

Suresh Mahato

Vs

The District Magistrate, Burdwan and Others

Writ Petition No. 388 of 1974

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

20.12.1974

JUDGMENT

BHAGWATI, J. -

1. This petition is directed against an order of detention made by the District Magistrate, Burdwan under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971. The order of detention was made on January 12, 1972 on the ground 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. The District Magistrate forthwith reported the fact of the making of the order of detention to the State Government and the order of detention was approved by the State Government on January 22, 1972. Pursuant to the order of detention the petitioner was arrested on February 18, 1972 and immediately on arrest, the grounds of detention were served on him. The petitioner made a representation against the order of detention on March 14, 1972 but this representation was rejected by the State Government on March 24, 1972. In the mean time the State Government placed the case of the petitioner before the Advisory Board on March 15, 1972 and the representation of the petitioner was also forwarded by the State Government to the Advisory Board. The Advisory Board, after considering the case of the petitioner and taking into account the representation made by him, gave its report on April 24, 1972 stating that in its opinion there was sufficient cause for the detention of the petitioner. The order of detention was thereupon confirmed by the State Government by an order dated May 17, 1972. The petitioner has been in jail since then.

2. The first contention urged on behalf of the petitioner was that though it was stated by the District Magistrate in his affidavit in reply that the representation of the petitioner was forwarded to the Advisory Board, there was nothing in the affidavit in reply to show as to when it was so forwarded and whether the Advisory Board received it before it submitted its report to the State Government on April 24, 1972. The omission to forward the representation to the Advisory Board before the Advisory Board gave its opinion constituted, according to the petitioner, a serious infirmity which vitiated the detention of the petitioner. Now, it is true that we do not find any statement in the affidavit in reply that the representation of the petitioner was forwarded to the Advisory Board before April 24, 1972 when the Advisory Board submitted its report, but Mr. Chatterjee, learned counsel appearing on behalf of the State, produced before us the report of the Advisory Board and this report clearly showed that the Advisory Board had before it the representation of the petitioner and it was after considering the representation of the petitioner that the Advisory Board gave its opinion. This contention must, therefore, be rejected.

3. The petitioner then contended that though the order of detention was made on January 12, 1972,

the petitioner was not arrested until February 18, 1972 and this time lag of about one month between the date of the order of detention and the date of the petitioner's arrest showed that the District Magistrate was not really and genuinely satisfied as regards the necessity for detention of the petitioner, for otherwise he would have tried to secure the arrest of the petitioner promptly and not left him free to carry on his nefarious activities. This contention was sought to be supported by two recent decisions of this Court, one in *Sk. Serajul v. State of W. B.* (W.P. No. 2000 of 1973, decided on September 9, 1974) and the other *Sk. Nizamuddin v. State of W. B.* ((1975) 3 SCC 395 : 1975 SCC (Cri) 21). Now, there can be no doubt - and the law on this point must be regarded as well settled by these two decisions - that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner. But we do not think that a delay of about one month can be regarded as so unreasonable as to support such an inference negating the genuineness of the satisfaction of the District Magistrate. This contention also cannot, therefore, be accepted.

4. The last contention urged on behalf of the petitioner was that the order of detention was vitiated as the fact that two criminal cases were registered against the petitioner in respect of the two incidents set out in the grounds of detention was not disclosed to the District Magistrate before made the order of detention. The grounds of detention referred to two incidents of theft. One was an incident of theft of three iron telephone posts which took place on August 24, 1971 and the other was an incident of theft of overhead electric copper wire which took place on September 5, 1971. Salanpur P.S. Case No. 3 was registered in respect of the first incident, while Salanpur P.S. No. 7 was registered in respect of the second incident. The name of the petitioner did not figure in the first information report in regard to either of these two incidents but his participation was revealed in the course of investigation. No charge-sheet could, however, be filed against the petitioner though there was sufficient evidence against him, because the witnesses were not prepared to come forward to give evidence against him for fear of danger to their lives. The criminal cases had, therefore, to be dropped and the petitioner had to be discharged. It was in these circumstances that the District Magistrate made the order of detention on January 12, 1972 directing detention of the petitioner. Now, we do not know as to when the criminal cases were dropped and the petitioner was discharged - whether it was before the making of the order of detention or thereafter. If the criminal cases were dropped and the petitioner was discharged before the making of the order of detention, then obviously it was not a material fact which ought to have been placed before the District Magistrate. On the other hand, if the criminal cases were pending, it was certainly a material fact which ought to have been brought to the notice of the District Magistrate, because as pointed out by this Court in *Sk. Nizamuddin v. State of West Bengal* (supra) [SCC p. 397 : SCC (Cri) p. 23]

the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate.

But there is nothing on record before us to show that this fact of pendency of criminal cases against the appellant was not brought to the attention of the District Magistrate before he made the order of detention. This contention must also, therefore, fail and be rejected.

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

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