

Kanu Biswas

Vs.

State of West Bengal

Writ Petition No. 46 of 1972

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

03.05.1972

JUDGMENT

KHANNA, J. -

1. This is a petition through Jail under Article 32 of the Constitution for issuing a writ of habeas corpus by Kanu Biswas, who has been ordered by the District Magistrate, 24-Parganas to be detained under Section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971) "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order".

2. The order of detention was made by the District Magistrate on November 13, 1971. The petitioner was arrested in pursuance of the detention order on November 14, 1971, and was served the same day with the order as well as the grounds of detention together with vernacular translation thereof. On November 18, 1971, the District Magistrate sent report to the State Government about the passing of the detention order along with the grounds of detention and other necessary particulars. The State Government considered the matter and approved the detention order on November 24, 1971. Necessary report was also sent on that day by the State Government to the Central Government. On December 13, 1971, the State Government placed the case of the petitioner before the Advisory Board. In the meanwhile, on December 12, 1971, the State Government received a representation of the petitioner. The representation was considered by the State Government and was rejected on January 11, 1972. The representation was thereafter forwarded to the Advisory Board. The Board, after considering the material placed before it, including the petitioner's representation, and after hearing the petitioner in person, sent its report to the State Government on January 14, 1972. Opinion was expressed by the Board that there was sufficient cause for the detention of the petitioner. On February 2, 1972, the State Government confirmed the order for the detention of the petitioner. Communication about the confirmation of the order was thereafter sent to the petitioner.

3. Affidavit of Shri B. Mukhopadhyaya, District Magistrate of 24-Parganas, who passed the impugned order, has been filed in opposition to the petition. Mr. Bagga has argued the case amicus curiae on behalf of the petitioner, while the State has been represented by Mr. Chakravarti.

4. It has been argued on behalf of the petitioner that the particular acts on account of which the order for the detention of the petitioner has been made were not germane to the maintenance of public order and, as such, the order for his detention could not be validly made for preventing him from acting in a manner prejudicial to the maintenance of public order. In this respect we find that according to the grounds of detention, the order for the petitioner's detention was made on the ground that he had been acting in a manner prejudicial to the maintenance of public order as

evidenced by the particulars given below taken separately or collectively :

"That on September 26, 1971, at about 18.30 hours while Baidyanath Bandopadhyaya of Champapukur, P. S. Basirhat, District 24-Parganas along with his wife were travelling in a 3rd class compartment of Up Basirhat local train from Barasat, you along with your associates attacked him and his wife with open knives between Champapukur R/S. and Basirhat R/S. and robbed them of Wrist Watch, Gold Ornaments, Cash valued at Rs. 725/- by putting them in fear of death. By your such activities you created terror and panic among the travelling passengers and public order was disturbed thereby.

On November 4, 1971, at about 21.40 hours, you and your associates armed with bombs, daggers, knives and iron rods, etc. attacked police on the platform at Beliaghata railway station with a view to take their lives and to intimidate the public you charged two bombs which exploded with terrible sound endangering the on-duty police.

Your such action was so violent that it created panic and confusion among the passengers there and then. You have thus acted in a manner prejudicial to the maintenance of public order."

5. It would appear from the above that the petitioner and his associates attacked a husband and wife with open knives in the third class compartment of a running train and robbed them of valuable property, including wrist watch, gold ornaments and cash by putting them in fear of death. The grounds of detention further show that the above act of the petitioner and his associates created terror and panic among the traveling passenger and thereby disturbed public order. The second incident which took place at 9.40 p.m. on November 4, 1971 related to the attack by the petitioner and his associates on a police party on the platform of Beliaghata railway station with a view to kill them. The petitioner and his associates are stated to have been then armed with bombs, daggers, knives and iron rods and they exploded two bombs with terrible sound. It is further stated that the above act of the petitioner and his associates created panic and confusion among the passengers and thus disturbed public order. Each one of the above two incidents of September 26, 1971 and November 4, 1971, in our opinion, affected public order and not merely law and order.

