

Anal Chandra Banarjee

Vs

The State of West Bengal

Writ Petition No. 274 of 1971

(J. M. Shelat, H. R. Khanna JJ)

02.02.1972

JUDGMENT

SHELAT, J. -

1. The order of detention, dated April 7, 1971, passed against the petitioner herein and in pursuance of which the petitioner was arrested and detained in jail the next day, recites that it was passed under Section 3(1) and (3) of the West Bengal (Prevention of Violent Activities) Act, (President's Act 19 of 1970), the ground for which was that the District Magistrate, 24 Parganas, who passed it, was satisfied that it was necessary to detain the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of public order.

2. The grounds of detention served on him at the time of this arrest narrated three incidents in which he was said to have been involved. The first ground was that on November 13, 1970, he, together with some others, committed theft of copper traction wire from a wagon lying in Naihati South Yard, and that when the railway police and the railway protection force on duty rushed at the spot, the petitioner and his associates threw bombs at them with intent to kill them. The second ground was that on December 23, 1970, the petitioner and his associates were removing 29 pieces of rail from the same railway yard and when the members of the railway protection force attempted to stop them from doing so, the petitioner and his said associates threw bombs at them with intent to kill them. The third and the last ground was as follows :

"That on January 13, 1971, in between 12.00 and 12.20 hours, you along with your associates being armed with bombs, swords, lathis, etc. entered in a clash with another group with a view to kill them. Your violent activities created a serious panic in the station area and disturbed the public order."

3. From the Dum Dum Central Jail where the petitioner was detained, he made a representation, dated April 29, 1971, to the State Government. That representation together with the record of the case was placed before the Advisory Board, who it appears, also heard the petitioner in person. The representation, dated April 29, 1971, was in general terms in which the petitioner denied the said grounds alleged against him, and maintained that he was a law-abiding citizen who never indulged in activities of the kind alleged against him. The Board, after considering the said representation, the said record of the case and after hearing him, as aforesaid, reported that there was, in its opinion, sufficient cause for his detention. It seems that thereupon the Government confirmed the said detention order and directed continuation of his detention thereunder. So far there does not appear to be any difficulty as all the steps following the petitioner's arrest appear to have been taken by the detaining authority in compliance with the provisions of the Act.

4. But two questions have been raised before us on behalf of the petitioner. The first was raised by the petitioner himself in the written arguments submitted by him to this Court from jail and the second was raised by his counsel during the course of the hearing of the petition. The point raised by the petitioner was in regard to ground No. 2 in the grounds of detention in which it was alleged that the petitioner participated in the incident said to have taken place on December 23, 1970. The petitioner's allegation was that on January 1, 1971, the Naihati G.R.P. police appeared before the Magistrate, Sealdah, stating that the petitioner was arrested in a police case referred to as Naihati G.R.P. Case No. 11, dated November 23, 1970, under Sections 148, 379 and 307 of the Penal Code and Section 46(3) of the Explosive Substances Act, but that the Magistrate, after considering the facts and circumstances of the case, released him on bail. That case, according to the petitioner was still pending. The contention was that the authorities, having elected to institute proceedings against him under the Code of Criminal Procedure, could not, while those proceedings were still pending, also take parallel proceedings under the present Act thereby placing, firstly, the petitioner under a double jeopardy, and secondly, conducting investigation in that case without that investigation being under the court's supervision and control. The argument was that if the petitioner were to be kept under preventive detention under the present Act it would not be necessary, as it would otherwise be, for the police to ask for remand orders and produce the petitioner before the Magistrate whenever such orders were prayed for. The detention order and the detention thereunder, it was argued, were on the aforesaid two grounds invalid.

