Samir Chatterjee

Vs

State of West Bengal

Writ Petition No. 4 of 1975

(A. Alagiriswami, N. L. Untawalia JJ)

21.03.1975

JUDGMENT

ALAGIRISWAMI, J. –

The petitioner has been detained under the provisions of the Maintenance of Internal Security Act in pursuance of an order passed by the Commissioner of Police of Calcutta on April 24, 1974. The grounds for detention order are :

> 1. That at about 05.40 hours on May 9, 1973, you along with your associates about 10 in number forcibly scaled over the boundary wall of Garden Reach Workshop, manufacturing defence materials, at 61, Garden Reach Road, Calcutta and when resisted by the Security Staff of the said workshop, you along with your said associates, being reinforced by about 25 others assemble and formed a violent mod on an open plot of land beyond the western boundary wall of the said workshop and incessantly hurled brickbats, which continued till 08.00 hours, aiming at the Security Staff of the said workshop creating serious disturbances there. As a result 3 Security Personnel, viz. Gurdit Singh, Ratan Singh and Hasib Khan of the said workshop sustained injuries on their person at the aforesaid date, time and place. In consequence, fear, frightfulness and insecurity prevailed amongst the workmen and authorities of the above workshop leading to the suspension of the defence production for some time in the said workshop in general and in the Drum Plant (of the workshop) in particular which was prejudicial to the maintenance of public order.
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> 2. That at about 12.05 hours on May 24, 1973, you along with your associates being armed with pistol and bombs formed an unlawful assembly on Transport Depot Road, Calcutta and created a great disturbance of public order by exploding high explosive bombs on Transport Depot Road, Calcutta near the workers' gate of M/s. Lipton Tea Co. at the aforesaid date and time with a view to terrorising the local people as well as the workers of the said company. As a result of your action, as aforesaid, widespread panic and confusion were created in the above area and thereby effected the maintenance of public order.

It appears that in respect of the two incidents mentioned in the two grounds there were two FIRs file before the Police. In respect of the first incident it is GR 1036/73 and in respect of the second incident it is GR 1246/73. In respect of the first incident case No. 102 under Sections 451, 148, 149 and 324 I.P.C. and Section 9 of the West Bengal M.P.O. Act was filed before the Police Magistrate, Alipore against the petitioner, Bibhuti Dutta and Sakti Pada Dutta. In respect of the second incident

case No. 118 under Sections 148 149 and 307 I.P.C., Sections 3 and 5 of the Essential Supplies Act and Sections 25 and 27 of the Arms Act was filed before the Police Magistrate, Alipore against the petitioner and three others, Bibhuti Dutta, Sakti Pada Dutta and Raghu Nath Show. On April 24, 1974 in both these cases the police applied before the Magistrate requesting that the petitioner may be discharged for his detention under the Maintenance of Internal Security Act. The same action was taken against Bibhuti Dutta and Sakti Pada Dutta also. It, however, appears that detention orders in respect of both Bibhuti Dutta and Sakti Pada Dutta were revoked because the Advisory Board reported that there was no sufficient cause for their detention. It would appear that both of them had appeared before the Advisory Board whereas the petitioner did not. We do not know whether the non-appearance of the petitioner before the Advisory Board had anything to do with the different result in this case. It should, however, be mentioned that the petitioner did make a representation on May 22, 1974 and this representation after it was considered by the State Government was also forwarded to the Advisory Board which submitted its report on June 26, 1974. The detenu made another representation on July 1, 1974 asking for personal hearing but that was not forwarded to the Advisory Board.

2. The validity of the order has been attacked on the following grounds :

1. That the grounds furnished to the petitioner indicate that they relate to maintenance of law and order and not the public order and therefore it could not be made the basis of the order of detention.

2. That the order of detention is vitiated as it is based on incidents which are not proximate.

3. That the provisions of the Maintenance of Internal Security Act have been used as a convenient substitute for the provisions of the ordinary law for detaining the petitioner. This argument is based on the following circumstances :

(a) that his discharge was asked for on the ground that he was going to be detained under M.I.S.A.;

(b) that the grounds of detention state that the petitioner had to be discharged in the criminal cases due to want of evidence for successful prosecution, while the order of discharge passed by the Magistrate states that it was made as prayed for in the application of the police;

(c) that the cases mentioned in the two FIRs are such that the petitioner could have been easily prosecuted under the laws of the land; and

(d) that the petitioner is continued in detention even though Bibhuti Dutta and Sakti Pada Dutta, who had been arrested in connection with the same cases as the petitioner and who had been served with identical grounds of detention, had been released on the advice of the Advisory Board.

