
(1974) 09 RAJ CK 0014

In the Rajasthan High Court

Case No : Criminal Habeas Corpus Petition No's. 2223 and 2224 of 1974

Bhagwan Das and Nathmal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-09-1974

Acts Referred:

Constitution of India, 1950 — Article 22
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1974) WLN 839

Hon'ble Judges : B.P. Beri, C.J;D.P. Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioners in these two writ petitions complain that their liberty has been infringed on account of their unlawful detention under the provisions of the Maintenance of Internal Security Act, 1971 (hereinafter called "the Act"). We shall examine the validity and legality of their detention in the light of the fundamental right enshrined in Article 22 of the Constitution of India and the procedural safeguards provided under the Act.

2 As the case of both the petitioners is common and the grounds of their detention are identical, it would be proper to dispose of both the petitions by a common order. We will, however, mention the facts with reference to the writ petition No. 2223 of 1974.

3. The facts are brief and simple The two petitioners namely, Bhagwan Das, and Nathmal, are brothers and are partners carrying on their partnership business at Sikar under the name and style of M/s Ramesh Kumar Bhagwan Das. They deal in general merchandise and according to them, they carried on their business in a "Thadi" (Wooden Cabin) situated at Jatia Bazar, Sikar. There was some dispute between the Municipal Board, Sikar and the "Thadi" holders, as the Board intended to remove the wooden cabins. On June 28, 1974, the wooden cabins including the "Thadi" of the petitioners are alleged to have been forcibly

removed. The petitioner Bhagwan Das was the President of the "Thadi" holders Association at that time and he presided over a public meeting held in the night of June 28, 1974 to lodge a protest and express resentment of the "Thadi" holders. On June 29, 1974, the Additional District Magistrate, Sikar along with a police party raided the house, shop and godowns of the petitioners and seized huge quantities of Match Boxes, Soap cakes (both bathing and washing), Soap Bars, Torch cells and shaving blades. Besides the above, huge stocks of medicines, used as pain relievers, like Novalgin, Saridon, Avedan, Anolzin, Cibazol, Anandkar and Anacin were also recovered from the aforesaid premises belonging to the two petitioners. The account books including "Rokar" and Bill Books were also seized. The petitioners were also arrested and a case registered against them for offences under Sections 3/7 of the Essential Commodities Act, but they were released on bail on July 4, 1974. Then on July 8, 1974, the District Magistrate, Sikar served upon the petitioners orders of detention u/s 3 of the Act stating that their detention was necessary with a view to prevent them from acting in any manner prejudicial to the maintenance of supplies essential to the community. The grounds of detention communicated to the petitioners read as under:

1. You are a partner of the firm M/s Ramesh Kumar Bhagwan Das in town Sikar, and you are dealing in business of essential and useful commodities for life like soaps, tea, blades, battery cells and matches. From the dated 29/6/74 to 1/7/74, District Police, Sikar, raided and took search of your house, shop and godowns situated at Sikar and from your possession recovered 94, 881 match sticks, 17,274 bathing soap cakes, 10,645 cloth washing soap cakes, 4,815 cloth washing soap bars, 10,745 blades and 2,465 battery cells. You had not displayed price list and stock position on your KAROBAR (business) which was necessary to be displayed under Essential Commodities Act, 1955 read with the Rajasthan (Display of Prices of Essential Commodities) Order, 1966.
2. On 29th and 30th June, 1974, the Drug Inspector took search of your Godown situated at Sikar and recovered therefrom pain-relieving (sic) 1301 tablets of Novalgin, 810 tablets of Saridon, 620 tablets of Avedan, 900 tablets of Anolzin, 2000 tablets of Cibazol, 1346 tablets of Anacin and 12096 tablets of Anandkar; for possessing and selling which you had not obtained a licence. You had unlawfully hoarded these pain-relieving medicines which are useful for life, for profiteering keeping in view the scarcity of these in the market.
3. You had hoarded unlawfully these essential articles useful for life in such large quantity with the intention of profiteering by selling them in the black market, so that, you may create an artificial scarcity with the object of charging any price you like from the customers. Because there is scarcity of these articles in the market at this time and the public is feeling difficulty in procuring them, and as such, you have made their availability difficult for the public by hoarding them for your selfish and unlawful profiteering.
4. In this way you have created a great obstruction in the supply of essential

