Mohd. Subrati Alias Mohd. Karim

Vs

State of West Bengal

Writ Petition No. 307 of 1972

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

14.11.1972

JUDGMENT

DUA, J. -

1. The petitioner in these proceedings for a writ in the nature of habeas corpus under Article 32 of the Constitution is one Mohd. Subrati alies Mohd. Karim detained in the Burdwan Jail pursuant to the impugned order of detention, dated February 9, 1972, made by the District Magistrate, Burdwan in exercise of the powers conferred on him by sub-section (1), read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act No. 26 of 1971 (hereinafter called the Act). The said District Magistrate, as is clear from the impugned order, was satisfied that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it was necessary to make the order directing that he be detained. The grounds of detention were duly served on him at the time of his arrest on February 11, 1972. Those grounds are :

> "(1) That on January 6, 1972, at about 03.30 hours you along with your associates including : (1) Teka Bahadur son of Shri Harak Bir Bahadur of Hutton Road, P. S. Asansol, District Burdwan, (2) Shri Ganesh Das, son of Shri Chote Das of Gour Mondal Road, P. S. Asansol, District Burdwan committed theft in respect of electric copper wire (about 1,500 ft. in length) at Hatgarui near Sen Raleigh Water Pump, P. S. Asansol, District Burdwan. As a result of this theft, water supply as well as electric supply in Sen Raleigh Housing Colony, P. S. Asansol, District Burdwan was totally disrupted for about 8 hours to the sufferings of the people of the locality.
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> (2) That on January 12, 1972, at about 04.00 hours you along with your associates including : (1) Teka Bahadur son of Shri Harak Bir Bahadur of Hutton Road, P.S. Asansol District Burdwan, (2) Ganesh Das, son of Shri Chote Das of Gour Mondal Road, P. S. Asansol, District Burdwan committed theft in respect of electric copper wire (about 3,000 ft. in length) from the electric poles at 'C' Block, Sen Raleigh Housing Colony, P.S. Asansol, District Burdwan. When challenged by the inhabitants of the area, you and your associates hurled bombs towards them. By your act, electric supply was totally disrupted in 'C' Block area, Sen Raleigh Housing Estate and its adjoining areas for more than 12 hours causing much inconvenience to the people of the locality."

2. The fact of making the order of detention was duly reported to the State Government on February 9, 1972, the date of the order. The State Government approved that order on February 21, 1972, and

the necessary report submitted to the Central Government the same day. The petitioner, as stated by him in the petition for habeas corpus, was produced before and heard in person by the Advisory Board on April 10, 1972. The Board, according to the respondent, gave its decision the same day. The representation made by the petitioner was received by the State Government on March 16, 1972, and considered by the said Government on March 22, 1972. The State Government confirmed the order of detention on May 5, 1972, and communicated its order to the detenu the same day.

