

Sk. Abdul Munnaf

Vs

The State of West Bengal

Writ Petition No. 527 of 1972

(H. R. Khanna, P. K. Goswami JJ)

22.03.1974

JUDGMENT

KHANNA, J. -

1. Abdul Munnaf petitioner was ordered to be detained under Section 3 of the Maintenance of Internal Security Act, 1971 (Act XXVI of 1971) by the District Magistrate, Howrah, with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The order for detention was made on March 6, 1972 and in pursuance thereof the petitioner was arrested on March 23, 1972. The petitioner thereupon sent this petition for issue of a writ of habeas corpus through jail.

2. Notice of the petition was issued to the State of West Bengal and the affidavit of Shri Sukumar Sen. Deputy Secretary Home (Special) Department, Government of West Bengal has been filed in opposition to the petition.

3. We have heard Mr. Sukumar Ghosh, who has argued the case amicus curiae on behalf of the petitioner, and Mr. P. K. Chatterjee on behalf of the State, and are of opinion that the order for the detention of the petitioner should be quashed on the short ground that there was inordinate delay and no proximity in point of time between the alleged prejudicial activity of the petitioner and the order of detention.

4. According to the grounds of detention, the petitioner was being detained because on June 7, 1971, he and his associates committed theft of navigational lamp from Achipore Buoy in river Hooghly as a result of which the movement of vessels carrying essential commodities was disrupted. When the petition came up for hearing on February 26, 1974, we found that a period of nine months had elapsed between the incident of June 7, 1971 and the order of detention which was made on March 6, 1972. As the delay of nine months in the making of the order for detention after the alleged incident had not been explained, the case was adjourned for three weeks to enable the respondent-State to file an affidavit for explaining the delay. No affidavit has, however, been filed on behalf of the respondent-State to explain the delay. It would therefore follow that the delay of nine months between the date of incident about the theft of navigational lamp and the making of the order of detention remain unexplained.

5. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed, largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order or to the maintenance of supplies and services

essential to the community. But in order to justify such an inference it is necessary to bear in mind that such past conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary (see *Sri Nagen Murmu v. State of W. B.* ((1973) 3 SCC 63 : 1973 SCC (Cri) 141)). No doubt, it is both inexpedient and undesirable to lay down any inflexible test as to how far distant the past conduct or the antecedent history should be for reasonably and rationally justifying the conclusion that the person concerned if not detained may indulge in prejudicial activities. If in a given case the time lag between the prejudicial activity of a detenu and the detention order made because of that activity is *ex facie* long, the detaining authority should explain the delay in the making of the detention order with a view to show that there was proximity between the prejudicial activity and the detention order. If the detaining authority fails to do so, in spite of an opportunity having been afforded to it, a serious infirmity would creep into the detention order.

6. This Court in the case of *Lakshman Khatik v. State of W. B.* ((1974) 4 SCC 1 : 1974 SCC (Cri) 289) held that a delay of seven months in making an order for detention after the incident which led to the making of that order was fatal. As the delay in the present case is for a longer period and no cogent explanations has been given for the delay, there is no escape from the conclusion that the detention of the petitioner is not in accordance with law. We accordingly accept the petition, quash the order for the detention of the petitioner and direct that he be set at liberty.

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