

Sk. Nizamuddin

Vs

State of West Bengal

Writ Petition No. 319 of 1974

(Y. V. Chndrachud, P. N. Bhagwati JJ)

05.11.1974

JUDGMENT

BHAGWATI, J. -

1. The petitioner challenges his detention under an order dated September 10, 1973 made by the District Magistrate, Burdwan under Section 3(2)(i) of the Maintenance of Internal Security Act, 1971. There were several grounds urged before us 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 September 10, 1973 and it was based on the subjective satisfaction of the District Magistrate that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. This subjective satisfaction, according to the grounds of detention furnished to the petitioner, was founded on a solitary incident of theft of aluminium wire alleged to have been committed by the petitioner on April 14, 1973. It appears that in respect of this incident a criminal case was filed inter alia against the petitioner in the Court of Sub-divisional Judicial Magistrate, Asansol, but, as the affidavit-in-reply filed by the District Magistrate shows, the witnesses were unwilling to depose against the petitioner in open court on account of fear of danger to their life and the prosecution was, therefore, constrained to drop the criminal case and the petitioner was discharged. However, the date when the petitioner was discharged was not set out in the affidavit-in-reply. The petitioner was thereafter detained on November 23, 1973 pursuant to the order of detention. There was thus a time lag of about two and a half months between the date of the order of detention and the date when the petitioner was actually detained. The petitioner contended that since the District Magistrate did not state in his affidavit-in-reply as to when the petitioner was discharged, it must be presumed that the petitioner was discharged on or about September 10, 1973 and was available for being detained under the order of detention and yet he was not arrested for a period of two and a half months until November 23, 1973 and that shows that there was no real necessity to detain the petitioner with a view to preventing him from acting in a prejudicial manner and the subjective satisfaction of the District Magistrate founding the order of detention was not genuine. There is great force in this contention of the petitioner and it must result in invalidation of the order of detention.

3. It is obvious from the facts set out in the affidavit-in-reply that the petitioner was arrested in connection with the criminal case arising out of the incident dated April 14, 1973 set out in the grounds of detention. The Criminal case was ultimately dropped as the witnesses were not willing to come forward to give evidence for fear of danger to their life and the petitioner was discharged. The

date of discharge of the petitioner was, however, not set out in the affidavit-in-reply. We asked the learned Counsel appearing on behalf of the respondent as to whether there was any record with him from which he could tell us as to what was the date on which the petitioner was discharged but he stated that the only record which he had was that relating to the order of detention and the record relating to the criminal case had not been sent to him. We were told that even the history-sheet of the petitioner, which was before the District Magistrate when he made the order of detention, did not give the date when the criminal prosecution was dropped and the petitioner was discharged. It did not even make any reference to the criminal case. This is rather unfortunate. We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detentions a very material circumstance which ought to be placed before the District Magistrate. That circumstance might quite possibly have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate. But that is a different question altogether and it need not detain us. The fact remains that there was no record with the learned Counsel appearing on behalf of the respondent from which he could give us the date when the petitioner was discharged. In view of this failure of the part of respondent to supply information to the Court as to when the petitioner was discharged, we must proceed on the assumption that he must have been discharged on or about September 10, 1973. The order of detention must have been made by the District Magistrate in anticipation of the discharge of the petitioner and the discharge of the petitioner can, therefore, be presumed to have taken place at or about the time when the order of detention was made, that is, September 10, 1973. But if that be so, the conclusion is inescapable that though the petitioner was available for detention since about September 10, 1973, he was not detained for a period of about two and a half months up to November 23, 1973. There was delay of about two and a half months in detaining the petitioner pursuant to the order of detention and this delay, unless satisfactorily explained, would throw considerable doubt of the genuineness of the subjective satisfaction of the District Magistrate recited in the order of detention. It would be reasonable to assume that if the District Magistrate 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 in securing the arrest of the petitioner immediately after the making of the order of detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry out his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay 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 was filed by the District Magistrate himself, no explanation was forthcoming in this affidavit as to why the petitioner was not arrested until November 23, 1973, though the order of detention was made as far back as on September 10, 1973. The learned Counsel appearing on behalf of the respondent contended that the State was not expected to render any explanation in regard to the delay in arresting the petitioner pursuant to the order of detention 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 to 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 arresting the detenu pursuant to the order of detention which is prima facie unreasonable, the State must give reasons explaining the delay. Vide Sk. Serajul v. State of West Bengal (W.P. 2000 of 1973, decided on September 9, 1974). Since in the present case no explanation for the delay has been given in the affidavit-in-reply filed by the District Magistrate, we are not at all satisfied that the District Magistrate 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.

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

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