

PETITIONER:
SAMARESH CHANDRA BOSE ETC. ETC.

Vs.

RESPONDENT:
DISTRICT MAGISTRATE, BURDWAN

DATE OF JUDGMENT 14/08/1972

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
SHELAT, J.M.
KHANNA, HANS RAJ

CITATION:
1972 AIR 2481 1973 SCR (1) 859
1972 SCC (2) 476

ACT:
Maintenance of Internal Security Act No. 26 of 1971--Section 3(1) and 3(2), whether delay of 22 days in considering the representation of the detainees by the Government unjustified--whether violence practised against political opponents and police party affects public order--whether detention order passed against detainees in jail is per se mala fide.

HEADNOTE:
The detainees and some other persons belonging to CPI(M) killed a driver belonging to CPI. It was further alleged that the detainees attacked the police party with bombs. The detention order was issued while the detainees were still in custody. The detention was challenged, inter alia, on the ground that the detention was vague, that the alleged acts of violence did not raise any problem of public order and that the detention was mala fide. The detainees also challenged the validity of s. 17(a).

Dismissing the petition,
HELD : (i) The reasons given by the Government, for delay, namely, Pakistani aggression during Bangladesh war, go-slow movement of workers increase in the number of detention cases and spate of anti-social activities by Naxalites and other political extremists, were clear and convincing. There was no inordinate delay in the consideration of representations. Considering the facts of the case, the representations were considered with reasonable dispatch. [862E]

Ujagar Singh v. The State of Punjab, [1952] S.C.R. 755 and Amiya Kumar Karmakar v. State of West Bengal W.P. No. 190 of 1972, relied on.

(ii) The petitioners knew who the "political opponents" were and the detention order expressly stated the respective parties to which the petitioners and the victim belonged. The two grounds of detention are interlinked. It cannot, therefore be said that the petitioners did not get opportunity to make effective representation due to vagueness or ambiguity of grounds furnished. [865H]

(iii) It is quite clear that the, petitioners and associates had indulged in acts prima facie designed to terrorise

people to overawe their political opponents and to cow down the police force and all this must have inevitable effect of disturbing and paralysing the normal peaceful civil life of the general public. The magnitude and impact of the activities of the petitioners and his associates on the peace and tranquility of the law abiding orderly society clearly shows that the acts of the detenues raised problems affecting public order. [868D]

Shyamlal Chakraborty v. Commissioner of Police, [1970] 1 S.C.R. 762, relied on.

Sushanta Goswami, In re : [1969] 3 S.C.R. 138, Sudhir Kumar Saha v. Commissioner, Calcutta, [1970] 3 S.C.R. 360 and Arun Ghosh v. State of West Bengal, [1970] S.C.R. 288, distinguished.

(iv) The earlier discharge in a court of law cannot preclude the detaining authority from coming to a subjective satisfaction about the necessity

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of the petitioner's detention which is preventive in character. The detention order is not rendered illegal or mala fide simply because the order was passed when the detenues were still in jail. [868F]

(v) Challenge, to s. 17(a), introduced as an amendment by Defence of India Act, 42 of 1971 was not pressed.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 216-218 of 1972. Under Article 32 of the Constitution of India for the enforcement of fundamental rights.

Somnath Chatterjee, Narnarayan Gooptu, Pulakmondal and Rathin Das, for the petitioners.

D. N. Mukherjee and G. Mukhoty, for the respondents.

The Judgment of the Court was delivered by

Dua, J. These three writ petitions (Samaresh Chandra Bose v. District Magistrate, Burdwan & Ors. W.P. No. 216 of 1972; Shymal Biswas v. District Magistrate, Burdwan etc., W.P. No. 217 of 1972 and Dulal Chandra Das v. District Magistrate, Burdwan etc., W.P. No. 218 of 1972) raise common questions of law and fact and are, therefore, being disposed of by a common judgment. In fact the main arguments were addressed only in Samaresh Chandra Bose v. District Magistrate (W.P. No. 216 of 1972), the arguments of this case having been adopted in the other two cases. We would, therefore, refer to the facts in W.P. No. 216 of 1972,