3. The only submission pressed by Shri Jagmohan, the learned counsel appearing as amicus curiae in support of the writ petition in assailing the order of detention is that, according to the return itself, two cases for theft of copper wires under Section 379, I.P.C. were registered against the petitioner and others at the Asansol Police Station (Case No. 16, dated January 6, 1972, and Case No. 20, dated January 12, 1972), but as the witnesses examined under Section 161, Cr.P.C. were reluctant to depose against the petitioner and his associates for fear of danger to their lives, the investigating officer submitted as true, his final report suspecting the petitioner and his associates. The order of detention was for this reason described by Shri Khanna as mala fide and, therefore, liable to be quashed. According to the learned counsel in such cases Criminal Trial is the only course open to the State and no order of detention is legally competent. The counsel added that if the Criminal Trial fails or the case is not launched because it is liable to fail, the State has to remain content with the result. It cannot deprive the suspected person of his liberty under the Act. We are unable to accept this contention. The Act was brought on the statute book in 1971 in order to provide for detention in certain cases for the purpose of maintenance of internal security and matters connected therewith. Its enactment was necessitated because in view of the prevailing situation in the country and the developments across the border it was considered necessary for urgent and effective preventive action in the interest of national security, to have powers of preventive detention to deal effectively with threats to the defence and the security of India because the existing laws available to deal with the situation were not found to be adequate. The emergent requirement for such a law would be obvious from the fact that before its enactment it had been considered necessary to promulgate the Maintenance of Internal Security Ordinance, 1971 which was replaced by the present Act. Under Section 3(1) of the Act, the Central Government or the State Government may, it satisfied with respect to any person, that with a view to preventive him from acting in any manner prejudicial to, inter alia, the security of the State or the maintenance of supplies and services essential to the community, it is necessary to do so, make an order directing that such person be detained. Sub-section (2) of this section authorises District Magistrates and certain other officers, if satisfied as above to exercise the power conferred by sub-section (1). It is quite clear that this section carried out the statutory purpose of preventive detention and it has nothing to do with trial and punishment of persons for commission of offences. Indeed, it is precisely because the existing law providing, for the punishment of persons accused of commission of offences and, for prevention of offences, is not found adequate for dealing with the situation for effectively preventing, in the interest of national security, etc., the commission of prejudicial acts in future, that the provisions of this Act were enacted and are intended to be utilised. If, therefore, for any reason it is not possible to successfully try and secure the conviction and imprisonment of the persons concerned for their past activities, which amount to an offence, but which are also relevant for the satisfaction of the detaining authority for considering it necessary that a detention order under Section 3 be made for preventing such persons from acting in prejudicial manner as contemplated by that section, then, the Act would indisputably be attracted and a detention order can appropriately be made. The detention order in such a case cannot be challenged on the ground that the person ordered to be detained was liable to be tried for the commission of the offence or offences founded on his conduct, on the basis of which, the detention order has been made or that proceedings under Chapter VIII, Cr.P.C. could be

initiated against him. The object, scheme and language of the Act is clearly against the petitioner's submission. The Act creates in the authorities concerned a new jurisdiction to make orders for preventive detention on their subjective satisfaction on grounds of suspicion of commission in future of acts prejudicial to the community in general. This jurisdiction in different from that the judicial trial in courts for offences and of judicial orders for prevention of offences. Even unsuccessful judicial trial or proceeding would, therefore, not operate as a bar to a detention order, or render it mala fide. The matter is also not res integra.

4. Indeed, while dealing with the Defence of India Rules which also empowered the Government of India to make orders of preventive detention this Court in Sahib Singh Dugal v. Union of India ([1966] 1 SCR 313 : AIR 1966 SC 340 : (1966) 1 SCJ 221) repelled a similar contention in the following words :

> "The next contention on behalf of the petitioners is that order is mala fide. The reason for this contention is that it was originally intended to prosecute the petitioner under Section 3 of the Official Secrets Act and when the authorities were unable to get sufficient evidence to obtain a conviction they decided to drop the criminal proceedings and to order the detention of the petitioners. This by itself is not sufficient to lead to the inference that the action of the detaining authority was mala fide. It may very well be that the executive authorities felt that it was not possible to obtain a conviction for a particular offence under the Official Secrets Act; at the same time they might reasonably come to the conclusion that the activities of the petitioners which had been watched for over two years before the order of detention was passed were of such a nature as to justify the order of detention. We cannot infer merely from the fact that the authorities decided to drop the case under the Official Secrets Act and thereafter to order the detention of the petitioners under the Rules that the order of detention was mala fide. As we have already said, it may not be possible to obtain a conviction for a particular offence; but the authorities may still be justified in ordering detention of a person in view of his past activities which will be of a wider range than the mere proof of a particular offence in a court of law. We are not therefore prepared to hold that the orders of detention in these cases were mala fide."

This decision was followed by this Court in Mohd. Salim Khan v. C. C. Bose and Another. ([1972] 2 SCR 607 : 1973 SCC (Cri) 35). A similar view was also taken by this Court in Borjahan Gorev v. State of West Bengal, ([1972] 2 SCC 550 : 1972 SCC (Cri) 888) where it was observed :

> "The preventive detention provided by the Act is apparently designed to deal urgently and effectively with the more serious situation, inter alia, affecting the security of India and the maintenance of public order as contemplated by Section 3 of the Act. The liability of the detenu also to be tried for commission of an offence..... do not in any way as a matter of law affect or impinge upon the full operation of the Act. The reason is obvious. Judicial trial for punishing the accused for the commission of an offence..... is a jurisdiction distinct from that of detention under the Act, which has in view, the object of preventing the detenu from acting in any manner prejudicial inter alia to the security of the State or maintenance of public order. The fields of these two jurisdictions are not co-extensive nor are they alternative. The jurisdiction under the Act may be invoked, when the available evidence does not come up to the standard of judicial proof but is otherwise cogent

