
(1981) 07 GAU CK 0005
In the Gauhati High Court

Madhab Ch. Chakraborty

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 01-07-1981

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (1982) CriLJ 1049

Hon'ble Judges : K. Lahiri, J;B. L. Hansaria, J

Bench : Division Bench

Judgement

K. Lahiri, J.—This is a habeas corpus application. The petitioner was detained, under order of the District Magistrate, Kamrup made u/s 3(2) of the National Security Act, 1980, "for preventing him from acting in a manner prejudicial to maintenance of public order". The detenu was detained on (illegible) and on the same date the grounds of detention were served on him. He made representation to the Government which was rejected. His case was heard by the learned Advisory Board. Acting on the opinion of the learned Advisory Board, the Government confirmed the order of detention on 14-6-81".

2. The allegations against the petitioner as revealed in the grounds of detention may be summarised as follows:1) That he was, at all relevant periods, an active supporter of ASSU and AAGSP and a Member of the Anchalik Karmachari Parishad; (2) That he had been injured while "experimenting with a homemade cartridge in a country-made gun"; (3) That he was engaged in the activities like collection of bombs, manufacturing and procuring of guns etc. Insofar as this item is concerned, a series of instances have been cited giving specific dates. It is alleged that on the 30th Nov. 1980 he went to Barpeta and brought arms and explosives, again on the 6th Dec, 1980 he asked one Shri Bashya to bring some arms and explosives made a plan to hand over one country-made gun and bombs to one Rahman around 8-30 p.m. but he was caught red-handed by the police.

3. The learned Counsel for the detenu submits that the first ground, to wit: That

the petitioner was a member of "the Organisations" cannot be a ground for detention. The learned Counsel submits that the Government itself is discussing with ASSU and AAGSP for solution of the problems arising out of "Foreigners" issue and as such the said ground of detention is irrelevant. The Organisations have not been declared illegal or unlawful. Secondly, the learned Counsel submits that there is absolutely no date or materials furnished to the detenu as to when and where the detenu was injured while "experimenting with home-made cartridges in a country-made gun". The ground is hopelessly vague and no effective representation could be made by the detenu in consequence whereof he was denied of his statutory-cum-constitutional rights. Insofar as the third ground is concerned, the learned Counsel submits that even if the entire allegations are accepted at their face value, the acts or activities did not cross the perimeter of "law and order" to enter within the narrower concentric circle of "public order". Counsel relies on the decision of the Supreme Court in *Sudhir Kumar Saha Vs. The Commissioner of Police, Calcutta and Another*, ; *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, ; *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, ; *Arun Ghosh Vs. State of West Bengal*, *Dipak Bose alias Naripada Vs. State of West Bengal*, *Dipak Bose v. Govt. of West Bengal*. We find sufficient force in the contentions. We extract the grounds of detention:

Grounds of detention of Shri Madhab Chakravarty S/o Sri Haldharma Chakravarty of village Janigog, P.S. Nalbari, District Kamrup.

That you are an active supporter of ASSU and AAGSP and a member of the Anchalik Karmachari Parishad and that you had been injured while experimenting with a home-made cartridge in a country-made gun and that you have been engaged in the activities like collection of bombs, manufacturing and procuring of guns etc. On 30-11-80 you went to Barpeta along with Shri Nao Ram Baishya in a motor cycle with a view to procure some bombs. On the 3rd day Nao Ram Baishya, who stayed there, came back to your house and handed over to you two bombs and six "haw bombs" on 6-12-80 you again sent Shri Baishya to bring 5 more bombs. You have made a plan to hand over one country-made gun and those bombs to one Rahman on 6-12-80 at 8-30 P.M. But you were caught red-handed by the police.

You have therefore acted and are likely to act in a manner prejudicial to the maintenance of public order.

You may submit representation to the State Government against the order of detention through the Superintendent of District Jail, in which you are detained, if you so desire.

(Emphasis added).

4. In a catena of cases it has been ruled by the Supreme Court in the field of preventive detention jurisprudence that even if one of the grounds or reasons which led to the subjective satisfaction of the detaining authority is nonexistent or misconceived or irrelevant, the order of detention would be invalid and it