Samaresh Chandra Bose who is employed as a Supervisor of Alloy Steel Plant, Durgapur was, according, to the common case of both sides arrested on October 13, 1971 and was an accused in Durgapur P.S. case (No. 33 dated October 14, 1971) under ss. 147/188/307, I.P.C. and under S. 6(3) of the Indian Explosives Act. According to the petitioner he was woken up while asleep in his quarters and arrested on the morning whereas according to the respondent he was arrested at about 8.15 p.m. from Tilak Road "B" Zone, Durgapur. It is alleged that the petitioner, along with his associates, Shyamal Biswas and Dulal Chandra Das (the two writ petitioners in the connected cases) and others had hurled a bomb towards a police party on patrol duty and after having done so they tried to run away, but they were chased and ultimately all three were apprehended. The petitioner, according to the respondent, was also wanted in connection with Durgapur P.S. case (No. 17 dated October 8, 1971). described by the petitioner in paragraph 8 of his writ petition to be under ss. 148/149/326/307/326/302, I.P.C. The

petitioner ,was discharged in both the aforesaid criminal cases on October

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28, 1971. After his discharge the petitioner was served with the detention order dated October 26 , 1971 made by the District Magistrate, Durgapur in exercise of the power conferred on him by s. 3(1) and (2) of the Maintenance of Internal Security Act, 26 of 1971 (hereinafter called the Act) and arrested on October 28, 1971.

On behalf of the petitioner Shri Somnath Chatterjee, his learned Advocate, submitted as the first ground of attack against the order of detention that the petitioner's representation to the State Government was not considered with due expedition as contemplated by Art. 22(5) of the Constitution. The representation was received by the State Government on November 23, 1971 but it was disposed of about 22 days thereafter on December 16, 1971. According to him the explanation for the delay furnished by the respondent is highly unsatisfactory and this inordinate delay has, therefore, rendered the petitioner's detention invalid.

it is not disputed that the representation received on November 23, 1971 was considered on December 16, 1971. The explanation given by the State for the aforesaid delay in considering the petitioner's representation is contained in paragraph 10 of the counter-affidavit, wherein it is averred :

"..... that the written representation of the detenu was duly considered by the State Government expeditiously and the same was rejected after due consideration. I further state that at that time due 'to influx of refugees and due to Pakistan aggression, most of the officers of the Home Department were very busy with serious problems which faced the country at that time and as, such the said representation of the petitioner could not be considered earlier. Moreover I further state that due to go-slow movement of workers launched co-ordination committee of the State Government Employees during the period September to November 1971 there was serious dislocation and delay in movement of files and disposal of cases. I further state that delay was also caused due to abrupt increase in number of detention cases during that time as the--re was spate of antisocial activities by Naxalites and other political extremists in the State. I state that all the above factors contributed towards the delay of about 28 days in considering the representation of the detenu petitioner."

This explanation in a nut-shell shows the following reasons for the delay in considering the petitioner's representation

(1) influx of refugees;

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(2) Pakistani aggression keeping most of the officers of the Home Department busy with the serious problems facing the country;

(3) go-slow movement of the workers launched by Co-ordination Committee of the State Government employees during the month of September to November, 1971 giving rise to serious dislocation and delay in the movement of files and disposal of cases;

(4) abrupt increase in the number of

detention cases;

(5) spate of anti-social activities by Naxalites other political extremists in the State.

