

Ashim Kumar Ray

Vs

The State of West Bengal

Writ Petition No. 112 Of 1972

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

17.08.1972

JUDGMENT

SHELAT, J. -

1. By an order, dated November 22, 1971, under Section 3(1) and (2) of the Maintenance of Internal Security Act, 1971 the District Magistrate of Nadia ordered the detention of the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of public order. Pursuant to the said order, the petitioner was arrested on December 1, 1971, and detained in jail. The detaining authorities thereafter took all the steps and passed all orders under and as prescribed by the Act. No dispute has been raised by the petitioner in respect of any one of them.

2. The grounds of detention furnished to the petitioner at the time of his arrest stated as follows :

"(1) On the night of July 30, 1971, at about 20.00 hours you along with your associates entered into the toddi shop of Shri Gopinath Bohara s/o Late Ram Bohara at Gangnapore, P.S. Ranaghat District, Nadia and stabbed Shri Gopinath Bohara with daggers causing severe bleeding injuries on his person. You also terrorised the local people by exploding bombs. Subsequently, the said Gopinath Bohara succumbed to his injuries at Saktinagar Hospital. Such action created terror and panic in the minds of the local peace-loving people and caused disruption to their normal work.

(2) On July 31, 1971, at about 21.30 hours at Rameshwar,

P. S. Ranaghat, District Nadia, you along with your associates armed with lethal weapons attacked Ajahar Ali Khan s/o Late Jabbar Khan of the said village and killed him by causing severe injuries on his person. You did this with a view to promoting your political ideology. Such action terrorised the local peace-loving people who out of fear and panic had to suspend their free-movements and normal work."

3. Two contentions challenging the validity of the petitioner's detention were raised before us. The first was that in respect of the two incidents set out in the aforesaid grounds and said to have occurred on the 30th and 31st of July, 1971, the petitioner was actually arrested on August 1, 1971, pursuant to a first information report lodged by the police. The police authorities, thus, having chosen to proceed against him under the ordinary law of the land, petitioner ought to have been tried by the court of law rather than be detained under an extraordinary act such as the Maintenance of Internal Security Act. The second was that the petitioner had nothing to do with either of the two incidents. But even assuming that he had participated in them, neither of the two grounds pertained

to public order, but related only to the problem of law and order, and therefore, no detention order could have been validly passed against him in respect of either of them.

4. Having heard the arguments of both the counsel, we are of the view that neither of the two contentions can be sustained.

5. It is well settled that the mere fact that the police at first had arrested the petitioner and initiated steps to prosecute him under the Code of Criminal Procedure and had even lodged a first information report would be no bar against the District Magistrate issuing an order under a preventive detention statute if at the time of passing such an order he is satisfied that it was necessary to do so on grounds permissible to him under the Act. Where, however, the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it would be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise either the security of the State or the public order. But such is not the position in the present case. The representation made by the petitioner to the State Government itself shows that he was arrested on August 1, 1971, in concession with the incident narrated in the first ground of detention. He was, however, enlarged on bail subject to the condition that he would attend the police station, presumably on certain days. On November 22, 1971, when the impugned order was passed, the petitioner thus was no longer in jail custody, and therefore, the District Magistrate could have the satisfaction from the record before him that there was likelihood of his acting in a manner prejudicial to the maintenance of public order. The first contention thus has no substance.

6. As regards the second contention, the grounds of detention show that on July 30, 1971, not only was the said Gopinath killed, but after stabbing him the petitioner and his associates exploded bombs with the object of terrorising the people living on that locality, causing panic amongst them and disrupting the normal life of the community living there. There can be no manner of doubt that such an act pertained to the problem of public order and was not merely an infraction of law and order. The same must also be said with regard to the incident set out in the second ground of detention. The murder of Ajahar Ali Khan was not an act committed out of any personal animus against him or out of the usual motives under the influence of which such acts are ordinarily committed. The counter-affidavit alleged that the petitioner and his associates belonged to what is called the Naxalite party. The second ground of detention alleged that the killing of Ajahar Ali Khan was committed with the object of promoting the political ideology of the petitioner and his associates; in other words, for terrorising those who did not subscribe to or were opposed to that ideology. Thus, the act in question was not merely confined to a specific individual but was aimed at those who did not agree with the said ideology, and to create a feeling of terror and a feeling that any one or more of them could be the target of an attack similar to that upon the victim named there. Such an attack committed for the aforesaid motive and in the circumstances there set out was bound to have an impact upon the normal life of the people living in that locality and cannot, therefore, properly be said to relate to law and order only and not to public order.

7. These were the only contentions raised before us and since neither of them can be sustained, the petition fails and has to be dismissed.

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