

(1974) 12 CAL CK 0016
In the Calcutta High Court
Case No : Criminal Mis. Case No. 2278 of 1973

Badsha Sheikh

APPELLANT

Vs

Dist. Magistrate, Murshidabad and Others

RESPONDENT

Date of Decision : 12-12-1974

Acts Referred:

Constitution of India, 1950 — Article 22, 22(v)

Citation : 79 CWN 1014

Hon'ble Judges : Sudhamay Basu, J;B.C. Basak, J

Bench : Division Bench

Advocate : ;P.R. Roy for State and Uma Sanyal as Amicus curiae, for the Respondent

Final Decision : Dismissed

Judgement

Sudhamay Basu, J.—This is a petition from Berhampore Special Jail. Murshidabad on the basis of which a Rule was issued by a Bench of this Court on 26th April, 1974 and the same was made returnable six weeks hence. Thereafter, the matter came up for hearing before this Bench as early as on 12th August, 1974. It was adjourned for a week and at the request of the Court, Mrs. Uma Sanyal offered to assist it as Amicus Curiae. Nobody however appeared on behalf of the State. The matter was adjourned from time to time. Mrs. Uma Sanyal on the basis of the allegations in the petition alleged that this order of detention was preceded by another earlier detention and being based on the same ground the re-detention may be held to be bad. At one stage, Mr. M. Shaw, Learned Advocate, appeared and said that the relevant file was lying with another learned Advocate Mr. V. Khanna. At a later stage, however, the Court was given to understand that Mr. Khanna was not appearing in this matter on behalf of the State and that "the relevant file" really contained no relevant papers. Even, thereafter, the matter was adjourned at the request of Mr. Shaw to enable the State to place the relevant papers before the court. Yet nothing has been produced before us. On the last occasion, Mr. P.R. Roy, the learned Govt. Advocate, offered to assist the

Court and obtain the relevant information but, even he has failed and there is nothing forthcoming. It is unfortunate that even after the lapse of several months and after umpteen number of adjournments, nobody has cared on behalf of the State, to produce any papers with regard to this case. There is nothing before this Court to satisfy it that the procedural requirements under the statute or the constitutional safeguards have been complied with. There is mention of an earlier detention in the petition. We cannot therefore, exclude the possibility of re-detention on the same ground in the present case. In fact both Mrs. Sanyal and Mr. Roy stated that they were informed verbally that "it was a case of re-detention" but no papers could be traced. After the pronouncement of this Court and the Supreme Court that redetention on identical grounds was bad. (*Madhu Manu & Ors. v. The State of W. Bengal*, 77 C.W.N. 1007; *Chotka Hembram Vs. State of West Bengal and Others*,)--it was incumbent on the State to release a detainee involved in such redetention forthwith. But amazingly none seems to care. When a Rule is issued by this Court, it is expected that the State should come forward with an affidavit to show that the detention is legal and is in conformity with the procedure prescribed. We may refer in this connection to the recent case of *Sk. Hanif v. State of West Bengal*, reported in AIR 1974, S.C: 679 where it was observed by the Supreme Court that "after a Rule was issued it was incumbent upon the State to satisfy the Court that the detention is legal and in conformity with not only the mandatory provisions of the Act but also the requirements of Article 22 (v) of the Constitution of India." Far from filing an affidavit, the State has not placed the Home file or the service file or the order of detention before this Court even after repeated opportunities were given by this Court. Nor has anybody thought it fit to make any enquiry about the case of this unfortunate detainee. There is also an averment in the petition that the allegations made by the District Magistrate are baseless. There is no return filed by the State and the averments remain uncontroverted. In the circumstances following the string of the Supreme Court decisions such as *Mintu Bhakta Vs. The State of West Bengal*, : *Tarak Nath Chakraborty Vs. State of West Bengal*, ; *Shaik Hanif and Others Vs. State of W.B.*, there is no reason why we should reject the averment.