articles useful for life to the public. Hence for the purpose of preventing you from carrying on such activities in future and for the purpose of facilitating the availability of these essential articles useful for life to the public, it has been found essential to detain you and therefore you have been detained u/s 3(1)(a) (iii) of the Maintenance of Internal Security Act, 1971. By this you are informed of the grounds of detention as required by Section 8 of the said Act.

4. Mr. Bhargava, learned Counsel for the petitioners argued that the grounds of detention supplied to the two petitioners are non-existent or false, irrelevant and ambiguous or vague. In respect of the first charge, Mr. Bhargava argued that the ground No 1 speaks of one shop of the petitioners, which was wooden cabin situated in Jatia Bazar, Sikar was demolished on June 28, 1974 the petitioners were not left with any shop at all which could be searched from 29th June to 1st July, 1974 as has been mentioned in ground No. 1. On account of the removal of the wooden cabin, which was the only place of business of the petitioners, there was no question of displaying either the price list or the stock position. He, therefore, argued that the allegations about the search of the shop of the petitioners from 29th June to 1st July, 1974 and that the petitioners did not display the price list and stock position on their shop were to tally false and non-existent. The learned Additional Advocate General urged in reply that the petitioners have another shop under the house of Dr J.P. Tak, also situated in Jatia Bazar, Sikar and it is that shop which was searched and the recoveries were made and it was at that shop that the price list & stock position was not displayed by the petitioners. He placed reliance upon the seizure memo Ex. R/1, which was prepared on July 1, 1974 after the search was made & bears the signatures of the two petitioners. According to the respondents, the petitioners had two shops of which one was the wooden cabin referred to by the petitioners and the other was a pucca shop mentioned in Ex. R/1.

5. We have considered the rival contentions and we agree with Mr. Bhargava to the extent that only one shop has been referred to in the ground No. 1 of the grounds of detention furnished to the petitioners. But we are not prepared to accept his contention that after the demolition of the wooden cabin on June 28, 1974 there was no shop left with the petitioners and, therefore, the alleged search of their shop and the alleged failure on the part of the petitioners to exhibit price list and stock position on their business premises from 29th June to 1st July, 1974 is false because it related to non-existing premises. The seizure memo Ex. R/1. gives the exact location where the shop of the petitioners was situated namely, below the residential house of Dr. J.P. Tak and in these circumstances ground No 1 cannot be challenged as false or non-existent (sic) as after the wooden cabin was admittedly removed on June 28, 1974 the petitioners were left with only one shop which has been described in the seizure memo Ex. R/1. The complaint of the learned Counsel is that petitioner mentioned in para 4 of the writ petition that their firm carried on the business in a wooden cabin in Jatia Bazar, Sikar and the said contention was not contested by the respondents in their reply and as such it should be presumed that the respondents admitted

the petitioner's contention that the only shop, namely, the wooden cabin, was demolished and they were left with no other place of business on June 29, 1974. We are not impressed by this argument at all, inasmuch as in para 4 of the writ petition, though the petitioner has mentioned that he Carried on business in a wooden shop and the said averment was admitted by the respondents, yet the petitioner did not mention in para 4 that the wood n shop was the only place of business of the petitioners. The pleadings of the parties are to be considered as a whole and the respondents in para 12 of their reply as well as in para 15 B, C and D, have specifically mentioned that the petitioners had two shops in their possession on June 28, 1974 and that after the demolition of the wooden cabin, another shop was left with the petitioners in the same locality on which they were carrying on their business. Thus the petitioners were left with only one shop after the demolition of the "thadi" on June 28, 1974 and it was that shop which was searched and the goods were seized therefrom June 28 to July 1,1974.

