
(1975) 02 CAL CK 0009
In the Calcutta High Court

Jnan Ranian Banerjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-02-1975

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3(1)(a)(ii), 3(2)

Citation : (1975) CriLJ 1258

Hon'ble Judges : Sudhamay 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 petitioner is challenging an order of detention passed by the Commissioner of Police, Calcutta, on the 10th June, 1974, in exercise of powers conferred by Sub-section (1) (a) (ii) 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. Amiya Kumar Banerjee, from acting in any manner prejudicial to the maintenance of public order. The two incidents relied upon in the grounds served on the detenu are set out hereinbelow.

(1) That at about 18.30 hours on 2-12-1973, you along with your associates being armed with bombs and bottles formed an unlawful assembly on Lake View Road and created a great disturbance of public order by exploding bombs and hurling bottles at random near the crossing of Sarat Banerji Road and Lake View Road at the aforesaid date and time with intent to create terror in the said locality. As a result of your action as aforesaid, people started running helter-skelter out of fear and panic and there prevailed a great sense of insecurity in the minds of the people of the said area amounting to public disorder.

(2) That at about 11.45 hours on 9-12-1973, you along with your associates being armed with bombs and fire arms formed an unlawful assembly on Kankulia Road and committed riot at the crossing of Kankulia Road and Ballygunge Station Road by exploding bombs at the aforesaid date and time and being chased by a

police party which had arrived there in the meantime on receipt of the information of disturbance, you along with your said associates also exploded bombs aiming at the said police party at the aforesaid date, time and place and being further chased you along with your above associates again hurled bombs towards them (police personnel) on Kankulia Road in front of premises No. 127 (Kankulia Road) at about 12.35 on the same date in order to facilitate your retreat. The above incident created a great sense of fear and insecurity among the local people who closed the doors and windows of their respective houses out of fear and panic affecting public order.

2. The said detention order was made on 10th June, 1974 and the fact of making the said order was reported to the State Government on the same day. The detention of the detenu pursuant to the aforesaid order commenced on and from 10th June, 1974. The grounds of detention were served on the detenu on 14th June, 1974, The detention order was approved by the State Government on 21st June, 1974 and the State Government duly, reported to Central Government u/s 3 (4) of the said Act on 21st June, 1974, Written representation of the detenu dated 2nd July, 1974, was received by the State Government on 5th July, 1974 and was rejected by the State Government on the 9th July, 1974, Reference u/s 10 of the said Act was made to the Advisory Board on 4th July, 1974- Report of the Advisory Board, that there is sufficient cause for detention, was sent on 17th August, 1974. The detention was confirmed u/s 12 of the said Act on 28th August, 1974 and the same was served upon the detenu on the 3rd September, 1974.

3. Dr. Banerjee, learned Advocate appearing in support of the Rule, Submitted, firstly, that the grounds are baseless and non-existent. In this context he relied on the averments made in paragraph 9 of the petition to the effect that the ground No. 1 was untrue and so far as the petitioner is concerned the ground was non-existent. He also placed reliance on paragraph 1.7 of the petition to the effect that the detenu had no connection whatsoever with the two criminal cases relating to the incidents on which the order of detention was based. It was further alleged in paragraph 20 of the petition that the detenu did not know the other co-accused persons and had nothing to do with any of the groups that alleged to have fought. It was further alleged that both the places of incidents are far from the house of the detenu and at the relevant time the detenu was nowhere near the place. It was pointed out by Dr. Banerjee that the allegations made in paragraphs 17 and 20 of the petition have not been dealt with at all in the affidavit of the detaining authority and accordingly the same remains uncontroverted and unanswered. Accordingly he submitted that we must accept the correctness of the same. In this context he relied on the decision of Mintu Bhakta Vs. The State of West Bengal, . He submitted that the grounds are baseless and non-existent,

4. Mr. D. Choudhury, learned Advocate appearing on behalf of the State expressed his regret that due to inadvertence para 17 onwards of the petition

have not been dealt with by the detaining authority but he says that there is sufficient averment in the affidavit of the detaining authority in denial of the allegations of mala fide, blamelessness and non-existence. In this context he relied on paragraphs 2, 4, 5, 10, 11, 11-A, 12-A and 13 of the said affidavit, He submitted that in any event we should place no reliance on paragraphs 17 and 20 of the petition inasmuch as that the affidavit in support of the petition has been affirmed by the father of the detenu who has purported to verify the said two affidavits as true to his knowledge which must be incorrect, According to Mr. Choudhury. whether the detenu had any connection -with this case or not and whether at the relevant time the detenu was at the place of incident or not must be within the exclusive knowledge of the detenu and the detenu's father cannot have any personal knowledge regarding the same. He also pointed out that it is not the case of the detenu's father that at the relevant time the detenu was with his father.

