

(1975) 02 CAL CK 0002
In the Calcutta High Court
In Re: Nikhilesh Nanda

Date of Decision : 13-02-1975

Acts Referred:

Defence of India Rules, 1962 — Rule 30

Citation : (1975) CriLJ 1137 : 79 CWN 879

Hon'ble Judges : Sudhamay Basu, J;Bimal Chandra Basak, J

Bench : Division Bench

Judgement

Sudhamay Basu, J.—Mr. Somnath Chatterjee appearing in support of the Rule made submissions as to the scope and nature of the Court's power for granting bail in cases of preventive detention. He pointed out that it would be wrong to proceed on the orthodox line viz. that bail could be granted only when it appeared to the Court, *prima facie*, that the petition was bound to succeed. He referred to the recent changes in the Criminal Procedure Code whereby the powers of both the High Court and the Sessions Court have been considerably enlarged. Mr. Chatterjee argued that no statutory guidelines were there to circumscribe the court's powers which were very wide. The powers of a High Court were not inhibited in any way. In this connection he referred to the recent case of *M.A. Rasheed and Others Vs. The State of Kerala*, . In that case Ray, C. J., held that administrative decisions in exercise of powers even if conferred in subjective terms are to be made in good faith on relevant considerations. It was further observed that where powers are conferred on public authorities, to exercise the same when "they are satisfied" or when "it appears to them" or when "in their opinion" a certain state of affairs exists or when powers enable public authorities to take "such action" as they think fit in relation to the subject-matter the Court will not readily defer to the collusiveness of executive authorities' opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated. According to Mr. Chatterjee this Clear pronouncement of the Supreme Court indicates that the Court should be on guard against the conclusiveness of executive authorities' opinion. Mr. Chatterjee also referred to the case of *The State of Bihar Vs. Rambalak Singh and Others*, and urged that there was nothing said there that bail could be

granted only when the petitioner was bound to succeed. The expressions used were "bail could be granted when the orders were patently illegal". According to Mr. Chatterjee the expression "patently illegal" was less restrictive than "bound to succeed". Mr. Chatterjee further urged that things have drastically changed since the time when Rambalak Singh was decided. Today thousands of people were put behind bars without trial and it was idle to expect that the detaining authorities would take ample and adequate care in exercising their powers.

2. It appears that following the cases of *The State of Orissa Vs. Madan Gopal Rungta*, and special reference No. 1 of 64 reported in *In the matter of: Under Article 143 of the Constitution of India*, the Supreme Court in the case of *The State of Bihar Vs. Rambalak Singh and Others*, held that the power of granting bail flowed from the well recognised principle that when a jurisdiction is conferred by a statute upon the Court, the conferment of jurisdiction implies the conferment of the power of doing all such acts or employing such means as is essentially necessary for its execution. The interim relief which could be granted in Habeas Corpus proceedings must no doubt be in aid of and auxiliary to the main relief. This seems to be the basis of the jurisdiction of the Court to grant bail. The argument that the Court had no power to enlarge a person on bail in cases of detention under Rule 30 of the Defence of India Rules was repelled by the Supreme Court in that case. At the same time the Supreme Court in that case held that the relief by way of granting bail to a detenu involved certain inexorable consideration relevant to the character of the proceeding and object of the detention. The jurisdiction of the High Court was said to be very narrow and limited. The subjective satisfaction of the detaining authority was said to be not justiciable (para 10 page 1446). The Supreme Court administered caution that in upholding the claim of individual liberty within the limits permitted by law it would be unwise to ignore the object which the orders of detention are intended to serve. An unwise decision in granting bail to a party may lead to consequences which are prejudicial to the existence of the community at large. That factor must be duly weighed by the High Court before granting bail. The limitation in granting interim bail flows from the limitation on the jurisdiction of the Court to grant relief to a detenu in a preventive custody. We see some force in the argument of Mr. Chatterjee that in view of the widespread application of the drastic powers conferred on the executive the care and caution required to be devoted before detaining (depriving?) a person of his liberty without trial may not be there. The necessity for vigilance by the Courts has therefore increased in this respect. Yet the considerations which weigh in a criminal case are not the same as would weigh in the case of detention. As the Supreme Court has repeatedly stated there is no parallel between prosecution in a court of law and a detention order under the act. The one is punitive action and the other is a preventive act (*Haradhan Saha Vs. The State of West Bengal and Others*, . Objective consideration of related facts according to a prescribed procedure which is characteristic of a criminal trial is not to be expected in preventive detention. Thus it would seem that while it is the duty of the Court to protect the