6. It may be mentioned here that under the Act the subjective satisfaction, which is the basis of an order of detention, is that of the concerned District Magistrate and not of a court of Law and for that reason the Court is precluded from going into the question as to the adequacy or truth or otherwise if the materials on which the said satisfaction has been reached. Reference in this connection may be made to the decisions of the Supreme Court in Mohd. Salim Khan Vs. Shri C.C. Bose and Another, and Shibban Lal Saksena Vs. The State of Utter Pradesh and Others, . The Supreme Court in (sic) Giani Bakshish Singh Vs. Government of India and Others, observed that it is well settled that the court will not go into the truth or otherwise of the facts alleged as grounds of detention. The sufficiency of the grounds for detention is not also a matter which the Court will go into.

7 The next contention of the lerned Counsel was that the ground No. 1 is irrelevant, inasmuch as the mere infringement of the Rajasthan (Display of Prices of Essential Commodities) Order, 1966 (herein after called "the Display Order") was not relevant to detention. According to the lerned Counsel the Display Order only required the dealer to affix a price list at his business premises and it was not necessary to display the stock position and in any view of the matter the display of the price list and the stock position was of no consequence. In the first place the Display Order not only requires that the dealer should exhibit a price list showing the prices of each item of essential commodities sold by him but it also requires that the dealer should also disclose on each day the opening stock of each commodity existing with him The purpose is obvious that if a dealer has got sufficient quantity of any commodity displayed in the list exhibited by him at his business premises, it will not be possible for him to sell any such commodity to a customer who may desire to purchase the same. Acute scarcity of both soaps or torch cells and other commodities of daily use in the market is a notorious fact, which the concerned authority was entitled to take into consideration and the failure on the part of the petitioners to display the prices list and stock position on their business premises, namely the remaining shop on

June 29, 1974 and thereafter is of course relevant in considering the conduct of the petitioners.

8. Then it was argued by the learned Counsel that the past conduct of the petitioners in their failure to display price list or stock position was irrelevant to the question of their detention. We shall presently refer to a catena of cases of the Supreme Court wherein their Lordships have held that the past conduct of a person has a reasonable prognosis to his future behaviour and, therefore, relevant for the purposes of detention. Past conduct often probablises future behaviour.

9. In *Arun Kumar Roy Vs. The State of West Bengal*, the grounds supplied to the petitioner disclosed that he had committed a criminal offence namely, theft of over head traction wires and it was argued that as there was ample provision made in the ordinary Criminal law of the country for punishment of such offences and, therefore, there was no necessity to resort to the Act for detaining the petitioner for such conduct, Their Lordships of the Supreme Court held that it may no doubt be a case of theft but it cannot be said that such removal of over head traction wires would not also be prejudicial to the maintenance of supplies and services essential to the community, specially when indulged in on a large scale and, therefore, held that the detention was justified.

10. In *Borjahan Gorey Vs. The State of West Bengal*, it was held that the judicial trial for punishing the accused for the commission of an offence is a jurisdiction distinct from that of detention under the Act. The fields of these two jurisdictions are not co-extensive for they are alternative. The jurisdiction under the Act may be invoked when the available evidence is cogent enough to give rise to suspicion in the mind of the authority concerned, that there is a reasonable likelihood of repetition of past conduct. Their Lordships observed:

This jurisdiction is sometimes called the jurisdiction of suspicion founded on past incidents and depending on subjective satisfaction... a case under the Code of Criminal Procedure whether punitive or preventive depends on the proof of objective facts which have already taken place whereas a case under the Act providing for preventive detention depends on the subjective satisfaction of the authorities concerned of the likelihood of the persons to be detained to act in future in manner similar to the one spent from his past acts... The grounds of detention relate to the past acts on which the opinion as to the likelihood of the repetition of such or similar acts is based and those grounds are furnished to the detenu to inform him as to how and why the subjective satisfaction has been arrived at so as to enable him to represent against them.

