

Dipak Bose Alias Naripada

Vs

State of West Bengal

Writ Petition No. 255 of 1972

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

01.11.1972

JUDGMENT

SHELAT, J. -

1. This is a petition sent to this Court by the petitioner from jail and treated as one under Article 32 of the Constitution challenging the validity of his detention under an order passed by the District Magistrate, 24 Parganas under section 3(1) and (2) of the Maintenance of Internal Security Act, 26 of 1971. The principal challenge to the petitioner's said detention is that the grounds of detention furnished to him at the time of his arrest are not relevant to the objects for which the Act permits preventive detention.

2. The two grounds of detention supplied to the petitioner, as aforesaid, read as follows :

"(1) On August 12, 1971, at about 17.00 hours you and some of your associates being armed with bhojali, bomb, choppers etc. etc. kidnapped Kashinath Saha of West Putiary, P. S. Behala and killed him at K. M. Naskar Road, P. S. Jadavpur. You thereby created panic and terror in the locality and disturbed public order.

(2) On August 26, 1971, at about 12.00 hours you and some of your associates being armed with bombs, daggers, choppers, pipe guns etc. dragged one Jyotirmay Bhattacharya and killed him at H. L. Sarkar Road, Bansdroni, P. S. Jadavpur. You thereby created panic and terror in the locality and disturbed public order."

3. Prima facie the grounds appear to affect two individuals who were the victims of the alleged two assaults, and therefore, do not appear to be relevant grounds affecting the maintenance of public order for which only the power of detention under the Act is intended to be used. Counsel for the State, however, relied on certain recent decisions of this Court justifying the exercise of power by the State of West Bengal under the Act. In Joyd-b Gorai v. State of West Bengal ((1972) 2 SCC 417 : 1972 SCC (Cri) 745), ground No. (1) set out only a threat to kill one Bibhuti Bhusan Ghosh for his refusal to rub out certain anti-naxalite slogans on the wall of a house. The argument was that even such a threat to kill an individual was held in that case to be a relevant ground. It is, however, clear from that decision that that ground was held to be relevant one as such an act fell within the special definition of the expression "acting in any manner prejudicial to the maintenance of public order" in Section 3(2)(d) of the West Bengal (Prevention of Violent Activities) Act, 19 of 1970. Similarly, the case of Nagendra Nath Mondal v. State of West Bengal ((1972) 1 SCC 493 : 1972 SCC (Cri) 227), was a case arising under the West Bengal (Prevention of Violent Activities) Act. The grounds of detention there were that the petitioner there and his associates set fire to a school and its registers

and equipments, placing a bomb in the school also with a view to scare away the members of the staff from putting out the fire. That ground was held to be a valid ground, jeopardising the maintenance of public order and falling under Section 3(2)(d) of the said Act. In that decision a distinction was made between acts which by reason of their impact and potentially affect the even tempo of the life of the people in the locality where they are committed and those which do not have such an impact and are acts which concern only specific individuals. As an example of the latter class, the case of *Sudhir Kumar Saha v. The Commissioner of Police, Calcutta* ((1970) 1 SCC 149 : 1970 SCC (Cri) 71), may aptly be recalled. That case was under the Preventive Detention Act of 1950 which did not contain any special definition of the expression "acting in any manner prejudicial to the maintenance of public order" as in the President's Act 19 of 1970. The three incidents set out in the grounds of detention there were held to be stray incidents affecting law and order only which, as the Court stated there, could well be dealt with under the ordinary penal laws of the country. In *Amiya Kumar Karmakar v. State of West Bengal* ((1972) 2 SCC 672 : 1973 SCC (Cri) 68), the order of detention was passed under Section 3(1) and (2) of the present Act. In that case the detention order was challenged on the ground that one of the two grounds of detention was irrelevant inasmuch as the incident there referred to pertain to the question of law and order and not of public order. In dealing with the challenge, the Court referred to *Arun Ghosh v. State of West Bengal* ((1970) 3 SCR 288 : (1970) 1 SCC 98 : 1972 SCC (Cri) 63) and *Nagendra Nath Mondal v. State of West Bengal* (supra), to demonstrate that the true distinction between the areas of law and order and of public order lay not merely in the nature or quality of the Act but in the degree and extent of its reach upon society. Acts similar in nature but committed in different contexts and circumstances might cause, it was said, different reactions, in one case affecting specific individuals only and in others affecting public order. The act in question there, thought prima facie affecting an individual, was held in the context and circumstances of the case to be one jeopardising or likely to jeopardise the maintenance of public order. A similar challenge was also repelled on similar grounds in *Arun Kumar Sinha v. State of West Bengal* ((1973) 4 SCC 54).

4. The question, therefore, to be properly asked in the present case is whether acts attributed to the petitioner in the grounds of detention fell in the same class and have the same kind of impact as acts alleged in the cases above referred to. In the two incidents described in the grounds the petitioner was said to have been accompanied by certain associates and it was also alleged that he and his associates carried with them certain weapons including bombs. The first incident was said to have taken place on August 12, 1971, when one Kashinath Shah was killed on a public road. The second incident was said to have taken place on August 26, 1971, when one Jyotirmay was dragged out of the shop and killed on the road. Both acts were said to have caused panic and terror in the locality. Neither of the grounds, however, suggested that the petitioner or any one of his associates used bombs in perpetrating the crime, nor was it suggested that the acts were done in pursuance of or for promoting a certain political ideology as in some cases which have recently come up before this Court, so that other persons of the locality not subscribing to that cult or ideology might feel apprehensive that they would next become the targets of similar attacks future and thus disturb the even tempo of the life of the community in that locality. Every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all of such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed. There is nothing in the two incidents set out in the grounds in the present case to suggest that either of them was of that kind and gravity which would jeopardise the maintenance of public order. No doubt bombs were said to have been carried by those who are alleged to have committed the two acts stated in the grounds. Possibly that was done to terrify the respective victims and prevent them

from offering resistance. But it is not alleged in the grounds that they were exploded to cause terror in the locality so that those living there would be prevented from following their usual avocations of life. The two incidents alleged against the petitioner, thus, pertained to specific individuals, and therefore, related to and fell within the area of law and order. In respect of such acts the drastic provisions of the Act are not contemplated to be resorted to and the ordinary provisions of our penal laws would be sufficient to cope with them.

5. In the circumstances the petition must be allowed and the release of the petitioner directed. Order accordingly.

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