Although according to Shri Chatterjee's submission this explanation is vague and ambiguous and does not disclose precise material on which the delay can be held by this Court to have been satisfactorily explained, we are unable to find any ambiguity or vagueness in it. In our opinion, the explanation contains distinct reasons based on facts which are quite clear, definite and relevant and they can legitimately be taken into account for determining whether the State Government had considered the petitioner's representation with reasonable despatch and expedition or had inordinately delayed its consideration. The explanation convincingly shows that there was no inordinate delay on the part of the State Government and that the representation was duly considered with reasonable dispatch or as expeditiously as practicable in the Peculiar circumstances of the case, thereby fully complying with the provisions of Art. 22(5) of the Constitution. This Court in *Ujagar Singh v. The State of Punjab*(1) while construing the words "as soon as may be" in s. 7 of the Preventive Detention Act, 4 of 1950 said that these words mean reasonable dispatch and what is reasonable dispatch depends on the facts of each case, it being not possible to set down an arbitrary time limit. Recently in a number of decisions this Court has taken a similar view. No precedent has been brought to our notice on the authority of which we may be obliged to hold that the reasons contained in the explanation before us do not satisfactorily account for the delay of 22 days and that the detention must on that account be held to have become invalid. On the other hand a recent decision of this Court dated July 31, 1972 in *Amiya Kumar Karmarkar v. State of West Bengal* (2) delay of 21 days in somewhat similar circumstances was held not to amount to inordinate delay so as to render the detention invalid.

(1) [1952] S. C. R. 756.

(2) W.P. No. 190 of 1972.

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Shri Chatterjee faintly contended that according to the verification of the counter-affidavit the contents of para 10 are based on information derived from the records and, therefore, this should more appropriately have been affirmed by the District Magistrate and not by the Deputy Secretary of the Home (Special) Department. This submission seems to us to be misconceived. In the State of West Bengal a Special Section of the Home Department has been created for the purpose of dealing with the law and order situation. In para 6(h) of the counter affidavit it is stated that on November 23, 1971 the Home Department (Special Section) received the petitioner's representation. From para 8 of the counter-affidavit it appears that the said representation was addressed to the Assistant Secretary, Home, (Special) Department. It is indeed this Department which, as suggested in para 24 of the counter-affidavit, has in its custody relevant records of the State Government from which the required relevant information has been derived by the deponent who is the Deputy Secretary of the Home (Special) Department, Government of West Bengal. He has affirmed that he has gone through the records kept in the Special Section and that he is well-acquainted with the facts and circumstances of the case. It is noteworthy that in this case there is no challenge to the bona fides of the officer (District Magistrate, Durgapur) making the order of deten-

tion : had there been such a challenge one might have as a rule expected the officer concerned to file an affidavit controverting that challenge. This contention is thus also unacceptable.

Shri Chatterjee also submitted that there is no material on the record suggesting that the Special Section itself did not continue to function effectively by reason of the five grounds contained in the explanation for the delay in the considering the petitioner's representation. According to the learned counsel this Section should not have taken more than just seven days for making available to the State Government the requisite material for performing its constitutional duty as contemplated by Art. 22(5). Shri Chatterjee indeed went to the length of suggesting that the explanation contained in the counter-affidavit was an after-thought. We are wholly unable to agree with this submission. The very fact that a Special Section of the Home Department was considered necessary to be created in the State of West Bengal for dealing with inter alia the cases of detainees, convincingly suggests that the situation there was far from normal; besides it is a matter of public history of which judicial notice can be taken, and indeed even Shri Chatterjee could not controvert it, that for several months preceeding the Indo-Pak war which began on December 3, 1971, there was a continuous influx of refugees (running into several millions) from what was then known as East Pakistan and is now free Republic of Bangla Desh and that

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on our eastern borders the situation was anything but normal, indeed, this unprecedented influx of refugees from the very nature of things could not but give rise to colossal problems affecting inter alia the law and order situation and maintenance of security in the State of West Bengal. Between November 23 and December 16, 1971, therefore, the entire Home Department in West Bengal, including its Special Section which owed its birth to the urgent need of dealing with the detenus and other allied problems, can legitimately be assumed to have been under considerable stress and strain on account of the vexed problem posed by the indiscriminate influx of refugees with unknown antecedents from across our eastern borders. We are, therefore, --, wholly unable to agree with Shri Chatterjee that there is no relevant material for holding that the working of the Special Section of the Home Department was also adversely affected for the reasons contained in the respondent's explanation.

