

(1973) 09 CAL CK 0001
In the Calcutta High Court

Shibnath Saha

APPELLANT

Vs

District Magistrate, Murshidabad and Others

RESPONDENT

Date of Decision : 18-09-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 491

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

Citation : (1973) 09 CAL CK 0001

Hon'ble Judges : Purna Chandra Borooah, J;Parimal Kumar Chanda, J

Bench : Division Bench

Advocate : Mrinmay Bagchi, for the Appellant;Sumit Kumar Maitra, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application u/s 491, Criminal Procedure Code by Shibnath Saha, who has been ordered to be detained by the District Magistrate, Murshidabad pursuant to order No.1875/C, dated 28.6.73 with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The grounds of detention are given below: -

(a) That in pursuance of a deep laid conspiracy to attack Khagra T.O. P. and Gorabazar T.P.O., both under P.S. Berhampore simultaneously on the night of 1.5.73 you alongwith your associates Sovendra Sarkar, Bachchu Sarkar, both sons of Nalineswar Sarkar of Dayanagar, P.S. Berhampore town. Adhir Choudhury, S/o. Late Niranjana Chaudhuri Gorabazar all under P.S. Berhampore and others while preparing bombs in the house of said Nalineswar Sarkar on 29.4.73 at about 10.00 hrs. there was a serious explosion of bomb so manufactured by you resulting in serious injuries to your associates Sovendra Sarkar, Bachchu Sarkar and another. As a result the people of the locality become panic-stricken and started running helter skelter. In consequences of your said activity public order in the locality was disturbed. The said activity thus attracts section 3 (1)(a)(ii) of the Maintenance of Internal Security Act, 1971

(Act 26 of 1971).

(b) That on 16.5.73 at about 19:30 hrs. you alongwith your associates Keshab Banerji S/o. late Mahendra Chandra Banerji of Khagra, Narayan Mahato S/o. Harendra nath Mahato of Saidabad, both under P.S. Berhampore and others being armed with daggers, knives, iron rods and other deadly weapons raised the houses of Samar Kundu, Golab Ghosh and others at Saidabad, P.S. Berhampore, and severely assaulted Samar Kundu. As a result the people of the locality became panic-stricken and left the area in fear. The shop-keeper of the locality closed their shops and normal life and movement of the locality closed their shops and normal life and movement of the citizens were paralysed. In consequences of your said activity thus attracts section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971).

2. Mr. Bagchi appearing on behalf of the petitioner has submitted that the ground No.1 is not non-existent and ground No.2 is irrelevant and that the detaining authority acted mala fide in passing the order of detention.

3. The detention order was made on 28.6.73 and it was reported to the State Government on the same date. The grounds upon which the detention was made were served on the detainee on 2.7.73 when he was taken into custody. The detention order was approved by the State Government as required under the statute on 6.7.73. The State Government reported to the Central Government on the same date. A representation on the detainee dated 18.7.73 was rejected by the State Government after due consideration on 21.7.73. The case was referred to the Advisory Board on 24.7.73. All the steps remained to be complied with up to the date have been taken.

4. In paragraph 12 of the application it has been stated that ground No.1 is totally non-existent as against the detainee as would be evident from the fact that the F.I.R. which was drawn by the O.C. Berhampore Police Station did not name the detainee and the detainee was never wanted for arrest in connection with the said case. It has been further stated in paragraph 13 that the ground No.1 has been falsely incorporated in the grounds with the mala fide intention of making a conviction case against the detainee.

5. It is stated in paragraph 14 of the application that ground No.2 is the subject-matter of a pending Criminal Case and no specific rule has been attributed to the detainee in respect of the alleged incident.

6. In paragraph 15 it has been alleged that both the grounds are subject-matter of Criminal Cases and as such it is not permissible to detain the detainee on the self sake incident.

7. The averment in paragraph 16 is that certain false and malicious repots against the detainee were placed by the police before the detaining authority and the detaining authority without applying his mind mechanically acted on the same. If the detainee in pursuance of a deep laid conspiracy to attack police out

posts was preparing bombs along with his associates, the ground No.1 must be held to be relevant. His complicity with the offence might have transpired after the F.I.R. was lodged. Merely because his name does not appear in the F.I.R., it cannot be said that the ground is non-existent. The fact of occurrence having taken place must be accepted as stated in the grounds because the subjective satisfaction of the detaining authority on the point is final and does not require any further proof. If on its face an order of detention is in term of the Act. Court is bound to stay its hands and uphold the order. This order cannot undertake an investigation as to the sufficiency of the materials on which the satisfaction of the detaining authority is grounded. The evidence in possession of the detaining authority may not be sufficient to make a charge in a Court to secure his conviction by legal proof, but may still be sufficient to justify, a men's detention. In the case of (1) Masood Alam, reported in AIR 1973 SC 905 the Supreme Court has observed:

An attempt has undoubtedly been made on behalf of the petitioner to show that the grounds, on which the District Magistrate felt satisfied are of men existent but as observed earlier, it is not open to this Court to review and override subject we opinion of the District Magistrate by going into the truth or otherwise of the facts accepted by him.

