
(1969) 09 SC CK 0064

In the Supreme Court Of India

Case No : Writ Petition No's. 170, 172 and 173 of 1969

Shri Ram Chauhan etc.

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 19-09-1969

Acts Referred:

Preventive Detention Act, 1950 — Section 3(1)

Citation : (1969) 1 UJ 677

Hon'ble Judges : Vishishtha Bhargava, J;J. M. Sehlat, J;C. A. Vaidyalingam, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Vaidialingam, J.—In these three applications, under Article 32, for writs of habeas corpus, the applicants challenge the orders of detention, dated March 1, 1969, passed against them by the Lieut. Governor of Delhi, u/s 3(1)(a)(ii) of the Preventive Detention Act, 1950 (Act IV of 1950) hereinafter referred to as the Act).

2. In view of the common questions raised, all these three writ petitions are being dealt with together, and we shall briefly refer to the facts in each case. In M P. No. 170 of 1969, the petitioner claims to have been arrested on November 15, 1968, under a case registered as F.I.R. No. 126 of 1948, dated November 2, 1968, on the file of the Police Station, Mehrauli. The petitioner avers that he has been discharged by the Magistrate on March 3, 1969, nevertheless he has been kept in detention illegally. The Officer on Special Duty, Home, Delhi Administration, in the counter affidavit dated March 1, 1969, has stated that the petitioner was arrested in pursuance of the order, dated March 1, 1969 of the Lieut, Governor, Delhi, passed u/s 3 (1) (a) (ii) of the Act and the said detention order was passed with a view to safeguarding the security of the State. It is further stated that the petitioner was a resident of "Village Dudiana Khurd, District Hoshiarpur and at the time of issuing of the order of detention he was working as a Lower Division Clerk in the Central Reserve Police, Diwan Kothi,

Jammu & Kashmir. In the further affidavit, filed in this Court after rule nisi was issued by this Court on July 28, 1969 it has been stated on behalf of the respondent as follows :

The petitioner was employed in the Military Intelligence Directorate as Havildar Clerk. It came to the notice of the authorities that he used to meet the officials of the Pakistan High Commission and that he supplied certain maps belonging to the military authorities which were relevant from strategic point of view, after receiving remuneration from the Pakistan Officials. On these allegations a First Information Report was lodged with the Police Station, Mehrauli and registered as F.I.R. 126 of 1968- The petitioner was produced before the Sub Divisional Magistrate on Nov. 25, 1968 on which date he made a confessional statement. These materials were placed before the Lieut. Governor for considering the necessary action to be taken against the petitioner. The Lieut Governor was satisfied that the detention of the petitioner was necessary since his remaining at large would be against the security of the state and, accordingly, passed the order of detention on March 1, 1969 u/s 3 (1) (a) (ii) of the Act. In pursuance of this order the petitioner was detained on March 3, 1969 The grounds of detention dated March 6, 1969 were served on the petitioner on March 7, 1969 within the period provided u/s 7 of the Act. The matter was referred to the Advisory Board u/s 9, on March 12, 1969. The Petitioner, on his own request, appeared before the Advisory Board on April 7, 1969. On April 19, 1969 the Advisory Board found that there was sufficient cause for the detention of the petitioner. The Lieut Governor by his order dated May 6, 1969 confirmed the order of detention.

3. The order of detention shows that the Lieut Governor was satisfied that with a view to preventing the petitioner from acting in any manner prejudicial to the security of the State, it is necessary to make an order that the petitioner be detained and, in consequence, an order was passed u/s 3 (1) (a) (ii) of the Act. In the grounds of detention served on the petitioner, reference is made to the petitioner, as Havildar Clerk in the Directorate of Military intelligence, Army Headquarters, New Delhi having access to the defence secrets vital to the safety and security of the State, visiting the mission of a foreign power at New Delhi in or about July/August 1967 and agreeing to supply defence secrets to them. Reference is also made to the petitioner having showed his identity cards and movement order to the agents of the foreign power to convince the latter that he was in a position to supply them defence secrets the disclosure of which would be prejudicial to the safety and security of India and useful to the enemy. It is further stated that the Administrator of the Union Territory of Delhi is satisfied, from the petitioner's said activities that he is likely to act further in a manner prejudicial to the defence of India and security and safety of India and therefore the order of detention is made to prevent him from so acting. There is a further statement that the Administrator of the Union Territory of Delhi considers it against the public interest to disclose to the petitioner facts other than those given in the grounds served on him.

