
(1975) 01 CAL CK 0004
In the Calcutta High Court

Jetha Laharang

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 29-01-1975

Acts Referred:

Constitution of India, 1950 — Article 22
Penal Code, 1860 (IPC) — Section 147, 148, 149, 506

Citation : (1976) CriLJ 556

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

Bench : Division Bench

Judgement

Bimal Chandra Basak, J.—In this application for a Writ in the nature of Habeas Corpus the detenu is challenging an order of detention assed by the District Magistrate. Darieeline. on the 6th December. 1973 in the exercise of newer conferred by Sub-section (1) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act. 1971 (hereinafter referred to as the said Act). The said order was passed with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of tomblike order. The order of detention was passed on the 6th December. 1973 and on that very day report was made to the State Government under Sub-section (3) of Section 3 of the said Act. The detenu was arrested Pursuant to that order on and the detention commenced from 7th December. 1975 (1973 ?). Such detention was approved by the State Government on 17th December. 1973 and on that very day the matter was reported to the Central Government. The case of the detenu was referred to the Advisory Board, u/s 10 of the said Act. on the 4th January. 1974 and on 1st February. 1974 the Board submitted its report to the effect that in its opinion there was sufficient cause for the detention of the detenu. Representation of the detenu made on the 11th February. 1974 was duly considered by the State Government and the same was reelected on the 20th February. 1974. By an order dated 4th March. 1974 the detention was confirmed by the State Government.

2. The grounds of detention served on the detenu rely on the following incident :?

(i) That on 17-11-1973 at about 13-30 hours during strike at Dhooteriah-Balason T. E.. P. S- Jorebunslow. District Darieelins about 20 labourers turned and for work at the top of No. II at Dalason Division of the said T. E. between 14.00 hours and 14.15 hours on 17-11-1973 you along with your associates:?

- (1) Bhuwan Singh Rai
- (2) Bal Bahadur Sunar alias Duksa s/o Late Baliyo Sunear
- (3) Budhabir Sunar alias Aita Singh Sunar s/o Late Dhaniit Sunar
- (4) Daman Tamans s/o Chhatraman Tamang
- (5) Kharkav Gurunp .s/o Late B irk ha Bahadur Gurunt?
- (6) Dhan Bahadur Rai s/o Late Badiman Rai
- (7) Bal Bahadur Rai s/o Late Aeam Dhoi
- (8) Dhan Bahadur Sunear s/o Padamlal Sunar
- (9) Sher Bahadur Tamariff s/o Late Jai Bahadur Tamang
- (10) Padam Tamang s/o Balman Tamang
- (11) Bhaeirath Sunar s/o Padamlal Sunar
- (12) Purna Bahadur Rai s/o Late Kirtiman Rai
- (13) Mohan Singh Rai s/o Late Jangbir Rai

all of Dhooteriah-Balason T. E. M. P.S. Jorebunglow. District Darieelins and others being armed with Khukris. daggers and sears went to the aforesaid work site and held out threats to the willing workers that if they did not join the strike, they (willing workers) would be killed. The menacing and violent attitude of the mob including you. created panic amongst the willing worker who fled away from the work site for fear of being killed by you and your associates. In consequence of your such activity which comes within the mischief of Sections 147/148/149/506. I. P. C- (rioting with deadly weapons and criminal intimidation) public order in the said locality was disturbed in that the willing workers ran away from the work site out of sheer panic and took shelter in jumbles and cardamom bushes. Your such activity created considerable tension and Danic at Dhooteriah-Balason T. E. P.S. Jorebunalow for suite some time. Your such activity thus attracts Clause (ii) of Section 3 (1) of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971). Witnesses are, however, afraid of deposing against you and your associates fearing that they would be killed by you and your associates if they deposed against you and your associates."

3. Mr. A.-P. Chatterjee. learned Advocate appearing in support of the Rule, raised various contentions before us. Firstly. Mr. Chatterjee submitted that the grounds are vague. In this context Mr. Chatterjee firstly submitted that it has been alleged in the ground that about 20 labourers turned up for work and the detenu

and his associates held out threats to these 20 willing workers. No name has been given of the said 20 workers-Next it was submitted that the expression "top of No. II" used in the sound is yeaned and it is not possible to understand the exact location of the so-called place of occurrence from such description. Mr. Chatterjee also submitted that the allegation that the willing workers took shelter in "jungles" is value because particulars of the jungles are not given. It was further submitted by him that Quoting of sections in the rounds was not sufficient because it is confusing to the detenu. For all these reasons, he submitted that the grounds are vague and that all necessary particulars to enable the detenu to make an effective representation was not given. In this context he also relied on the decision of Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, . He relied on an observations made in that decision to the effect that "the question. however, is not whether the petitioner will in fact be prejudicially affected in the matter of securing this release by his representation, but whether his constitutional safeguard has been infringed". Relvin? upon this observation, he submitted that on the question of vagueness. only the grounds served can be taken into consideration and nothing else. According to him the Court cannot take into consideration the position held by the detenu or how he was situated.