8. Those observations are applicable in regard to both the grounds in instant case.

9. In his affidavit in reply the District Magistrate has said before he made the detention order, he scrutinized carefully the facts, informations and materials and was satisfied that the activities of the detainee as mentioned in the grounds collectively and separately are prejudicial to the maintenance of public order. He has denied that he has in any way been influenced by the Police. He has further asserted that the he made the instant order of detention without any ulterior motive or purpose and he acted in good faith. He has also said in the affidavit that direct and opposite complicity of the detainee transpired in course of investigation.

10. The onus is upon the detainee to prove mala fide. Police and detaining authority cannot be treated is identical under the Maintenance of Internal Security Act. We are not at all concerned with the mala fide or otherwise of any one except the detaining authority. In the case of (2) D. Souza, reported in AIR 1956 SCR 382 it has been held that the allegation of mala fide will not be entertained by the Court when it is not against the authority who made the impugned order, but some other persons e.g., the police. Merely that the purpose might have been served proceeding under the ordinary law it cannot be said that the order of detention is mala fide. In the case of (3) Arun Roy and Dipak Ghosh, reported in AIR (1972) 3 SCC at pages 893 and 294 the Supreme Court has held that the offence triable by ordinary Criminal Courts as grounds of detention are valid. In the case of (4) Indradeo Mahato Vs. The State of West Bengal, it has been held by the Supreme Court that the facts that the acts disclosed in the

grounds of detention also constitute offence under the Penal Code triable by Criminal Courts will not by itself debar the authority concerned from detaining a person if such acts of his fall within the ambit of section 3 of the Maintenance of Internal Security Act.

11. The distinction between the maintenance of public order and maintenance of law and order was brought out by the Supreme Court in the cases of (5) *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, with in the Supreme Court pointed out that maintenance of law and order is a concept much wider than the conception of maintenance of public order. The latter is a prevention of disorder of grave nature and every act that effects law and order need not accept public order. It is otherwise every one who disturbs law and order however petty the offence committed by him may be, can be detained under the Preventive Detention Act. This would be a total repudiation of the rule of law and an affront to our constitution. The legal position relating to the point in issue therefore is that public order is the even tempo of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals, which do not disturb the society to the extent of causing a general disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order.

12. The first ground of the detention as earlier stated pertained to the problem of public order and was not merely an infraction of law and order. The two incidents mentioned in the ground cannot be said to be interlinked. But the same cannot be said with regard to the incident set out in ground No.2. This kind solitary assault on the individual and raid on 2 or 3 houses following clashes between two rival groups is not an uncommon occurrence and can hardly be said to disturb public order or place order in jeopardy so as to bring the case within purview of the Maintenance of Internal Security Act. The particulars given in the ground No.2 at best disclose that only 2 or 3 individuals were affected and in the context and circumstances of the case does not appear to be relevant ground effect the Maintenance of public order, for which only the power of detention under the Maintenance of Internal Security Act is intended to be used. The ground does not suggest that the detainee or any of his associates used bombs in perpetrating the crime, nor had it been suggested in the ground that the acts were done in pursuance of or for promoting a certain political ideology. It also does not disclose any threat to the public or shopkeepers of the locality. The acts of the detainee can at best raise only law and order problem and no more; its impact on the society as a whole cannot be considered to be so extension wide spread and forceful as to disturb the normal life of the community thereby rudely shaking the balance tempo of the orderly life of the general public. In this connection, reference may be made to the case of (6) *Manu Bhusan Roy Prodhan Vs. State of West Bengal and Others*, . In the case of (7) *Dipak Bose alias Naripada Vs. State of West Bengal*, , the grounds of detention alleged that the detainee alongwith his associates armed with certain weapons including bombs committed murders of

two specified individuals in a public road on two different dates and thereby created panic and terror in the locality and disturbance of public order but nowhere it was stated that bombs were used in the commission of crime. The Supreme Court held that the grounds related to and fall within the area of law and order and were not relevant to the object of the Act viz., maintenance of public order for which the Act permits preventive detention. The detention was therefore illegal detention. The detention was therefore illegal. We find that in the instant case ground No.2 is irrelevant.

13. When one of the grounds fails the entire order of detention must be struck down as we cannot predicate what would have been the subjective satisfaction of the detaining authority in the absence of ground No.1.

The application succeeds. The rule is made absolute. The detainee be set at liberty forthwith.