

China Mall

Vs

The State of West Bengal

Writ Petition No. 292 of 1972

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

12.10.1972

JUDGMENT

SHELAT, J. -

1. This petition reached hearing before us on October 4, 1972. After hearing the parties we came to the conclusion that the order impugned herein and the petitioner's detention thereunder cannot be sustained. We, therefore, ordered the immediate release of the petitioner and said that we would give our reasons for order later on. We now set out those reasons.

2. By his order, dated November 2, 1971, the District Magistrate, Burdwan directed the detention of the petitioner under the Maintenance of Internal Security Act, 1971 (26 of 1971), on the ground that such detention was necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. Consequent upon the passing of the order the petitioner was arrested and lodged in jail.

3. The ground for detention served on the petitioner was as follows :

"On October 12, 1971, at 04.15 hours you along with Abu Taleb and others being armed with deadly weapons like kripans and lethal forcefully detained one running truck at Alampur or Suri Road P.S. Burdwan and committed dacoity in respect of valuable belongings of the truck after assaulting Shri Hardoer Sharma of the said truck. This incident in the early morning on the highway of Burdwan created panic and the people were terrorised and felt a sense of insecurity and were hesitant to pursue their normal trade and avocation and thereby their even tempo of life was affected adversely."

4. After he was lodged in jail the petitioner, through the jail authorities, sent his representation to the Government. That representation was received by the Government on December 12, 1971, but was not disposed of till February 19, 1972. There was thus a delay of nearly 50 days in considering and disposing of the representation by the Government.

5. Counsel for the petitioner urged that the ground for detention on the basis of which the District Magistrate was said to have reached satisfaction about the necessity of detaining the petitioner was extraneous and irrelevant. The impugned order, therefore, was unsustainable and invalid. He also urged that there was undue delay by the Government in considering the petitioner's representation which rendered his detention invalid. He contended that on both these grounds the court should order release of the petitioner.

6. It is conceded by the respondent-Government in the return filed on its behalf that there was delay of about 50 days in consideration of the petitioner's representation. The only explanation given by it for the delay is that there was a "sudden and abrupt increase in volume of detention cases during this period under the Maintenance of Internal Security Act owing to spate of anti-social activities by political extremists in the State at that time."

7. This explanation is obviously vague and unsatisfactory and cannot for that reason be accepted. No particulars are given in support of the vague assertions made by the deponent. There being thus no proper or acceptable explanation, there is no alternative except to hold that there was undue delay in considering the petitioner's representation which rendered his detention invalid.

8. In view of this conclusion, it is not necessary to deal with the other contention raised by the petitioner's counsel.

9. The petition succeeds and is allowed.

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