

Jainal Sk.

Vs

The District Magistrate, West Dinajpur, and Others

Writ Petition No. 380 of 1974

(P. N. Bhagwati, N. L. Untwalia JJ)

26.11.1974

JUDGMENT

UNTWALIA, J. -

1. In this petition under Article 32 of the Constitution of India the petitioner has prayed for a writ of habeas corpus for directing his release from the allegedly unlawful custody in jail. The facts of this case are identical to those of Writ Petition No. 332 of 1974, the judgment of which has been delivered today. The dates of the order of detention and the arrest of the detenus and the grounds served in both the cases are identical. Each of them along with his associates is said to have been carrying 11 bundles of telegraph copper wires weighing 300 kgs. in bullock cart on May 13, 1972. The reasons of detention of the petitioner in this case are the same as in the other case. It is plain that this writ petition has also to fail in view of the judgment in the other case.

2. But there is one special point which was urged by Mr. Pramod Swarup, learned Counsel for the petitioner who assisted the Court as amicus curiae. Counsel submitted that in the first information report the petitioner was not named as an accused when a regular case was instituted. Allegations made against him in the grounds of detention are therefore baseless and false. Mr. Swarup endeavoured to press into service some observations of this Court in Paragraph 4 of the judgment in the case of Arun Kumar Sinha v. State of W. B. (AIR 1972 SC 2371 : (1973) 4 SCC 54 : 1973 SCC (Cri) 695). In the said paragraph it was pointed out in answer to a similar point as to the absence of the name of the detenu from the first information report that this ground was not taken by the petitioner in the petition with the result that the respondent had no opportunity or occasion to deal with it. Counsel submitted that in the instant case the point was taken and therefore it must succeed. We have no difficulty in rejecting this argument as devoid of substance. In the petition filed from jail there was no such point taken. But the whole of the argument seems to have been built up on the basis of the statement in the counter-affidavit filed on behalf of the respondents. In paragraph 5 of the counter-affidavit it is said :

It appears from the report submitted by the I.C. of the case, that although the names of the petitioner did not appear in F.I.R. his complicity in the incident transpired in course of investigation. It further appears that in connection with said incident a specific case was started being Islampur P.S. Case No. 19 dated May 16, 1972 under Section 5 of the Telegraph Copper Wire (Unlawful Possession) Act 1950 in the Court of S.O.D.M. Islampur. After some investigation and enquiry the said case ended in F.R.T. on June 21, 1972 as the witnesses were afraid to depose against the petitioner in open court. Thereafter the petitioner was discharged from the said case and detained under the said order passed by the said District Magistrate on June 22, 1972.

3. In view of the statement made in the counter-affidavit which has been extracted above, it is manifest that mere absence of the petitioner's name in the first information report cannot justify the inference that the ground of his detention is non est. In a case of this kind, investigation as to the truthfulness of the facts forming the basis of the grounds of detention cannot be embarked. And exercising the peripheral jurisdiction in matters of preventive detention this Court is unable to accept the contention put forward on behalf of the petitioner.

4. For the reasons stated above, this writ petition fails and is dismissed. The Rule is discharged.

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