6. The distinction between the concept of public order and that of law and order has been adverted to by this Court in a number of cases. In the case of *Dr. Ram Manohar Lohia v. State of Bihar* ((1966) 1 SCR 709 : AIR 1966 SC 740 : (1966) 2 SCJ 5), Hidayatullah, J. (as he then was) said that any contravention of law always affected order, but before it could be said to affect public order, it must affect the community at large. He considered three concepts, law and order, public order and the security of the State, and observed that to appreciate the scope and extent of each one of them, one should imagine three concentric circles. The largest of them represented law and order, next represented public order and the smallest represented the security of the State. An act might affect law and order but not public order, just as an act might affect public order but not the security of the State. In the subsequent case of *Arun Ghosh v. State of West Bengal*, the Court dealt with the matter in the following words :

"Public order is the even tempo of the life of the community taking the country as a whole 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. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different."

7. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order, according to the dictum laid down in the above case, is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call "order publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is : Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed ?

8. The principle enunciated above has been followed by this Court in the case of Nagendra Nath Mondal v. State of West Bengal ((1972) 1 SCC 498.), and Nandlal Roy alias Honda Dulal Roy alias Pagla v. State of West Bengal (W.P. No. 15 of 1972, decided on April 11, 1972) ((1972) 2 SCC 524). In the light of what has been observed above, we have no doubt that each one of the incidents of September 26, 1971 and November 4, 1971, was prejudicial to the maintenance of public order. When two passengers are robbed at the point of knife while travelling in a third class compartment of a running train the act of the miscreants affects not only the passengers who are deprived of their valuables but also the other passengers who watch the whole thing in fear as helpless spectators. There is bound to be consequent terror and panic amongst the travelling public. Likewise, attack directed against a police party on the platform of a railway station by exploding bombs is bound to create panic and confusion among the passengers at the railway station. The acts in question in the very nature of things would adversely affect the even tempo of the life of the community and cause a general disturbance of public tranquillity.

9. Reference has been made on behalf of the petitioner to the case of Sudhir Kumar Saha v. Commissioner of Police, Calcutta and Another ((1970) 3 SCR 360 : (1970) 1 SCC 149). The petitioner in that case along with others committed various acts on three occasions. On the first occasion he attacked the people of a locality with a knife and by hurling bottles at them. On the other two occasions he attacked the people of another locality of hurling bombs at them. It was held that the incidents were not interlinked and could not have prejudiced the maintenance of public order.

10. As against the above solitary decision, Mr. Chakravarti on behalf of the respondent-State has referred to the principle laid down in the case of Arun Ghosh v. State of West Bengal (supra), as well as in the case of Nagendra Nath Mondal v. State of West Bengal (supra). Apart from those two cases, we find that in the case of Tapan Kumar Mukherjee and Others v. State of West Bengal (AIR 1972 SC 840 : 1972 Cri LJ 657), the allegation against the detenu was that he along with other associates committed robbery in respect of a fan and a watch at the point of dagger in a running train, and this created disturbance of public order. Contention was raised that the act of the detenu

and his associates related only to law and order and not to public order. This contention was repelled and it was observed that the innocent passengers would be terror-stricken by the acts of the detenu and his associates. Another incident which was referred to in that case related to throwing of bombs on a shop. The bombs exploded and as a result of the panic so caused in the locality, all the shops and houses around the place were closed. The above ground was held by this Court to be germane to the disturbance of public order, In the case of Nandlal Roy (supra), the ground of detention recited that the detenu and his associates while committing theft of rice from a wagon threw bombs upon the members of the Railway Protection Force. One member of the Railway Protection Force was injured. The explosion of the bombs was stated to have created panic in the station area and the adjoining locality. It was held that the activity of the petitioner created not merely a question of the maintenance law and order but created a disturbance which would be comprehended by the expression "order publique". The detention order was consequently upheld.

11. In *S.K. Kedar v. State of West Bengal* (W.P. No. 35 of 1972, decided on May 2, 1972) ((1970) 3 SCR 360 : (1970) 1 SCC 149), the allegation against the detenu was that he and his associates while removing railway material charged bombs ballast upon R.P.F. party as a consequence of which the members of R.P.F. party fired in self-defence. The activity of the petitioner was considered to be prejudicial to the maintenance of public order and the detention order was upheld.

12. The facts of the present case are much more akin to those of *Tapan Kumar Mukherjee and Other v. State of West Bengal* (supra). The past activities of the petitioner as revealed in the grounds of detention, in our opinion, showed a propensity to disturb public order. The authority concerned, in the circumstances, could have validly made the order for the detention of the petitioner to prevent him from acting in a manner prejudicial to the maintenance of public order.

13. The petition consequently fails and is dismissed.

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