

Kamal Pathak

Vs

The District Magistrate, Burdwan and Others

Writ Petition No. 446 of 1974

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

20.12.1974

JUDGMENT

BHAGWATI, J. -

1. The District Magistrate, Burdwan, by an order dated August 29, 1972, 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 on the ground that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it was necessary to detain him. The grounds on which the order of detention was based referred to two incidents of theft, one on May 25, 1972 and the other on June 12, 1972. It appears from the affidavit in reply filed by the District Magistrate that in respect of these two incidents Hirasur Case No. 16, dated May 27, 1972 and Hirasur Case No. 23, dated June 24, 1972 were registered and though the name of the petitioner was not mentioned in the first information report, his participation in these two incidents was revealed in the course of investigation. The police tried to arrest the petitioner in connection with these two cases, but the petitioner could not be arrested as he was absconding. There was evidence against the petitioner showing his complicity in respect of these two incidents, but the witnesses were not willing to come forward to give evidence for fear of safety of their lives and the police were, therefore, constrained to drop the cases against the petitioner. The first case was dropped on August 11, 1972, while the other was dropped on August 30, 1972. It was in these circumstances that the District Magistrate passed the order dated August 29, 1972, directing detention of the petitioner. Pursuant to the order of detention the petitioner was arrested on September 3, 1972, and the grounds of detention were served on him. The formalities required by the Act were thereafter complied with within the prescribed time limits and the orders of detention was ultimately confirmed by the State Government.

2. The only ground on which the petitioner challenged the validity of the order of detention was based on the following averment made in paragraph 7 of the affidavit in reply filed by the District Magistrate :

the said detenu was ultimately discharged from the cases on the prayer of the police from the said cases not because there was no evidence against him but because this detenu being a dangerous person witnesses were afraid to depose against him.

The argument of the petitioner was that there must have been some material before the District Magistrate from which he inferred that the petitioner was a dangerous person and since this material was not disclosed to the petitioner, he was denied an opportunity of making effective representation and the order of detention was, therefore, invalid. This argument is wholly without force. There is

nothing on the record to show that there was before the District Magistrate any material other than the grounds of detention served on the petitioner. The District Magistrate did not rely on the circumstance that the petitioner was a dangerous person for the purpose of reaching his subjective satisfaction as regards the necessity for the detention of the petitioner. He referred to the fact of the petitioner being a dangerous person in his affidavit in reply merely by way of giving a reason why the witnesses were not willing to come forward to give evidence against him. That was not a circumstance taken into account by him for the purpose of arriving at this subjective satisfaction. In any event, the two incidents set out in the grounds of detention clearly suggested that the petitioner was a dangerous person. No inference could, therefore, be drawn that there was any other material before the District Magistrate which was not disclosed to the petitioner.

3. The petition, therefore, fails and the rule is discharged.

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