4. In the rejoinder affidavit filed by the petitioner he has taken the plea that the grounds of detention are all vague, nonexistent and have no proximity to the date of the order of detention. In particular, he has stated that when the order of detention was passed, he was already in jail as an accused for a non-bailable offence and that therefore there could be no likelihood of his acting prejudicially to the safety and security of the country and the so called satisfaction of the detaining authority cannot be real. He further states that the authorities first implicated him in a police case and finding that they did not have evidence to prove the offence, they had resorted to preventive detention. He also states that his detention under the Act commenced on March 2, 1969 and the grounds were not furnished to him within the period specified u/s 7.

5. In writ Petition No. 172 of 1969, the petitioner Som Prakash Bansal, claims to have been arrested on November 14, 1968 on basis of a report F.I.R. No. 126 of 1968 dated November 2, 1968 and he claims that he was discharged on March 3, 1969 by the Magistrate. An order of detention was passed by the Lieut. Governor u/s 3 (1) (a) (ii) on March 1, 1969 and the petitioner claims that he has been illegally detained. He further avers that his detention was from March 2, 1969 and the grounds for detention have not been served within the period specified u/s 7 (1) of the Act. From the counter affidavit filed on behalf of the respondent it is seen that the grounds of detention, dated March 6, 1969 was served on the petitioner on March 7, 1969. The matter was referred to the advisory Board on March 12, 1969. This petitioner also appeared before the Advisory Board on April 7, 1969 and the Board, on April 19, 1969 expressed the view that there was sufficient cause for the detention of the petitioner. The detention as confirmed by the Lieut-Governor on May 6, 1969 The respondent has stated that the petitioner has made a confession before the Sub-Divisional Magistrate on November 23, 1968.

6. From the grounds of detention and the counter affidavits filed on behalf of the respondent it is seen that according to the respondent, this petitioner came into contact with the "officers of the Pakistan High Commission who promised a job for his brother Raj Kumar Agarwal (the petitioner in writ petition No. 173 of 1969) in case he was able to procure certain documents and maps of vital importance from the point of view of military strategy and that the petitioner was able to procure some documents and maps of such importance which were passed on by him to his brother, to be transmitted to the officials of the Pakistan High Commission for which remuneration was received. It is further stated that the administrator of the Union Territory of Delhi was satisfied that the said activities of the petitioner were prejudicial to the defence, security and safety of India and that the petitioner was likely to act further in a manner prejudicial to the defence, security and safety of India and with a view to prevent him from so acting, the order of detention was made.

7. Coming to the petitioner in Writ petition No. 173 of 1969, Raj Kumar Aggarwal, he also claims to have been arrested on November 3, 1968 under the

same N.I.R. No. 125 of 1968. He also pleads that he has been discharged by the Magistrate on March 3, 1969. He further states that the order of detention was made on March 1, 1969 and he was detained by the respondent with effect from March 2, 1969. The same grounds of attack, as in the connected petitions, against the detention order, are also made by this petitioner, regarding his detention. From the counter affidavit filed by the respondent, the following facts emerge. The grounds of detention were communicated to the petitioner on March 7, 1969 and the matter was referred to the Advisory Board on March 12, 1969. This petitioner also appeared before the advisory Board on April 7, 1969, by its order dated April 19, 1969 the Board held that there were sufficient grounds for detaining the petitioner. The order of detention was confirmed by the Lieut. Governor on May 6, 1969. It is also stated that this petitioner made a confessional statement before the Sub-Divisional Magistrate on November 16, 1965. The grounds for detention against this petitioner were also more or less similar that he maintained secret contact with the agents of the Foreign Power in New Delhi for supply of vital secret defence information.

