Sri Nagen Murmu

Vs

The State of West Bengal

Writ Petition No. 191 of 1972

(J. M. Shelat, I. D. Dua JJ)

27.07.1972

JUDGMENT

DUA, J. -

1. In this petition under Article 32 of the Constitution the petitioner Shri Nagen Murmu challenges the order of his detention, dated December 24, 1971, made by the District Magistrate, Midnapore under Section 3, sub-section (1) read with sub-section (2) of the Maintenance of Internal Security Act, 26 of 1971 (hereinafter called the Act). The detenu was arrested pursuant to the order of detention, on December 29, 1971 on which date the grounds of detention were also served on him. This fact was reported to the State Government on December 30, 1971 and the detention order was approved by the State Government, on January 4, 1972. The detenu's representation was received by the State Government, on January 10, 1972 and was considered by it, on February 19, 1972. The grounds on which the detention order was passed are :

> "1. That on the midnight of October 13/14, 1969, you along with nearly 200 other armed with a gun, bows and arrows, tangis and other deadly weapons raised the house of Jiban Krishna Das of village Jotdaris, P. S. Debra, shot the house owner to death, looted cash and ornaments worth about Rs. 2,300/- and set-fire to his house.

2. That, on June 22, 1970, at about 04.00 hours, you and some of your associates including Gourkhai Mandi of Chakmrityunjay, P. S. Debra, were found present without any reasonable excuse in the house of Bankim Chandra De of Shibarampur, P. S. Debra at the time of recovery of a stolen gun from this place. This gun belonged to Shri Kanai Lal Kauity of village Saldahari, P. S. Debra and it was forcibly taken away on October 1, 1969 by the Naxalites.

Ground No. 2, in our opinion, is wholly irrelevant and extraneous to the object or purpose of the detention order. Merely because the petitioner and his associates were found present without any reasonable excuse in the house of Bankim Chandra De at the time of the recovery of the stolen gun alleged to belong to kanai Lal Kuity of village Saldahari from whom it had been forcibly taken away, on October 1, 1969, by the Naxalites could by no stretch be considered to be an act in any manner prejudicial to the maintenance of public order. It is indeed beyond our comprehension how any officer fully understanding the concept of maintenance of public order could consider the petitioner's mere presence at the place of the incident to be an action raising the problem of the public order. It appears that the detaining authority had not fully grasped the distinction between the concept of public order and of ordinary law and order or of ordinary violation of law. This distinction has been clearly brought out in a number of decisions of this Court to which it is unnecessary to refer in detail on this occasion (see Dr. Ram Manohar Lohia v. State of Bihar ([1966]

1 SCR 709 : AIR 1966 SC 740 : [1966] 1 SCA 472) and Sudhir Kumar Saha v. Commissioner of Police, Calcutta (AIR 1970 SC 814 : (1970) 1 SCC 149)). Public order has been repeatedly been described by this Court to be the even tempo of the life of the community taking within its fold even a specified locality and a substantial section of the society as a whole. It may be pointed out that the object of making the impugned order of detention was to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. If, therefore, the mere presence of the petitioner in the house of Bankim Chandra De as alleged in ground No. 2 cannot be considered to be an act prejudicial to the maintenance of public order, the possibility of repetition of such an act could by no means be considered to fall within the purview of Section 3(1)(a)(ii) of the Act.

2. Coming to the first ground the incident which is the subject-matter there of is said to have taken place on the midnight of October 13/14, 1969. The impugned order was made, on December 24, 1971, more than two years thereafter. This, in our opinion is far too remote for the purpose of raising any rational and reasonable inference of any apprehension of a repetition of such an act so to justify the petitioner's detention. It may be pointed out that as held by this Court in Ujagar Singh v. State of Punjab and Jagjit Singh v. State of Punjab, ([1952] SCR 756 : AIR 1953 SC 3501 : 1952 SCJ 521) the past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed largely from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely in the future to act inner manner prejudicial to the maintenance of public order. But in order to justify such an inference it is necessary to bear in mind that such past conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary. No doubt, it is both inexpedient and undesirable to say down any inflexible test as to how far distant the past conduct or the antecedent history should be for reasonably and rationally justifying the conclusion that the person concerned if not detained may indulge in prejudicial activities. In Rameshwar Shaw v. District Magistrate, Burdhwan, ([1964] 4 SCR 921 : AIR 1964 SC 334 : (1964) 1 Cri LJ 257) after laying down what has just been said the court observed that the detention of a person without a trial is a very serious encroachment on his personal freedom and so at every stage all questions in relation to the said detention must be carefully and solemnly considered.

3. In the case in hand, there is nothing on the record from which it can be gathered that, though the solitary incident contained in the first ground occurred as far back as October, 1969, there are cogent grounds from which it can be rationally inferred in December, 1971 that with a view to prevent the petitioner from acting in future in a manner prejudicial to the maintenance of public order it is necessary to make the impugned order of detention. In the return, in addition to the reference to the two grounds on which the order of detention is based, it is stated in Para 8 that the petitioner is an active member of the CPI-ML group and he was a close associate of hard-core Naxalite leaders, namely, Gangadhar Murmu and Baidyanath Murmu and others. This, in our opinion, does not in any way bring the solitary incident contained in ground No. 1 close to the time of the impugned order as to justify the detention order.

4. It was also argued on behalf of the petitioner that his representation was not considered by the State Government with due expedition. The representation was made, on January 10, 1972 and the State Government considered it, on February 19, 1972. The explanation given by the State Government in the counter-affidavit, dated July 8, 1972 is :

> "(a) That the go-slow movement launched by the State Government employees sometime back caused dislocation in office work, consequential increase in the

pending work and delay in disposal.

(b) That due to increase of the volume of work relating to detentions under the said Act there was considerable pressure of work and in consequence whereof disposal of urgent matters was also delayed.

(c) That due to aforesaid grounds, movement of files was delayed and the records were not readily available and in this case was a delay about 38 days in considering the representation of the petitioner."

This explanation, is needless to point out, is so extremely vague with respect to the point of time of the go-slow movement and with respect to the details of the volume of work that we find it almost impossible to hold this explanation to be satisfactory. The liberty of an individual, it need hardly be emphasised, is a matter of great constitutional importance in our system of governance. The detention of an individual is thus a serious matter and in our view the State is expected and indeed enjoined by the Constitution to consider the representation of a detenu under the Act with reasonable dispatch and a casual or indifferent attitude with respect to the delay in this matter cannot be lightly countenanced by this Court. This order is also liable to be quashed on this ground.

5. We set aside the impugned order of detention and direct that the petitioner be set at liberty forthwith.

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