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SURYA PRAKASH SHARMA

v.

STATE OF U.P. AND ORS.

AUGUST 9, 1994

B

[P.B. SAWANT AND M.K. MUKHERJEE, JJ.]

National Security Act, 1980—Section 3(3)—Order of detention under—Validity of—Solitary incident of murder—Detenue in judicial custody on date of making of order—Whether and in what circumstances an order for preventive detention can be passed against a person who is already in custody.

C

Pursuant to an order made under Section 3(3) of the National Security Act, 1980 the detenue was detained with a view of preventing him from acting in any manner prejudicial to the maintenance of public order. The main allegation in the grounds of detention served upon the detenue is that the detenue alongwith his three colleagues brutally committed the murder of one person in a thickly populated area by causing bullet injuries on his person. A panic was created amongst the residents and normal life was completely disturbed. On the date of making of the order the detenue was in judicial custody.

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Assailing the validity of the order of detention, the petitioner alleged in the writ petition that having regard to the fact that the detenue was in judicial custody in connection with the case instituted over the murder, there was no, nor could there be any, apprehension in the mind of the detaining authority that he would be indulging in any prejudicial activity, and therefore, the satisfaction of the detaining authority to pass the order was not proper.

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Allowing the writ petition, this Court

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HELD : Though the grounds of detention indicate the detaining authority's awareness of the fact that the detenue was in judicial custody at the time of making the order of detention, the detaining authority has not brought on record any cogent material nor furnished any cogent ground in support of the averment made in grounds of detention that if the detenue is released on bail 'he may again indulge in serious offences causing threat to public order'. The satisfaction of the detaining authority

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that the detenu might indulge in serious offences causing threat to public order, solely on the basis of a solitary murder, cannot be said to be proper and justified. [489-D, E] A

Dharmendra Suganchand Chelawat v. Union of India, AIR (1990) SC 1196 and *Rameshwar Shaw v. District Magistrate*, [1964] 4 SCR 921, followed. B

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 117 of 1994.

(Under Article 32 of the Constitution of India.) C

D.K. Garg and Yatendra Sharma for the Petitioner.

N.M. Ghatate and A.S. Pundir for the Respondents.

The Judgment of the Court was delivered by D

M.K. MUKHERJEE, J. We heard this writ petition on July 26, 1994 and on conclusion of the hearing passed the following order :

"Reasons to be recorded separately . We allow the Writ Petition and direct that the detenu Surya Prakash Sharma be released forthwith unless wanted in some other case." E

We now recount the reasons for the above order.

Pursuant to an order made by the District Magistrate, Meerut, on February 1, 1994 under Section 3(3) of the National Security Act, 1980, Surya Prakash Sharma, the detenu, was detained with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. Assailing the validity of the above order the petitioner filed this writ petition. The main allegation in the grounds of detention served upon the detenu is that on January 1, 1994 he along with his three colleagues brutally committed the murder of one Anil Kumar Jain in a thickly populated area of Meerut city by causing bullet injuries on his person. It is further alleged that due to the gruesome murder committed by the detenu and his colleagues a panic was created amongst the residents of Meerut and the normal life was completely disturbed and people started thinking themself- H

A ves unsafe. It is lastly stated in the grounds of detention :

"Although the aforesaid Shri Surya Prakash Sharma s/o Sukh Lal is in Judicial custody with effect from 22.1.1994, however, he has been trying to be released on bail. He moved an application for bail on 24.1.1994 before the District and Sessions Judge, Meerut and the application for bail has been fixed for hearing on 2.2.1994. If the aforesaid Shri Surya Prakash is released on bail he may again indulge in serious offences causing threat in public orders."

The learned counsel appearing in support of the writ petition contended that having regard to the admitted fact that the detenu in judicial custody on February 1, 1994, the date of making of the impugned order, in connection with the case instituted over the murder referred to in the grounds of detention, there was no, nor could there be any, apprehension in the mind of the detaining authority that he (the detenu) would be indulging in any prejudicial activity. That necessarily meant that the satisfaction of the detaining authority to pass the impugned order was not a proper one, urged the learned counsel.

In repudiating the above contention the learned counsel for the respondents contended that for justifiable reasons an order for detention could be made in respect of a person who was in custody, and, referring to the earlier quoted passage in the grounds of detention, the counsel submitted that in the facts and circumstances of the case, the reasons so canvassed by the detaining authority must be said to be valid and proper.

The question as to whether and in what circumstances an order for preventive detention can be passed against a person who is already in custody has had been engaging the attention of this Court since it first came up for consideration before a Constitution Bench in *Rameshwar Shaw v. District Magistrate, Burdwan*, [1964] 4 SCR 921. To eschew prolixity we refrain from detailing all those cases except that of *Dharmendra Suganchand Chelawat v. Union of India*, AIR (1990) SC 1196 wherein a three Judge Bench, after considering all the earlier relevant decisions including *Rameshwar Shaw* (supra) answered the question in the following words:

"The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in

custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention: and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implied that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

When the above principles are applied to the facts of the instant case, there is no escape from the conclusion that the impugned order cannot be sustained. Though the grounds of detention indicate the detaining authority's awareness of the fact that the detenu was in judicial custody at the time of making the order of detention, the detaining authority has not brought on record any cogent material nor furnished any cogent ground in support of the averment made in grounds of detention that if the aforesaid Surya Prakash Sharma is released on bail '*he may again indulge in serious offences causing threat to public order*'. (emphasis supplied). To put it differently, the satisfaction of the detaining authority that the detenu might indulge in serious offences causing threat to public order, solely on the basis of a solitary murder, cannot be said to be proper and justified.

On the conclusions as above we quash the order of detention.

A.G.

Petition allowed.