8. Before us, Mr. Garg, learned counsel appearing as amicus curiae for the petitioners, has mainly urged two grounds of attack : (1) that the grounds of detention have not been communicated to the petitioners within the period specified u/s 7 (1) of the Act and, as such the detention is illegal. (2) That the orders of detention, passed when the petitioners were in Jail pending investigation under F.I.R. registered by the police for non-cognizable offences, were bad in law, especially when the petitioners had been discharged by the Magistrate.

9. In view of the common questions raised all these three writ petitions are being dealt with together, as we have already stated. Regarding the first ground of attack, it is necessary to refer to the facts relating to the dates when the petitioners were detained, as well as the dates of communication of the grounds of detention. There cannot be any controversy that u/s 7 (1) of the Act, the authority making the order of detention is bound to communicate to the detenu the grounds on which the order has been made and that should be done 'as soon as may be, but not later than 5 days from the date of detention' Each of the petitioners claims that he has been detained, under the Act not from March 3, 1969 as stated by the respondent, but really from 'March 2, 1969. There is no controversy that the order of detention in respect of the petitioners was passed by the Lieut. Governor on March 1, 1969. Again, there is no controversy that the grounds of detention were furnished to each of the petitioners on March 7, 1969. But, while according to the respondent all these petitioners were detained on March 3, 1969 the date when they were discharged by the Magistrate in respect of F.I.R. 126 of 1969, the petitioners plead that they have been detained from March 2, 1969- From the records that have been, produced before us, by the respondent, it is clear that the orders of detention, dated March 1, 1969 were served on the petitioner on March 3, 1969 and they have acknowledged receipt of the same, on the same date. The jail records and other registers which have

been referred to us, also show that all these petitioners were released on March 3, 1969 in pursuance of the discharge order passed on that date by the Additional District Magistrate, South Delhi. After such release, the petitioners were served with the detention orders and were detained only on March 3, 1969. It is clear from these circumstances that the petitioners were detained only on March 3, 1969 under the detention orders. Therefore the first contention raised by Mr. Garg, based upon Section 7 (1) of the Act, on behalf of the petitioners, fails.

10. Regarding the second ground, it is doubt true that the Additional District Magistrate, South Delhi, passed an order on March 3, 1969 discharging the petitioners who were arrested in F. I. R. No. 126 on the file of the Police Station, Mehrauli, dated November 2, 1968. The petitioners, along with certain others, were no doubt arrested on different dates on the basis of this F. I. R. for offences u/s 3 read with Section 5 of the Official Secrets Act and Section 120B of the Indian Penal Code. The Deputy Superintendent of Police, C. I. D. Special Branch, Delhi, who investigated F. I. R. 126 dated November 2, 1968 has filed an affidavit, dated September 2, 1969 to the effect that the complaint with regard to Raj Kumar Agarwal (Petitioner in W. P. 173 of 1969) and the other petitioners along with others was investigated. He further states that the allegations against the petitioners related to the collection and passing of secret information to a foreign Mission in Delhi. In pursuance of the investigation, the Officer states, that the petitioner in W. P. 173 of 1969 was arrested on November 3, 1958 and the other two petitioners on November 15, 1965. All of them were produced before the Magistrates before whom they made confessional statements. It is further stated that the case of the petitioners was sent to the Lieut. Governor and the petitioners were not rescued under the F.I. R. and they were hence discharged by the Additional District Magistrate on March 3, 1969 on the application of the police. It is further stated that the only action taken against them was under the Preventive Detention Act on the orders of the Lieut Governor.

11. The order of the District Magistrate, dated March 3, 1969 shows that the investigating officer represented that as sufficient evidence to provide the case could not be collected, they may be discharged. The District Magistrate, accepting this representation, passed an order of discharge on March 3, 1969. From the affidavit of the Deputy Superintendent of Police and the order of the District Magistrate, it is clear that proceedings by way of prosecution under the F. I. R. against the petitioners have been dropped and the only action taken against them is under the Act. The question, therefore is whether the order of detention, passed under such circumstances, is valid.

