf of the petitioner that the detention order was passed with a view to frustrate the bail allowed to the petitioner in the criminal case. Reliance was placed on the observations in *Maledath Bharathan Malyali* v. *The Commissioner of Police,*
C AIR 1950 Bombay 202. A perusal of the detention order in the case before us and of the affidavit of the District Magistrate, makes it abundantly clear that he did not act for defeating the bail order. He was of the view that having regard to the entire circumstances appearing from the records placed before him, the petitioner when let out on
D bail, was likely to create public order problem. The District Magistrate came to this conclusion on the consideration of relevant materials. Copies of the documents were served on the petitioner along with the grounds. The scope for passing an order of detention against an accused immediately after he is allowed bail or at a point of time when he is likely to be enlarged on bail has been considered by this Court in
E several decisions, (*Alijan Mian & another* v. *District Magistrate, Dhanbad,* [1983] 3 SCR 939; *Poonam Lata* v. *M.L. Wadhawan & another,* [1987] 4 SCC 48, and several other cases) and we do not consider it necessary to again discuss the point. It is true that in such cases great caution should be exercised in scrutinising the validity of the order, which is based on the very same charge which is to be tried
F by a criminal court, and accordingly we have given our anxious consideration to the entire circumstances of the case but do not find any fault with the impugned order.

9. There is no merit whatsoever in the petitioner's grievance of discrimination on the ground that the other co-accused persons have
G not been detained. The role of the petitioner and that of the others are not identical and the reasonable apprehension as to their future conduct must depend on the relevant facts and circumstances which differ from individual to individual. It would have been wrong on the part of the detaining authority to take a uniform decision in this regard only on the ground that the persons concerned are all joined together as
H accused in a criminal case.

10. The plea of the petitioner that all the relevant materials were not placed before and considered by the District Magistrate is made in vague terms and is not fit to be accepted. The detaining authority in his counter affidavit has denied the allegation and we see no reason to disbelieve him. The learned counsel further urged that the petitioner was not supplied with a copy of the application filed at his instance as a cross-case and he was, therefore, prejudiced in effectively making his representation. We do not find any force in this argument as it cannot be presumed that the petitioner was prejudiced by non-service of a copy of his own application.

11. So far the last point mentioned above is concerned it was argued that since the petitioner filed his representation on 22.12.1987 and according to the statement of the Central Government, it disposed of some representation of another date, it must be assumed that that representation was not considered and disposed of. We do not find any merit in the presumption raised by the petitioner on account of the error in the date mentioned by the Central Government as the matter stands clarified by the Counter Affidavit of Shri Shiv Basant, Deputy Secretary, Ministry of Home Affairs, Government of India stating that it was the petitioner's representation which was disposed of and the error pointed out was accidental. We are satisfied that the error in the date referred to by the petitioner was clerical in nature and that the Central Government had, in fact, rejected the petitioner's representation after duly considering it.

12. In the result, we do not find any merit in any of the points pressed on behalf of the petitioner and the writ application is, therefore, dismissed.

R.S.S. Petition dismissed.