

Sk. Serajul

Vs

State of West Bengal

Writ Petition No. 2000 of 1973

(P. Gagnmohan Reddy, P. N. Bhagwati, P. K. Goswami, R. S. Sarkaria JJ)

09.09.1974

JUDGMENT

BHAGWATI, J. –

1. The petitioner challenges his detention under an order dated August 24, 1972 made by the District Magistrate, Burdwan under Section 3 of the Maintenance of Internal Security Act, 1971. There are several grounds taken in the petition for challenging the validity of the order of detention, but it is not necessary to refer to them since we find that there is one ground which is sufficient to dispose of the petition. To appreciate this ground it is necessary to notice a few facts.

2. The order of detention was made on August 24, 1972 and it was based on the subjective satisfaction of the District Magistrate, Burdwan that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. This subjective satisfaction, as the grounds of detention furnished to the petitioner show, was founded on three incidents of breaking open railway wagons and looting their contents committed by the petitioner and his associates. One was an incident on November 21, 1971, the other was an incident on November 24, 1971 and the third was an incident on January 15, 1972. Though the last incident occurred on January 15, 1972, the order of detention was not made until August 24, 1972, and even after the order of detention was made, the petitioner was not arrested until February 22, 1973. These was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate. Burdwan recited in the order of detention. It would be reasonable to assume that if the District Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine. But here we find that though an affidavit in reply to the petition was filed by the Deputy Secretary Home (Special) Department, Government of West Bengal, no explanation was forthcoming in this affidavit as to why the order of detention was made as late as August 24, 1972 when the last incident on which it was founded occurred on January 15, 1972 and why the petitioner was not arrested until February 22, 1973, though the order

of detention was made on August 24, 1972. Mr. Chatterjee, Learned Counsel appearing on behalf of the State of West Bengal, contended that the State was not expected to render any explanation in regard to the delay in making the order of detention and arresting the petitioner because no such complaint was made in the petition. But this is hardly an argument which can avail the State when it is called upon to answer a rule issued on a petition for a writ of habeas corpus. It is the obligation of the State or the detaining authority in making its return to the rule in such a case to place all the relevant facts before the Court and if there is any delay in making the order of detention or in arresting the detenu, which is prima facie unreasonable, the State must give reason explaining the delay. Here there is no explanation for the delay which has occurred at both stages and in the absence of such explanation, we are not at all satisfied that the District Magistrate, Burdwan applied his mind and arrived at a real and genuine subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner. The condition precedent for the making of the order of detention was, therefore, not satisfied, and consequently, the order of detention must be quashed and set aside.

3. We accordingly quash and set aside the order of detention and direct that the petitioner be set at liberty forthwith.

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