Gora

Vs

State of West Bengal

Writ Petition No. 379 of 1974

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

11.12.1974

JUDGMENT

BHAGWATI, J.

The District Magistrate, 24-Parganas, by an order dated December 29, 1973 made under Sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 directed that the petitioner be detained as he was satisfied that with a view to preventing the petitioner from acting in a manner prejudicial to the maintenance of public order it was necessary to detain him. The fact of the making of the order of detention was reported by the District Magistrate to the State Government on January 2, 1974 and the State Government, by an order dated January 8, 1974, approved the order of detention. Pursuant to the order of detention, the petitioner was arrested on January 18, 1974 and immediately on his arrest he was served with the grounds on which the order of detention was made. The grounds of detention referred only to one incident as forming the basis of arriving at the subjective certification as regards the necessity for detention of the petitioner and that incident was in the following terms :

> On the night of June 25/26, 1973 at about 00.01 hrs. you along with your associates being armed with lethal weapons including fire arms raided the house of Ananta Kayal of Naitala under Diamond Harbour P.S. and looted away cash, ornaments etc. At the time of operation you fired from your fire arms indiscriminately disregarding human lives and their safety. As a result, the house owner Ananta Kayal and his close door neighbour Ajit Kayal sustained grievous gun shot injuries on their persons. Subsequently both of them expired in Diamond Harbour Hospital. You also brutally assaulted some of the inmates of the house of occurrence. Your action created such panic in the locality and the local people felt a sense of insecurity. Thus you acted in a manner prejudicial to the maintenance of public order.

The petitioner made a representation against the order of detention on January 29, 1974 but it was considered and rejected by the State Government on January 31, 1974. The State Government thereafter submitted the case of the petitioner to the Advisory Board along with his representation and the Advisory Board, after hearing the petitioner and taking into account the representation made by him, made a report to the State Government on March 6, 1974 stating that in its opinion there was sufficient cause for the detention of the petitioner. The State Government accordingly passed an order dated March 14, 1974 confirming the detention of the petitioner. This detention is challenged by the petition in the present petition which has been submitted from jail.

2. The first contention urged by Mr. Mukhoty, learned Counsel appearing amicus curiae on behalf of

the petitioner, was that the solitary incident set out in the grounds of detention was so remote from the date of the order of detention - in fact there was a time lag of about six months - that the District Magistrate could not possibly have arrived at his subjective satisfaction on the basis of that incident. The requirement of proximity, said Mr. Mukhoty, was not satisfied and the subjective satisfaction said to have been reached by the District Magistrate could not be regarded as real or genuine. Now it is true, as pointed out by this Court in Golam Hussain v. Commissioner of Police, Calcutta ((1974) 4 SCC 530 : 1974 SCC (Cri) 566) that [SCC p. 534 : SCC (CRI) p. 570, para 5]

There must be a live link between the grounds of criminal alleged by the detaining authority and the purpose of detention, namely, inhibition of prejudicial activity of the species specified in the statute. This credible chain is snapped it activity of the species specified in the statute. This credible chain is snapped if there is too long and unexplained an interval between the offending acts and the order of detention. Such is the ratio of proximity in Lakshman Khatik v. State of W. B. ((1974) 4 SCC 1 : 1974 SCC (Cri) 289). No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course on an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.

There is, therefore, no hard and fast rule that merely because there is a time lag of bout six months between the 'offending acts' and the date of the order of detention, the causal link must be taken to be broken and the satisfaction claimed to have been arrived at by the District Magistrate must be regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction must depend on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the 'Offending acts' and the order of detention. It is a subsidiary test evolved by the Court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu land its utility; therefore, lies only in no far as it subserves that purpose and it cannot be allowed to dominate or drown it. The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a part of an organised operation of a complex of agencies collaborating to clandestinely and secretly carry on such activities and in such a case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely or secretly carried on by the detenu and it is, therefore necessary to detain him with a view to preventing him from indulging in such activities in the future. Here in the present case, the Act alleged against the petitioner was a daring act of dacoity in a village by a gang consisting of the petitioner and his associates and if this Act is judged in its correct setting, grave proportions and clear implications, it would be clear that it cannot be a stray isolated act but must be the work of a habituated and hardened criminal given to commit dacoities and the District Magistrate could, therefore, reasonably arrive at a satisfaction that with a view to preventing the petitioner from carrying on such activated it was necessary to detain him. Moreover, the affidavit in reply filed on behalf of the State Government by the Secretary in the Department of Public Relations and Youth Services, points out that in connection with the incident set out in the grounds of detention a criminal case was filed in the court of Sub-Divisional Judicial Magistrate, Diamond Harbour on

