

Sk. Alek Mohammad

Vs

The State of West Bengal

Writ Petition No. 603 of 1972

(D. G. Palekar, P. N. Bhagwati, V. R. Krishna Iyer JJ)

19.02.1974

JUDGMENT

KRISHNA IYER, J. -

1. We recorded a short order releasing the petitioner in this petition for habeas corpus and we now proceed to give our reasons.

2. The petitioner was detained by the District Magistrate of Howrah by order dated August 8, 1972. The ground on which the District Magistrate was satisfied about the prejudicial activities of the petitioner was communicated immediately after the detention was effected on August 21, 1972. The only particular instance communicated to the petitioner was that on January 14, 1972 he and his associates were engaged in committing theft of telephone cable wires belonging to the P and T Department at Balarampri and that he was caught red-handed :

In consequence of your said activity which attracts clause (iii) of Section 3(1)(a) of the Maintenance of Internal Security Act, 1971, the tele-communication system was disturbed.

This was the sole ground on which the sole ground on which the petitioner could possibly make a representation. However, the District Magistrate in his affidavit in opposition, stated "that the detenu-petitioner is one of the notorious stealer of railway materials and cable wire". Thereafter, the particular instance of January 14, 1972 is also set out. The District Magistrate winds up by stating that,

..... the aforesaid activity of the petitioner disturbed tele-communication system and also caused substantial loss and damages to the Post and Telegraph Department and so he was detained under the said Act.

3. It is obvious that the District Magistrate has admitted to having been influenced by the course of activities - as distinguished from a single act or episode - and by the notoriety of the petitioner as a stealer of railway materials and cable wire. This important and injurious information was not communicated to the petitioner and, therefore, could not have been the subject of any effective representation contra by the latter. Therefore, the case is attracted by the ratio in the judgment in Shaik Hanif v. State of West Bengal ((1974) 1 SCC 637 : 1974 SCC (Cri) 292). The petitioner is therefore entitled to be released, and the habeas corpus application is accordingly allowed.

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