11. In *Mohd. Subrati alias Mohd. Karim Vs. State of West Bengal*, , it was held by their Lordships of the Supreme Court that the past activities of the person concerned are relevant for the satisfaction of the detaining authority for passing an order of his detention. Their Lordships observed:

If, therefore, for any reason it is not possible to successfully try and secure the

conviction and imprisonment of the persons concerned for their past activities, which amount to an offence, but which are also relevant for the satisfaction of the detaining authority for considering it necessary that a detention order u/s 3 be made for preventing such persons from acting in a prejudicial manner as contemplated by that section, then, the Act would indisputably be attracted and a detention order can appropriately be made. The detention order in such a case cannot be challenged on the ground that the person ordered to be detained was liable to be tried for the commission of the offences or offence founded on his conduct, on the basis of which the detention order has been made.

Their Lordships further held that the previous conduct of the petitioner of his having committed theft of electric copper wires "is very relevant for satisfying the authority concerned that it is prejudicial to the maintenance of supplies and services essential to the community and if such authority considered it necessary on this ground to detain him with a view to preventing him from repeating such acts, then the order of detention would indubitably and legitimately fall within the purview of Section 3 of the Act."

12. In *Beni Madhob Shaw Vs. The State of West Bengal*, , it was held by their Lordships of the Supreme Court that "non-prosecution for past activities which amount to an offence, does not operate in law as a bar to the order of detention on the basis of those activities. The two jurisdictions one for punishing a person after a regular trial for the commission of an offence and the other for detaining him to prevent repetition of objectional activities, are different."

13. In *Giani Bakshish Singh Vs. Government of India and Others*, , their Lordships of the Supreme Court observed that:

It is now settled law that preventive detention is not a punishment for the past activities of a person but is intended to prevent the person detained from indulging future in activities which may produce the results mentioned in Section 3 of the Maintenance of Internal Security Act.

14. In *Habibullah Khan Vs. The State of West Bengal*, , where the detention order was passed on the allegation that on April 22, 1973, the petitioner along with his associates had cut the over-head return conductor wire in between two railway stations and had committed theft of the wire, it was argued that the order of detention was based on a solitary ground comprising of a stray incident. Their Lordships rejecting the aforesaid contention held that the question raised was not within the jurisdiction of the Court because sufficiency of evidence before the detaining authority is not a matter for the Court to decide. It was further held that the particulars furnished to the petitioner show that the facts within the knowledge of the detaining authority bear a rational connection with the maintenance of supplies and services essential to the community and the order and, therefore, it could not be said to have been passed on extraneous ground. Thus the past conduct of the petitioner in cutting over-head return conductor wire and in committing theft thereof was considered to be relevant for the

purpose of the satisfaction of the District Magistrate u/s 3 of the Act.

15. In *Debu Mahato Vs. The State of West Bengal*, , it was held that "the order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behavior of a person based on his past conduct judged in the light of the surrounding circumstances. Such post conduct may consist of one single act or of a series of acts. But whatever it be, it must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention."

16. Another argument advanced by the learned Counsel was that the grounds supplied to the petitioners were vague inasmuch as in ground No. 1 it has been mentioned that the petitioner failed to display the price list and stock position on his "KAROBAR", which was extremely vague, in as much as the search was made from the house and the godown of the petitioners. We are unable to accept this contention of the learned Counsel, inasmuch as reading the entire ground No 1, it is clear that only one place of doing business is mentioned therein where the search was made namely the shop. The house of the petitioner and the godowns. which was also searched and from where also recoveries were made cannot by any stretch of imagination be considered as business premises As the respondents have specifically located the place where the shop of the petitioners was situated by producing the seizure memo Ex. R/1. there is no force in the contention of the learned Counsel that the word "KAROBAR" was vague and it was difficult for the petitioner to understand as to which place it referred to. As we have already held above that after the demolition of the wooden cabin on June 28, 1974, the petitioners were left with only one shop and that was, therefore, the only place of business where the display of price list and the stock position ought to have been made by the petitioners

17. Then it was also argued that on June 29, 1974 there was a strike and the shops were closed in protest against the removal of the wooden cabins by the Municipal Board, Sikar. It is, however, not the case of the petitioners that a price list was in existence at the shop of the petitioner and he failed to display the same on account of the public strike. This is, therefore, clearly an after thought and cannot be entertained.