June 26, 1973 and he was arrested in connection with that case, but it appeared during investigation that witnesses were unwilling to give evident in open court against the petitioner and his associates and it was, therefore, felt that it was futile to proceed with the criminal case and it was decided to drop it against the petitioner. Now, if the criminal case were dropped, the petitioner would have to be released and in that even he would be free to carry on his nefarious activities. The District Magistrate, therefore, passed the order of detention on December 29, 1973. The order of detention was in fact passed in anticipation of the petitioner being released as a result of dropping of the criminal case against him. The record of the case which was produced before us by the learned Counsel appearing on behalf of the State showed that the criminal case was actually pending against the petitioner on January 3, 1974. That means that the criminal case must have been dropped and the petitioner must have been discharged sometime between January 3, 1974 and January 18, 1974, the latter being the date when he was once again arrested pursuant to the order of detention. It is, therefore, not possible to say that the District Magistrate could not have arrived at a subjective satisfaction on the basis of the incident set out in the grounds of detention, or that the subjective satisfaction reached by him was sham or unreal.

3. Mr. Mukhoty on behalf of the petitioner then urged that even if the incident set out in the grounds of detention were true, it merely affected maintenance of law and order and did not have any impact on public order and hence there was no nexus between the act alleged against the petitioner and the subjective satisfaction reached by the District Magistrate. Now, there can be no doubt that the acts of the detenu on which a subjective satisfaction is claimed to have been reached by the detaining authority mush have relevance to the formation of such subjective satisfaction. If the acts of the detenu railed on by the detaining authority are irrelevant, no reasonable person could possible arrive at a subjective satisfaction on the basis of such irrelevant acts and the subjective said to have been reached by the detaining authority would be a mere pretence. It is, therefore, necessary to consider whether the act alleged against the petitioner in the grounds of detention could be said to be relevant to the formation of a subjective satisfaction that be said to be relevant to the formation of a subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in manner prejudicial to the maintenance of public order. What was the potency or radiation of the act alleged against the petitioner : did it affect maintenance of public order or was its prejudicial effect confined merely to maintenance of law and order ? The distinction between law and order, on the one hand, and public order, on the other, has been brought out admirably by Hidayatulla, C.J., in a recent decision in Arun Ghosh v. State of W. B. ((1970) 3 SCR 288 : (1970) 1 SCC 98). The learned Chief Justice pointed out in that case the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance in the following words : [SCC pp. 99-100, para 3]

Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed, against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implication are deeper and it affects the even tempo of life and public order is jeopardised because the repercussions of the act embrace large sections of the community and incite them to make further breached of the law and order and to subvert the public order, ... It means therefore

that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society ... The question to ask is : Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it effect merely and individual leaving the tranquillity of the society undisturbed ?

It we ask this question in relation to the facts of the present case, it is obvious that the act alleged against the petitioner was calculated to disturb "the current of life of the community" in the village. It was a serious act of dacoity which was alleged against the petitioner and it was perpetrated at dead of night and the petitioner and his associates who participated were armed with lethal weapons including guns and they used these lethal weapons recklessly and indiscriminately in utter disregard of human life and actually caused grievous injuries to at least two persons and beat up several others. This act of dacoity created a panic in the locality and seriously disturbed the even tempo of life of the community in the village. There was clearly disturbance of public order and the act alleged against the petitioner had nexus with the object of maintenance of public order. The subjective satisfaction reached by the District Magistrate, could not, therefore, be said to be based on an irrelevant ground.

4. Then it was contended on behalf of the petitioner that the District Magistrate had taken into account other material contained in the history sheet of the petitioner in arriving at his subjective satisfaction and since this material was not disclosed to the petitioner, he had no opportunity of making an effective representation and the order of detention was, therefore, invalid. Now, the proposition can no longer be disputed that if any material which has not been disclose to the petitioner has gone into the formation of the subjective satisfaction of the detaining authority it would have an invalidating consequence on the order of detention. But in the present case it is not possible to say that any material other than that set out in the grounds of detention was taken into account by the District Magistrate in reaching his subjective satisfaction. We have looked at the history-sheet of the petitioner which was produced before us by the learned Counsel appearing on behalf of the State. Government and we do not find any material prejudicial to the petitioner other than that set out in the grounds of detention. There is, therefore, no factual basis for his contention and it must be rejected.