4. That the detaining authority had not applied its mind to the petitioner's case is shown by the fact that the grounds of detention show that the petitioner had to be discharged from the cases due to want of sufficient evidence for successful prosecution, whereas he was discharged because he was going to be detained, and that the grounds of detention refer to allegations which do not find a place in the

FIRs.

5. That the grounds of detention are vague.

6. That the Government had failed to periodically review the case of the petitioner and that has rendered his continued detention illegal.

7. That this is a case where Section 15 of the Act should have been applied and the petitioner released, and

8. That in any event the petitioner is entitled to a direction for consideration of his second representation dated July 1, 1974.

3. Before we proceed to deal with theses points it may be useful and necessary to refer to the decision of the Constitution Bench in Haradhan Saha v. State of W. B. ((1975) 3 SCC 198 : 1974 SCC (Cri) 816). It was observed : [SCC pp. 208-210, paras 32-34, 36-38, SCC (CRI) pp 826-828]

The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if its relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

. . . the principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.

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In the case of Madanlal Agarwala, it is submitted that the detention order was for a collateral purpose because he was released on March 26, 1973, and the detention order was of the same day. It was also said that one incident was said to be the ground in the order of detention and one incident should not suffice for an order of detention.

The ground given in Madanlal Agarwala's case is that he in collusion with his father had hoarded 8 quintals, 84 kg. of rice, 2 quintals, 88 kg. of flour and 1 quintal, 96 kg. of suji and further that he had no licence as required by Section 4 of the West Bengal Essential Foodstuffs Anti-Hoarding Order, 1966. The detaining authority said in the grounds : It is apparent in the aforesaid facts that you in collusion with your father are likely to withhold or impede supply of foodstuffs or rationed articles essential to the community". The future behaviour of Madanlal Agarwala based on his past conduct in the light of surrounding circumstances is the real ground of detention. It is needless to stress the obvious that Madanlal Agarwala's acts are gravely prejudicial to the maintenance of supplies essential to the community.

It was said in the case of Haradhan Saha that he was released on July 25, 1973, and he was arrested on August 7, 1973, pursuant to a detention order dated July 31, 1973. It is, therefore, said that the detention order was passed for collateral purposes. The grounds in the detention order are that on June 19, 1973, Haradhan Saha with his associates was smuggling 115 bags of rice weighting 93 quintals, 83 kg. to Calcutta covered by coal by engaging lorry without any valid permit or authority. Haradhan Saha violated the provisions of West Bengal Rice and Paddy (Restriction on Movement by Night) Order, 1969, and West Bengal Rice and Paddy (Licensing and Control) Order, 1967, and tried to frustrate the food and procurement policy of the Government. These grounds concluded by stating that Haradhan Saha acted in a manner prejudicial to the maintenance of supplies and services essential to the community. This again illustrates as to how these detention orders came to be passed to prevent the likelihood of such acts prejudicial to the maintenance of supplies essential to the community.

4. It appears to us that many of the decisions relied upon by the petitioner have not appreciated the implications of this decision. For instance decision which hold that where there is a possibility of prosecuting a person he should be prosecuted rather than dealt with under the provisions of the Preventive Detention Act fall under that category (Srilal Shaw v. State of W. B.((1975) 1 SCC : 1975 (Cri) 172)). In the case before the Constitution Bench Madanlal had no licence as required by Section 4 of the West Bengal Essential Foodstuffs Anti-Hoarding Order, 1966. So it would have been easy to prosecute him. In the case of Haradhan Saha he also violated the provisions of West Bengal Rice and Paddy (Restriction on Movement by Night) Order, 1969 and West Bengal Rice and Paddy (Licensing and Control) Order, 1967 because he was smuggling rice without any valid permit or authority.

