

SUPREME COURT OF INDIA

Ala Mohan Mallick

Vs.

State of W.B.

Writ Petns. Nos. 229, 230, 233, 235, 262 and 288 of 1971

(P. Jaganmohan Reddy and D. G. Palekar, JJ.)

14.12.1971

JUDGEMENT

PALEKAR, J.:-

1. In these Writ Petitions the petitioners have applied to this court for writs in the nature of habeas corpus challenging their detention by the District Magistrates under section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970. The petitioners have been detained on the ground that they have been acting in a manner prejudicial to the maintenance of public order.

Writ Petition No. 262 of 71.

2. In this petition the petitioner Ala Mohan Mallick has been detained by the Order of the District Magistrate, Howrah dated 30-3-1971. He was arrested on 6-4-71 and the detention order and grounds of detention were served on him on the same day. After the receipt of the opinion of the Advisory Board on 7-6-1971 the State Government confirmed and continued the detention on 9-8-1971.

Writ Petition No. 230 of 71.

3. In this petition the petitioner Bhanu Lal Dey was detained by the order of District Magistrate, Howrah dated 14-4-1971. The petitioner was arrested on 20-4-1971 and on the same day he was served with the detention order and the grounds of detention. The opinion of the Advisory Board was received on 23-6-1971 and the order of detention was confirmed and continued by the State Government on 6-9-1971.

Writ Petition No. 233 of 71.

4. The petitioner Sahat Mondal was detained by a detention order dated 14-4-1971 passed by the District Magistrate, 24 Parganas. The petitioner was arrested on 20-4-71 and on the same day he was served with a detention order and the grounds of detention. The opinion of the Advisory Board was received on 21-6-1971 and the detention was confirmed and continued by the State Government on 16-8-1971.

Writ Petition No. 262 of 71.

5. The petitioner Animesh Ghosh was detained by a detention order dated 19-12-1970 passed by the District Magistrate Purulia. The petitioner was arrested on 21-12-1970 and on the same day he was served with the detention order and the grounds of detention. The opinion of the Advisory Board was received on 1-3-1971 and the State Government confirmed and continued the detention on 2-4-1971.

WRIT PETITION NO. 288 OF 71.

6. The petitioner Sunil Kumar Mitra was detained by an order passed by the district Magistrate, Bardwan on 1-3-1971. He was arrested on 24-3-1971 and on the same day he was served with the detention order and the grounds for detention. The opinion of the Advisory Board was received by the State Government on 21-5-1971 and the State Government confirmed and continued the detention order on 2-7-1971.

7. It will be seen in all these writ petitions that the State Government had failed to confirm and continue the detention order within three months of the date of detention. We have already held in Writ Petn. No. 219 of 1971 Deban Das v. State of West Bengal decided on 7-12-1971 (SC) that in order that a detention order passed by the District Magistrate may continue to be legal, the same has

to be confirmed and continued by the State government within three months of the date of detention. Since in all the above cases the State Government has failed to confirm and continue the detention within three months of the date of detention, the detention after three months would be illegal. All these petitioners, therefore, are entitled to be released forthwith. We have already passed orders for the release of the petitioners and no further orders are, therefore, necessary.

WRIT PETITION NO. 235 OF 1971.

8. The petitioner Samir Mazumdar was detained by the order of the District Magistrate, Bardwan dated 21-12-1970. He was arrested on 24-12-1970 and on the same day he was served with the detention order and grounds of detention. The State Government approved the detention order on 31-12-1970 and his case was placed before the Advisory Board on 21-1-1971. The petitioner's representation to the State Government had been received on 19-1-1971 and the same appears to have been forwarded to the Advisory Board. Later, however, on 5-2-1971 the representation was considered by the Government and rejected. The Advisory Board submitted its opinion that there are sufficient grounds for detention on 20-2-1971. Thereafter on 15-3-1971 the State Government confirmed and continued the detention.

9. It is contended on behalf of the petitioner that the grounds for detention are both vague and irrelevant for the detention and hence the order of detention is illegal. The grounds served on the petitioner are as follows:

(1) That on 16-11-70 approximately at 12.35 hrs., you along with others carried on depredations of the academical institutions of Kalna Town namely, Ambica Mahisamardini Higher Secondary School, Mahinsamardini Girls' Institution and Mahisamrdini Institution for boys by resorting to arms, explosion of bombs and throw in of acide bulbs etc, and thereby caused injury to Shri Sasthidas Banerji of Kalna town and damages of public properties.

(2) That on 24-11-1970 approximately at 19.00 hrs., you along with others attempted to murder Shri Bimal Kumar Das, Inspector of F.C.I. of Kalna town by attacking him with lethal weapons like daggers, revolver etc. in front of his house door.

(3) That you along with others prior to your arrest were engaged in a deep laid conspiracy to commit and instigate the commission of offences of murder, arson and other subversive acts.

10. It is contended before us that so far as ground No. 2 is concerned it cannot be regarded as prejudicial, to the maintenance of public order. At the most it would amount to a breach of law and order and hence the ground was not relevant to the object of maintaining public order. So far as

ground No. 3 is concerned, it is contended that the same is vague and, therefore, deprived the petitioner of an opportunity to make an effective representation against the same. It is not stated what was the deep laid conspiracy, who were the other participants, when the conspiracy took place, what murders were instigated and what was the nature of subversive acts. We think that there is considerable force in these contentions. Since the two grounds are invalid for the purposes of detention, the whole detention order becomes invalid even if the first ground is held to be valid. The petitioner is, therefore, entitled to be released. No fresh orders for his release are necessary to be passed because we have already passed orders for his release.

Petitions allowed.