

Jatindra Nath Biswas

Vs

The State of West Bengal

Writ Petition No. 568 of 1974

(V. R. Krishna Iyer, N. L. Untawalia JJ)

20.03.1975

JUDGMENT

UNTWALIA, J. –

1. The petitioner was arrested on March 17, 1974 in pursuance of an order of detention made on June 29, 1973 by the District Magistrate, 24-Parganas, West Bengal under Section 3(1) of the Maintenance of Internal Security Act, 1971. The petitioner by this writ application challenges his detention as illegal.
2. The petition was filed by the detenu from jail and was argued before us by an advocate of this court appearing amicus curiae. The relevant facts may be stated from the counter filed on behalf of the respondent.
3. The grounds of detention against the petitioner are two and they are these :
 - (i) That on June 8, 1972 at about 01.50 hrs. you along with your associates (1) Madhab Chandra Mondal, (2) Bhupen Adhikari, (3) Biswanath Adhikari, (4) Jiban Krishna Biswas, (5) Promatha Samaddar, (6) Iman Ali Sardar, (7) Profulla Kumar Roy, (8) Jnanandra Nath Roy and others being armed with bombs and lethal weapons raided the house of Paresh Chandra Dutt, son of Nibaran Chandra Dutta of Simulpur, P. S. Gaighata, Distt. 24-Parganas, assaulted the inmates of the house and looted away cash, ornaments, utensils, etc., valued Rs. 8,110. That when the villagers viz. Ranjit Kr. Ghosh, Bhadu Mondal, Jiten Mazumdar, Nirod Ch. Sarkar and others chased your and your associates, you kept them at bay by bomb outrage and managed to escape with looted properties. Your such violent activities infused panic and terror in the mind of the peace loving people of the locality and consequently the public order of the locality was much disturbed.
 - (ii) That on June 10, 1972 between 01.00 hrs. to 03.00 hrs. you along with your associates (1) Madhab Chandra Mondal, (2) Bhupen Adhikari, (3) Biswanath Adhikari, (4) Jiban Krishna Biswas, (5) Promatha Samaddar, (6) Jnanandra Nath Roy, (7) Iman Ali Sardar, and others being armed with deadly weapons like dagger, etc., raided the houses of Nimai Ch. Bala, s/o Promatha Nath Bala of Goalbathari, P. S. Gaighata, district 24 Parganas, assaulted the inmates of the house and looted away cash, wrist watch, clothings, gold ornaments, etc. valued about Rs. 540. As a result of your such activities the people of the locality became very much panicky and peace and order of the locality was completely disturbed.

4. In the counter it is further stated that in connection with the incidents mentioned in the grounds of detention two criminal cases were filed under Sections 395 and 397 of the Indian Penal Code. The detenu was not named in either of the first information reports but his complicity in the said incidents transpired in the course of investigation. The petitioner was arrested on September 30, 1972. In both the cases the petitioner was released on bail on December 21, 1972. After attending the court on some dates, he jumped bail on or after June 21, 1973 and remained absconding until he was arrested in pursuance of the detention order. The criminal cases could not be proceeded against him as the witnesses were unwilling to give evidence in court for fear of their lives. No infirmity is to be found in observing the formalities under the law. But we are of the opinion that the acts stated in grounds No. (ii) did not relate to the disturbance of the public order but merely concerned law and order. In connection with ground No. (i) one may say that the facts alleged thereunder did affect the tempo and even flow of public life of the locality because when the villagers came, they were scared away by a bomb outrage presumably by explosion of bombs. The violent activities are said to have infused panic and terror in the minds of the people of the locality. But the second ground merely states that as a result of the activities of the petitioner mentioned in that ground people of the locality became very panicky and peace and order was completely disturbed. The mere activity of committing dacoity with deadly weapons in the house of a single individual at the dead of night could not necessarily lead to the inference of disturbances of public order as was made out in the last portion of the ground. It was necessary to state some activities other than the raid on the individual's house to lend assurance to the fact that District Magistrate found the public order disturbed and hence felt satisfied that the detention of the petitioner was necessary to prevent him from indulging in such activities in future. Merely for creating law and order problem, a person could not be detained under MISA. Sometimes the dividing line on the facts stated may be thin to determine whether they constitute disturbances of public order or merely affect law and order. Yet the life is distinct in this case.

5. In the case of *Kuso Sah v. State of Bihar* ((1974) 1 SCC 185 : 1974 SCC (Cri) 84) it has been said in paragraph 4 : [SCC p. 186 : SCC (CRI) p. 85]

These acts may raise problems of law and order but we find it impossible to see their impact on public order. The two concepts have well defined contours, it being well established that stray and unorganised crime of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. As observed in *Pushkar Mukherjee v. State of West Bengal* ((1969) 2 SCR 648 : (1969) 1 SCC 10, 19), a line of demarcation must be drawn between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. In *Dr. Ram Manohar Lohia v. State of Bihar* ((1966) 1 SCR 709, 746 : AIR 1966 SC 740 : 1966 Cri LJ 608), *Hidayatullah, J.* has expressed this concept picturesquely by saying that one has to imagine three concentric circles; law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents the security of State. "Law and Order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State".

6. In our judgment ground No. (ii) could not justify the detention of the petitioner for preventing

him from acting in a manner prejudicial to the maintenance of public order. It has been repeatedly pointed out by this Court that even if one ground out of two or more is found to vitiate the subjective satisfaction of the detaining authority the order of detention falls. In such a situation one does not know whether the authority would have thought it fit to pass an order of detention only on the basis of the surviving ground or grounds. The order stands vitiated if some out of many grounds are found to have no nexus with the object of detention.

7. For the reasons stated above, we allow this writ application, make the rule absolute and direct the release of the petitioner forthwith.

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