The two grounds on the basis of which the petitioner has been detained are :

"On 8-10-71 at about 13-45 hours you along with your associates Dulal Chandra Das and 30/35 others, belonging to CPI(M) with a view to reduce your political opponents, to submission and passivity, being armed with lethal weapon like daggers etc. stopped D.S.P. Bus No. WGH 7664 forcibly between 24th and 26th street on Sibaji Road, throwing brickbats, pulled down the driver from the bus, assaulted him and stabbed Shri Jiten Chowdhury of 8/9 Akbar Road, a driver of D.S.P. Bus, belonging to CPI,

who was

travelling in the said bus and murdered him. Your act created a general sense of panic and insecurity in the minds of the residents of

the- area of Sibaji Road in A Zone Steel Township, who could not follow their normal avocations for a few days after the incident under the influence of terror.

2. Following a series of interparty clashes on 8-10-71 curfew orders were promulgated under section 144 Cr. P.C. in D.S.P. Township between 6 p.m. and 5 a.m. with effect from 8-10-71. On 13-10-71 during the curfew hours at about 20-15 hours you along with your associates Dulal Chandra Das and others belonging to CPI (M) being armed with lethal weapons like bombs, knives etc., attacked lorry no. WGD 536 in which police party under the leadership of H.C/1209 Anil Kumar Samanta of B Zone O.P. was on patrol duty. You hurled bomb aiming the police party with a view to kill

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them near street no. of Tilak Road The bomb missed them and it exploded on the road The police party the explosion chased you and your associates and could arrest you and 2 others, while others fled away. On search one knife and a cycle chain was recovered from possession of Samaresh Bose. Your act was intended to cow down the police and your political opponents by terror for promoting the objectives of the party to which you belong. By attempting to murder police personnel engaged in maintenance of public order in the residential township area within curfew period, you created a sense of panic and insecurity in the minds of local people to such an extent that they were hesitant to pursue their normal avocations for a considerable period after the incident."

The learned counsel faintly suggested that on December 8, 1971 the Indo-Pak war was at its height and, therefore, it is inconceivable that the incident mentioned in ground no. 1 could have occurred on that day because no one would have been so reckless as to dare to indulge in such a violent activity, when armed forces must be deemed to be present in the State in large numbers for fighting war on the eastern border. This contention is difficult to accept. The fact of the occurrence having taken place must be accepted as stated in the grounds because the subjective satisfaction of the detaining authority on this point is final. Indeed, it has also been affirmed in the counter-affidavit. Once the occurrence is accepted, then, even on Shri Chatterjee's own line of reasoning the necessity of the order for the detention of the petitioner and his associates would appear too obvious to require any further Proof. This occurrence highlights the terrorising character of the petitioner's party.

The learned counsel then urged that both the grounds are vague. because the expression "political opponents" has not been explained with precision. In our opinion the learned counsel is not quite correct in his submission. In ground no. 1 it is clearly stated that the petitioner his associates be on going to CPI(M), with a view to reduce the political opponents to submission and passivity, being armed with lethal weapons etc., stabbed Shri Jiten Choudhury, a driver of D.S P. (Durgapur Steel Project) Bus belonging to the C.P.I. (emphasis supplied). The political parties are,

therefore, quite clearly and specifically referred to in ground no. 1. It cannot be said that the petitioner was kept in the dark or that he was unable to understand the reference to the political opponents in this ground and was, therefore, not in a position to make a proper, effective representation. In ground no. 2 undoubtedly there is no reference to C.P.T. such as is found in ground no. 1. But in our opinion ground no. 2 has to be ,

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read and understood in the light of the reference made to the political opponents in ground no. 1. The two grounds have to be read together in this respect as they are clearly inter-linked. Reference in ground no. 2 to a series of inter-party clashes on ,October 8, makes the position further clear. Ground no. 2 states that the petitioner's act was intended to cow down the police and the political opponents by terror for promoting the objectives of the party to which he belonged. The petitioner's party being clearly specified in ground no. 1 which is inter-linked with ground no. 2, the challenge on the ground of vagueness or ambiguity in ,round no. 2 must be held to be devoid of merit.

