

Mrinal Roy

Vs

State of West Bengal and Others

Writ Petition No. 770 of 1973

(H. R.Khanna, A. Alagiriswami JJ)

06.09.1973

JUDGMENT

KHANNA, J. -

1. This is a petition for the issuance of a writ of habeas corpus of Mrinal Roy, who has been ordered by the Commissioner of Police Calcutta to be detained under Section 3 of the Maintenance of Internal Security Act.

2. An order for the detention of the petitioner under Section 3 of the Maintenance of Internal Security Act was made by the Commissioner of Police Calcutta on December 6, 1971. The grounds on which the said order was passed related to the activities of the petitioner on December 27, 1970 and January 23, 1971. The petitioner in pursuance of the aforesaid order was arrested and was kept under detention. While the petitioner was under detention, this Court gave it judgment in the case of Sambhu Nath Sarkar v. State of West Bengal ((1973) 1 SCC 856 : 1973 SCC (Cri) 618.) on April 23, 1973. In view of that judgment, the petitioner was released on April 23, 1973 under the orders of the State Government. The same day a fresh order for the detention of the petitioner was made by the Commissioner of Police Calcutta under Section 3 of the Maintenance of Internal Security Act. This subsequent order of detention was made precisely on the same grounds on which the earlier order of detention dated December 6, 1971 had been made.

3. We have heard Mr. Puri who has argued the case amicus curiae on behalf of the petitioner and Mr. D. N. Mukherjee on behalf of the respondents, and find that this case is covered directly by our decision in the case of Chotka Hembram v. State of West Bengal and Others, wherein upon similar facts we quashed the detention of the detenu.

4. It has been argued by Mr. Mukherjee that at the time the writ petition was sent from jail by the petitioner, the only order of detention which was in force against the petitioner was one dated December 6, 1971. The subsequent order of detention was made during the pendency of the petition, and as the aforesaid order has not been assailed by the petitioner, the petition, according to Mr. Mukherjee, should be dismissed on that ground. There is, in our opinion, no force in this contention. What has been challenged by the petitioner is his detention. If fresh facts come into existence during the pendency of the petition and those fact also reveal that the detention of the petitioner is not in accordance with law, this Court would not stay its hand in directing the release of the petitioner. It has to be borne in mind that the relief sought by the petitioner is for the issuance of writ of habeas corpus. The petition has been sent by him from jail. We would not normally allow a technical plea to prevail in a matter which affects the liberty of the subject, more so when on consideration of the circumstances in their entirety, we find that the detention of the petitioner is not

in accordance with law.

5. Following our decision mentioned above, we accept the petition, quash the fresh order of detention dated April 23, 1973 and direct that the petitioner be set at liberty forthwith.

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