

Sri Baidya Nath Chunakar

Vs

State of West Bengal

Writ Petition No. 377 of 1971

(J. M. Shelat, H. R. Khanna, G. K. Mitter JJ)

14.03.1972

JUDGMENT

MITTER J. -

1. The petitioner before us challenges the order of detention by which he was put under arrest under Article 32 of the Constitution.

2. The said order was passed against the petitioner by the District Magistrate, Burdwan, on April 3, 1971, in exercise of powers conferred by sub-section (1), read with sub-section (3) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970. The petitioner was arrested on April 6, 1971, when he was served with grounds for detention. The District Magistrate had reported about the passing of the detention order together with grounds of detention and other particulars to the State Government on April 3, 1971. The report and particulars were considered by the Government on April 13, and the detention order was approved on the same day. The State Government also submitted a report to the Central Government in accordance with the provisions contained in sub-section (5) of Section 3 of the Act. The petitioner made a representation against his arrest on May 3, 1971. On May 4, 1971, the State Government placed the case of the petitioner before the Advisory Board under Section 10 of the Act. It appears that the representation of the petitioner was received by the State Government in its Home Department on or about May 10, 1971. The representation appears to have been considered by the Government on June 8, 1971, and rejected on the same day. Nevertheless the representation was sent up to the Advisory Board for its consideration. The Board after considering the materials placed before it and after hearing the detenu petitioner in person submitted its report to the State Government on June 14, 1971, to the effect that there was sufficient cause for detention of the petitioner. By order, dated July 3, 1971, the State Government confirmed the order of detention in exercise of powers conferred by sub-section (1) of Section 12 of the Act. The communication of the confirmation of the order of detention was claimed to have been made by a memo, dated August 23, 1971, through the Additional Superintendent of Police who was directed to serve the same upon the petitioner immediately.

3. The above dates are called from the affidavit of Chandi Charan Bose, Deputy Secretary, Home (Special) Department, Government of West Bengal. The deponent claims to have made the affidavit on the basis of the relevant records available to the Government of West Bengal, as also authority from the State Government to affirm the affidavit on behalf of the respondent to the petitioner, the District Magistrate of Burdwan.

4. There is no challenge to the above dates by the petitioner excepting that according to him the order of communication to him bearing, dated August 23, 1971, was not served October 4, 1971.

This appears to be borne out by the original records which were produced before us.

5. The grounds of detention served on the petitioner are : (1) That the petitioner committed theft of overhead traction wire from the main line of the Eastern Railway in the area between Panagarh Railway Station and Birudiha; (2) on March 21, 1971 at 20.30 hours the petitioner along with his associates attacked on Inspector of the Railway Protection Force at Ondal on the road in South Bazar, Ondal by hurling crackers at him.

6. The commission of the first act was said to be likely to prejudice the maintenance of public order as the stoppage of running train services causes great disaffection amongst the passengers. With regard to the second act it was said that the offence actually affected the maintenance of public order as people were all frightened and out of a sense of insecurity closed their shops and could not pursue their normal avocations of life.

7. The petitioner's case is that he was not a guilty of any of the above acts which were attributed to him and that after the arrest criminal cases were started against him when Judicial Magistrate, Durgapur ordered him to be released on bail as there was no prima facie evidence to connect him with the acts with which he was charged.

8. It is not necessary to go into all the contentions raised on behalf of the petitioner in his petition and the affidavit in reply. The points which were urged by Mr. Rana appearing for the petitioner were, first, that the record did not show that the fact of the release of the petitioner on bail was ever brought to the notice of the detaining authority. It was contended that the same would have convinced the authority that there was no prima facie case for proceeding against him under the West Bengal (Prevention of Violent Activities) Act, 1970. The second point urged was that the return to the writ petition had not been filed by the District Magistrate who was the detaining authority but only an Assistant Secretary to the Government who had no personal knowledge of the facts of the case. The third point urged was that the petitioner's detention was bad inasmuch as there was undue delay in considering his representation. According to the dates which have already been set forth, the petitioner's representation against the detention was received by Government on May 10, and it was considered and rejected on June 8, there being a delay of 29 days.

9. On the third point our attention was drawn to a decision of this Court in *K. I. Singh v. State of Manipur* (AIR 1972 SC 438.). It appears the petitioners in that case had made a joint representation on March 1, 1971, which was received by Government on March 3, 1971. The representation was rejected on March 20, 1971, and such rejection was communicated to the petitioners on March 22, 1971. Various judgments of this Court were considered in that case and certain principles deducible therefrom were noted. For our purpose it will be sufficient to state that the Court laid down (a) that the appropriate authority was bound to give an opportunity to the detenu to make representation and to consider the representation of the detenu as early as possible; (b) the consideration of the representation of the detainee was entirely independent of any action by the Advisory Board; (c) That there should not be any delay in the matter of consideration and although no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority Government must show vigilance in such matters as a citizen's right raised a correlative duty on the State; and (d) The appropriate Government was to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board.

10. On the facts of that case the Court held that an unexplained delay of 17 days between the date when the representation was received and the date when the same was considered was by itself a

sufficient ground for holding that the orders of detention of the petitioners were illegal and they were entitled to be released.

11. In laying down the above propositions the Court relied on clause (5) of Article 22 of the Constitution and took the view that unaccounted for delay in the consideration of the representation would result in violation of a fundamental right of a citizen entitling that detenu to be set at liberty.

12. Although the question of delay was not raised either in the petition or in affidavit in reply to the petition, the factum of it emerges clearly from the affidavit of the Assistant Secretary affirmed on behalf of the State Government. As the entire record of the case was before us we went into the matter and looked into the record to see whether there was any material which would lead us to infer that there was some justification for the delay in considering the representation, but we found none and the counsel for the State was not able to point out any material which would excuse the delay. In the circumstances we have no alternative but to follow the decision referred to above and direct the petitioner to be set at liberty. We may also add that apparently there was delay in the final communication on the confirmation of the order of detention by the State Government but we do not base our decision on that delay.

13. In the circumstances, it is not necessary to consider the others points raised on behalf of the petitioner. We directed his release even on the day when the matter was heard, i.e. February 24, 1972, and indicated that we would give reasons for our order later on. The above are our reasons for the order of release. We had directed while ordering the release of the petitioner to the effect that he should be taken to Burdwan and released as soon as he reaches there.

</html