
(1975) 02 CAL CK 0010
In the Calcutta High Court

Radha Prosad Keshri

APPELLANT

Vs

Superintendent of Suri Jail and Others

RESPONDENT

Date of Decision : 24-02-1975

Acts Referred:

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

Citation : (1975) CriLJ 1048

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

Bench : Division Bench

Judgement

Bimal Chandra Basak, J.—This is an application for Bail in an application for a Writ of Habeas Corpus which is directed against an order of detention passed by the District Magistrate. Birbhum on the 28th January! 1975 in exercise of powers conferred by subsection (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 has been passed with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of supplies essential to the community. The grounds of detention framed on the detenu read as follows:?

(1) On 8-11-1974 between 15.30 hrs, and 18.00 hrs. at Bharsalapara, p. S. Ram-purhat during inspection of stock and accounts of your licensed sodown by S. I. A. G, Dewan of D. E. B. and other witnesses in your presence there actual stock of 391 bags of cement were found against book balance of 439 baPs and sale of 5 bags of 1 cement on 8-11-1974 and there was shortage of 43 bags of cement from your sodown for which you failed to give any explanation or show any document or authority for their disposal and thus you illegally disposed of 43 baas of cement an essential commodity and acted in a manner prejudicial to the maintenance of supplies essential to the community.

(a) On 5-11-1974 you sold 4 bags of cement to a customer and realised Rs. 30/- per bags and on 6-11-1974 you sold 15 bags of cement to another customer and realised Rs. 30/- per bag instead of- approved rate of Rs. 19.33 per bag and thus acted against distribution of cement at fair price, an essential commodity and

acted in a manner prejudicial to the maintenance of supplies essential to the community.

2. Mr. -Sankardas Banerjee, learned advocate appearing in support of this-application, contended before us that this-is a fit case where bail should be granted. In support of the same he made various submissions before us. The first submission was directed against the ground No. 1" as set out above. In this connection Mr. Banerjee drew our attention to the averments made in the writ petition and its annexures. To summarise, the contention of the detenu is that the shortage in the number of bags of cement in, the godown was- due to the fact that on check being made, after the receipt of the-consignments, it appeared that there was-shortage in weight in many bags of cement and that the said bags were containing less than 50 Kgs. It is stated that in respect of the consignment on 15th June, 1974 the same was weighed in the presence of the Sub-Inspector of Food and Supplies after which it was found" that there was a shortage of 17 aintals and 36 Kgs. It is further stated that the-detenu was directed by the office of ,the Sub-Divisional Controller of Food and" Supplies, Rampurhat that the cement bags which are not of standard weight should be standardised at the time of sale. It is stated that there was a similar shortage in respect of the quantity weighed on 22nd July, 1974. It is further stated that the detenu thereafter received many consignments of cement and some of the said consignments were found short-on weight for which the detenu gave-" due intimation to Sub-Divisional Controller, Food and Supplies, Rampurhat. It instated that in view of the specific direction of the Sub-Divisional Controller, Food and Supplies, Rampurhat to standardise the cement bags which were not of standard weight, the detenu at the time" of the sale of the bags of cement containing less than 50 Kgs. the standard weight had to make required quantity of cement from other bags to make 50 Kgs. of cement, the standard weight in each bag. as a result of which actual number of bags in stock reduced than the book figure of the detenu. It is alleged that-the detenu requested G. Mondal, the then Sub-Divisional Controller, Food and Supplies, Rampurhat to give note about the reduction of the number of bags but Shri Mondal though agreed to give a note after standardisation of weight but the same-was not done and accordingly the stock book was not adjusted in respect of the-number of bags. Accordingly it was submitted that the ground was baseless and non-existent. It was next contended that the second ground was vague. It was submitted that no particulars were given of the customers to whom the detenu is alleged to* have sold the cement at a higher rate and accordingly the detenu was prevented from making any effective representation. In this context reference was made to certain observations in the case of Motilal Jain Vs. State of Bihar and Others, . Thirdly, it was contended! that the detenu does not understand English and cannot read ;and write English and the,said grounds of detention were not explained to the detenu in the language he understands. .Lastly, it was contended that the grounds : are false and baseless inasmuch as there was no mention of the incident referred "to in the second ground, either in the -First Information Report

of the Charge -sheets submitted in this connection.