12. It is now well established, by decisions of this Court (i) that the reasonableness of the satisfaction of the detaining authority cannot be questioned in a Court of law for the reason that the satisfaction of the detaining authority to which Section 3 (1) (a) refers, is 'subjective satisfaction' (ii) that the adequacy of the materials on which the said satisfaction purports to rest, cannot

be examined in a Court of law; and (iii) that the satisfaction that is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is the basis of the Order u/s 3 (1)(a) of the Act.

13. Mr. Garg, learned counsel for the petitioner, no doubt urged that when the petitioners had been attempted to be charge-sheeted and prosecuted for substantially the same acts mentioned in the grounds of detention and when they have been discharged by a Magistrate, the order of detention passed cannot be sustained. In this connection, Mr. Garg referred us to the decision of the Full Bench of the Bombay High Court in *Malyali v. Commissioner of Police*(1). In our opinion that decision does not assist the petitioners case. The Court there found that after investigation into the offence for which the persons therein had been arrested and without taking the necessary steps which are mandatory under the CrPC, the authorities resorted to passing an order of detention. Such an order of a detention was held to be bad by the High Court on the ground that the purpose of detaining the party concerning that case was for a collateral purpose and that was to deprive him of his rights and safeguards under the Criminal Procedure Code and to carry on an investigation without the supervision of the Court. In the case before us the reasons for not prosecuting the petitioners on the basis of F. I. R. 126 of 1968 are evident from the order of the Additional District Magistrate dated March 3, 1969 and also the affidavit of the Deputy Superintendent of Police, C. I. D., Special Branch, Delhi, dated September 2, 1969. After it became reasonably clear that the proceedings connected with F. I. R. 126 of 1968 cannot be continued and that the petitioners will be released by the Magistrate, in anticipations of this release, the Lieut. Governor passed the order was served on the Petitioners on March 3, 1969 after they were actually released in pursuance of the order of the District Magistrate, Though it has not been very clearly stated in the counter affidavits filed by the respondents that the petitioners were released on March 3, 1969 in pursuance of the order of the District Magistrate and after such release, orders of detention were served on the same day, these facts are borne out by the jail registers, and records referred to by us earlier which support the plea of the respondents in this regard.

14. Therefore the position in the cases before us is that the petitioners were detained only after they were released by the Magistrate, though the order of detention is dated March 1, 1969.

15. In this connection the following observations of this Court in *Rameshwar Shaw v. District Magistrate, Burdwan* (2) are opposite :

16. Mr. Sen has, however, relied on the decision of the Assam High Court in *Sahadet Ali v. The State of Assam and Ors.* (3). In that case, it appeared that the Government had decided in public interest to abandon the prosecution which was pending against the detenu. The said decision was duly conveyed to the police and so, the police reported u/s 173 of the Criminal Procedure Code for the release of the detenu. In anticipation of the release, the order of detention was passed against him and it was served on him after he was actually released.

These facts clearly illustrate how an order of detention can be passed against a person even though he may be in detention or jail custody, and also show that the said order should be served on the detenu after he is released. The test of proximity of time is fully satisfied in such a case and no invalidity or infirmity is attached to the making of the order or its serve. Therefore, we do not think that the decision in Sahadat Ali's case (3) is of any assistance to Mr. Sen."

17. The above observations were not doubt made by this Court in a case where an order of detention was made and served while he was in judicial custody as an under-trial prisoner in connection with a criminal case pending against him, and such an order was set aside by this Court. Counsel for the respondent-District Magistrate in that case attempted to justify the legality of such an order by referring to the decision of the Assam High Court in Sahadat Ali's case (3). That case was distinguished by this court, as is seen from the extract quoted above. In the case before us, it is evident that the respondent passed the order on March 1, 1969 when it was reasonably clear that the petitioners would be discharged by the Magistrate under the F.I.R. and the orders were served on the petitioners only on March 3, 1969 and they were detained after they were released in accordance with the orders of the District Magistrate. The orders of detention passed under those circumstances, cannot be legally assailed. Therefore the second ground of attack against the order of detention, also fails.

All the three writ petitions, in consequence, are dismissed.