

Muralidhar Malla

Vs

The State of West Bengal

Writ Petition No. 277 Of 1972

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

12.10.1972

JUDGMENT

SHELAT, J. -

1. By his order, dated October 26, 1971, the District Magistrate, Burdwan directed the detention of the petitioner under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 26 of 1971, on the ground that it was necessary to detain him with a view to preventing him from acting in a manner prejudicial to the maintenance of public order. In pursuance of the said order the petitioner was arrested on November 1, 1971, and detained in Burdwan jail.

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

"(1) That on July 12, 1971, at about 10.45 hours you along with your associates viz. : (1) Madan Bouri alias Balmiki, son of late Chalu Bouri alias Balmiki of Santa, P.S. Hirapur, District Burdwan, (2) Manik Bouri, son of Tara Pada Bouri of Nabaghanty, P.S. Hirapur, District Burdwan, (3) Rabindra Nath Sarkar alias Rabi, son of Narendra Nath Sarkar of New Town Road No. 7, Quarter No. 13/3, P.S. Hirapur, District Burdwan, being armed with lethal weapons surrounded one Chottan Lall, son of Ram Brich of Burnpur at Narsinghbandh, P.S. Hirapur, District Burdwan while he was returning to Burnpur, Chottan Lall somehow managed to escape from your clutches. You and your associates attempted to do away with the life of Chottan Lall by exploding bombs and firing from pipe gun, suspecting him as a police informer. Your act threw out of gear the normal life-stream of the community of the locality in and around Narsinghbandh, P.S. Hirapur, District Burdwan.

(2) That on July 30, 1971, at about 07.45 hours you along with your associates viz. : (1) Ganga Malla, (2) Masua Show, both of Homeless, temporarily residing at Santadagal, P.S. Hirapur and others, being armed with lethal weapons entered into the hotel of Shri Vivekananda Sha, son of late Khusru Sha of Burnpur Road, P.S. Hirapur and attacked Shri Sha with bombs, dagger etc., with a view to do away with his life when Shri Sha with the help of public was able to arrest you with two bombs in your possession while your other associates fled away. You wanted to do away with the life of Vivekananda Sha when he demanded back money from you. As a result of your act a general sense of insecurity was generated in the locality and the people were so much panic-stricken that they could not follow their normal avocations of life for a number of days after the incident."

3. Mr. Markendeya questioned the validity of the said order on three grounds. The first ground urged by him was that there was undue delay in the consideration of the petitioner's representation by the State Government which rendered the continuation of the petitioner's detention contrary to Article 22(5) of the Constitution. The facts in this connection are that the Government received the representation on November 29, 1971, but did not consider and dispose of until December 30, 1971. There was, therefore, delay of about 30 days in dealing with the petitioner's representation. The return filed on behalf of the Government states that the reasons for delay were : (1) influx of refugees in West Bengal, (2) the Indo-Pakistan war, and (3) sudden spurt of anti-social activities by political extremists taking advantage of the extraordinary situation arising as a result of the influx of refugees and then the war. These reasons have been considered by us in some of the petitions earlier heard by us and were held valid. There being thus a satisfactory explanation, it is not possible to hold that there was by the Government such undue delay as would invalidate the petitioner's detention.

4. The second ground urged by counsel was that the petitioner is a Hindi-speaking person, that although a translation on the grounds was served upon him, it is not known in what language the grounds were translated. If such language was other than Hindi, it was futile to serve such a translation. The petitioner, therefore, would be unable to understand the grounds and would not be able to make an effective representation against his detention. We have ascertained from the files produced by counsel for the State that the translation served on the petitioner was in Hindi and therefore the petitioner can have no grievance on that score.

5. The third and the last contention was that the grounds of detention were not germane to the objects in respect of which detention under the Act could be directed. It was argued that the incidents narrated in the grounds would at best constitute infraction of law and order and not public order as defined by this Court in some of its decisions. The grounds of detention speak of two incidents in which the petitioner along with some of his associates is alleged to have participated. The first incident took place on July 12, 1971 when the petitioner and his associates named in ground No. 1 surrounded and attempted to kill one Chottan Lall. Chottan Lall, however, was fortunate enough to escape. But in attempting his murder it is alleged that the petitioner used bombs and a pipe gun which "threw out of gear the normal life-stream of the community of the locality". The second incident is said to have occurred on July 30, 1971 when the petitioner and his associates trespassed into the hotel of one Vivekanand and attacked him with bombs and a dagger. Once again the victim with the help of some of the members of the public could not only save himself but arrest the petitioner. When the petitioner was caught two live bombs were found in his possession. This incident also was said to have caused a sense of panic and insecurity in the locality.

6. It is quite clear from the nature of the attack, the weapons possessed and actually used by the aggressors, viz., live bombs, that both the incidents must have had an impact not only on the victims but also others living in that locality. It is, therefore, not possible to say that they affected only the individuals involved in it or that only those individuals could be said to be concerned with them. We are satisfied that the incidents could not be rightly characterised as mere infractions of law and order or were such that only the parties involved in them were affected. Their impact was deeper and wider than that and did jeopardise the maintenance of public order in the localities where they were committed. This contention, therefore, cannot commend itself to us and we reject it.

7. The petition fails and is dismissed.

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