

BHUPENDRA

v.

STATE OF MAHARASHTRA & ANR.
(Criminal Appeal No.890 Of 2008)

MAY 14, 2008

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

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981 – ss. 3(2) and 8(2) – Detention Order under the Act – Challenge to, on the ground of absence of link between activities of detenu and the date of detention order – Held: 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 – On facts, detention order shows that detenu was hired on payment by anti-social elements for commission of violent crimes – Occurrence not of remote past to warrant conclusion of absence of live link – Thus, detention order correct.

Preventive detention:

Law of preventive detention – Discussed.

Detention order – Acts prejudicial to maintenance of public order – Areas of 'law and order and public order' – Distinction between.

Words and Phrases: 'Law and Order', 'public order' and 'security of state' – Meaning of.

The detention order was passed against the appellant u/s. 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981. He was detained under the Act. The grounds of detention were served on 23.4.07. Appellant filed Habeas Corpus petition to quash and set

- A aside the detention order on the ground that the detention order indicated cases relating to law and order situation and had nothing to do with the maintenance of public order and were old. High Court found that several offences were registered from 2005 till few days before the detention order and there was live link between the activities of detention and date of passing of detention order. High Court dismissed the petition. Hence the present appeal.

- C Appellant contended that there was no live link between the activities of the detenu and the date of passing of the impugned order of detention; that reference was made to some of the incidents which allegedly took place in 2005 and in any event when preventive action in terms of s.107 and s. 110 Cr.P.C. had been taken, there was no need for passing the order of detention; that the alleged acts at the most related to law and order situation and having nothing to do with public order; that the statement of in camera witnesses should not have been relied upon by the detaining authority without forming an opinion as to whether they represented the truth.

- E Respondent-State and its functionaries contended that the detention order was correct.

Dismissing the appeal, the Court

- F HELD: 1.1. 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 between a particular community and the builders over the possession of 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 had 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 u/ss 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 is concerned reference was made to s. 8(2) of the Act which permits withholding the statement of certain witnesses in public interest. [Paras 6] [714F,G, 715-A,B]

1.2. With regard 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. [Para 14] [718-B,C]

Kanu Biswas v. State of West Bengal AIR 1972 SC 1656; Dr. Ram Manohar Lohia v. State of Bihar and Ors. 1966(1) SCR 70; 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; 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; 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- relied on.

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 890 of 2008

From the final Judgment and Order dated 14.9.2007 of the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal W.P. No. 372 of 2007

A Anantbhusan Kanade, R.K. Gupta and Aribam
Guneshwar Sharma for the Appellant.

Shekhar Nephade, Ravindra Keshavrao Adsure for the
Respondents.

B The Judgment of the Court was delivered by
DR. ARIJIT PASAYAT, J.1. Leave granted.

C 2. Challenge in this appeal is to the judgment of the Divi-
sion Bench of the Bombay High Court dismissing the Habeas
corpus Petition filed under Article 226 of the Constitution of In-
dia, 1950 (in short the 'Constitution') by one Bhupendra (here-
inafter referred to as the 'detenu')

D 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 respon-
dent No. 2 in purported exercise of powers conferred under
E Section 3(2) of the Maharashtra Prevention of Dangerous Ac-
tivities of Slumlords, Bootleggers, Drug Offenders and Dan-
gerous Persons Act, 1981(in short the 'Act'). The detaining au-
thority detained detenu under the Act. Grounds of detention were
F served on 23.4.2007. Several acts of the detenu were high-
lighted which according to the detaining authority warranted
detention.

G 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 deten-
tion. 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 be-
H fore 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 between a particular community and the builders over the 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

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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

A order. The test to be adopted in determining whether an act
affects law and order or public order, is: Does it lead to distur-
bance of the current life of the community so as to amount to
disturbance of the public order or does it affect merely an indi-
vidual leaving the tranquility of the society undisturbed? (See
B *Kanu Biswas v. State of West Bengal* (AIR 1972 SC 1656).

9. "Public order" is synonymous with public safety and tran-
quility: "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".
C 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 dis-
order. They can be dealt with under the powers to maintain law
and order but cannot be detained on the ground that they were
D disturbing public order. Disorder is no doubt prevented by the
maintenance of law and order also but disorder is a broad spec-
trum, 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
E 709)

10. 'Public Order', 'law and order' and the 'security of the
State' fictionally draw three concentric circles, the largest rep-
resenting law and order, the next representing public order and
the smallest representing security of the State. Every infraction
F of law must necessarily affect order, but an act affecting law
and order may not necessarily also affect the public order. Like-
wise, an act may affect public order, but not necessarily the se-
curity of the State. The true test is not the kind, but the potential-
ity of the act in question. One act may affect only individuals
G while the other, though of a similar kind, may have such an im-
pact that it would disturb the even tempo of the life of the com-
munity. 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
H 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). A

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). B C

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. D E F

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 H

A 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.

N.J.

Appeal dismissed.