Shri Chatterjee then said that this ground does not give rise to any problem of public order. We are unable to accept this submission. Attempting to murder police personnel engaged on patrol duty in the residential township area during curfew period in order to overawe them is, in our view, an act which would obviously create a feeling of panic, alarm and insecurity in the minds of the local inhabitants in general : it would also suggest that any one opposing the political ideology of the petitioner's party would be similarly exposed to violence at the hands of the petitioner and his associates, who are not afraid even of the police force. This clearly illustrates how direct and extensive is the reach of this crime on the general public. The faint suggestion that during curfew time the incident mentioned in ground no. 2 could not reasonably raise any problem of public order because there would hardly be many members of the public, present in the streets, seems to us to be misconceived. The incident is said to have taken place at about 8-15 p.m. on October 13, 1971 during curfew hours. The area in question in residential township area. People, though not moving about in the streets. would normally speaking be awake in their own houses and they could not be unaware of such a serious clash between the petitioner and his associates armed with bombs etc., on the one side and the police patrol Party on the other, on whom the bombs were hurled. This clash must have caused serious disturbance of peace and tranquillity in the locality and would inevitably had attracted attention of its residents. Attack with bombs and other lethal weapons on police patrol party in the circumstances cannot but have a grave impact on public order and on even tempo of the life of the community. People, though keeping in-door-; in their houses, would quite naturally get panic-stricken and feel frightened to move about freely in the performance of their normal daily activities: they are also likely to feel scared of moving out during curfew hours with the permission of the authorities concerned for doing even most urgent work. Reference was made, by Shri Chatterjee to the decision of this Court in Re : Sushanta Goswami(1) where the incidents relied upon by the

(1) [1969] 3 S. C. R. 138.

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detaining authority were held to relate only to the problem of law and order. The incidents there do not seem to bear any comparison with those before us and the petitioner's counsel also ultimately did not seriously press the point. The decision reported as Sudhir Kumar Saha v. Commissioner, Calcutta(1) deals with the case of stray incidents and does not constitute any binding precedent for the case in hand. Reference was further made to Arun Ghosh v. State of West Bengal(1) but there again the acts of the detenu were directed against the family of one individual and not against women in general in the locality. It was held in the reported case that the detenu's conduct however reprehensible did not create the situation where it could be said that the life of the community at large was being seriously disturbed or put out of gear : in other words that there was a breach, or likelihood of a breach- of public order. The reported case is clearly distinguishable acts imputed to petitioner in tilt else in hand directly raise problem of public order. The petitioner and his associates belong to a political party and the two , , rounds are founded on inter-linked incidents, which are closely related to inter-party clashes preceding the promulgation of the curfew order on October 8, 1971 following their political opponent Jiten Choudhury's murder. The second incident is a direct violent clash with the police force during the curfew period. It is, therefore, not possible to sustain Shri Chatterjee's contention that these two grounds do not raise the problem of public order. These facts seem to bear a close resemblance to those of Amiya Kumar Karmakar (Supra). On behalf of the respondent our attention was drawn to Shyamal Chakraborty v. Commissioner of Police, Calcutta (2) where the question was discussed in those words :

"The question which arose is this : do the grounds reproduced above relate merely to maintenance of order or do they relat

e to the

maintenance of public order ? It will be noticed that the detenu in each of these cases acted along with associates who were armed with lathes, iron rods, acid bulbs, etc. It is clearly said in ground no. 1 that he committed a riot and indiscriminately used acid bulbs, iron rods, lathis etc. endangering human lives. This ground cannot be said to have reference merely to maintenance of order because it affects the locality and everybody who lives in the locality. Similarly, in the second ground, he along with his associates prevented the police constables from discharging their lawful duties and thus affected everybody living in the locality.