3. Before we consider the submissions of Mr. Banerjee it has to be kept in mind that we are not considering the writ petition on its merits but we are merely considering whether, in the facts of this case it is fit and proper that the detenu should be released on bail. It is no doubt true that the Court entertaining a Habeas Corpus petition is entitled to release the detenu on bail pending the final disposal of his writ petition, In the * case of The State of Bihar Vs. Rambalak Singh and Others, the jurisdiction of Court to grant bail was recognised and it was stated that the High Court will no doubt take all the relevant facts into account and it is only if and when the High Court is satisfied that prima facie, there is something patently illegal in the order of detention that an "order of bail would be passed. We shall have to apply this test while examining the contentions of Mr. Banerjee keeping in mind that we are not deciding the merits of this case at this stage when no affidavit has yet been filed on behalf of the State. So far as the first submission of Mr. Banerjee is concerned we cannot. anerely on the basis of the averments made in the petition hold that the grounds are baseless and non-existent or that no .such satisfaction could be reached in the facts of this case. It is admitted that there was some discrepancy in the number of bags of cement found in the "licensed godown and the number shown in the books of the godown. The petitioner has sought to give some explanation in respect of the same. This might be correct or incorrect. Apart from the question as to the extent of the jurisdiction of Court to go into the correctness of the facts stated in the grounds, we are of the opinion that at least at this stage - and on the basis of the averments before us we cannot hold that the said ground is baseless or non-existent. We cannot "hold merely on such allegations in the .petition that there is something patently illegal in the order of detention. It is to be pointed out that we have refrained ourselves from giving our final decision regarding the merits of the contention of petitioner at this stage so that the same may not prejudice the case of the petitioner at the time of the final hearing of the writ petition. We may merely point out that the conclusion sought to be drawn by Mr. Banerjee does not necessarily follow from the facts stated in the petition. In this context it may be pointed out that excepting in respect of one consignment, no other order of the Sub-Divisional Controller regarding the standardisation has been produced, Further only two alleged consignments are mentioned in detail. There is only some vague and general averments regarding the other consignments wherein similar short-weight is alleged to have taken place.

4. Regarding the second contention of Mr. Banerjee. we are not satisfied, at this stage, that there is anything patently illegal. Prima facie, we are not satisfied that merely because such name was not given, the detenu was in any way prevented from making any effective representation. In this context, we may point out that in the petition the petitioner has stated that on 5th November. 1974 and 6th November. 1974 the detenu sold cement to the persons specified therein in respect of the quantity mentioned therein at the rate prescribed

against the cash memo duly countersigned by the said persons. It is" alleged that the detenu did not sell cement on 5th November or 6th November; to any one at the rate of Rs. 30/- as alleged in the ground. This itself suggests that the mere absence of such names in the ground did not in any way prevent the detenu from making any effective representation. Moreover, the "auestion still remains whether the name of customer is merely a matter of evidential detail. Absence of giving particulars of secondary fact or evidential details do not affect the validity of a detention. (Vakil Singh Vs. The State of J. and K. and Another, . Regarding the Motilal Jain case relied on by Mr. Banerjee the facts of that case are different. In that case it was alleged that the detenu sold match boxes on a.dav specified to a shop-keeper of Purnea Court compound at a price higher than that fixed for these commodities. It was pointed out that not furnishing the name of the shop-keeper, the price fixed and the price at which the detenu is supposed to have sold them makes the ground vaeue. In this context it was observed that the futility of making a representation against an unknown man in respect of an unspecified price could easily be imagined. In the present case though the names of the customers.

We have not given but the approved rate and the rate at which the detenu is alleged to b0e sold them have been specified. Accordingly at this stage we are not convinced of the correctness of the conten-pn of Mr. Baneriee.

5. So far as the third around is Concerned. Mr. Chowdhurv. learned advocate appearing on behalf of the State has produced before us the service copy Of" the grounds and the order of detention. ?rom the endorsement made on the reverse of the grounds of detention it is clear that the arounds were explained to the detenu. Mr. Baneriee sought to make fome submission regarding the correctness and genuineness of such endorsement on the basis of the position of the signatures of the relevant persons in the said portion. However havina regard to the endorsement on the service copy, we are tinable to hold, at this stage, that there is something patently illegal regarding %"me service of the order or the grounds of Retention.

6. The last submission of Mr. Baneriee has no merit at all. The mere Hact that the facts constituting the second ground is not mentioned in F. I. R. or the charge-sheet does not and cannot by itself "*"tfect the validity of the detention order.

7. For the reasons aforesaid, we aject all the contentions of Mr. Baneriee. Ve are not satisfied that there is some-hing patently illegal in the order of detetion or that it is a fit and proper case for the grant of bail.

8. Accordinalv application for bail is reiected.

Sudhamay Basu, J.

9. I agree.