5. Mr. Mukhoty on behalf of the petitioner also tried to persuade us to strike down the order of detention on the ground that though the order of detention was made on December 29, 1973, the petitioner was not arrested until January 18, 1974 and there was thus a delay of twenty days in arresting the petitioner pursuant to the order of detention. But this is equally unsustainable and for two very good reasons. In the first place, the delay of twenty days between the date of the order of detention and the date of arrest cannot be regarded as unreasonable. Secondly, there is sufficient explanation for the delay. The petitioner was actually in jail on December 29, 1973 when the order of detention was made and it was only on some date between January 3, 1974 January 18, 1974 that he was released and then once again arrested on January 18, 1974.

6. The last contention urged by Mr. Mukhoty on behalf of the petitioner was that though the order of detention was made by the District Magistrate on December 29, 1973, he did not report the fact of the making of the order of detention to the State government until January 2, 1974 and there was thus a delay of about five days which constituted a violation of the statutory requirement of Section 3, sub-section (3) that the fact of the making of the order detention must be reported forthwith to the State Government. This contention raises the question as to what is the true meaning and connotation of the word "forthwith" as used in Section 3 sub-section (3). The question is fortunately

not res integra. It is concluded by a decision of this Court in Keshav Nilkanth Joglekar v. Commissioner of Police, Greater Bombay (1956 SCR 653 : AIR 1957 SC 28 : 1957 Cri LJ 10). The statutory provision which came up for consideration in that case was Section 3, sub-section (3) of the Preventive Detention Act, 1950 which contained an identical provision as Section 3, Sub-section (3) of the present Act and the question which arose was as to whether Commissioner who made the order of detention on January 13, 1956 could be said to have reported that fact 'forthwith' to the State Government under Section 3, sub-section (3) when he did so as late as January 21, 1956. The Court was, therefore, called upon the construe the word 'forthwith' in Section 3, sub-section (3) and after discussing various authorities, English as well as Indian, bearing on the interpretation of this word, the Court, speaking through Venkatarama Ayyar, J., pointed out that : "On theses authorities, it may be taken, an act which is to be done forthwith must be held to have been so done, when it is done with all reasonable despatch and without avoidable delay", and proceeded to add :

> Under Section 3(3) it is whether the report has been sent all the earliest point of time possible, and when there is an interval of time between the date of the order the date of the report, what has to be considered is whether the delay in sending the report could have been avoided . . . . the result then is that the report sent by the Commissioner to the State on January 21, 1956 could be held to have been sent "forthwith" as required by Section 3(3). Only if the authority could satisfy could satisfy us that, in spite of all diligence, it was not in a position to send the report during the period from January 13 to 21, 1956.

The same test must be applied in the present case and we must inquire whether the District Magistrate sent the report to the State Government "with all reasonable despatch and without avoidable delay", or, to put it differently, whether in spite of all diligence the District Magistrate was not in a position to send the report until January 2, 1974. Now, the District Magistrate has made an affidavit explaining the reason for the delay in sending the report to the State Government. He has pointed out that December 29, 1973, which was the date when the order of detention was made, was a Saturday and on that day he had passed eight other orders of detention and the, materials in connection with all these nine cases had to be typed out by the typist which could not possibly be completed in one single day. December 30, 1973 was a Sunday and, therefore, the earliest when the report could be submitted to the State Government was December 31, 1973. But the District Magistrate could not send the report on that day as he was very busy in connection with food procurement work in the district and the next day, namely, January 1, 1974 being a public holiday, he could send the report only on January 2, 1974. This explanation given by the District Magistrate is, in our opinion, sufficient to show that he sent the report to the State Government with all reasonable despatch and there was no avoidable delay on his part. Whilst taking this view on facts, we do not wish to underscore the need for strict compliance with this requirement of Section 3, sub-section (3). It is a very important requirement intended to secure that the State Government shall have sufficient time for consideration before it decides - and this decision has to be made within twelve days of the making of the order of detention - whether or not to approve the order of detention and the Court would, therefore, insist on strict compliance with it and not condone avoidable delay, even if it be trivial. But in the present case the facts stated by the District Magistrate in his affidavit show that he acted with prompt despatch and was not guilty of any avoidable delay. The District Magistrate must, therefore, be held to have sent the report 'forthwith' as required by Section 3, sub-section (3).

7. These were the only contentions urged on behalf of the petitioner in support of the petition and since there is no substance in them, the petition fails and the rule is discharged.

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