
(1974) 09 CAL CK 0001
In the Calcutta High Court

Tarapada alias Khokan Chatterjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 02-09-1974

Acts Referred:

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

Citation : (1975) CriLJ 1263

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

Bench : Division Bench

Judgement

Bimal Chandra Basak, J.—This is an application for a writ in the nature of Habeas Corpus directed against an order passed by the District Magistrate, Murshidabad on the 11th April, 1974, in exercise of power conferred by Sub-section (1) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971. By the said order the petitioner detenu was directed to be detained with a view to preventing him from acting in any manner prejudicial to the maintenance of public order,

2. The grounds relied upon in support of such detention, which were served on the petitioner, read as follows;-

1. On 20-1-1974 noon at 12.00 hrs. you called Shrimati Radharani Haider w/o. Shri Manindra Haider of godown colony, P. S. Raghunathganj to your house on a false plea, wrongfully confined her and tried to outrage her modesty by force as a result she sustained injuries. This daring and violent act to outrage the modesty of a woman in broad daylight created panic and consternation among the people of the locality and the current flow of life of the community was greatly disturbed. In consequence of your said activity public order was disturbed in the area and thus it attracts Section 3 (1) (a) (ii) of the Maintenance of Internal Security Act 1971 (Act 26 of 1971).

2. On 21-1-1974 morning at about 07.30 hrs. you called Shrimati Mineza Khatoon daughter of Sahash Molla of Omarpur, P. S. Raghunathganj to your

house wrongfully confined her and tried to outrage her modesty by force. This daring and violent act to outrage modesty of a girl in broad daylight created panic and alarm among the people of the locality and the current flow of life of the community was greatly disturbed. In consequence of your activity public order was disturbed in the locality and thus it attracts Section 3 (i) (a) (ii) of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971).

3. Mr. Dipak Sengupta appearing on behalf of the petitioner has made twofold submissions. Firstly he submits that the petitioner has challenged the subjective satisfaction of the detaining authority and stated that the allegation contained in the said grounds are false and mala fide having no basis in the fact. The petitioner had further . stated that the allegation contained in the said grounds are non-existent so far as the petitioner is concerned. It was further alleged that the petitioner did not act nor did he commit any offence as alleged. It was further alleged that the police had mala fide procured the instant order of detention from the detaining authority by putting up false reports and materials before him. In this connection our attention was drawn to paragraphs 7, 10, 14, 15 and 16 of the petition. There is no return to this rule and accordingly such statement should be accepted and it is to be held that such allegation so far as the petitioner is concerned is baseless and mala fide. Secondly he submits that incidents alleged relate to law and order and not public order.

4. We are constrained to accept the submission of Mr. Sengupta that the grounds are baseless and mala fide. In respect of these two grounds the petitioner has stated that the grounds are false and mala fide having no basis in fact. -He has further stated that the allegations contained in the said ground are non-existent so far as the petitioner is concerned. It is also stated that the petitioner did not act nor did he commit any offence as alleged. There is no denial of the same. No affidavit has been affirmed and filed on behalf of the detaining authority though this case has been appearing in the daily list for quite some time. It is now well established that when an allegation is made in the petition challenging the subjective satisfaction or alleging that the grounds are baseless or setting up an alibi or when mala fide is alleged, then the detaining authority must file an affidavit dealing with the same.

5. In the case of Mintu Bhakta Vs. The State of West Bengal, the petitioner alleged that the allegation against him were false and baseless since he was in the police custody at the relevant time. The Supreme Court observed that if the* petitioner's contention was to be accepted, the ground must necessarily be held to be baseless as it would obviously be impossible for the petitioner to have committed the acts alleged in that ground upon which the detaining authority was said to have reached its subjective satisfaction. In that case an affidavit was affirmed on behalf of the State but there only some bare assertions were made and a vague answer given. The said affidavit was described as inadequate and it was held that the allegations made in the petition remained unanswered and must consequently be accepted in the absence of any cogent reply thereto. In

the case of Samaresh Chandra Bose and Others Vs. The District Magistrate, Burdwan and Others, the Supreme Court observed that when there is a challenge to the bona fide of the officer making the order of detention it might as a rule be expected that the officer concerned would file an affidavit controverting that challenge. In the case of Arun Kumar Sinha Vs. The State of West Bengal, the Supreme Court observed that if the subjective satisfaction of the detaining authority is directly challenged it would be appropriate and satisfactory that the affidavit should be affirmed by the detaining authority himself.