(2) [1970] 3 S.C.R. 288.

(3) [1970] 3 S.C.R. 762.

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In ground no. 3, again the whole locality was in danger as the detenu and his associates were armed with deadly weapons and these were in fact used for indiscriminately endangering human lives in the locality. The object of the detenu seems to have been to terrorise the locality and bring the whole machinery of law and order to a halt. We are unable to say that the Commissioner of Police could not in view of these grounds come to the conclusion that the detenu was likely to act in a manner

prejudicial to the maintenance of public order in the future and it was necessary to prevent him from doing so. The fact that public order is affected by an act which was also an offence under the Indian Penal Code seems to us to be irrelevant."

The reasoning of this decision fully applies to the case before us. It is quite clear that the petitioner and his associates had indulged in acts prima facie designed to terrorise people, to over-awe their political opponents, and to cow down the police force. and all this must have the inevitable effect of disturbing and paralysing the normal, peaceful civic life of the general public. The magnitude of the impact of the activities of the petitioner and his associates on the peace and tranquillity of the law-abiding, orderly society clearly shows that they were directed to bring a halt to the machinery of law and order. This must necessarily raise a problem affecting public order. On these grounds the detention order cannot but be held to be justified. As a preventive measure this order rightly ensures protection of liberty of the public wrongfully endangered by the petitioner's terrorising activities.

The fact that the petitioner was discharged in a criminal case for the offences for which he was arrested on October 8, 1971 and that the detention order is dated October 26, 1971 when he was still in jail custody would not render the detention order either illegal or mala fide. After the order of discharge the petitioner was going to be released soon and if the detaining authority felt satisfied on the material before it which was germane to the object of detention, then, the petitioner's detention is not open to challenge in the present proceedings. His detention is preventive : he is to be prevented from acting in future in any manner prejudicial to the maintenance of public order. His earlier discharge in a court of law cannot preclude the detaining authority from coming to a subjective satisfaction about the necessity of the petitioner's detention on grounds which are germane and relevant.

Before closing we may refer to another point sought to be raised by Shri Chatterjee. He has referred us to the Defence of India Act, 42 of 1971 which came into force on December 4,

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1971. This enactment to amend the Act in several respects. It adds S. 17A after S. 17 and the new section provides

"Notwithstanding anything contained in the foregoing Provisions of this Act, during the period of operation of the Proclamation of Emergency issued on the 3rd day of December, 1971, any person (including a foreigner) in respect of whom an order of detention has been made under this Act, may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding two years from the date of his detention in any of the following classes of cases or under any of the following circumstances, namely :

(a) where such person had been detained with a view to preventing him from acting in any manner prejudicial to the defence of India, relations of India with foreign powers or the security of India....."

The learned counsel apprehending that this amendment of the Act may entail the petitioner's detention beyond a period of

12 months as contemplated in the unamended Act, desired to challenge this amendment.

In the counter-affidavit, however, it is averred in para 6A that the State Government, while affirming the petitioners order of detention directed on December 24, 1971 that his detention is to continue till the expiration of 12 months from the date of his detention. The present detention of the petitioner is in any event valid under the unamended Act. In view of this and of para 6A of the counter-affidavit Shri Chatterjee did not press his challenge to the validity of the aforementioned amendment. We are, therefore, not called upon to consider the effect of the said amendment on the present case. It would, however, be open to the petitioner to take whatever suitable steps are open to him after the expiry of 12 months from the date of his detention if he feels aggrieved.

No fresh arguments were addressed in the other two writ petitions and it was conceded that our order in W.P. No. 216 of 1972 would also cover the other two petitions. The final result is that all the three petitions fail and are dismissed.

S.B.W.
dismissed.
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Petitions