5. Generally speaking the sufficiency of the grounds served on the detenu is not justiciable but in a proper case where sufficient and specific allegations are made in the petition on the question of the grounds being baseless and non-existent it is open to the Court to hold that the grounds are non-existent particularly when there is no affidavit controverting such allegations. In the present case there is an affidavit, by the State. It is true that paragraphs 17 and 20 of the petition have not been specifically dealt with in the said affidavit but that by itself does not conclude the matter, We must read the affidavit as a whole to find out whether there is sufficient averment therein denying the allegations that the grounds served are baseless and non-existent. In paragraph 2 of the said affidavit there is a general denial of the allegations in the petition. In paragraph 4 of the affidavit it has been specifically stated that before the detention order was made the detaining authority scrutinised carefully facts, information and materials supplying grounds for detention contained in the relevant order and that the detaining authority was satisfied that the activities of the detenu as mentioned in the grounds are prejudicial to the maintenance of public order as envisaged under the said Act. In paragraph 5 of the said affidavit it was stated that after careful consideration of all the information, facts, materials placed before him, the detaining authority was personally satisfied that with a view to preventing the detenu, from acting in any manner prejudicial to the maintenance of public order, the detention of the detenu was necessary and that he made the instant order of detention without any ulterior motive or purpose. In paragraph 10 of the said affidavit it was specifically, denied that the grounds of detention are vague and non-existent. It was again repeated that before he made the order in question, the detaining authority had scrutinised carefully the facts, information, martial's supplying the grounds for detention as contained in the order in question and that he was personally satisfied that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order his detention was necessary and as such he made the instant order of detention without any ulterior motive or purpose, In paragraph 11 of the

said affidavit, though it was stated that the detenu was involved in the incident referred to in the ground No- 1, in view of the improper verification of the said paragraph Mr. Choudhury, in his usual fairness, did not place any reliance on the same. In paragraph 11-A of the said affidavit it. was stated that the detenu was arrested in this case on 9th of March, 1974 for his complicity in connection with the case arising out of ground No. 1. In paragraph 12-A of the said affidavit it was stated that the detenu was arrested on 9th of March for his complicity in connection with the case arising out of the incident referred to in ground No. 2. In paragraph 13 of the said affidavit the detaining authority had repeated and reiterated what has been stated in the grounds for detention and has also denied each and all allegations save and except what would appear from the said grounds. It was also specifically denied that the detaining authority passed the instant order of detention on the false material or materials which are non est and/or which have no bearing in the present context. In the supplementary affidavit by the detaining authority on the 11th of January, 1975. it was specifically stated that from the materials collected during investigation of the criminal cases arising out of the said two incidents, the detaining authority was satisfied that the detenu had taken part in the incidents in the manner stated in the grounds of detention.

6. Having regard to these averments in the affidavit of the detaining authority we are satisfied that there are sufficient and specific averments therein controverting the allegation of blamelessness and non est as purported to be made out in the petition. It is unfortunate that some allegations in paragraphs 17 and 20 of the petition have not. been dealt with specifically in the said affidavit but in our opinion the same, by themselves, are not sufficient for us to hold that the grounds are baseless and non-existent specially having regard to the affidavit, of the detaining authority read as a whole and also the supplementary affidavit. Further it is difficult for us to place much reliance on such stray sentences in paragraphs 17 and 20 of the petition particularly, having regard to the fact that this has been verified not as information received from the detenu but as true to the knowledge of the deponent who is the detenu's father. The deponent does not say that he was at the relevant time at the place of incident and accordingly he cannot be in a position to say whether the detenu had any connection with this incident or not and whether the detenu was anywhere near the place or not. Further it has not. been stated that at the relevant time the detenu was with the deponent. For all these reasons we are unable to hold that the grounds are baseless and non-existent. Accordingly we reject this contention of Dr. Banerjee.

7. However, we must point out that the duty cast on the detaining authority regarding the filing of affidavit should be taken very seriously. The detaining authority should take proper care and attention in dealing with the allegations made in the petition. In this particular case paragraph 17 onwards of the petition has not been dealt with at all. This reflects that care and attention was not taken in respect of the preparation and affirmation of the said affidavit.

8. It is next urged by Dr. Banerjee that the order was made mala fide. In this context Dr. Banerjee stated that the detenu was arrested on 9th March, 1974, in connection with the Criminal Cases but he was discharged on 10th June, 1974, on which day he was again arrested under the said Act. He also drew our attention to paragraph 11 of the petition where it has been alleged that the order of detention has been passed against the detenu wholly mala fide by the detaining authority and that he had acted under the advices of the special Branch Police Authorities. It is further alleged that the detaining authority is a busy authority and had hardly any time to predicate for himself and weigh upon and assess the materials, on his own and check up whether all the materials, essential for reaching the conclusion, had been placed before him before he could pass the order. Dr. Banerjee also drew our attention to paragraphs 18 and 19 of the petition and submitted that since his arrest on 9th March, 1974 the detenu was residing at his house 70, Hazra Road and was regularly attending college. He submitted that if the detenu had any connection with the said two incidents he would have been arrested long ago. It is pointed out by Dr. Banerjee that the name of the detenu did not appear in the First Information Report. There is no denial of the allegations made in paragraphs 18 and 19 of the petition.

