

(1967) 01 CAL CK 0013
In the Calcutta High Court
Case No : Criminal Misc. Case No. 378 of 1966

Sidhya Gopal Misra Represented by Sm. Nalini Misra, mother, APPELLANT
Detenu

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 19-01-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 491
Preventive Detention Act, 1950 — Section 3, 3(1), 3(2), 7

Citation : AIR 1968 Cal 101 : (1968) CriLJ 307

Hon'ble Judges : R.N. Dutt, J; A.K. Das, J

Bench : Division Bench

Advocate : A.K. Dutta and Amiya Narayan Mukherjee, for the Appellant; S.N. Banerjee, D.L.R. and A.K. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—This is an application u/s 491 of the Criminal Procedure Code for issue of a Writ in the nature of Habeas Corpus directing the respondent. State of West Bengal to release the petitioner Sidhya Gopal Misra from detention.

2. The petitioner is a resident of Suri town within the district of Birbhum and was living with his widowed mother and his elder brother who was himself a student of the local college. His father was a local landlord and had considerable properties at Suri and other places in the district of Birbhum. He was a student of the I. T. I School at Suri. On May 6, 1966 an order under Sub-section 3 (2) of the Preventive Detention Act, 1950 (Act 4 of 1950), purported to be passed by respondent No. 4, District Magistrate at Suri was served on him and he was taken into custody. The petitioner contends that his father was lying seriously ill for several years before his death and practically became invalid for more than 6 years. During this period interested persons and relations became inimical to them with intent to grab the properties and started making false allegations against him. These persons colluded with the local police officers and made

unlawful and unauthorised demands from them and threatened to put them to trouble As a result false allegations started to be made against him since about 1961 when he was only 14, and this impugned order under the Preventive Detention Act was served on him and he was taken into custody. The petitioner contends that he was not given any opportunity of being heard and was not heard against this order under the Preventive Detention Act and his case was not placed before the Advisory Board. The petitioner further states that the alleged criminal charges were made and alleged to have happened when he was a minor and in any case they are too remote and of distant dates to justify an order under the Preventive Detention Act. The grounds besides were also too vague, remote and indefinite as a result of which he was prevented from making effective representation to the Advisory Board. This application has therefore been filed through his mother for an order u/s 491 Cr. P. C. directing the respondent State of West Bengal to release him from detention.

3. On behalf of the respondent, the District Magistrate of Birbhum has sworn an affidavit-in-opposition supporting all the grounds given in the order of detention. The District Magistrate has specifically denied that the order of detention was passed by him as a result of any manipulation by Officer-in-charge of Suri Police Station; he has stated that he himself issued the order of detention being personally satisfied on a consideration of all material facts and particulars in the report of the Superintendent of Police that it was absolutely necessary for the maintenance of public order in the locality that the petitioner be put in preventive detention. He has further stated that the detenu made a representation on the 17th May, 1968 dealing with the grounds set out in the grounds of detention and that at no point of time did he complain of any vagueness or indefiniteness of any of the said grounds nor did he call for any further particulars from him regarding any of the grounds set out in the grounds of detention. The District Magistrate in his affidavit has further stated that the detenu's representation against the order of detention was duly placed before the Advisory Board which considered the representation and upheld the detention order. The affidavit further discloses that there was an enquiry by the Sub-divisional Officer on the allegations made by the detenu's mother against the Officer-in-charge but the allegations were found to be groundless. The Officer-in-charge Byomkesh Bhattacharjee has also sworn a support-tag affidavit stating that he was never at Suri Police Station during the period 1961-62 when the complaints were recorded against the detenu at the police station nor did he enquire into any of these. He also denied that he ever proposed to purchase any tank or any other property from the mother of the detenu or that he had any grudge against the detenu or made any false complaint and reports against him.

4. On May 6, 1966 the order of detention signed by the District Magistrate for Birbhum was served on the petitioner and the order reads as follows:

** * *

Government of West Bengal. Office of the District Magistrate, Birbhum (Suri)

ORDER

No. 896-C. Dated 6-5-66.