4. It is now well settled that the grounds must be communicated in a clear and unambiguous terms giving as much particulars as will facilitate making of an effective representation in order to satisfy the authority concerned that the order is unfounded or invalid. In this context we may refer to a recent decision of Supreme Court been Ajit Kumar Kaviraj Vs. District Magistrate, Birbhum and Another, . The rounds must be read as a whole; one portion cannot be read isolated out of its context. (Arun Kumar Ghosh Vs. State of West Bengal, and Netaipada Shah Vs. The State of West Bengal, . It is also well settled that read as a whole the grounds must be reasonably clear and self-sufficient. They must contain pith and substance of primary facts but not subsidiary facts or evidential details, which are not of essential constituent. (Vakil Singh Vs. The State of J. and K. and Another, . A detenu is not entitled to know the evidence or the source of information. (Har Jas Dev Singh Vs. State of Punjab and Others, . Havana regard to this well settled principles we are of the opinion that the grounds served do not suffer from vagueness. In our opinion all necessary particulars of all the material facts have been given in the around so as to enable the detenu to make an effective representation. The date, time and the place of occurrence and the manner in which the acts were committed including the names of the associates of the detenu are given. The pith and substance of all the primary facts have been given. Read as a whole the around are clear and unambiguous. Regarding the names of 20 labourers it if to be kept in mind that admittedly the petitioner is also a worker of the Tea Estate in question. He also, admittedly resides in a village within or near that tea estate. Under these circumstances there is no question of any difficulty in identifying these persons. It is to be kept in mind that it is not the case of the detenu that no such incident took place.

Further in our opinion the giving of names of these 20 labourers, against whom the action of the detenu was directed was not of essential nature. At the most they can be expressed as subsidiary facts or evidential details absence of which does not affect the order of detention. It is now well settled by several decisions of the Supreme Court that even if the names of the associates of the detenu is not given in the ground, the detention would not be bad on that ground alone, (Milan Banik Vs. The State of West Bengal and Others, and other,, cases). On similar reasons merely because the names of the victims or persons against whom the action of the detenu and his associates were directed are not given, it does not affect the validity of the order of detention. As a matter of fact a Division Bench of this Court has held that not merely evince names of some of the victims does not affect the validity of the order of detention. Pabitra Kumar Mitra Vs. Secretary, Home Department and Others, . So far as the expression "top of No. II" is concerned, as already stated the detenu is himself a worker of tea estate. Therefore, it cannot be difficult for him to understand what is meant by that expression. As a matter of fact it would appear from para. 7 of the petition that the petitioner himself has understood the same to be the top of a hill. Further, if the ground is read as a whole it becomes clear that the too No. II is a particular worksite. From the expression "above worksite" used subsequently it is clear that "the top of No. II" is merely a reference to a particular worksite. So far as the expression "jungle" is concerned we do not find any section of any vagueness. In our opinion it was not necessary to specify any particular muffle. It is to be understood that it was in a Tea Estate area and therefore the question of giving any more particular regarding jungle cannot arise. Regarding the submission of Mr. Chatterjee in respect of auctions of sections of the Indian Penal Code, we are of the opinion that the same are not vague. The substance of the allegations have been given after the sections were Quoted. Moreover whether the action complained of amounts to an offence under the Indian Penal Code or not is quite immaterial. It cannot be urged that only where the grounds of detention are based on facts which can be held to amount to an offence for which he could be punished, that a person could be detained under a law of preventive detention. (Giani Bakshish Singh Vs. Government of India and Others, . As it is apparent from the grounds, the order of detention has been made and subjective satisfaction reached on the basis of the action of the detenu and not because it amounted to an offence under the Indian Penal Code. This is made clear by the expression "which comes within the mischief of". The charge against the detenu is that in consequence of the activity of the detenu and his associates, public order was disturbed and incidentally it was mentioned that the same also came within the mischief of several sections of Indian Penal Code. In our opinion there is no vagueness at all because sufficient particulars have been given. In any event, in our opinion, the same are secondary inessential and consequential in nature. Incidentally it may be mentioned that in the detailed representation made by the detenu the detenu did not make any complaint that the grounds suffered from, vagueness or that the detenu did not fully or clearly understand the implication of the same or that for such alleged vagueness he could not make

any effective representation.

