

Md. Sahabuddin

Vs

The District Magistrate, 24 Parganas and Others

Writ Petition No. 537 of 1974

(V. R. Krishna Iyer, R. S. Sarkaria, P. N. Bhagwati, N. L. Untwami JJ )

21.01.1975

ORDER

KRISHNA IYER, J. –

1. The petitioner who was detained under an order of the District Magistrate, 24-Parganas, in exercise of his powers under Section 3 of the Maintenance of Internal Security Act, 1971 has moved this Court for release from custody on the ground that the order has been passed without any real subjective satisfaction and that another person who had been detained under the Maintenance of Internal Security Act, on the same ground, has already been released by the High Court.

2. On one short ground, the order of detention must fail. The single instance relied on by the detaining authority for the subjective satisfaction reached by him is dated July 27/28, 1973 and relates to stealing to telephone cables. If really this ground had been the basis of the detention order, one would have reasonably expected the District Magistrate to act promptly. In any case, the order seemed to have been passed nearly seven months after the criminal incident. No explanation whatever in the shape of a counter affidavit by the District Magistrate or anyone else on behalf of the State has been filed. We have to presume that there is an explanation worthwhile offering. Time was taken by Counsel for filing a counter affidavit when this writ petition came up for hearing last time; but none is forthcoming yet.

3. On the basis that there is a long unexplained delay between the criminal occurrence and the detention order, this Court has held that such detention must be held illegal because the subjective satisfaction has no proximate rational nexus with the prejudicial act. We have to follow the same view here also. The order of detention is quashed, the rule nisi made absolute and the petitioner is directed to be released forthwith.

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