

Imam Shaik

Vs

State of West Bengal

Writ Petition No. 43 of 1974

(R. S. Sarkaria, A. C. Gupta JJ)

01.10.1974

JUDGMENT

SARKARIA J.

1. The petitioner challenges the order, dated October 24, 1972, of his detention made by the District Magistrate Murshidabad, under Section 3(1) of the Maintenance of Internal Security Act, 1971 (for short the Act). The order states that the impugned action is taken with a view to prevent the petitioner from acting in a manner prejudicial to the maintenance of supplies and services essential to the community.

2. The detention order is founded on two incidents of theft, particulars of which are as under :

That on June 18, 1972, at about 17.00 hrs., you along with your associates stole away M.S. Angles worth about Rs. 1900 from nine electric towers in the Beldanga-Gokarna 66 K. V. Line in Kandi, P. S. Area, seriously affecting maintenance of supplies and services of power and light which is essential to the community.

That on July 26, 1972 at about 18.00 hrs. you along with your associates stole away M. S. Angles worth about Rs. 2,000 from ten electric towers of 66 K. V. Line near Jorophukuria P. S. Farakka, seriously affecting maintenance of supplies and services of Power and Light which is essential to the community.

3. In response to the rule nisi issued by this Court, the District Magistrate, Murshidabad who had passed the order of detention, filed a counter-affidavit wherein inter alia he has given the reasons for the detention of the petitioner to which we shall refer presently.

4. Mr. B. P. Maheshwari, Advocate appearing as amicus curiae for the petitioner contends : (1) That the petitioner was illiterate, and the grounds of detention which were in English, were never interpreted and explained to him. There was therefore a violation of Article 22(5) of the Constitution; (2) That the order of detention having been made 3 to 3 1/2 months after the incidents on which it was founded, had no proximate nexus with the grounds of detention. This delay of 3 months or so has not been satisfactorily explained; on the contrary, a false allegation has been made in the counter that the petitioner was absconding during this period; (3) That the order of detention was passed mechanically without due application of mind and (4) That the detaining authority had taken into account some other material also which was not communicated to the detenu and thus there was a violation of Article 22(5) of the Constitution and Section 8(1) of the Act.

5. We will deal with these contentions ad seriatum.

6. A further affidavit has been filed in this Court on behalf of the State by Bhola Nath Saha, Sub-Inspector of Police attached to Alipore Copper Wire Cell, Criminal Investigation department, West Bengal, in which he has clearly averred that the deponent had on October 26, 1972 at about 20,000 and 20.30 hrs. personally served the order and the grounds of detention on the petitioner together with the vernacular translation of the grounds in Bengali in the presence of two witnesses viz., Shri Nur Islam Sk. and Shri Ayub Sk. of Darbesh Para, after explaining the contents of the said order and the grounds in Bengali to the detinue which is his mother tongue. It is noteworthy that in the writ petition it is stated that the detinue was heard in person by an Hon'ble Judge of the Calcutta High Court but his prayer was rejected. Mr. P. K. Chakravarti, learned Counsel for the State says that this reference in the petition is to the Hon'ble Judge who was the Chairman of the Advisory Board. This means that the petitioner appeared in person before the Advisory Board to represent his case. There is no merit in the first contention and we negative the same.

7. In regard to the second contention, it may be observed that the interval between the second incident of theft (July 26, 1972) and the order of detention (October 24, 1972) was hardly three months. In the counter, it is averred :

... after the said incidents two criminal cases were filed against the petitioner and his associates one being Kandi P. S. Case No. 20 dated July 18, 1972 both under Section 379, I.P.C. in the Court of the Sub-Divisional Judicial Magistrate. Kandi and Jangipur and after some investigation and enquiry the prosecution files final reports in both the said cases as the witnesses were not willing to give any evidence against the petitioner and his associates and the said Magistrate was pleased too accept the said final reports as true in those cases on

... Thereafter it appears that on October 4, 1972 the Superintendent of Police, Murshidabad submitted before me the records relating to the detinue for my consideration. I went through the same and after being satisfied that having regard to the activities of the petitioner as mentioned in the grounds of detention it was necessary to detain him under the said Act, I passed the order of detention on October 24, 1972. It further appears from the records that the petitioner could not be arrested in connection with these incidents and cases as he was absconding. The allegation of the petitioner that he was not absconding is denied.

8. What has been quoted above, sufficiently explains as to why the order of detention was not passed soon after these thefts. No doubt, it would have been better if the detaining authority had given in the counter all the material dates including the one on which the Judicial Magistrate accepted the final reports submitted by the Police and dropped the proceedings in the two criminal cases. However the use of the word 'thereafter' in association with the date October 4, 1972 in the passage quoted above gives sufficient indication that these final reports were accepted by the Judicial Magistrate shortly before October 4, 1972 when the Superintendent of Police moved for preventive detention of the petitioner.

9. Be that as it may, the overall period which elapsed between the second incident of theft and the order of detention was only three months. It could not therefore be said that there was no proximate nexus between the incidents of theft and the order of detention. We therefore reject this contention also.

10. This takes us to the third contention.

11. Great stress has been laid on the fact that in the petition it had been averred positively that the petitioner was throughout available and had never absconded. Despite this fact, no explanation was forth - coming as to why even after the receipt of the proposal on October 4, 1972 for the petitioner's detention, the District Magistrate procrastinated 'for another 20 days before making the order of detention. Conversely' it is urged, that this delay of 20 days negatives the stand taken by the respondents in the counter that the petitioner was absconding, and supports the petitioner's assertion that he never did so.

12. We do not think much capital can be made out of the fact that the District Magistrate took 20 days for accepting the proposal submitted by the Superintendent of Police. We have no good reasons to doubt the sworn word of the detaining authority that the petitioner was then absconding.

13. It was also argued that these two instances only of the theft of M. S. Angles were not sufficient to form an opinion by any reasonable man that the petitioner was likely to commit like thefts in future also, particularly when during the next three months after the second incident he was not involved in any other theft of that kind.

14. We are not impressed by this argument.

15. In the two thefts mentioned in the particulars of the grounds of detention, substantial quantities of M. S. Angles were stolen away with consequent disruption of supplies and services viz., power and light, essential to the community. Moreover, it was entirely for the detaining authority to make a prognosis of the petitioner's future behaviour on the basis of his past activities. This Court cannot test the subjective satisfaction of the authority as to the propensity of the petitioner to act in a manner prejudicial to supplies and services essential to the community, by objective standards.

16. Nor do we find any force in the last argument raised by Mr. Maheshwari. In the counter the district Magistrate has categorically stated that he had passed the order of detention, only on the grounds communicated to the detenu.

17. For the foregoing reasons, we dismiss the petition and discharged the Rule.

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