18. As regards, ground No 2 the argument of the learned Counsel for the petitioners was that it suffered from the same three infirmities from which ground No 1 suffered, namely that it was totally false, irrelevant and vague. We have already considered the contention of the learned Counsel for the petitioners regarding the non-existence or the falsehood of the ground. We have already held above that the petitioner was left with one shop on June 29, 1974. Therefore, it cannot be argued that there was no shop left with the the petitioners from where the search could be made and the goods could be seized, besides the house and godowns. The petitioners godowns yielded huge quantities of pain relieving medicines including 1301 tablets of Novalgin 980 tablets of (sic), 620 tablets of Cibazol, 1346 tablets of Anacin and 12098 tablets of Anandkar.

That the petitioners had stored in their godowns thousands of analgesic tablets and sundry medicines of daily use. It is not their case that they ran or run any clinic, charitable or otherwise, Nor do they contend that they were licensed sellers of medicines. These medicinal tablets are no hobby-collections either. If these circumstances subjectively satisfied the District Magistrate that these medicines in notorious short-supply were hoarded to profiteer and interrupt their supply, we cannot find fault with such a conclusion.

19. As regards ground No. 3, learned Counsel for the petitioners urged that it was absolutely vague and it lacked precision, accuracy and clarity and the vagueness thereof interfered with the detainees' right to make an appropriate representation against the order of detention.

20. Learned Counsel for the petitioners in this connection relied upon *Durgadas and Ors. v. Rex* AIR 1949 All 148, *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, *Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others*, *Krishna Lal Dutta Vs. The State of West Bengal*, *Rameshwar Lal Patwari Vs. State of Bihar*, and *Motilal Jain Vs. State of Bihar and Others*. It was held in *Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others*, that if the Detaining Authority gave several reasons of which one was vague, it can never be predicted to what extent the bad reason operated on the mind of the Authority or whether the detention order would have been made at all, if only one or two good reasons would have been before it. Their Lordships observed;

There can be no doubt that the first ground postulated that the petitioners were indulging in unauthorised milling of paddy and also in smuggling the resultant rice to Meghalaya for earning undue profit. As already stated, no particular instance of smuggling was given, nor the period during which the smuggling operation was carried on mentioned in the ground. We could have understood the contention of the learned Attorney General if the ground had stated that the petitioner were responsible for unauthorised milling of paddy and that was for the purpose of smuggling the resultant rice to Meghalaya for earning undue profit. Then it could have been said that no particulars about the smuggling would be available as it was only a natural inference of the purpose of the unauthorised milling of paddy. We would have to adopt the vocabulary of humpty dumpty if we were to read the ground in the way in which it has been read in the return filed on behalf of the respondents. We have no hesitation in holding that the first ground is an independent ground and refers to the past activities of the petitioners namely unauthorised milling of paddy and the smuggling of the resultant rice of Meghalaya for the earning undue profit.

(It is ours)

Learned Counsel for the petitioners relied upon the aforesaid passage and contended that no particular instance whether the petitioners refused to sell goods seized from them has been given nor any instance has been pointed out to show that the petitioners sold any articles and made unlawful profit thereby. On

this ground it is argued that the ground No 3 in the order of detention in the present case is vague and as such the entire order must fall. We would, however, like to point out that in the aforesaid passage their Lordships themselves observed that if the ground had stated that the petitioners were responsible for unauthorised milling of paddy and that was for the purpose of smuggling the resultant rice of Meghalaya for earning undue profit, then it could have been said that no particulars about the smuggling would be available as it was only a natural inference of the purpose for which the unauthorised milling of paddy was done. Ground No. 3 in the order of detention in the present case is not an independent ground but it is only a natural inference drawn from the unlawful hoarding of huge quantities of Match Boxes, Soaps, Soap Bars, Torch Cells, Shaving blades and medicines mentioned in grounds Nos. 1 and 2 and in the context of short supply of these essential articles in the market it could legitimately be inferred that the petitioners had indulged in large scale hoarding of these commodities with the intention of taking undue advantage of the difficulties of the public and artificial scarcity of these commodities for the purpose of earning undue profits.