5. Regarding the observations made in the case of Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, relied upon by Mr. Chatterjee, as noted above, we may point out that the said observations were made in a context quite different from the one we are concerned in the present case. In that case, in respect of the question of vagueness it was observed that the test is whether it is sufficient to enable the detained person to make a representation "which on being considered may give relief to the detained person." In this connection it was observed that on this interpretation of Article 22(5) of the Constitution of India two questions arose for consideration. Firstly, whether the particular ground, which was subject-matter of consideration by the Court, was so yeened as to render it difficult, if not impossible, for the petitioner to make an adequate representation to the appropriate authorities: and secondly, if it is vague, whether only one yeened ground among others, which are clear and definite, would infringe the constitutional safeguard provided in Article 22(5). On the first question, it was held that that ground was vague. On the second Question it was argued on behalf of the petitioner that even though the petitioner might succeed in rebutting the other grounds to the satisfaction of the Advisory Board, his representation might fail to carry conviction so far as the ground concerned, in the absence of particulars which he could rebut, and the Advisory Board might, therefore, recommend the continuation of his detention. To this it was argued on behalf of the State that the petitioner would be entitled to be heard in person before the Advisory Board if he so desired and thereby he would have the opportunity of getting the necessary particulars through the Board¹ which could call upon the appropriate Government to furnish particulars if the Board thought that the demand for them was in the circumstances just and reasonable. Accordingly it was argued on behalf of the State that the petitioner would thus suffer no hardship or prejudice by reason of sufficient particulars not having been already furnished to him. In this context it was observed that the question, however, it is not whether the petitioner will in fact be prejudicially affected in the matter of securing his release by his representation, but whether his constitutional safeguard had been infringed. This observation of the Supreme Court is no authority for the proposition put forward by Mr. Chatterjee that in order to examine whether the grounds are vague or not, we cannot take into consideration the position in which the petitioner is situated. It is well settled that the purpose of giving grounds in clear and unambiguous terms is to enable the detenu to make an effective representation against the order of detention. Whether the grounds are vague or not depends on the facts and circumstances of each case. The grounds must be considered vis-a-vis the detenu and not in abstract. Accordingly, the situation of the detenu cannot be totally ignored in considering the question of vagueness of the ground. To give an illustration, when a ground is served, on a non-technical person containing some technical or scientific expressions without any particulars explaining or relating to the same. In that case the ground must be held to suffer from vagueness because a layman

is not expected to understand the meaning of the same and thereby he is prevented from making an effective representation. But take another case when such technical expression is used in the ground, which is served on a person well-versed in such technical or scientific knowledge. In his case it cannot be said that the grounds suffer from any vagueness or that he could have any difficulty in making an effective representation. We are of the opinion that on the question of vagueness, the Court is certainly entitled to take into consideration the position or situation of the detenu. Accordingly, we are of the opinion, that on the Question whether the grounds served on the petitioner suffer from the infirmity of vagueness, we can take into consideration the admitted fact that the petitioner is a worker of the tea estate where the incident took place and also that he is a resident of that locality.

6. For all these reasons we are unable to accept the contention of Mr. Chatterjee that the grounds are vague and accordingly we reject the same.