Whereas I am satisfied with respect to the person known as BAG alias Sidhya Gopal Misra son of late Kumud Bandhu Misra of Seherapara (Suri), P. S. Suri, District Birbhum, that with a view to preventing him from acting in a manner prejudicial to the maintenance of public order, it is necessary so to do.

Now, therefore, in exercise of the powers conferred by Section 3(2) of the Preventive Detention Act 1950 (Act IV of 1950), I make this order directing that the said "BAG" alias Sidhya Gopal Misra be detained.

Given under my hand and seal of office.

Sd/- M. Kar Gupta. District Magistrate, Birbhum. 6-5-66.

Seal of the District

Magistrate of Birbhum.

** ** *

The annexure to this order discloses 8 grounds between the period from January 21. 1961 and the date of detention. The grounds Ka to Ma mention incidents in the years 1961 and 1962 and the grounds Cha to Ja from September 1965. The grounds stated do not disclose any incident of the years 1963 and 1964 and the learned advocate for the petitioner Mr. Ajit Kumar Dutta has therefore argued that the grounds for the years 1961 and 1962 are too remote and as such should not be considered as sufficient grounds for detention. In support of his contention the learned advocate has referred to Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, In that case both when the order was passed and when it was served on Rameshwar he was held in jail in connection with the criminal case pending against him and it was not known how long he would remain in jail in that connection. The main question that was decided in Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, was that where a person who was already in jail for an indefinite length of time in connection with the criminal case pending against him, it would not be possible for the authority to come to the conclusion that such a person's detention is necessary in order to prevent him from acting in a manner prejudicial to public safety etc. It was pointed out that the scheme of the section postulates that if the order of detention is not passed against a person he would be free and able to act in a prejudicial manner; but when the person against whom an order is passed is already in jail for an Indefinite length of time or for long time to come it could hardly be said that such t person would act in a manner prejudicial to the public safety unless he is detained. That consideration will not apply to the present case. A similar question was considered in the case of Sahib Singh Dugal Vs. Union of India (UOI), . The petitioner in this reported case had been in jail for about three months before the detention order was made that the criminal case

could not succeed for want of sufficient evidence, it applied for discharge. Thereafter an order for detention was passed. The learned Judges held that detention order is generally passed in the light of the evidence about the past activities of the persons concerned. These past activities should however ordinarily be proximate in point of time to justify the detention order. The learned Judges held that in the present case the petitioner had been in jail for only three months before the order of detention was passed against him. It could not therefore be said that the conduct of the petitioner before this period of three months was not proximate enough to justify an order of detention based on that conduct. It is true that in the present case, the earlier grounds relate to years 1961-62, but there is a continuity and a certain family likeness demonstrating a tendency to behave in a particular manner, which is calculated to affect the maintenance of the public order of the locality. In the case reported in *Saberuddin Shaikh Vs. State of West Bengal and Others*, it has been held that the detaining authority may reasonably have waited and watched the activities for the entire period before the order of detention was passed and no inference of mala fide can be drawn from that. In the present case there is a continuity of acts prejudicial to the maintenance of public order and as such the remoteness of some of the activities is no ground to invalidate an order of detention.

5. Mr. Dutta has next urged that the object of the order of detention is maintenance of public order but so far as ground No. 1 is concerned, that question would not arise. This relates to petitioner's activities in so far as he insulted the girls and women in public places and of using violent and abusive language and actually assaulting out Ashutosh Majumdar who protested against such conduct. Apparently such conduct is likely to result in breach of public peace and order and this argument therefore cannot be accepted. Mr. Dutta has also urged that some of the grounds at least are too vague to enable the detenu to make an effective representation to the Advisory Board and in support he has referred to the ground No. Kha. This ground No. Kha not only gives the date and the hour of the incident but the District Magistrate's affidavit discloses that the petitioner did not make any representation for further or better particulars nor did he raise any objection in his representation to the Advisory Board on the ground of vagueness. The Preventive Detention Act provides that the detenu shall be furnished as soon as may be, with the grounds on which the order is made and has to be afforded the earliest possible opportunity of making representation against the order. If the grounds are not sufficient to enable the person detained to make a representation he can rely on his second right and if he likes, he may ask for particulars which would enable him to make the representation. On an infringement of these two rights the detained person has a right to approach the Court and complain that there has been an infringement of his fundamental right. This view has been taken in the case reported in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, . A similar view was taken by a Division Bench of this Court in the case reported in *Priyatosh Mazumdar on behalf of Jogeshwar Mazumdar Detenu Vs. State of W. Bengal and Others*, where it has been held

