

Deonarayan Mondal Alias Debu

Vs

The State of West Bengal

Writ Petition No. 275 of 1972

(J. M. Shelat, I. D. Dua, Y. V. Chandrachud JJ)

10.10.1972

JUDGMENT

CHANDRACHUD, J. -

1. By this petition under Article 32 of the Constitution, the petitioner challenges an order of detention, dated October 29, 1971, passed by the District Magistrate, 24-Parganas, West Bengal, under the Maintenance of Internal Security Act, 1971 (Act 26 of 1071).
2. The order of detention is expressed to have been passed with a view to preventing the petitioner "from acting in any manner prejudicial to the maintenance of public order....." The petitioner was arrested in pursuance of the detention order on November 1, 1971, and on the same date the grounds on which the order was passed were served on him. Stated briefly, the first ground says that on October 11, 1971, the petitioner and his associates formed an unlawful assembly, that they were armed with pipe guns, bombs and other lethal weapons, that they attempted to commit the murder of one Pravash Chandra Kundu, that the petitioner fired one round from his pipe gun and that these acts created terror in the particular locality and disturbed the public order. The second ground says that on October 13, 1971, the petitioner and his associates, being armed with bombs and other lethal weapons, attempted to commit the murder of one Ramdhari Show for the reason that he did not subscribe to their views. The petitioner and his associates exploded bombs which caused severe injuries to Ramdhari, causing a panic and scare in the particular locality whereby public order was disturbed.
3. Learned counsel for the petitioner challenges the detention order on the ground, firstly, that there was an abnormal delay on the part of the State Government in considering the representation made by the petitioner against the order of detention. The representation was received by the Government on December 7, 1971, and it was considered by it after a delay of 27 days on January 3, 1972. Apparently, the representation was not considered with promptitude, but the affidavit filed by the Assistant Secretary Home (Special) Department, Government of West Bengal, shows that there were adequate reasons why it could not be considered earlier. The war with Pakistan, the influx of refugees and the unprecedented problems which faced this country in December 1971, led to delay in considering the representation of the petitioner. As the delay has been satisfactorily explained, the order of detention cannot be set aside on this particular ground.
4. It is then contended that Section 10 of the Maintenance of Internal Security Act, has not been complied with by the Government in that the representation made by the petitioner was not placed before the Advisory Board within 30 days of the detention order. This submission proceeds from a misreading of Section 10 because what it provides is that the representation made by the detenu

should be placed before the Advisory Board "within 30 days from the date of detention under the order" and not within 30 days from the date on which the detention order was passed. The words "the date of detention under the order" mean the date on which the detenu was arrested under the order of detention. The petitioner was arrested on November 1, 1971, and his case was placed before the Board on November 30.

5. Counsel finally contended that the affidavit, dated August 30, 1972, filed by the District Magistrate should not be given any credence because it is couched in vague terms. We cannot accept this contention, as the material part of the affidavit does not suffer from any vagueness. We must however state that since the affidavit has been made by the very officer who passed the order of detention, it should not have contained loose expressions like "it appears", which occur in Paragraph 7 thereof. The order of detention specifically alleges that the two incidents which led to the detention took place on October 11 and 13, 1971, respectively. The District Magistrate should therefore not have stated in his affidavit that "it appears" that the incidents took place on the two particular dates. The dates were a matter of his personal knowledge. But this error will not vitiate the order of detention.

In the result the petition is dismissed.

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