6. In the case of Shaik Hanif and Others Vs. State of W.B., the Supreme Court held that failure to furnish the counter-affidavit by the detaining authority is an impropriety. It was further held that in most cases it may not be of much consequence, but in a few cases, for instance, where mala fide or extraneous considerations are attributed to the Magistrate or the detaining authority, it may in conjunction with other circumstances assume the shape of a serious infirmity leading the Court to declare the detention illegal. It is true that the court cannot go into question of sufficiency or adequacy of the grounds on the basis of which the subjective satisfaction is arrived at. Ordinarily the facts alleged in the grounds are conclusive. But if such subjective satisfaction is challenged on the ground that it was mala fide, baseless or any other ground which goes to the root of the matter, it is incumbent upon the detaining authority to affirm an affidavit. Failure to do so is vital because the allegations made in the petition remain unanswered and uncontroverted. Accordingly in the present case we are bound to accept the allegation of the petitioner and hold that the facts alleged in the grounds are baseless and non-existent so far as the petitioner is concerned and that the order was made mala fide and in colourable exercise of power.

7. So far as the second submission of Mr. Sengupta is concerned, there is a good deal of force in the argument of Mr. Sengupta. Law and order and public order are two different things as explained by Supreme Court from time to time. In this particular case it should be noticed that the incidents alleged took place not in a public street or a public place but inside a private house i.e., the house of the petitioner himself. It should be noticed that there is no question of using any force or intimidation in bringing the woman concerned to the house of the petitioner. In both the cases, the woman concerned came to the house of the detenu voluntarily, in one case on a false excuse. The members of the public as such were not involved. It is not alleged that incidents took place in the presence of the public or that the public came to rescue the woman concerned. In the case of Arun Ghosh Vs. State of West Bengal, the grounds of detention were as follows:

18-5-1966. Teased one Rekha Rani Berua, and when her father protested confined and assaulted him.

29-3-1968. One Deepak Kumar Roy was wrongfully restrained and assaulted with lathis and rods.

1-4-1968. Attempt was made to assault Deepak Kumar Roy at the Malda Sadar Hospital where he was being treated for his injuries in the previous assault.

2-9-1968. Threatened one Phanindra C. Das that he would insult his daughter publicly.

26-1-1968. Embraced Uma Das d/o. Phanindra C. Das and threw white powder on her face (Criminal case started).

7-12-1968. Obscenely teased Smt. Sima Das, sister of Uma Das and beat her with chappals.

18-12-1968. Smt. Sima Das was again teased.

28-1-1968. Threatened the life of Phanindra C. Das.

It was contended on behalf of the petitioner that these were stray acts directed against individuals and not subversive of public order. The Supreme Court discussed the law in question and considered several decisions and observed as follows:

Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from act directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embraces large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests woman in lonely places. As a result of his activities girls going to college and school are in constant danger and fear. Women going for their ordinary business are afraid of being way-laid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a

disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man, has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society.

8. It was further held in that case that the acts of molestation were directed against one particular family and were not directed against the woman in general from the locality.

9. Applying this test in the facts of the case before us, it is clear that this is not a case of public order. As already pointed out what happened so happened inside a house. The woman concerned in each case was not abducted or forced to come to the house of the detenu but she came there voluntarily. This is not a case of molestation of women in lonely places or any public place. It cannot be said that as a result of what happened inside the house, where the women voluntarily went, the girls or women of the locality were or could be in constant danger and fear. There is further no question of women going for their ordinary business being afraid, as a result of the said incidents, of being way-laid or assaulted. It cannot further be said that from the point of view of its potentiality and the effect upon the public tranquillity, the incidents alleged caused or could cause a disturbance in the even tempo of life which is the first requirement of public order.

10. In the case of *Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others*, the Supreme Court observed that a criminal act hitting a private target such as indecent assault of a woman or slapping a neighbour or knocking down a pedestrian while driving may not shake up public order. But a drunk with a drawn knife chasing women in a public street and all women running in public, a Hindu or Muslim in a crowded place at a time of communal tension, throwing a bomb at a personal enemy of the other religion and the people all scared, fleeing the area, a striking worker armed with a dagger stabbing a blackleg during a bitter strike spreading terror-these are invasions of public order although the motivation may be against a particular private individual. The nature of the act, the circumstances of its commission, the impact on people around and such like factors constitute the pathology of public disorder.

11. Applying such principle laid down by Supreme Court in the aforesaid decisions and various other decisions we accept the contention of Mr. Sengupta on this point after due and careful consideration and the alleged impact on people around we are of the opinion that this is a case of law and order and not public order.

12. Accordingly we accept both the contentions of Mr. Sengupta and hold that the

order of detention is illegal and invalid.

13. Accordingly the application succeeds and the Rule is made absolute. The petitioner/detenu be released forthwith.

Sudhamoy Basu, J.

14. I agree.