7. It was next argued that the grounds are baseless and non-existent. In this context reliance is placed on a stray and isolated sentence contained in paragraph 2 of the petition to the effect that the detenu observed the Bandh by not joining his duties at Dhooteriah Tea Estate and staying in his house throughout the day and night. According to Mr. Chatterjee as there is no affidavit controvert this allegation, this must be accepted as correct and that we must hold that the ground is baseless and nonexistent. We are unable to accept this contention. The facts stated in the ground must generally be accepted as correct and the Courts cannot ordinarily go into the veracity of the allegations made. *Samaresh Chandra Bose and Others Vs. The District Magistrate, Burdwan and Others*, : *Tarak Nath Chakraborty Vs. State of West Bengal*, . But it is open to the Court to set aside the order of detention when the ground is shown to be non-existent. *Motilal Jain Vs. State of Bihar and Others*, : *Rameshwar Lal Patwari Vs. State of Bihar*, and *Borjahan Gorey Vs. The State of West Bengal*, . There must be sufficient and specific averments in the petition so that if the same are not denied or controverted by an affidavit on behalf of the detaining authority, the Court may hold the ground to be baseless or non-existent. There is no specific and sufficient allegation in the petition in the present case. There is no allegation that no such incident took place. It is not denied specifically that the petitioner had not him to do with the same. It is not stated that he did not go to the place of occurrence or that he did not hold out any such threat as alleged. Accordingly, we cannot hold that the grounds are baseless and nonexistent on the basis of such isolated, bare and stray sentence which is not clear, and specific. In any event the averment relied on is to be read in its context. As already stated there is no specific averment to the effect that the detenu was not present at the place of incident at the relevant time or that he did not take part in the act complained of. Further, it is not possible to place much reliance on this stray averment because of the nature of the verification in the affidavit in support of the petition. It has been verified by a gentleman stated to be a friend of the detenu. He is a resident of Calcutta whereas the incident had taken place in the District of

Darjeeling. The relevant averment has been verified by him as true to his knowledge. We would have expected that having regard to the fact that the detenu being the best person to know whether he has taken part in the incident or not, this averment would have been verified as based on information received from the detenu and not as personal ; knowledge of a person who is a resident " of Calcutta. For all these reasons we reject this contention of Mr. Chatterjee. However, we place on record our strong disapproval of the attitude of the detaining authority shown by not affirming an [affidavit in this case. The efficacy of the limited, yet crucial safeguards provided in the law of preventive detention must " not be lost in mechanical routine, dull casualness and chill indifference on the part of the authorities concerned "with their application. The requirement of Filing an affidavit cannot be treated as an empty formality. In this case the Rule was issued in March, 1974. In spite of the same the detaining authority has not chosen to affirm any affidavit. No explanation was also offered for the same.

8. It was next urged by Mr. Chatterjee that the grounds served relied upon a solitary incident arising out of a strike called in view of a Bandih, According to Mr. Chatterjee such a strike may or may not be called within a near future and accordingly it was not possible for the detaining authority to reach any such subjective satisfaction regarding the future behaviour of the detenu from such a solitary incident, In this context Mr. Chatterjee relied on the decision of Debu Mahato Vs. The State of West Bengal, and a recent unreported decision of the Supreme Court delivered on 11th December, 1974 in Writ Petn. No. 379 of 1974 :since reported in Gora Vs. State of West Bengal, . He relied on an observation in the last mentioned case to the following effect:

The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a Part of an organised operation of a complex of agencies collaborating to clandestinely and secretly carry of such activities and in such a case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act but must be a part of a course of conduct of such or similar activities clandestinely or secretly carried on by the detenu and it is therefore necessary to detain him with a view to preventing him from indulging in such activities in future.

9. Relying on the aforesaid, Mr. Chatterjee submitted that there is nothing in the present case to show that it is a part of an organised operation of the nature referred to therein.

10. We are unable to accept this contention of Mr. Chatterjee. In the case of Debu Mahato Vs. The State of West Bengal, itself the Supreme Court made it clear that it was not of the view that in no case a single solitary act attributed to a person can form the basis for reaching a satisfaction that he might repeat such act in future and in order to prevent him from doing so it is necessary to detain him. It was pointed out that the nature of the act and the attendant circumstances may in a given case be such as to reasonably justify an inference that the Detenu concerned, if not detained, would be likely to indulge in commission of such act

in future. In the case of Anil Dey Vs. State of West Bengal, also it was¹ pointed out that the single act may under certain circumstances be sufficient to warrant such an inference on the part of the detaining authority. This was followed in a recent decision in the case of Israil Sk. Vs. The District Magistrate of West Dinajpur and Others, . In the present case having regard to the nature of the act and the attendant circumstances we hold that this solitary incident is of such a nature that it was reasonable and possible for the detaining authority to draw an inference that in similar situation the detenu would act similarly, if not detained.