that though the High Court has no power to examine the truth or falsity of the grounds, it has the power to see whether the detenu has been enabled to exercise his constitutional right of making an effective representation against the order he complains of. This really resolves itself to the question of vagueness or imprecision of the grounds. Whether the grounds are sufficient in the opinion of the detaining authority for the purpose of inducing its subjective satisfaction in making the order of detention is a matter which is entirely outside the purview of the Court's consideration. The same view is reiterated in another decision reported in *Saberuddin Shaikh Vs. State of West Bengal and Others*, . It was held that the High Court did not possess the power of investigating the truth or falsity of the particulars upon which an order of detention is based. It can only confine its consideration to the question whether the detenu has been enabled to exercise his constitutional right of making an effective representation against the order made. It was pointed out that whatever be the rival versions, the High Court is only concerned to see whether any material exists which would warrant the plea that the order was vitiated by bad faith. We have already found that the grounds given are not vague and in any case, the detenu made representation and did not ask for further or necessary particulars on the grounds. If the detenu feels embarrassed by reason of want of necessary details, he has the right to ask for further necessary particulars and that right follows from his other right to make an effective representation before the authority is concerned. This objection therefore cannot hold good.

6. Mr. Dutta next argued that some of the grounds were too trifling or too remote and if any of them goes out the order of detention could not be supported, as the decision of the detaining authority might be otherwise in the absence of this ground. The same point arose in the case earlier referred to in *Priyatosh Mazumdar on behalf of Jogeshwar Mazumdar Detenu Vs. State of W. Bengal and Others*, earlier referred to a Division Bench of this Court held that while the Court should not uphold an order of detention in spite of invalidity of some of the reasons or grounds it is its duty to be satisfied as to whether the allegedly vague irrelevant ground is such as, if excluded, might reasonably have affected the subjective satisfaction of the authority concerned. If some ground or reason appears to the Court to be of comparatively unessential nature, the order of detention cannot be held bad, merely because there are one or two such particulars amongst a number of others upon which an order of detention has been made. An order of detention is made on the totality of the facts contained in the particulars attached to the ground and it would not be right to take a particular ground and study it in isolation from the rest. It is necessary to take the particulars together and in order to see whether they could have reasonably produced the personal satisfaction of the authority making the order and whether all of them were such as to have enabled the detenu to make an effective representation against the order. The satisfaction is the subjective satisfaction of the detaining authority and it is well settled that the Court cannot substitute its own satisfaction in that place. The Supreme Court has held in *The State of*

Bombay Vs. Atma Ram Sridhar Vaidya, earlier referred to that there is nothing in Article 22(5) to warrant the view that the ground on which the order of detention has been made must be such that, when communicated to the person detained, they are found by a Court of law to be sufficient to enable him to what the Court considers to be an adequate representation.

7. It is then urged that the incidents in any case were petty incidents and the alleged satisfaction of the detaining authority is not bona fide. We have already held that it is the subjective satisfaction of the detaining authority that matters and that the High Court has no power to examine the truth or falsity of the grounds. Sufficiency of the grounds for the purpose of inducing satisfaction of the authority concerned is entirely different and what this Court is concerned with is its sufficiency in relation to detenu's right to make an effective representation.

8. In the result, we find that the requirements of law for furnishing the detenu with grounds on which the order has been made, have been complied with and that the grounds are not also vague or too remote. Indeed the detenu made a representation and did not complain about vagueness of the grounds nor did he apply for further or better particulars to enable him to make a representation which was considered by the Advisory Board. The affidavit-in-opposition a worn by the District Magistrate clearly stated that he had taken all the materials into consideration before passing the order of detention and that he was satisfied that his detention was necessary for maintenance of public order. What matters is the subjective satisfaction of the detaining authority and it cannot be said that the order was passed mala fide and this Court will not therefore interfere with the order of detention.

9. The application is therefore rejected.

R.N. Dutt, J.

10. I agree.