

Madan Malik

Vs

State of West Bengal

Writ Petition No. 38 of 1972

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

05.05.1972

JUDGMENT

KHANNA, J. -

1. This is a petition through jail under Article 32 of the Constitution of India for the issue of a writ of habeas corpus by Madan Malik, who has been ordered by the District Magistrate, 24-Parganas to be detained under Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970) (hereinafter referred to as the Act) "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order".

2. Affidavit on behalf of the respondent-State was filed by Shri Hironmoy Chakraborty, Assistant Secretary, Home (Special) Department, Government of West Bengal. The case was argued amicus curiae by Mr. Harjinder Singh on behalf of the petitioner and by Mr. Kshatriya on behalf of the respondent. After hearing the learned counsel, we passed an order on May 3, 1972 for the release of the petitioner and stated that the reasons in support of our order would be given later. We now proceed to set out those reasons.

3. The order for the detention of the petitioner was made by the District Magistrate on July 2, 1971. He was arrested in pursuance of the said order on July 3, 1971, and was served with the detention order as well as the ground of detention together with vernacular translation thereof. Report along with necessary particulars about the making of the detention order was sent by the District Magistrate to the State Government and the said Government, after giving the matter its consideration, approved the detention order on July 12, 1971. The same day report was sent to the Central Government by the State Government about the making of the detention order. On July 31, 1971, the State Government received a representation from the petitioner. On August 1, 1971, the case of the petitioner was placed before the Advisory Board. The representation sent by the petitioner was considered by the State Government and was rejected on September 9, 1971. The representation was thereafter forwarded to the Advisory Board. The Advisory Board, after considering the material before it and the representation of the petitioner and after hearing him in person, submitted its report to the State Government on September 10, 1971. Opinion was expressed by the Board that there was sufficient cause for the detention of the petitioner. The State Government in exercise of the power conferred by sub-section (1) of Section 12 of the Act passed an order on October 12, 1971, confirming the order of detention. Intimation about the confirmation was thereafter sent to the petitioner.

4. It would appear from the above that though the petitioner was arrested in pursuance of the detention order on July 3, 1971, the order for the confirmation of the detention order under Section

12 of the Act was made by the State Government on October 12, 1971. A period of more than three months thus elapsed between the date of the arrest of the petitioner in pursuance of the detention order and the date of the order by which the State Government confirmed the detention order. The failure of the State Government to confirm the detention order within three months from the date of commencement of detention, in our opinion, would render the further detention of the petitioner to be not in accordance with law. There is a string of authorities wherein this Court has held, after referring to Article 22(4) of the Constitution, that unless the State Government exercises its power of confirming the detention order within three months from the date of detention, the detention after the expiry of that period would be without the authority of law. In *Deb Sadhan Roy v. State of West Bengal* ((1972) 1 SCC 308.), this Court held that failure to confirm the detention order within three months would result in the detention becoming illegal the moment the three months period has elapsed without such confirmation. The above decision was realised upon in the case of *Ujjal Mandal v. State of West Bengal* ((1972) 1 SCC 456 : 1972 SCC (Cri) 212.) and it was held that unless that power of confirming the detention after the exercised within three months from the date of detention, the detention after the expiry of that period would be without the authority of law. Reference was also made in that case to a number of decisions of the High Courts wherein a similar view had been taken. The above view was again reiterated by this Court in the case of *Shibapada Mukherjee v. State of West Bengal* (W.P. No. 341 of 1971, decided on January 25, 1972). It was held that if there is no decision to confirm the detention order and to continue the detention thereunder, the detention has to come to an end on the expiry of three months from the date of detention. Such an order or decision, it was further observed, has to be made before the period of three months, for without such an order the detention would cease to be valid.

5. In view of the above decisions, the detention of the petitioner after the expiry of three months from the date of his arrest cannot be held to be in accordance with law. We, therefore, accept the petition and make absolute the rule issued therein.

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