

PETITIONER:
CHOTKA HEMBRAM

Vs.

RESPONDENT:
STATE OF WEST BENGAL AND ORS.

DATE OF JUDGMENT 29/08/1973

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
ALAGIRISWAMI, A.

CITATION:
1974 AIR 432 1974 SCR (1) 563
1974 SCC (3) 401
CITATOR INFO :
F 1974 SC1155 (3)
F 1974 SC1796 (3)
R 1974 SC2151 (18)
D 1989 SC1234 (10)

ACT:
Maintenance of Internal Security Act, 1971 (Act 26 of 1971)
Sections 13 and 14(2)-Order of detention set aside by Court-
Fresh order of detention on same facts is invalid-Violates
ss. 13 and 14(2).

HEADNOTE:

An order for the detention of the petitioner was made under sub-section (2) of section 3 of the Maintenance of Internal Security Act, 1971 by the District Magistrate, Burdwan on July 3, 1972. A writ petition against that order was allowed by this Court by judgment dated April 19, 1973. In pursuance of this judgment the petitioner was released on April 28, 1973. Two days before the release of the petitioner the District Magistrate of Burdwan made a fresh detention order under s. 3 of the Act for the detention of the petitioner and based that order on the same grounds upon which the earlier order for the detention of the petitioner had been based.

Allowing the petition under Art. 32 against the fresh order of detention,

HELD : From the provisions of s. 14(2) of the Act it would follow that if an order for the detention of a person had been made under the Act and that order was either subsequently revoked or the period for which the detention order was made has expired, the said order would not stand in the way of, the making of a fresh order under section 3 of the Act against the same person provided, fresh facts arise after the date of the said revocation or expiry. If no fresh facts come into being after the date of revocation or expiry as may warrant the making of an order of detention. the requisite condition precedent to the making of the subsequent order would be non-existent and it would not be permissible to make a subsequent order of detention under section 3 of the Act.

In the present case, perusal of the grounds of detention made it manifest, that they related to incidents which took

place at a time prior to the revocation of the earlier detention order dated, July 3, 1972. In fact they related, to incidents which took place prior to the making of that order. As such those incidents could not provide valid grounds for the making of the subsequent detention order dated April 26, 1973. [565 B-F]

The impugment order was also violative of s. 13 of the Act which provides that the maximum period for which any person may be retained in pursuance of any detention order, which has been confirmed under s. 12, shall be 12 months from the date of detention. If for the same acts, repeated orders of detention can be made, the effect would be that for the same acts a detenu would be liable to be detained, for a period of more than 12 months. This would run counter to the whole scheme of the Act. [566A]

Masood Alain v. Union of India, A.L.R. 1973 S.C. 897, applied.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 841 of 1973.

Under Article 32 of the Constitution for a Writ in the nature of habeas corpus.

B. Datta, for the appellant.

M. M. Kshatriya and G. S. Chatterjee, for the respondents.
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The Judgment of the Court was delivered by KHANNA, J. This is a petition under Article 32 of the Constitution of India by Chotka Hembram for the issuance of a writ of habeas corpus.

An order for the detention of the petitioner was made under subsection 2 of section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971) (hereinafter referred to as the Act), by the District Magistrate of Burdwan on July 3, 1972. The petitioner by means of this petition challenged the validity of the aforesaid order for his detention. From the reply filed on behalf of the State of West Bengal it would appear that the petitioner was released on April 28, 1973 and a fresh order for the detention of the petitioner was made on April 26, 1973 by the District Magistrate of Burdwan during the pendency of the present petition-

The present petition, it may be mentioned, was sent from jail, by the petitioner on February 22, 1973. The petitioner is now being detained in pursuance of the fresh order of detention dated April 26, 1973. It is the validity of this later order of detention which is now being assailed before us on behalf of the petitioner.

After hearing Mr. Datta, who has argued the case amicus curiae, and Mr. Kshatriya on behalf of the State of West Bengal, we are of the view that the validity of the detention order dated April 26, 1973 cannot be sustained. The grounds of detention on the basis of which the petitioner was ordered to be detained by the District Magistrate on July 3, 1972 were as under :

"(1) On 8-11-71 at about 12.30 hours, you along with your associates viz. Kartick Pal and others belonging to CPI(ML), being armed with lethal weapons like daggers, tangi etc. attacked Karunamcy Pal (Congress-R) of Daoradanga, P.S. Bhatar, Distt. Burdwan and stabbed him to death near his house with a view to promoting the cause of the party to which you belong as he refused to join hands

with you. Your act created a general sense of insecurity and deterred the residents of the locality from following their normal avocation of life for a considerable period after the incident.

