

SHIV PRASAD BHATNAGAR

v.

STATE OF MADHYA PRADESH & ANR.

March 5, 1981

[O. CHINNAPPA REDDY AND BAHARUL ISLAM, JJ]

National Security Act—Section 12 (1)—Scope of—Staleness and irrelevance of grounds of detention—If would vitiate the order of detention.

The petitioner was detained under section 12 (1) of the National Security Act on the grounds that he, alongwith his friends, in the second week of November, 1980 indulged in filthy abuse of Muslims, threatened their lives and performed "marpeet" and that he and his associates terrorised the common man in the area by their various criminal acts which caused disturbance to the public peace and public safety.

In support of the petition it was contended on behalf of the petitioner that the reference to associates without naming even one rendered the ground vague and, therefore, vitiated the order of detention and (2) that the incidents enumerated in the second ground related to the years 1974, 1975, 1977 and 1978 which could not be said to be proximate enough to sustain the order of detention.

Allowing the petition,

HELD : The detenu is entitled to be released.

It is now well settled that grounds of detention must be pertinent and not irrelevant, proximate and not stale, precise and not vague. Irrelevance, staleness and vagueness are vices any single one of which is sufficient to vitiate the order of detention. [83 D]

In the instant case the incidents enumerated to substantiate the second ground show that apart from the vice of staleness from which they suffer, they were related to "law and order" and not to the maintenance of public order. They are stale because of the passage of time since the happening of some of the incidents; they are irrelevant because they related to law and order and not to maintenance of public order. [83 E]

In Re : Sushanta Goswami and Ors., [1969] 3 S.C.R. 138 followed.

ORIGINAL JURISDICTION : Writ Petition No. 397 of 1981.

(Under Article 32 of the Constitution)

Mrs. Shyamala Pappu, M. S. Mann, S Shukhar, Miss Raj Shree and Mrs. Indra Sawhney for the Petitioner.

S. K. Gambhir and Vijay Hansaria for the Respondent.

A The Judgment of the Court was delivered by

CHINNAPPA REDDY J. Shiv Prasad Bhatnagar is under preventive detention pursuant to an order made by the District Magistrate, Vidisha, Madhya Pradesh. The order and the grounds of detention were served on him on November 28, 1980. The

B District Magistrate made a report of the order to the State Government and the latter approved the detention order on December 2, 1980. The approval was communicated to the detenu on December 5, 1980. A representation was submitted by the detenu on December 13, 1980. The Advisory Board constituted by the

C State Government met on January 3, 1981, considered the material placed before it by the detaining authority as well as the representation and the written arguments submitted by the detenu. The detenu was also given a personal hearing. The Advisory Board submitted its report to the State Government on January 4, 1981.

D Thereafter the State Government confirmed the order of detention on February 3, 1981 under Sec. 12 (1) of the National Security Act. The period of detention was stipulated as one year from the date of the order of detention. The order confirming the detention was communicated to the detenu on February 12, 1981 and he was also informed that the Advisory Board had opined that there was sufficient cause for his detention.

E Smt. Shyamla Pappu, learned counsel for the detenu made a number of submissions. In the view that we are taking of one of the primary submissions, we do not think it necessary to consider the rest of the submissions. The primary submission that we have in mind is that the grounds of detention suffer from the vice of either vagueness or staleness. The first ground mentions that the

F detenu alongwith his friends, in the second week of November, 1980, indulged in filthy abuse of Muslims, threatened their lives and performed "mar pit". Details of incidents were given to substantiate the ground. As many as six incidents were mentioned and in everyone of them it was said that the detenu alongwith his associates had indulged in this or that violent action. No mention was made

G of the name of even a single associate. The argument was that the reference to 'associates' without naming even one rendered the ground vague and, therefore, vitiated it. Similarly, it was said the second ground also referred to the detenu and his associates without naming even a single associate and for that reason the second

H ground also was vague. The further submission was that the incidents enumerated in second ground were of the years 1974, 1975, 1977 and 1978 and could by no means be said to be proximate

enough to sustain an order of preventive detention. The second ground was to the effect that the detenu and his associates had terrorized the common man in the Vidisha area by their various criminal acts which caused disturbance to public peace and public safety. Several incidents were narrated to substantiate this ground. The first incident was of the year 1974, the second incident was of the year 1975, the next three incidents were of the year 1977 and the rest of the incidents barring the last one were of the year 1978. A perusal of the incidents enumerated to substantiate the second ground show that apart from the vice of staleness from which they appear to suffer, the incidents are related to "law and order" and not to the maintenance of public order. The incidents appear to bear a striking resemblance to the grounds of detention which were considered *In Re : Sushanta Goswami & Ors.*, (1) particularly in the cases of Debendra Nath Das, Abdul Wahab, Anil Das, Dilip Kumar Chakraborty and Ashoka Kumar Mukherjee. It is now well settled that grounds of detention must be pertinent and not irrelevant, proximate and not stale, precise and not vague. Irrelevance, staleness and vagueness are vices any single one of which is sufficient to vitiate a ground of detention. And, a single vicious ground is sufficient to vitiate an order of detention. In the present case we are satisfied that the second ground of detention suffers both from the vice of staleness, because of the passage of time since the happening of some of the incidents and the vice of irrelevance because they relate to 'law and order' and not to 'the maintenance of public order'. The detenu is entitled to be released. He is directed to be released forthwith. The petition is allowed.

P.B.R.

Petition allowed.

(1) [1969] 3 S.C.R. 138.