

Sudhir Kumar Saha

Vs

The Commissioner of Police, Calcutta and Another

Writ Petition No. 378 of 1969

(J.C. Shah, K.S. Hegde JJ)

18.12.1969

JUDGMENT

HEGDE, J. -

1. In this petition under Article 32 of the Constitution submitted from Jail, the petitioner seeks a writ of Habeas Corpus directing his release from detention. We have already directed the release of the petitioner on 15.12.1969. Now we proceed to give our reasons in support of that order.
2. The petitioner was ordered to be detained by the Commissioner of Police, Calcutta under Section 3(2) of the Preventive Detention Act, 1950 (Act IV of 1950) by his order dated July 15, 1969. It is stated in that order that the petitioner was ordered to be detained with a view to preventing him from acting in any manner prejudicial to the maintenance of "public order". That order was confirmed by the State Government after the same was approved by the Advisory Board.
3. From the grounds served on the petitioner, it appears that his detention was ordered because of the three instances mentioned therein. It is said therein that on 28.2.1968 between 9.50 p.m. and 10.30 p.m. the petitioner armed with a knife along with some others, also armed, created disturbance on the Northern Avenue in the course of which he attacked the local people with knife as a result of which one Ajit Kumar Biswas sustained stab injuries. It is further alleged that during that incident, the petitioner and his associates hurled sodawater bottles and brickbats towards that local people endangering their lives and safety and thereby they created fear and frighfulness amongst the people of the locality and thus affected public peace and tranquillity of the locality.
4. The second incident mentioned therein is that on 29.10.1968 at about 9.10 p.m. the petitioner being armed with bombs and accompanied by some others created disturbance on Raja Manindra Road, in the course of which he and his associates hurled bombs, used swords, iron rods and lathis against the local people endangering their lives and safety and thereby they created fear and frightfulness in the locality resulting in the disturbance of public peace and tranquillity of that locality.
5. The last incident mentioned is that on 28-6-1969 at about 11.15 p.m., the petitioner and his associates armed with bombs created disturbance on Raja Manindra Road in the course of which they indiscriminately hurled bombs towards the local people endangering their lives and safety and thereby they affected public peace and tranquillity of that locality.
6. From the record it does not appear that the petitioner was prosecuted for any of the offences mentioned earlier. It is known why he was not prosecuted. In the ordinary course, if there is truth in

the allegations made, he should have been prosecuted and given an opportunity to defend himself. The allegations made against the petitioner do not amount to anything more than that he committed certain breaches of law.

7. The freedom of the individual is of utmost importance in any civilized society. It is a human right. Under our Constitution it is a guaranteed right. It can be deprived of only by due process of law. The power to detain is an exceptional power to be used under exceptional circumstances. It is wrong to consider the same, as the executive appears to have done in the present case, that it is a convenient substitute for the ordinary process of law. The detention of the petitioner under the circumstances of this case appears to be a gross misuse of the power conferred under the Preventive Detention Act.

8. The three incidents mentioned in the grounds are stray incidents spread over a period of one year and four months. These incidents cannot be said to be inter-linked. They could not have prejudiced the maintenance of 'public order' nor can they be held to be subversive of 'public order'. They were at best prejudicial to "law and order". The distinction between the maintenance of 'public order' and maintenance of "law and order" was brought out by this court in *Dr. Ram Manohar Lohia v. State of Bihar*.((1966) 1 SCR 709) Therein this Court pointed out that maintenance of "law and order" is a conception much wider than the conception of maintenance of 'public order'. The latter is the prevention of a disorder of grave nature. Every act that affects "law and order" need not affect 'public order'. If it is otherwise every one who disturbs "law and order", however petty the offence committed by him may be can be detained under the Preventive Detention Act. This would be a total repudiation of the rule of law and an affront to our Constitution. The legal position relating to the point in issue was again recently considered by this Court in *Arun Ghosh v. State of West Bengal*. (Writ Petition No. 287/69, decided on 2-12-1969 : 1970 (1) SCC 98 : 1970 SCC (Cr) Therein it was observed that 'public order' is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of "public order" is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of "law and order".

9. We are of the opinion that the grounds stated in support of the detention cannot amount to a disturbance of the maintenance of 'public order'.

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