The collective wisdom of our nation while providing for detention without trial even in normal times also laid down some safeguards in the constitution to ensure that this extra-ordinary power may not be abused. Several provisions have been engrafted in the Maintenance of Internal Security Act by way of safeguards against arbitrary and hasty encroachments upon the liberty of the citizens. The Courts are to see that the power intended to be used is not made more harsh or its operation more stringent. Even academic jurists while noting the handicaps suffered by the detainee sounded caution that "not only is it low water mark of the civil liberties placed so high in the scheme of the constitution. But it also indicates the sensitive and vulnerable spot that may prove the "achilles" heel" for the entire scheme of civil liberties in the constitution." (Dr. T. K. Tripathi "Spot light of Constitution Interpretation, 1972 page 189-190). The

limited but vital safeguards provided by the Act are not to be rendered futile. We do not know how to describe the attitude of the authorities in this case but we remember in this connection the phrases used by the Supreme Court in the aforesaid case of *Sk. Hanif v. The State of West Bengal* that the value of the safeguards may not be set at naught by "mechanical routine, dull casualness and chill indifferent." It is time that there was an appreciation by the appropriate people in proper quarters that a person detained without trial merits better consideration.

2. This is only, however, one side of the picture. While we have come across cases like the instant one and cases where the detaining authority served blank or illegible grounds upon the detainee (see Criminal case No 2146 of 1973 disposed of on 12.8.74). We also came across dozens and dozens of cases every month where neither the detaining authority nor anybody else on their behalf takes the trouble of filing an affidavit in return to the Rule Nisi, even after prolonged or repeated adjournments, so that allegations of malafide and non-existence of grounds made by the detainees go unchallenged and uncontroverted. These give rise to a doubt if the State really is interested to detain these persons. Time and again we have cautioned the learned lawyers appearing for the State. It was a short time ago that the Supreme Court in the case of *Jagdish Prasad v. The State of Bihar* (A.I.R. 74 S.C. 911) felt compelled to make an observation (at page 914) "it is difficult to appreciate why in return to a Rule Nisi in Habeas Corpus motion, it is not thought serious enough even where liberty of a citizen is choked off, to get the District Magistrate to explain his subjective satisfaction and the grounds therefor. Not even why he is not available nor the next best, the oath of a senior officer in the Secretariat who had been associated with the handling of the case at Government level." In *Md. Adam v. The State of West Bengal* reported in AIR 1974 SC 917 the Supreme Court again observed at page 921 that "requirement as to the filing of the counter-affidavit by the proper person cannot be treated as empty formality. This obligation stems from the well settled principle that once the Rule Nisi is issued on Habeas Corpus motions, by the Court, the onus is on the State to show that the liberty of the detainee has been taken away in accordance with the procedure established by law and that the safeguards provided in Article 22 and in the Act have not been transgressed or bypassed." We have directed copies of some of our judgments to be served upon the Legal Remembrancer. Nothing has improved. It is a frustrating experience to witness the learned advocates appearing for the State from time to time expressing their embarrassment and helplessness for lack of response of their clients. It is not one or two isolated cases of inadvertence or mistake which trouble us. Persistent and widespread tardiness or indifference or inefficiency have brought about a state of thing which cause serious misgivings in our mind. That these kind of cases pending before Court can be dealt with efficiency is evident from the fact that in cases dealt with by the Commissioner of Police, Calcutta we have not witnessed such chronic laches. We are constrained to make these observations as we felt uneasy and

find that lack of proper assistance and cooperation on the part of the State constitutes a great handicap in administering justice in cases involved under the Maintenance of Internal Security Act. Not only the interest of the detainees but that of the State seem to be jeopardised by some unfortunate but avoidable lapses of inefficiency in quarters where they should be least expected.

On consideration of the facts and circumstances of the case, we hold the detention to be illegal.

The Court records its appreciation of the assistance rendered by Mrs. Sanyal in this connection.

The petition succeeds. The Rule is made absolute. Let the detainee be released forthwith. Bimal Chandra Basak, J.

I agree.