would not avail the detaining authority to contend that the other grounds or reasons are good and do not suffer from any such infirmity. The detention order is based on "subjective satisfaction". It is an executive action. Can the Court predicate as to the extent the bad ground or reasons had operated on the mind of the detaining authority or whether the order of detention could have been made at all if the bad grounds or reasons were excluded and only the good ground or reasons alone were before the detaining authority? It could not be so predicated. Therefore, if one of the grounds is bad the order of detention must be set aside. We rely on *Shibban Lal Saksena Vs. The State of Uttar Pradesh and Others*, , *Motilal Jain Vs. State of Bihar and Others*, , *Pushkar Mukherjee and Others Vs. The State of West Bengal*, , *Biram Chand Vs. State of Uttar Pradesh and Others*, , *Shri Satya Brata Ghose Vs. Mr. Arif Ali, District Magistrate, Sibasagar, Jorhat and Others*, , *Kuso Sah Vs. The State of Bihar and Others*, , *Ram Bahadur Rai Vs. The State of Bihar and Others*, , *Dwarika Prasad Sahu Vs. The State of Bihar and Others*, , *Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others*, . An order of detention is made on "the subjective satisfaction" of the detaining authority. The Court can neither consider the propriety of sufficiency of the grounds on which the subjective satisfaction is based provided they have a rational probative value and not extraneous to the purpose of detention. The Court cannot review the grounds and substitute its own opinion for the opinion of the detaining authority by applying the objective tests, or determine the necessity of detention for a specified purpose. It cannot interfere if there is some material in the grounds upon which a reasonable man may form the subjective satisfaction, provided the grounds are germane to the reasons or purpose of detention. However, the Court's judicial review is permissible, inter alia, on the grounds (1) that "the satisfaction" is not based on materials which are of rationally probative value i.e. no rational human being can consider any connection with the fact in respect of which the satisfaction is reached, or (2) if the grounds are not relevant to the subject matter of the enquiry or extraneous to the scope and purpose of the statute; or (3) if the detaining authority takes into consideration as relevant factor something which it cannot properly take into account in deciding whether or not to exercise the power or the manner or the extent to which it should be exercised. The power of the Court is not an appellate one. As a judicial authority it is concerned and only concerned with scrutinising the order of detention to see whether the statutory authority has contravened the law by acting in excess of the power which the legislature has conferred on it. A ground which is self-sufficient and self-explanatory and readily intelligible by a reasonable person without any legal aid containing basic facts and materials is a good ground. A vague ground means a ground which does not contain either (a) the basic facts or (b) the basic materials or (c) the basic facts and materials are neither self-sufficient and self-explanatory, or (d) a ground which is not readily intelligible to a reasonable and prudent person without legal aid. Of course, the term "vagueness" is a relative one. The function to determine as to whether the ground is vague is to consider whether the details withheld were the essential constituents of the grounds or

are merely subsidiary facts or further particulars of the basic facts. If the details withheld are the essential constituents, the grounds must be held to be vague but withholding of subsidiary facts or further particulars of the basic facts does not amount to furnishing a vague ground.

5. In I his background let us decide the case in hand. The first part of the first sentence of the ground is the allegation that the detenu is a member of some organisations abbreviated as AASU and AAGSP. Are they unlawful associations/organizations Nothing has been stated. How could the membership of the organisations by itself be a ground for detention to safeguard the public order? Nothing has been explained nor is there any explanation in the counter filed by the State. The contention has strong force. The second part of the first sentence contains allegations that the detenu had been injured "while experimenting with a home-made cartridge in a country-made gun". It does not contain the essential constituents of the ground. The details withheld are (1) the date, (2) time and (3) place. These are undoubtedly the essential constituents of the grounds. As such it must be held to be a vague ground and no effective representation could be made by the detenu on the scanty material in the said ground. We are constrained to hold that on this ground alone the petition must succeed.

6. Insofar as the third ground is concerned the allegations are that the detenu was collecting arms and ammunitions. The acts, actions or conduct fall within the realm of "law and order", Do they, "per se" fall within the expression "public order?" It is undoubtedly true that the distinction between the expressions "law and order" and "public order" lies not merely on the nature and quality of the act but entirely depends on the degree and extent of its reach upon the society. The effect of an act or series of acts is the criterion to determine whether an act or series of acts can be reasonably stated to be prejudicial to the maintenance of public order. Acts similar in nature but committed in different context, circumstances or situations might cause different reactions. Collection of arms and explosives may be for the purpose of creating law and order problem. It may, in a different context and background, affect "public order". Ordinarily clandestine arms dealings are punishable under the provisions of penal laws like I.P.C., Arms Explosive Acts, and, such laws would be sufficient to cope with them. However, in the context of extraordinary circumstances, completely different consequence might follow and a person may be detained for the maintenance of public order. The context, circumstances or environments must be narrated. The ground in question is just a run of the mill averment of possession of arms and ammunitions which can be taken care of by the penal laws. There is nothing in the grounds that the acts and conducts were committed with the object of disturbing "public order" or there existed the problem of "public order" in the area in question. There is no inkling as to the prevailing circumstances or environments in the area or its neighbourhood at the relevant time. There is no indication in the grounds of detention to show the relevant context. or circumstances or environments which might have brought the case within the narrower concentric circle of "public order" from the larger concentric circle of

"law and order". As such, the detention for the purpose cannot be sustained. We rely on Dipak Bose alias Naripada Vs. State of West Bengal, , Sudhir Kumar Saha Vs. The Commissioner of Police, Calcutta and Another, and Arun Ghosh Vs. State of West Bengal,). We are of the opinion that the ground stated in support of the detention cannot amount to disturbance of public order on the authority of the aforesaid decisions.

7. For the foregoing reasons we hold that the petition must be allowed and continued detention of the petitioner is void and illegal. The Rule is made absolute. The petitioner shall be released forthwith unless he is wanted in connection with any other case.