

Abdul Aziz

Vs

The District Magistrate, Burdwan and Others

Writ Petition No. 276 of 1972

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

11.10.1972

JUDGMENT

CHANDRACHUD, J. -

1. This is a petition under Article 32 of the Constitution for the issue of a writ of habeas corpus for the release of the petitioner.

2. On November 16, 1971, the District Magistrate Burdwan, West Bengal passed an order under the Maintenance of Internal Security Act, 26 of 1971, that the petitioner be detained "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order". The petitioner was arrested on December 17, 1971, and on the same date the ground of detention were served on him. The petitioner's case was placed before the Advisory Board on January 7, 1972, his representation was received by the Government on January 13, 1972, and was rejected on February 22, 1972.

3. Two grounds were furnished to the petitioner in justification of the order of detention. It was stated firstly, that the petitioner and his associates were members of an extremist party (CPI - ML), that on August 16, 1971, they armed themselves with lethal weapons like firearms, choppers and daggers with a view to promoting the cause of their party, that they raided the house of one Durgapada Rudra and murdered him and that the aforesaid incidents created a general sense of insecurity, as a result of which the residents of the locality could not follow their normal avocations for a considerable period. The second ground of detention is that on May 22, 1971, the petitioner and his associates raided the house of Smt. Kshetromoni Choudhury and murdered one Umapada Mallick who was staying in that house. This incident is also stated to have created a general sense of insecurity amongst the residents of the locality.

4. Learned counsel appearing in support of the petition contends that these two incidents are but simple cases of murder, germane to law and order, but which could have no impact on "public order" as such. A short answer to this contention is that the murders are stated to have been committed by the petitioner and his associates with the definite object of promoting the cause of the party to which they belonged. These, therefore, are not stray or simple cases of murder as contended by the learned counsel. Such incidents have serious repercussions not merely on law and order but on public order. We may mention that a similar contention was rejected by this Court in Writ Petition No. 190 of 1972, decided on July 31, 1972.

5. It is then contended that the order of detention was passed during the pendency of a prosecution launched against the petitioner for the very same incidents in regard to which the order of detention has been passed and thereby the order is vitiated. One of the two incidents is alleged to have taken place on August 16, 1971, and immediately thereafter the petitioner was arrested. He was produced before the Judicial Magistrate, Kalna on September 10, 1971, who enlarged him on bail on October 6, 1971. The petitioner was eventually discharged by the learned Magistrate on December 16, 1971, but in the meanwhile, the order of detention was passed on November 16, 1971, and the petitioner was arrested in pursuance of that order on December 17, 1971. In regard to this contention it may be sufficient to draw attention to the decision of this Court in Writ Petition No. 112 of 1972, decided on August 17, 1972. It was held therein that the mere circumstance that a detention is passed during the pendency of a prosecution will not vitiate the order. In conceivable cases of an order discharge or acquittal.

6. The next challenge to the order of detention is that the delay of about 40 days caused in considering the representation made by the petitioner is fatal to the order. The petitioner's representation was received by the Government on January 13, 1972, and was rejected on February 22, 1972. Apparently therefore there was delay in considering the representation but, the affidavit of the Deputy Secretary Home (Special) Department, Government of West Bengal, shows that the representation could not be considered earlier because although the war with Pakistan had ended, its after-effects were still looming large in West Bengal and the officers of the State Government had to take appropriate steps for the return of the refugees who had taken shelter in West Bengal. The delay, thus, is satisfactorily explained.

7. The last contention advanced on behalf of the petitioner is that the Maintenance of Internal Security Act, 1971 having been passed for the maintenance of internal security, it was not open to the Parliament to confer power on the appropriate Government to pass orders of detention for the maintenance of public order, as "internal security" cannot comprehend "public order". Learned counsel draws support to his argument, partly from the long title to the Act, which describes it as "an Act to provide for detention in certain cases for the purpose of maintenance of internal security and matters connected therewith". We see no merit in this contention. In the first place, under Entry 3 of List III of the Seventh Schedule to the Constitution, Parliament has the power to legislate on "Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community". Section 3(1)(a)(ii) of the Act confers power on the Central Government to pass orders of detention with a view to preventing any person from acting in any manner prejudicial to the security of the State or the maintenance of public order. This power cannot be controlled by anything stated in the long title of the Act. Besides, the long title describes the Act as one for providing for detention for the purpose of maintenance of internal security and "matters connected therewith". "Internal Security" is an expression of width sufficient to comprehend the concept of public order. Internal disturbances can threaten the security of the State and such disturbances may assume grave proportions so as to have a direct impact on public order.

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

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