

Chetu Sheikh @ Chetu @ Shabji

Vs

The State of West Bengal

Writ Petition No. 374 of 1974

(V. R. Krishna Iyer, R. S. Sarkaria JJ )

15.01.1975

JUDGMENT

SARKARIA, J. -

1. The petitioner challenges the order of his detention made under Section 3 of the Maintenance of Internal Security Act, 1971, by the District Magistrate, Murshidabad. The order was made on May 10, 1973 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. It is founded on two incidents, the facts of which were incorporated in the grounds of detention. One was that on the night of March 31, 1973 at about 00.01 hrs., the petitioner along with his associates armed with fire-arms and other deadly weapons committed a daring dacoity in the house of Abdur Razak of village Chanderpara, Police Station Domkal; and the second was that on the same night at about 2 to 2.30 hrs., he along with his associates armed with fire-arms and other deadly weapons, committed dacoity in the house of one Amiruddin Mondal of village Sreerampur, P. S. Jallani, and assaulted the inmates of the house and looted the property.
2. Two F.I.Rs. with regard to these dacoities were registered with the police. One was case No. 16 of March 31, 1973 under Section 395, Penal Code, registered at Police Station Domkal, and the other was case No. 13 of March 31, 1973 registered under Sections 395 and 397, Penal Code at Police Station, Jallangi. The detenu was not named in the F.I.Rs. But during investigation, it was discovered that he was concerned in these incidents.
3. The petitioner was arrested on April 3, 1973 in connection with those cases. The police, however, submitted a report to the Magistrate that the detenu was a dangerous person and the witnesses were afraid to depose against him. He was consequently discharged by the Magistrate on May 22, 1973, but in pursuance of the detention order, he was taken into custody on the same day.
4. The first contention advanced by the learned Counsel for the petitioner is that the latter is an old man 65 years and it was impossible for him to commit these dacoities at two different villages on the same night.
5. This Court in these proceedings cannot go into the question whether or not the petitioner was concerned in these two dacoities. The statute has left that matter to the subjective satisfaction of the detaining authority. Moreover, it appears from the record that the petitioner is only 48 years old. We therefore repel this contention.
6. Next it is contended that an order of preventive detention under the Act could not be passed against a person who was already in jail.

7. It is now settled law that if from the circumstances of a particular case, the detaining authority is satisfied that the detention or jail custody of the detenu is about to terminate shortly and further that in view of his prejudicial activities in the proximate past, an apprehension of his acting in the same prejudicial manner after his release exists, the authority may, if the conditions of Section 3 are satisfied, validly make an order of detention even while the detenu is still in jail. The preventive jurisdiction which the authority exercises under the Act is different from the jurisdiction to prosecute him for a substantive offence. In dealing with this question however considerations of proximity of time will be a relevant factor.

8. In the instant case, in the counter filed on behalf of the respondent it has been averred that the police had made a report for the discharge of the detenu on the ground that witnesses were afraid of deposing against him.

9. Mr. Chatterjee, Counsel for the respondent has placed before us the report dated May 7, 1973 of the Superintendent of Police whereby the District Magistrate was moved to take the preventive action in question. In this report it is indicated that the prosecution of the petitioner for the substantive offences of dacoity was foredoomed to failure because the witnesses being terror-stricken, were not willing to come forward and depose against him in court. Thus on May 10, 1973 when the detention order was made, the District Magistrate must have been satisfied from the report of the police that the prosecution pending against the petitioner was bound to result in his discharge shortly - and in fact he was discharged by the Court on May 22, 1973. The grounds on which the detention has been ordered did not relate to state incidents. There was a proximate nexus between those grounds and the object sought to be achieved. In the circumstances it cannot be said that the impugned order is 'colourable and was not justified'.

10. The petition fails and is dismissed. Rule discharged.

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