

Kartic Chandra Guha

Vs

The State of West Bengal and Others

Writ Petition No. 12 of 1974

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

18.06.1974

JUDGMENT

PALEKAR, J. -

1. This is a petition under Article 32 of the Constitution for a writ or order in the nature of habeas corpus.

2. The petitioner was detained by an order of the District Magistrate, 24-Parganas, passed on May 24, 1973 in exercise of the powers conferred by sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 with a view to preventing the petitioner from acting in a manner prejudicial to the maintenance of 'public order'. The petitioner was arrested on May 30, 1973 and the order along with the grounds was served on him on the same day. The grounds are as follows :

1. On November 11, 1972 at 20.45 hrs. you along with your associates being armed with pipe guns and other deadly weapons attacked the house of Prasanta Sikdar of Nimta, P. S. Dum Dum and severely assaulted the inmates of the house as he opposed your rowdy and anti-social activities. You also threatened the inmates of the house and other by-standers with dire consequences, if they report the matter to local police. Your act created a panic and scare in the locality which disturbed public order.

2. On April 30, 1973 at about 00.30 hrs. you along with your associates entered the house of one Sudhir Seal at Saptagram, Nimta P. S. Dum Dum posing yourself to be local Congress workers. You robbed cash, ornaments, radio valued Rs. 3,400 from Sudhir Seal threatening him and the inmates of his house at the point of pistol. You also threatened the local people who came to the help of Sudhir Seal with dire consequences if they come forward. Your act created a panic and scare in the locality which disturbed public order.

3. On May 1, 1973 at 14.30 hrs. you along with your associates were found at Bisharpara Road, Nimta P. S. Dum Dum in a rickshaw. On being confronted by local police, you tried to open fire from a loaded pistol aiming at police and other by-standers. But you were arrested with a loaded pistol and two rounds of live cartridges. Your act created a panic and scare in the locality which disturbed public order.

3. It appears that on these very grounds first information reports of the commission of cognisable offences had been filed. The accused was not to be found when the first two offences were being investigated but he was found in the circumstances referred to in ground No. 3 and was promptly

arrested. He was produced before the Magistrate and was remanded into custody. While he was thus in custody on May 30, 1973, he was served with the detention order which had been passed on May 24, 1973.

4. It was contended by Mr. Mazumdar for the petitioner that the petitioner was already in custody pending the filing of the charge-sheets for three separate offences which arose out of the three grounds given in this case and, therefore, there could be no reasonable apprehension that the petitioner would be a menace to the maintenance of 'public order'. It was, therefore, contended that the order of detention was invalid. We are unable to agree with this submission. It will be seen that the offence underlying the first ground was committed on November 11, 1972 and the second ground on April 30, 1973, and only when he was being pursued by the police in connection with the investigation of these two offences, he was apprehended on May 1, 1973 in circumstances described in ground No. 3. He was accompanied by his associates and was fully armed at the time. He threatened the police and the by-standers that he would fire on them with his loaded pistol but he was over-powered and put under arrest. This third ground shows that the petitioner having committed desperate crimes was trying to hold at bay the forces of law and order, and it is obvious that if the police had failed to catch him on May 1, 1973 he would have been again at large free to continue the activities mentioned in grounds Nos. 1 and 2 above. He was no doubt in custody after May 1, 1973 and was produced before the Magistrate on May 2, 1973. The District Magistrate gives the reason why he found it necessary on May 24, 1973 to make the detention order. He says in his affidavit at para 8 ". . . having regard to the activities of the detenu as disclosed in the grounds of detention and having regard to the possibility of his being enlarged on bail I was satisfied that the detenu should be detained under the Act". It is true that he had been held in custody in connection with offences under the Arms Act which are non-bailable offences, but even so, it was open to the trying Magistrate to release the petitioner on bail. The District Magistrate, on information received by him, thought that the petitioner was likely to be released on bail in which case having regard to his past activities it was open to the District Magistrate to come to the reasonable conclusion that having regard to the desperate nature of the activities of the petitioner, his enlargement on bail would be no deterrent to his desperate activities. Hence the District Magistrate was entitled to pass the order of detention, if that was necessary, to prevent the petitioner from acting in a manner prejudicial to the maintenance of 'public order'.

5. It was next contended, relying upon the affidavit of the District Magistrate, that when he passed the order of detention he had in his possession the petitioner's history sheet besides the grounds for detention. It was, therefore, contended that there were some uncommunicated grounds for detention and hence the detention was bad. Learned Counsel on behalf of the State produced before the Court the history sheet in order to satisfy the Court that the history sheet contained nothing more significant than the three grounds communicated to the petitioner. An innocuous bio-data of the petitioner was attached to the grounds and that is described as the history sheet. The real grounds on which action was taken were the grounds before the District Magistrate and those are the grounds which were further communicated to the Government for its approval. We are satisfied, therefore, that there were no grounds apart from the grounds communicated to the petitioner which prevailed with the District Magistrate in passing the order of detention.

6. No other point of substance was urged before us. It is necessary to note here that before the petitioner filed his petition in this Court, a petition had been filed in the Calcutta High Court and dismissed on November 8, 1973.

7. The petition fails and is dismissed.

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