21. No doubt, a right to personal liberty of an individual is of great importance and is jealously protected by our Constitution. But this liberty is not absolute and it cannot give any person licence to indulge in activities which wrongfully and unjustly deprive the community of essential services and supplies. The right of the society as a whole from its very nature is of far greater importance than that of an individual. In case of conflict between the two rights, the individual's right has to be subjected to the larger interests of the society by imposition of reasonable restrictions on the right of individual's freedom. Thus in our opinion, ground No. 3 suffers from no infirmity because it is a natural inference of the preceding grounds and the surrounding circumstances,

22. In *Deb Sadhan Roy Vs. State of West Bengal*, it is held by their Lordships of the Supreme Court that the purpose of furnishing the grounds is to enable the petitioner to make effective representation in respect thereof. It was further held in that case that merely because dates and time were not mentioned in the grounds but the acts of the petitioner were specified in detail and were sufficient to enable him to make effective representation, the order of detention could not be challenged on the basis that the grounds of detention were irrelevant or vague. Similarly in *SK. Hasan Ali Vs. State of West Bengal*, it was observed:

The facts stated in the grounds of detention were sufficient to appraise the petitioner of the precise activity on account of which the order for his detention had been made and, in our opinion, it cannot be said that the petitioner was in any way handicapped in making an effective representation against the detention order. What has to be seen by the Court is that ground of detention supplied to the petitioner was not so vague as to prevent him from making an effective representation. In the present case as mentioned earlier, the ground of detention does not suffer from any infirmity of vagueness.

A ground would be considered vague only when a reasonable intelligent citizen would find it so nebulous and intangible that he cannot effectively represent against it. It does not become vague on account of ingenuity.

23. The next (sic) of the learned Counsel for the petitioners was that the affidavit of the District Magistrate filed in reply to the writ petition shows that the material which was not communicated to the petitioners had influenced the consideration of the Detaining Authority, namely that there was a raid on the godown of the petitioner on account of some information that the petitioner was dealing in adulterated tea and that above 100 quintals of explosives were also recovered from the house and godown of the petitioner. Learned Counsel argued that the petitioner had no effective opportunity of making a representation in respect of these matters and the order of detention was vitiated on this ground. In this context learned Counsel relied upon *Bhut Nath Mete Vs. The State of West Bengal*, *Debu Mahato Vs. The State of West Bengal*, *Mohd. Alam Vs. State of West Bengal*, *Krishna Lal Dutta Vs. The State of West Bengal*, and *Deben Das Vs. The State of West Bengal*. In *Bhut Nath Mete Vs. The State of West Bengal*, the police had sent to the District Magistrate a blistering bio data of the petitioner and the report appeared to be present on the mind of the authorities but it was withheld from the detainee and in these circumstances it was held that the petitioner never knew of such injurious information and could not answer back. It was held that the order of detention based on un-communicated material was unfair and illegal. Similarly in *Debu Mahato Vs. The State of West Bengal*, the District Magistrate stated in his (sic) that the petitioner was "one of the notorious wagon breakers and was engaged in systematically breaking of railway wagons and committing theft of rice and wheat" from railway wagons. It was held that this ground was not communicated to the petitioner and as such the order of detention was vitiated by a serious infirmity.

24. In *Mohd. Alam Vs. State of West Bengal*, it was held that the whole of the material particulars or information relating to the anti-social and prejudicial activities of the detainee that led to his detention were not communicated to him and on account of the withholding of such information his detention was illegal. While only one solitary incident of wagon breaking by the detainee was (sic) to him the District Magistrate, described the detainee as "a notorious wagon breaker." It was held by their Lordships that the petitioner was deprived of an opportunity of making an effective representation against the undisclosed material and the order of detention was bad. Similar view has been expressed in the cases of *Krishna Lal Dutta Vs. The State of West Bengal*, and *Debendras AIR 1974 SC 1149*.