> enough to give rise to suspicion in the mind of the authority concerned that there is a reasonable likelihood of repetition of past conduct which would be prejudicial inter alia to the security of the State or the maintenance of public order or even when the witnesses may be frightened or scared of coming to a court and deposing about past acts on which the opinion of the authority concerned is based. This jurisdiction is sometimes called the jurisdiction of suspicion founded on past incidents and depending on subjective satisfaction..... The grounds of detention relate to the past acts on which the opinion as to the likelihood of the repetition of such or similar acts is based and those grounds are furnished to the detenu to inform him as to how and why the subjective satisfaction has been arrived at so as to enable him to represent against them. The fact, therefore, that a prosecution under the Code could also have been launched is not a valid ground for saying that it precludes the authority from acting under the Act."

5. The grievance that the petitioner ought to have been proceeded against in a court of law and that the investigating agency did not put him on a regular trial for want of evidence can thus be no bar to his detention if the detaining authority under the Act is satisfied that it is necessary to make the order of preventive detention on the grounds contemplated by the Act.

6. The grounds on the basis of which the petitioner has been detained are clear, relevant and germane to the object and purpose for which preventive detention is authorised by the Act. The petitioner is stated to have committed theft of electric copper wires on January 6 and 12, 1972. When he was challenged by the inhabitants of the area he and his associates hurled bombs towards them. The theft of electric wire totally disrupted electric supplies for several hours in the areas concerned. This conduct is very relevant for satisfying the authority concerned that it is prejudicial to the maintenance of supplies and services essential to the community and if such authority considers it necessary of this ground to detain him with a view to preventing him from repeating such acts, then, the order of detention would indubitably and legitimately fall within the purview of Section 3 of the Act. The detention order is not open to challenge in these proceedings on the grounds averred in the writ petition and urged by the learned counsel at the bar. In this connection, Shri Chatterji also drew our attention to Arun Kumar v. State of West Bengal ([1972] 3 SCC 893 : 1973 SCC (Cri) 104) and Sasti Chowdhary v. State of West Bengal. ([1972] 3 SCC 826 : 1973 SCC (Cri) 11)

7. No doubt, the right to personal liberty of an individual is jealously protected by our Constitution but this liberty is not absolute and is not to be understood to amount to licence to indulge in activities which wrongfully and unjustly deprive the community or the society of essential services and supplies. The right of the society as a whole is, from its very nature, of much greater importance than that of an individual. In case of conflict between the two rights, the individual's right is subjected by our Constitution to reasonable restrictions in the larger interests of the society.

8. Before concluding, however, we consider it proper to refer to one other matter which appears to be of importance. According to the counter-affidavit the order of detention has been approved by the State Government under Section 3(3) of the Act on February 18, 1972. This is clearly incorrect. We find from the original order of approval from the record (which was produced by the counsel for the State under our directions) that it was drafted on February 19, 1972, but actually signed by the Deputy Secretary on behalf of the Government on February 21, 1972. The order of approval must, therefore, be considered to have been made only on the day when it was signed, i.e. February 21, 1972. We are unable to find any cogent reason for the sworn assertion in the counter-affidavit that

this order had been approved on February 18, 1972. We feel that the counter-affidavit produce in this Court in answer to the challenge to the preventive detention of the detenu should contain all the facts correctly and full disclosure must be made without any reservation. In must be remembered that the personal liberty of an individual has been given an honoured place in the fundamental rights which our Constitution has jealously protected against illegal and arbitrary deprivation, and that this Court has been entrusted with a duty and invested with a power to enforce that fundamental right. It is, therefore, obligatory on the part of the State to place before this court all the relevant facts relating to the impugned detention truly, clearly and with the utmost fairness. This Court normally accepts without reservation the sworn affidavits by responsible officers on the assumption that the facts stated therein are absolutely true and that there is no mis-statement or concealment of relevant facts. It is, therefore, incumbent on the officer concerned swearing the counter-affidavit to take good care to satisfy himself that what he states on oath is absolutely true according to the record.

9. This petition fails and is dismissed.

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