9. There is no merit in this contention. It has been specifically denied by the Commissioner of Police that he had acted under the advice of the Special Branch Police Authorities. It has been categorically stated that he had acted after proper application of mind. Further mere fact that the detenu was available for arrest in connection with the said Criminal case long before 9th March, 1974, does not in any way affect the order of detention. So far as absence of specific denial of the averments made in paragraphs 18 and 19 of the petition, we have already considered the effect of the same. In our opinion, to put it shortly, there is no sufficient material before us on the basis of which we can hold that the detaining authority had acted mala fide. Read as a whole, the affidavit of the detaining authority, read with the supplementary affidavit, show sufficient denial of the allegation of mala fide. Accordingly we reject this contention of Dr. Banerjee.

10. Lastly, it was argued by Dr. Banerjee that the order suffers from lack of proximity. He points out that there has been 6 months" delay between the date of the order of detention and "the alleged incidents and accordingly in the absence of any explanation we must hold that the detaining authority could not have reached his subjective satisfaction as he has purported to do. In our opinion there is no merit in this contention. The time lag between the date of alleged incident and the making of the order of detention is not so large that it can be said that no reasonable person could possibly arrive at the satisfaction which the detaining authority did on the basis of the alleged incident. It must be remembered that some time is bound to elapse before the investigation into the alleged incident is completed and the matter is brought to the notice of the detaining authority and the detaining authority applies his mind and arrives at the requisite satisfaction culminating in the order of detention. The period of 6

months cannot be regarded as so unreasonably long as to warrant an inference that no satisfaction was really arrived at by the Commissioner of Police or that the satisfaction was colourable or no satisfaction at all as required by the said Act. The satisfaction which the detaining authority is required to reach in order to support the order of detention is that it is necessary to detain the petitioner with a view to preventing him from acting in a particular manner and that satisfaction can obviously be founded only on a reasonably anticipated prognosis of future behaviour of the detenu made on the basis of past incidents. *Malwa Shaw Vs. The State of West Bengal*, . In *Malwa Shaw* case 5 months" delay was held not to be fatal. In the present case it is not possible to say that the incidents referred to in the grounds of detention were such that they could not reasonably lead to the satisfaction which the detaining authority reached when he made the order of detention. For reasons similar to *Malwa Shaw* case, 5 months" delay was held not to have affected the order of detention in the case of *Olia Mallick alias Oliruddin Mallick Vs. The State of West Bengal*, . As it was pointed out in the case of *Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others*, no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and conidial, on the length of the gap. short or long, on the reasons for the delay in taking preventive action, like information of participation being available in course of investigation. In the case of *Gora Vs. State of West Bengal*, there was a time lag of 6 months. The Supreme Court held that such time lag was not sufficient to warrant that the order of detention was passed in colourable exercise of powers. It was pointed out in that case that no hard and fast rule, that merely because there is time lag of about 6 months between the offending acts and the date of the order of detention, the casual link must be taken to be broken and the satisfaction claimed to have been arrived at by the authority concerned must be regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction, must be determined on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. It is a subsidiary test evolved by the Court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu and its utility therefore lies only so far as it subserves that purpose and it cannot be allowed to dominate or drown it. Applying the aforesaid principles to the fact of the present case, we are of the opinion that the time lag is not such so as to hold that the order was passed or satisfaction was reached in colourable exercise of powers. There are two other aspects of this matter. Firstly, the detenu's name was not in the F. I. R. Only when his complicity transpired during the investigation that he was arrested on 9th March, 1974, in connection with the Criminal Case. Therefore it cannot be said that the authorities were aware of the detenu's connection with the incident from the date of the incident. The next

aspect of the matter is that, one of the important things regarding the time lag is as to the time when the facts were brought to the attention of the detaining authority. The police might have arrested the detenu on 9th March, in connection with the criminal cases. That does not necessarily mean that for the purpose of detention, the detaining authority was aware of the complicity of the detenu at that time. As a matter of fact from the relevant records it appears that the proposal was placed before the Commissioner of Police only on the 9th June, 1974. As already stated, the order was passed on 10th June, 1974. For the aforesaid reasons we are of the opinion that no valid ground has been made out on the basis of lack of proximity between the incidents relied on and the order made. Accordingly we reject the contention of Dr. Banerjee.

11. All the contentions raised by Dr. Banerjee fail. Accordingly we dismiss this application and discharge the Rule.

Sudhamay Basu, J.

12. I agree.