(2) On 14-1-72 at about 17.35 hours, you along with your associates viz. Kartick Pal and others belonging to CPI (ML) being armed with gun attacked Ram Krishan Sarkar by barricading the roads with pillars and shot at him from an unlicensed gun with a view to annihilating them to promote the cause of the party to which you belong, As a result, Constable 721 Rajaram Jadav received gun shot injuries. Your act created a general sense of insecurity and deterred the residents of the locality from follow in their normal avocations of life for a considerable period after the incident."

Precisely, these are the very grounds on account of which the fresh order of detention for the petitioner has been made on April 26, 1973.

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According to sub-section (2) of section 14 of the Act "the revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or State Government or an officer, as the case may be, is satisfied that such an order should be made' " It would, therefore, follow that if an order for the detention of a person had been made under the Act and that order was either subsequently revoked or the period for which the detention order was made has expired, the said order would not stand in the way of the making of a fresh order of detention under section 3 of the Act against the same person provided fresh facts arise after the date of the said revocation or expiry. If no fresh facts come into being after the date of revocation or expiry as may warrant the making of an order of detention, the requisite condition precedent to the making of the subsequent order would be non-existent and it would not be permissible to make a subsequent order of detention under section 3 of the Act. The order for the detention of the petitioner in the present case made on July 3, 1972 was revoked when this Court give its judgment in the case of Sambhu Nath Sarkar v. State of West Bengal W.P. 266 of 1972 decided on April 19, 1973(1). The petitioner was accordingly released on April 28, 1973. Two days before the release of the petitioner the District Magistrate of Burdwan made a fresh order under section 3 of the Act for the detention of the petitioner and based that order upon the same grounds upon which the earlier order for the detention of the petitioner had been based. Perusal of the grounds of detention makes it manifest that they relate to incidents which took place at a time prior to the revocation of the, earlier detention order dated July 3, 1972; in fact they relate, as they must in the very nature of things, to incidents which took place prior to the making of that order. As such, those incidents could not provide valid grounds for the making of the subsequent detention order dated April 26, 1973.

The provisions of sub-section (2) of section 14 of the Act were considered by this Court in the case of Masood Alam v. Union of India(2) and it was observed that "the power of preventive detention being an extraordinary power intended to be exercised only in extraordinary emergent

circumstances, the legislative scheme of sections 13 and 14 of the Act suggest that the detaining authority is expected to know and to take into account all the existing grounds and make one order of detention which must not go beyond a maximum period fixed. In the present case it is not urged, and indeed it is not possible to urge,, that after the actual expiry of the original order of detention made by the District Magistrate, which could only last for 12 days in the absence of its approval by the State Government, any fresh facts could arise for sustaining the fresh order of detention." This Court, in the circumstances, quashed the order of detention.

(1) [1973] 1 S. C. C. 856

(2) A. I. R. [1973] 8. C. 897.

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The matter can also be looked at from another angle. Section 13 of the Act provides that the maximum period for which any person may be detained in, pursuance of any detention order, which has been confirmed under section 12, shall be 12 months from the date of detention. It is, therefore, plain that the maximum period for which a person can be detained on account of specified acts should not exceed 12 months. If for the same acts repeated orders of detention can be made, the effect would be that for the same acts a detenu would be liable to be detained for a period of more than 12 months. The making of, a subsequent, order of detention in, respect of the same acts, for which an earlier order of detention was made, would run counter to the entire scheme of the Act. It; would, also set at naught the restriction which is imposed by section 13 of the Act, relating to the maximum period. for which a person can be detained, in pursuance of a detention order. In our opinion, the order of detention which was made by the District Magistrate, on April 26, 1973 contravenes the provisions of both section 13 and section 14 of the, Act. We, accordingly, accept the petition, quash the fresh order of, detention dated April 26, 1973 and direct that the petitioner be set at liberty forthwith.

G.C.

Petition granted.

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