25. The District Magistrate in the cases before us has merely indicated the process by which he came to know the hoarding of the commodities. It does not mean that the process influenced him and this be failed to communicate. He has stated in his affidavit that there was no such material which was known to him and which was taken by him into consideration while passing the order of

detention except that which was communicated to the datenues. It has not been stated that the recovery of explosives or any other thing except those mentioned in the order of detention was brought to the notice of the District Magistrate at the time he passed the detention order and it cannot therefore, be argued that the District Magistrate was influenced by other considerations based on uncommunicated material.

26. Then it was argued by the leraned Counsel that a case u/s 3/7 of the Essential Cmmodities Act has already been registered against the petitioners and that they were arrested in connection with the aforesaid case and were also released on bail Leraned Counsel argued that two simultaneous (sic) one of prosecuting the petitioner for an offence under the Essential Commodities Act and another of detaining him under the Act, could not be proceeded with at the same time for the same set of facts. Leraned Counsel strongly relied upon the decision of their Lordships of the Supreme Court in *Biram Chand Vs. State of Uttar Pradesh and Others*, in which it was observed that two parallel proceedings against the detenue could not be taken at the same time. It was held by their Lordships that if the authority concerned made an order of detention and also prosecuted the petitioner in a criminal case on the self same facts, then it was totally barred, as the detaining authority could not take recourse to two parallel and simultaneous proceedings, Mr. Shrimal, Additional Advocate General, submitted the this decision of a division bench of the Supreme Court was contrary to two decisions decided by larger benches consisting of three Hon''ble Judges each. In *Ashim Kumar Ray Vs. The State of West Bengal*, it was held that the mere fact that the police at first bad arrested the petitioner and initiated steps to prosecute him under the Code of Ctiminal Procedure and had even lodged a first information report would be no bar against the District Magistrate issuing an order under a preventive detention statute if at the time of passing such an order he is satisfied that it was necessary to do so under the Act. Similar view was taken in *Abdul Aziz Vs. The District Magistrate, Burdwan and Others*, where the petitioner was prosecuted for the very same incident and he was detained during the pendency of the prosecution.

27. A Division Bench of this Court in *Banwarilal v. State of Rajasthan* (D B. Habeas Corpus petition No. 1527 of 1974) decided on 29th July, 1974 followed the aforesaid decisions of the Supreme Court in *Biram Chand Vs. State of Uttar Pradesh and Others*, and *Abdul Aziz Vs. The District Magistrate, Burdwan and Others*, in preference to the view taken in *Biram Chand Vs. State of Uttar Pradesh and Others*, .

28. The controversy has been now resolved by a larger bench of the Supreme Court consisting of five Hon''ble Judges in *Haraddan Saha v. The State of West Bengal and Ors.* (Writ Petition No. 1999 of 1973), decided on 21st August, 1974, thprein it has been held that *Ashim Kumar Ray's* case (25) *Abdul Aziz Vs. The District Magistrate, Burdwan and Others*, and *Debu Mahato Vs. The State of West Bengal*, have correctly laid down the principles to be followed and that *Biram*

Chand Vs. State of Uttar Pradesh and Others, has taken a contrary view. Their Lordships have held that:

The principles which can be broadly stated are these. First, merely because a detainee 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 learn 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 concerned person is actually in Jail custody at the time when an order of detention is passed against him and is likely to be not 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 circumstances that a detention order is passed during the pendency 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.

Lastly, it was argued by the learned Counsel that the order of detention was mala fide and that the entire District Administration was against the petitioner Bhagwan Das because he was the President of the "Thadi" holders Association and there was a dispute between the "Thadi" Holders and the Municipal Board, Sikar, in respect of the removal of the wooden cabins.

29. In our opinion, there is no material on the record to justify the allegation of the learned Counsel for the petitioners that the District Magistrate passed order of detention mala fide. The conduct of the police or the Municipal Authority cannot be taken into consideration for holding that the order of detention was passed mala fide by the District Magistrate,

30. We are, therefore; unable to hold that the orders of detention passed by the District Magistrate, Sikar, in respect of the two petitioners were in any manner illegal or void.

31. The writ petitions have no force and are, therefore, dismissed.