

Arun Kumar Sinha

Vs

The State of West Bengal

Writ Petition No. 117 Of 1972

( H. R. Khanna, J. M. Shelat, I. D. Dua JJ)

31.07.1972

JUDGMENT

SHELAT, J. -

1. On August 24, 1971, the District Magistrate Burdwan passed an order of detention against the petitioner under sub-section (1), read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971, on the ground that it was necessary to do so with a view to preventing the him from acting in a manner prejudicial to the maintenance of public order. Pursuant to the order, the petitioner was arrested on September 5, 1971, and has since then been in jail

2. The grounds of detention served on the petitioner at the time of his arrest read as follows :

"That you on December 31, 1970, at about 19.50 hours with your associates, armed with lethal weapons with a view to promoting the cause of the extremist party to which you belong, went to Chinakuri and surrounded one Sulaxman Singh on the road near Chinakuri Pit No. 3 Colliery Hospital while he was returning to his house on a motorcycle from Chinakuri Bazar and stabbed him (Sulaxman Singh) with dagger causing his death. Your act created a general feeling of fear and insecurity and jeopardised the even tempo of life of the community of the locality and thereby disturbed public order.

That you on March 14, 1971, at about 17.30 hours along with your associates being armed with lethal weapons with a view to promoting the cause of the extremist party to which you belong, surrounded Sri Subhodh Mitra, Loading Inspector, Chinakuri Colliery, on the road near Radhanagar Railway Station P. S. Kulti, District Burdwan and inflicted multiple injuries on his person by dagger for committing murder, characterising him a police spy. Your act created a general feeling of fear and insecurity and jeopardised even the tempo of life of the community of the locality and thereby disturbed public order."

3. There is no dispute that the relevant authorities took thereafter all the consequential steps as required by the Act.

4. Mr. Parashar, however, challenged the validity of the order and the petitioner's detention thereunder on four grounds. The first was that the subjective satisfaction, which is the foundation for action under the Act, being that of the District Magistrate, the counter-affidavit filed on behalf of the State should have been made by that officer who alone could depose about such satisfaction and

not by the Deputy Secretary, Home (Special) Department of the West Bengal Government. There is, in our view, some force in the contention of Mr. Parashar, for, it would be more appropriate that the authority which passes the order and upon whose satisfaction such an order is founded should make the affidavit-in-reply rather than any other authority who has no knowledge of his own and has, therefore, to rely simply on the record of the case. It, however, appears that the State Government has entrusted the entire work of detention cases to a special department to which the records of all the detention cases are sent and therefore finds it more expeditious and convenient to have affidavits filed by the Under Secretary in charge of those cases. Since the subjective satisfaction of the District Magistrate in the instant case is not directly challenged, nothing would seem to turn on the fact that the affidavit-in-reply is not by the District Magistrate but by the Under Secretary. However, in cases where such a challenge is made, it would, in our view, be appropriate and satisfactory that the affidavit should be by the detaining authority itself.

5. The second ground was that the First Information Report was lodged in respect of incidents set out in the grounds for the purpose of initiating a prosecuting against those responsible for them and yet that document did not contain the petitioner's name. This ground, however, was not taken by the petitioner in the petition with the result that the respondent State had no opportunity or occasion to deal with it. That being so, it is not possible, in the absence of any materials before us, to deal with such a contention urged for the first time in the course of arguments.

6. The third ground was that there was a delay of thirty-seven days by the Government in considering the representation sent to it by the petitioner. It is not in dispute that the Government received the representation on September 21, 1971, and did not consider and dispose it of until October 28, 1971. Thirty-seven days has thus elapsed between the receipt and the disposal of the representation. This contention also was not raised in the petition and consequently the counter-affidavit of the State Government did not contain any facts explaining the delay. The state Government, however, was directed to file a supplemental reply explaining the delay which the Government has now done. The supplemental affidavit gives two reasons why the representation could not be expeditiously dealt with by the Government. One is that the State Government's employees, including those working in the Home (Special) Department, had resorted to constant demonstrations from the September 12, to the end of November 1971, which considerably impeded the work of the concerned Department. The other is that during this period there was also a considerable spurt in detention cases both the under the present Act and the West Bengal Prevention of (Violent Activities) Act, 1970. Both these reasons contributed to the delay in the disposal of the cases by the Department. In two decisions of this Court *Amulya Chandra Dev v. State of West Bengal* ((1972) 2 SCC 902 : 1972 SCC (Cri) 906) and *Mritunjoy Prumanik v. State of West Bengal* ((1972) 2 SCC 586 : 1972 SCC (Cri) 904) Mathew, J., rejected a similar explanation and ordered the release of the detenus therein. But that was because he found those explanations unsatisfactory as the representations in those cases were received by Government after the demonstrations had stopped. That is not so in the present case as the petitioner's representation was received by Government on September 21, 1971, and considered on October 28, 1971, that is to say, while the demonstrations were still going on. The two cases dealt with by Mathew, J., are thus clearly distinguishable and the reason given there for considering the Government's explanation unsatisfactory cannot rightly apply to the present case. In the circumstances of the present case it is not possible to hold, in the absence of any other material, that the Government was guilty of such inordinate delay as to vitiate the impugned order and the detention thereunder.

7. The last ground was that in any event that two grounds of detention pertained to the problem of law and order and not to public order in relation to which only preventive detention can be directed

under the Act. The argument was that the acts complained of in the grounds were acts against specific individuals in respect of which the ordinary laws of the land would be sufficient to cope with and no recourse could have been made to the present Act. A similar point was dealt with in the judgment in *Amiya Kumar Karmakar v. State of West Bengal* ((1972) 2 SCC 672 : 1973 SCC (Cri) 68) just delivered. The reasoning given by us there applies to this case also, and therefore, it is not necessary to repeat it except to say that the object with which the acts attributed to the petitioner and the probable impact they would have on the members of the public residing in the locality were such that they were likely to (and as the grounds assert they in fact did) affect adversely the maintenance of public order.

8. In the result the petition fails and is dismissed.

</html