

Shiv Parsad Bhatnagar

Vs

State of M. P. and Another

Writ Petition No. 397 of 1981

(O. Chinnappa Reddy, Baharul Islam JJ)

05.03.1981

JUDGMENT

CHINNAPPA REDDY, J. -

1. Shiv Prasad Bhatnagar is under preventive detention pursuant to an order made by the District Magistrate, Vidisha, Madhya Pradesh. The order and the grounds of detention were served on him on November 28, 1980. The District Magistrate made a report of the order to the State Government and the latter approved the detention order on December 2, 1980. The approval was communicated too the detenu on December 5, 1980. A representation was submitted by the detenu on December 13, 1980. The Advisory Board constituted by the State Government met on January 3, 1981, considered the material placed before it by the detaining authority as well as the representation and the written arguments submitted by the detenu. The detenu was also given a personal hearing. The Advisory Board submitted its report to the State Government on January 4, 1981. Thereafter the State Government confirmed the order of detention on February 3, 1981 under Section 12(1) of the National Security Act. The period of detention was stipulated as one year from the date of the order of detention. The order confirming the detention was communicated to the detenu on February 12, 1981 and he was also informed that the Advisory Board had opined that there was sufficient cause for his detention.

2. Smt. Shyamla Pappu, learned counsel for the detenu made a number of submission. In the view that we are taking of one of the primary submission, we do not think it necessary to consider the rest of the submission. The primary submission that we have in mind is that the grounds of detention suffer from the vice of either vagueness or staleness. The first ground matins that the detenu along with his friends, in the second week of November, 1980, indulged in filthy abuse of Muslims, given to substitute the ground. As many as six incidents were mentioned and in every one of them it was said that the detenu along with his associates had indulged in this or that violent action. No mention was made of the name of even a single associate. The argument was that the reference to 'associate' without naming even one rendered the ground vague and therefore, vitiated it. Similarly, it was said the second ground also referred to the detenu and his associates without naming even a single associate and for that reason the second ground also was vague. The further submission, was that the incidents enumerated in second ground were of the years 1974, 1975, 1977 and 1978 and could by no means be said to be proximate enough to sustain an order or preventive detention. The second ground was to the effect that the detenu and his associates had terrorized the common man in the Vidisha area by their various criminal acts which causes disturbance to public peace and public safety. Several incidents were narrated to substantiate this ground. The first incident was of the year 12974, the second incident was of the year 1975, the next three incidents were of the year 1977 and the rest of the incidents barring the last one were of the year 1978. A perusal of the incidents

enumerated to substantiate the second ground shows that apart from the vice of staleness from which they appear to suffer, the incidents are related to "law and order" and not to the maintenance of public order. The incidents appear to bear a striking resemblance to the ground of detention which were considered In re Sushanta Goswami, particularly in the cases of Debendra Nath Das, Abdul Waheb, Anil Das, Dilip Kumar Chakraborty and Ashoka Kumar Mukherjee. It is now well settled that ground of detention must be pertinent and not irrelevant, proximate and not state precise and not vague. Irrelevance, staleness and vagueness are vices any single one of which is sufficient to vitiate a ground of detention. And, a single vicious ground is sufficient that the second ground of detention suffers both from the vice of staleness, because of the passage of time since the happening of some of the incidents and the vice of irrelevance because they relate to 'law and order' and not to 'the maintenance of public order '. The detenu is entitled to be released. He is directed to be released forthwith. The petition is allowed.

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