In W.P. No. 429 of 1974 (Sadhu Roy v. State of W. B. ((1975) 1 SCC 660 : 1975 SCC (Cri)296)), decided on January 22, 1975, it was observed :

> There are two social implications of dropping prosecutions and restoring to substitutive detentions which deserve to be remembered. Where a grievous crime against the community has been committed, the culprit must be subjected to condign punishment so that the penal law may strike a stern blow where it should. Detention is a softer treatment than stringent sentence and there is no reason why a dangerous criminal should get away with it by enjoying an unfree but unpaid holiday. Secondly, if the man is innocent, the process of the law should give him a fair chance and that

> should not be scuttled by indiscriminate resort to easy but unreal orders of detention unbound by precise time. That is a negation of the correctional humanism of our system and breeds bitterness, alienation and hostility within the cage.

It is not always possible for a Court dealing with a habeas corpus petition in the case of a person detained under the Maintenance of Internal Security Act to say whether in a case where a criminal case has been registered against a person and then it is withdrawn and he is detained under the provisions of the Act, that is proper or not. The Court is not in possession of all the evidence to be able to decide for itself whether the prosecution would have been successful or not and without those materials being available it is not possible for the Court to say that the punitive action should have been taken and not detention. It is the authority conducting the prosecution that would be in a position to decided whether evidence is available which could establish the guilt of the accused beyond reasonable doubt before the criminal court. Where the authority is not sure that such material is available it may not like to face the prospect of the prosecution failing and being charged with vindictiveness or mala fides if thereafter the accused is detained preventively. The Court should be slow towards the conclusion that the detenu could have been successfully prosecuted in the absence of all the material before it and then going on to criticise the detaining authority for not continuing the prosecution but detaining him.

6. At this point we may conveniently consider point No. 3 because it logically comes in here.

7. There is no substance in any one of the contentions in this point. The application for discharge was made by the police and it is the Commissioner of Police that had to be satisfied that there were sufficient grounds for the detention of the petitioner. That would not in any way vitiate the grounds of detention or show that the Commissioner had no sufficient material before him to be satisfied that the petitioner ought to be detained in order to prevent him from acting in a manner prejudicial to public order. Want of evidence for successful prosecution is a matter which can be legitimately taken into account by an authority competent to pass an order of detention under the Maintenance of Internal Security Act for deciding whether he should pass an order of detention against a particular person. In the grounds it is said that the petitioner had to be discharged from the criminal cases due to want of evidence for successful prosecution. A criminal case needs evidence to establish the guilt of the accused beyond reasonable doubt. The fact that such evidence was not available does not mean that the detaining authority had not before him evidence on which he can be satisfied. This would not show that in asking for discharge of the petitioner from the criminal cases the authorities were taking the easier course of preventive detention rather than prosecuting him under the ordinary law of the land. It is the police who were prosecuting the petitioner that had to decide whether there was sufficient evidence for a successful prosecution. The detaining authority when he comes to know that the petitioner was going to be discharged from the criminal cases for want of sufficient evidence for successful prosecution can very well take the view that it was necessary for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order that he should be detained and if he is satisfied on the evidence available his subjective satisfaction cannot be questioned by this Court. There is no material to show on what grounds the Advisory Board held that in the case of Bibhuti Dutta and Sakti Pada Dutta there was not sufficient cause for their continued detention. Merely on the ground that in their case there was not sufficient cause it could not be assumed that there is no sufficient cause for detention of the petitioner.

Point No. 1

8. We think that this contention is without substance. The incident mentioned in the first ground

took place at 61 Garden Reach Road, Calcutta. The factory where this incident took place has 5,000 workers working in it. The petitioner and his associates as well as 25 others assembled and formed a violent mod outside the walls of the workshop and continued to pelt brickbats for over two hours. Apart from the large number of workers working in that factory the incident very clearly took place in a public place. The factory has a door number in Garden Reach Road. So it must be a public place with members of the public passing to and for and this incident would have been caused fear and alarm not merely to the persons working in the factory but also to people passing along the road. In the second incident the petitioner and others were armed with pistol and bombs, exploded the bombs with a view to terrorising the local people as well as the workers and widespread panic and confusion was created in the above area. Both these incidents, therefore, clearly relate to public order. In respect of the first incident it could not be said that it related to only a single factory and therefore it does not relate to public order because, as we have shown above, it would have created panic and confusion among the passers-by in the road in which the factory was situate; nor can we agree that alarm caused to 5,000 workers in which three members of the security staff were also injured does not relate to public order. It is not necessary to refer to the decisions which distinguish between incidents which relate to law and order and incidents which relate to public order. These incidents clearly relate to public order.