5. The second contention concerned the third ground of the grounds of detention and related to the alleged incident, dated January 13, 1971, when the petitioner and his associates who were armed with the bombs, swords, lathis, etc. were said to have clashed with another group. In the written arguments submitted by the petitioner from jail, the petitioner made a general denial stating that, if such an incident had occurred and he had been involved in it, the police were bound to file a case against him, but that no such case was filed which indicated that he had nothing to do with the alleged incident, and had been falsely involved in it. Counsel appearing for him raised another point, and that was that ground No. 3 was vague and uncertain and was couched in such indefinite language that it would be impossible for the petitioner to effectively make a representation.

6. We proceed to consider this contention first because in the view we take concerning it it would not be necessary for us to go into the contention regarding ground No. 2 of the grounds of detention.

7. Ground No. 3, no doubt, specifies the date and the time when the incident alleged therein was said to have taken place. It also alleges that the petitioner and his associates were armed during that alleged incident with weapons such as bombs, swords, lathis, etc., and that they had a clash "with another group", and that that incident "created a serious panic in the station area". The ground does not state what the authority meant by "another group", nor does it state in which "station area" the said alleged incident was said to have taken place resulting in panic.

8. It will be seen that the first and the second grounds mentioned two incidents of theft said to have been committed in the yard of the Naihati Railway Station. The question is, in the absence of any particulars as to the place where the incident alleged in the third ground took place, what would the expression "station area" mean to the petitioner, and whether the petitioner would not get the impression that the District Magistrate meant thereby Naihati railway station or Naihati police station area. In his representation, the petitioner merely denied all the three grounds and maintained that he had no concern with any of the three incidents alleged in the grounds of detention. In his written arguments submitted to this Court he, firstly, denied having anything to do with the incident of January 13, 1971, and then proceeded to state that all those allegations were made falsely against

him by the Naihati railway police, and that they were false because if the said alleged incidents had in fact occurred, the police were bound to launch proceedings against him. He further asserted that at any rate, the local police that is, the Naihati police, were bound to make some record of them in the general diary maintained by the said police station. It is, thus, clear that the petitioner was under the impression, in the absence of the place or the locality where the said incident was said to have taken place having been mentioned, that the said incident had taken place, according to the District Magistrate, either in Naihati railway station or the area under the jurisdiction of Naihati police station.

9. Such an impression, it appears, was likely because when read in the context of the first and the second grounds, the reader, of the third ground, in the absence of any particulars as regards the locality where the said alleged incident took place, might well infer that the locality there alleged must be Naihati railway station area. That such was the impression of the petitioner appears from the assertion made by him in Para 6 of his written arguments that the allegations in respect of all the grounds were made against him by Naihati railway police, and that those were false because neither they nor the Naihati Police made any reference to them in the general diaries maintained by them, nor lodged any complaint against him. In Para 7 of the affidavit in reply of the State, the averment for the first time made was that the alleged incident of January 13, 1971, took place not in Naihati railway station area but at Palta railway station which resulted in "panic in the said station area and distributed public peace and tranquility".

10. Apart, thus, from ground No. 3 in the grounds of detention being vague by reason of its omission to mention the locality, there was in the context of the other two grounds a likelihood of the petitioner being under a wrong impression that according to the District Magistrate the incident there alleged had taken place in Naihati railway station area. That being so, it is obvious that the petitioner could not make a correct and proper representation which must mean that the omission to mention the locality prevented him from effectively making a representation.

11. The omission to specify the group with whom the petitioner and his associates came into clash also renders that ground vague and indefinite, resulting once again in disabling the petitioner from effectively making a representation. Suppose that the petitioner wanted to maintain that on January 13, 1971, he was never at or near Palta railway station or that the group with whom he was said to have clashed was his own group or was friendly with him, and therefore, there was no possibility of any such clash. He could not obviously have been able to do so in the absence of particulars about the locality and the name or description of the said group.

12. The result of those omissions being to prevent the petitioner from effectively making representation, his detention under the said order must be found to be invalid. The petition, for the reasons aforesaid, succeeds and is allowed. Accordingly we direct that the petitioner be released from jail and set at liberty forthwith.

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