liberty of the subject and not to defer to the conclusiveness of orders of the detaining authority as regards either matter of law or fact involved in a detention order, the Court's power, nonetheless, seems to be somewhat circumscribed and fettered. The fetters in the ultimate analysis perhaps flow from the restraints imposed by the Courts themselves in treating the subjective satisfaction of the detaining authority in the light of the object and purpose of the enactment which empowers the Executive with the drastic authority. The ambit of exercise of the Court's power being generally limited in a preventive detention - its power to grant bail in such a case, is necessarily more limited. The bail is after all an interim relief in aid of the final redress the Court may confer.

3. In the light of the principles discussed above we may now consider the present case. Mr. Chatterjee argued firstly that the facts and circumstances in the case showed that apprehension of any recurrence of prejudicial activity was not there to justify detention. He referred to certain certificates given in favour of the detenu by persons from different walks of life, such as, the principal, P. K. College, Contai and Mr. Sinha, Ex-minister. The Block Development Officer. Contai and by other M. L. As. According to Mr. Chatterjee these have to be taken note of as part of the surrounding circumstances. The detenu, after all, was handicapped and could not come forward as in a criminal to prove his innocence. Mr. Chatterjee, next argued that the grounds were non est. According to him the incident that took place on the day of occurrence was quite different from what he said in the grounds. There was a dispute between two groups. The detenu incurred the displeasure of one, Sisir Kumar Adhikary, the chairman of the Contai Municipality, On the day of occurrence the detenu himself lodged the First Information Report as a reprisal of which false and fabricated statements were made and another F. I. R. was lodged against the detenu. In a supplementary affidavit filed on behalf of the petitioner it was stated that the said Sisir Kumar Adhikary influenced the detaining authority to take steps against the detenu. In this connection he referred to the paragraphs 2, 3 and 4 of the supplementary affidavit affirmed on 6th February, 1975.

4. Mr. Chatterjee next argued that the grounds were vague. According to him there were two parts of the grounds. The first part consisted of alleged attack on the immersion procession of God Biswakarma as a result of which the members of the procession got frightened and ran away. The other incident is that some local people objected to this when the detenu and his associates were alleged to attack them. According to Mr. Chatterjee it is not clear when the second part of the incident took place. Moreover, the expression "Karkuli Canal Per" according to him, was vague.

5. Mr. D. Chowdhury on behalf of the State, however, argued that the first contention of Mr. Chatterjee was untenable. To accept the same would amount to substituting the subjective satisfaction of the detaining authority by the Court's own satisfaction. Certain certificates of different persons would not take away the grounds alleged against the detenu. As to second contention Mr. Chowdhury

stated that those were disputed questions of fact and even if it involved question of blamelessness or mala fide that could be determined only after affidavits were filed and the matter was gone into fully at the time of hearing of the Rule. As to the third submission of Mr. Chatterjee it was pointed out that the grounds were to be read as a whole, the second part was not to be delinked from the first part. Both were parts of a chain of events. It was, moreover, clear from the petition that the detenu did not feel handicapped with regard to the place of occurrence. In fact the averments in the petition, on the other hand, suggest that incidents of a different type, that is, other than what is stated in the grounds, occurred at the same place and near about the same time.

6. After carefully considering the arguments advanced on behalf of the respective parties and after going through the grounds we are, however, unable to hold, prima facie, without further examination in depth, that the order of detention or the grounds are patently illegal or such that the petitioner is bound to or is very likely to succeed. We thus feel unable to enlarge the detenu on bail even after taking note of the arguments advanced on behalf of the detenu by Mr. Chatterjee such as, the certificates given in his favour and the possibility of the order being executed on account of group rivalry in a mala fide manner. The final outcome being far from certain the petition for bail, is rejected

Bimal Chandra Basak, J.

7. I agree.