Point No. 2

9. The appellant was arrested and produced before the Magistrate on July 23, 1973 and was in confinement till he was released on April 24, 1974, the date on which the order of detention was passed against him. He was therefore incapable of any activity during that period. There is therefore no substance in the argument that as the incidents relied upon relate to May 9, 1973 and May 24, 1973, there could have been no apprehension on April 24, 1974 that he was likely to act in a manner prejudicial to public order.

Point No. 4

10. It is contented that the detaining authority had not applied his mind to the petitioner's case as shown by the fact that the petitioner had to be discharged from the criminal cases due to want of sufficient evidence for successful prosecution whereas the order of discharge shows that he was discharged because he was going to be detained, and the grounds of detention refer to allegations which do not find a place in the FIR. It cannot be said that when the Commissioner of Police stated that the petitioner had to be discharged from the criminal cases due to want of sufficient evidence for a successful prosecution that was one of the grounds for petitioner's detention. The grounds for detention are the two incidents mentioned. The lack of evidence for successful prosecution is not the ground for detention. As has been held by this Court again and again, whereas criminal prosecution is punitive, preventive detention is resorted to in order to prevent a person from acting in a manner prejudicial to public order in future. If the detaining authority is satisfied that on the two grounds mentioned it is necessary to detain the petitioner in order to prevent him from acting in a manner prejudicial to public order that satisfaction cannot be questioned by the Court.

Point No. 5

11. We are not able to see how the grounds can be said to be vague because the name of the petitioner does not figure in the FIR and he was detained for nearly a year after he was arrested on criminal charges. It is stated in the counter affidavit filed by the Commissioner of Police that it was during the course of the investigation of the cases that it came to be known that the petitioner was

one of the persons who took part in both the incidents, and the petitioner's detention for a year after he was arrested on criminal charges has nothing to do with the grounds being vague.

Points Nos. 6, 7 and 8

12. The decision in Sailesh Dutta v. State of W. B. ((1974) 4 SCR 594 : 1974 SCC (Cri) 262) was relied upon in support of point No. 6 to urge that the petitioner's case should have been reviewed periodically. Such a review was not considered by the Court as a legal obligation on the part of the Government nor the failure to do so as making the detention illegal. We also agree that it would be better if the Government periodically reviews the cases of the detenus.

13. In support of point No. 7 the following observations of a Bench of this Court in Babulal Das v. State of W. B. ((1975) 1 SCC 311 : 1975 SCC (Cri) 138) are relied upon : [SCC pp. 313-314, para 4, SCC (CRI) p. 140]

> While discharging the rule issued and dismissing the petition, we wish to emphasize that Section 15 is often lost sight of by the Government in such situations, as long term preventive detention can be self-defeating or criminally counter-productive. Section 15 reads :
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> 15. Temporary release of persons detained - (1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.
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> (2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.
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> (3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.
>
> (4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.
>
> (5) If any person released under sub-section (1) fails to fulfill any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

We consider that it is fair that persons kept incarcerated and embittered without trial should be given some chance to reform themselves by reasonable recourse to the parole power under Section 15. Calculated risks, by release for short periods may, perhaps, be a social gain, the beneficent jurisdiction being wisely exercised.

We fail to see that these observations lay down any principle of law. Section 15 merely confers a power on the Government. The power and duty of this Court is to decide cases coming before it

according to law. In so doing it may take various considerations into account. But to advise the Government as to how they should exercise their functions or powers conferred on them by statute is not one of this Court's functions. Where the Court is able to give effect to its views in the form of a valid and binding order that is a different matter. Furthermore, Section 15 deals with release on parole and there is nothing to show that the petitioner applied for to be released on parole for any specific purpose. As far as we are able to see, release on parole is made only on the request of the party and for a specific purpose.

14. We also hope that in the case of the petitioner his representation made on July 1, 1974 would be considered by the Government. It has been pointed out by this Court in its decision in W.P. No. 322 of 1974 (Ram Bali Rajbhar v. State of W. B. ((1975) 4 SCC : 1975 SCC (Cri) 321) decided on December 20, 1974, that the Government has got the power to place the representation before the Advisory Board and therefore we direct the Government of West Bengal to consider and take an early decision on the pending fresh representation of the petitioner in accordance with the requirements of law and justice even as was done in that case. Subject to this direction the petition is dismissed.

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