11. There is another aspect of this question. It is doubtful whether the Courts are entitled to go into such a question when otherwise the grounds are germane to the object of the order. In the case of Habibullah Khan Vs. The State of West Bengal, a similar contention, as raised by Mr. Chatterjee was repelled by the Supreme Court and it was observed that it raises a question which is not within the jurisdiction of this Court because sufficiency of the evidence before the detaining authority is not a matter for the Court to decide. In the case of Nabani alias Alani Saha Vs. State of West Bengal, repelling a similar argument it was observed that this argument was beyond the ken of judicial review as it was not for the Court to determine the sufficiency of reasons for detention. In the case of Imam Shaik Vs. State of West Bengal, similar argument was advanced wherein it was held by their Lordships of the Supreme Court that it was entirely for the detaining authority to make a prognosis of the detenu's future behaviour on the basis of his past activities. It was further observed that the Court cannot test the subjective satisfaction of the authority as to the propensity of the detenu to act in a manner: prejudicial to supplies and services essential to the community, by objective standards. In the case of Haradhan Saha Vs. The State of West Bengal and Others, similar argument was repelled and it was observed as follows. The future behaviour of Madanlal Agarwalla 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 Agarwalla's acts are gravely prejudicial to the maintenance of supplies essential to the community." The observation in Borjahan Gorey Vs. The State of West Bengal, relied upon by Mr. Chatterjee was made in a different context. In that case it was contended on behalf of the detenu that the solitary incident referred to in the grounds was so remote from the date of the order of detention that the District Magistrate could not possibly have arrived at the subjective satisfaction on the basis of that incident. In that context the observation, relied on by Mr. Chatterjee was made.

12. Accordingly we reject this contention of Mr. Chatterjee

13. Next it was argued that the grounds relate to law and order and it was not germane to Public order. It was argued that only 20 persons were involved in this case who were described as willing workers but that majority of the workers resorted to the strike and therefore such an action could not have affected the community of the workers as such. It was further submitted that there was

merely a threat in this case and there was no overt act and accordingly the question of public order being affected cannot arise. There is no merit in this contention. Public order means grave public disorder. Law and order is of a lesser depravity. This disturbance of public order is some thin which disturbs the society to the extent of causing general disturbance of Public tranquility. It is the deferens of disturbance arid its effect upon the life of the community in a locality which determine whether the disturbance amounts to only a breach of law and order. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of decree and the extent of the reach of the act upon the society. Contravention of law itself is not sufficient. It must affect the community or public at large. Acts designed to terrorist the people, to overawe the political opponents, affect the public order and is not merely a law and order problem. Public order means even tempo of life of the community in a locality of a substantial section of the society. Dr. Ram Manohar Lohia Vs. State of Bihar and Others, : Sudhir Kumar Saha Vs. The Commissioner of Police, Calcutta and Another, : Sushanta Goswami v. State of West Bengal AIR 1969 SC 1004 : Samaresh Chandra Bose and Others Vs. The District Magistrate, Burdwan and Others, : Sri Nagen Murmu Vs. The State of West Bengal, : Milan Banik Vs. The State of West Bengal and Others, . In the case of Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others, it was observed as follows :?

The nature of the act the circumstances of its commission, the impact on people around and such like factors constitute the pathology of public disorder. We cannot isolate the act from its public setting or analyst its molecules as in a laboratory but take its total effect on the flow of ordinary life. It may be a question of degree and quality of the activity. of the sensitivity of the situation and psychic response of the involved people. To dissect further is to defeat the purpose of social defence which is the paramount purpose of preventive detention.

14. In the present case we find that certain willing workers were prevented from, dins their work by the detenu and 13 other men who were armed with Kukries. dealers and spears. Threat³ were held out that if they did not join the strike they would be killed. It is to be remembered that the locality concerned is a tea estate and where workers of tea estate reside. The impact of this incident on the locality i.e. amongst the workers can easily be felt. The effect of this incident on the community of workers can easily be understood. Accordingly we are satisfied that the grounds relied on have a rational relation to the subjective satisfaction regarding the prejudicial activities imputed to the petitioner. In this context we may purity out that there is no material before us to accept the contention of Mr. Chaterjee that excepting these 20 willing workers the rest of the workers of the tea estate joined the strike or that these 20 workers were in the minority. In any event in our view that is not a material consideration. Regarding the argument of Mr. Chattered that there is no overt act we are unable to agree with the same. Adopting a violent and menacing attitude and holding out threats of killing of the

willing workers who did not join the strike seem to be overt acts. In any event we are concerned with the impact of the incident on the flow of life of the community. If otherwise the act complained of affected or is likely to affect the flow of even tempo of the life of the community, even if threats are not regarded as overt acts it would not make any difference, The potentiality of the incident is the relevant factor. Accordingly we reject this contention of Mr. Chaterjee

15. All the contentions raised by Mr. Chaterjee fail. Accordingly we dismiss this application and discharge the Rule.

Sudhamay Basu, J.

16. I agree.