

MOHD. SUBRATI ALIAS MOHD. KARIM

A

v.

STATE OF WEST BENGAL

November 14, 1972

[A. ALAGIRISWAMI, I. D. DUA AND C. A. VAIDIALINGAM, JJ.]

B

Maintenance of Internal Security Act (26 of 1971), s. 3 (1) and (2)
 —Scope of.

C

Duty of State to place before Court all matters relevant to the detention and of officers swearing to affidavits to be careful.

The petitioner committed thefts of electric copper wire and when challenged by the inhabitants of the area he and his associates hurled bombs at them. The thefts totally disrupted the electric supply for several hours in the areas concerned. The petitioner was detained by an order of preventive detention under s. 3(1) and (2) of the Maintenance of Internal Security Act, 1971. In a petition under Art. 32 he contended that he ought to have been proceeded against in a court of law and that the investigating agency did not put him on a regular trial for want of evidence.

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HELD: (1) (a) The Act was necessitated because in view of the prevailing situation in the country and the developments across the border the existing laws available to deal with the situation were found to be inadequate and it was considered necessary for urgent and effective preventive action, in the interest of national security, to have powers of preventive detention to deal effectively with threats to the defence and the security of India. Section 3 of the Act carries out the statutory purpose of preventive detention and has nothing to do with trial and punishment of persons for commission of offences. If, therefore, for any reason, it is not possible to successfully try and secure the conviction and imprisonment of the persons concerned for their past activities, which amount to an offence, but which are also relevant for the satisfaction of the detaining authority for considering it necessary that a detention order under s. 3 be made for preventing such persons from acting in a prejudicial manner as contemplated by the section, then the Act would indisputably be attracted and a detention order can appropriately be made. The detention order in such a case cannot be challenged on the ground that the detained person should have been tried for the offence committed or that proceedings under Chap. VIII Cr. P. C. could have been initiated against him. The Act creates in the authorities concerned, a new jurisdiction to make orders of preventive detention on their subjective satisfaction of grounds of suspicion of commission in future of acts prejudicial to the community. This jurisdiction is different from that of judicial trial in courts and of judicial orders for prevention of offences. Therefore, even an unsuccessful judicial trial or proceeding would not operate as a bar to the detention order, or render it *mala fide*. [1993 B-H; 994 A-C]

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Sahib Singh Dugal v. Union of India, [1966] 1 S.C.R. 313, *S. C. Bose & anr. v. C. C. Bose* [1972] 2 S.C.C. 607 and *Borjahan Gorey v. State of West Bengal* [1972] 2 S.C.C. 550 followed

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(b) The right to personal liberty is protected by the Constitution, but this liberty is not absolute and is not to be understood to amount to license to indulge in activities which wrongfully and unjustly deprive the community or society of essential services and supplies. The

A right of society as a whole is, from its very nature, of much greater importance than that of an individual, and in case of conflict between the two, the individual's right is subjected by the Constitution to reasonable restriction to the larger interests of society. [996 D-F]

(c) In the present case, the grounds of detention are clear, relevant and germane to the object and purpose for which preventive detention is authorised by the Act, and the detention order is not open to challenge.

B [996 B-D]

(2) This Court normally accepts without reservation the sworn affidavits of responsible officers on the assumption that the facts stated therein are absolutely true and that there is no mis-statement or concealment of relevant facts. It is therefore obligatory on the part of the State to place before the Court all the relevant facts relating to the impugned detention truly, clearly and with utmost fairness, and it is incumbent on the officer concerned, swearing the counter affidavit, to take good care to satisfy himself that what he states on oath is absolutely true according to the record. [996 F; 997 A-D]

ORIGINAL JURISDICTION : Writ Petition No. 307 of 1972.

Petition under Article 32 of the Constitution of India for a writ in the nature of *habeas corpus*.

D *Jagmohan Khanna* for the petitioner.

G. S. Chatterjee for the respondent.

The Judgment of the Court was delivered by

DUA, J.—The petitioner in these proceedings for a writ in the nature of *habeas corpus* under Art. 32 of the Constitution is one Mohd. Subrati *alias* Mohd. Karim detained in the Burdwan Jail pursuant to the impugned order of detention dated February 9, 1972 made by the District Magistrate, Burdwan in exercise of the powers conferred on him by sub-s. (1) read with sub-s. (2) of s. 3 of the Maintenance of Internal Security Act No. 26 of 1971 (hereinafter called the Act). The said District Magistrate, as is clear from impugned order, was satisfied that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it was necessary to make the order directing that he be detained. The ground of detention were duly served on him at the time of his arrest on February 11, 1972. Those grounds are:—

“1. That on 6-1-72 at about 03.30 hrs. you along with your associates including (1) Teka Bahadur son of Shri Harak Bir Bahadur of Hutton Road, P.S. Asansol, Dist. Burdwan, (2) Shri Ganesh Das, son of Shri Chote Das of Gour Mondal Road, P.S. Asansol, Dist. Burdwan committed theft in respect of electric copper wire (about 1500 ft. in length) at Hatgarui near Sen-Releigh Water Pump, P.S. Asansol, Dist. Burdwan. As a result of this theft, water supply as

well as electric supply in Sen-Releigh Housing Colony, P.S. Asansol, Dist. Burdwan was totally disrupted for about 8 hours to the sufferings of the people of the locality.

2. That on 12-1-72 at about 04.00 hrs. you along with your associates including (1) Teka Bahadur son of Shri Harak Bir Bahadur of Hutton Road, P.S. Asansol Dist. Burdwan (2) Ganesh Das, son of Shri Chote Das of Gour Mondal Road, P.S. Asansol, Dist. Burdwan committed theft in respect of electric copper wire (about 3000 ft. in length) from the electric poles at 'C' Block, Sen Releigh Housing Colony, P.S. Asansol Dist. Burdwan. When challenged by the inhabitants of the area, you and your associates hurled bombs towards them. By your act, electric supply was totally disrupted in 'C' Block area, Sen Releigh Housing Estate and its adjoining areas for more than 12 hours causing much inconvenience to the people of the locality."

The fact of making the order of detention was duly reported to the State Government on February 9, 1972, the date of the order. The State Government approved that order on February 21, 1972 and the necessary report submitted to the Central Government the same day. The petitioner, as stated by him in the petition for *habeas corpus*, was produced before and heard in person, by the Advisory Board on April 10, 1972. The Board, according to the respondent, gave its decision the same day. The representation made by the petitioner was received by the State Government on March 16, 1972 and considered by the said Government on March 22, 1972. The State Government confirmed the order of detention on May 5, 1972 and communicated its order to the detenu the same day.

The only submission pressed by Shri Jagmohan, the learned counsel appearing as *amicus curiae* in support of the writ petition, in assailing the order of detention is that, according to the return itself, two cases for theft of copper wires under s. 379, I.P.C. were registered against the petitioner and others at the Asansol Police Station (Case no. 16 dated 6th January, 1972 and case no. 20 dated 12th January, 1972), but as the witnesses examined under s. 161, Cr.P.C. were reluctant to depose against petitioner and his associates for fear of danger to their lives, the Investigating Officer submitted as true, his final report suspecting the petitioner and his associates. The order of detention was for this reason described by Shri Khanna as *mala fide* and, therefore, liable to be quashed. According to the learned counsel in such cases criminal trial is the only course open to the State and no order of detention is legally competent. The counsel added that

- A if the criminal trial fails or the case is not launched because it is liable to fail, the State has to remain content with the result. It cannot deprive the suspected person of his liberty under the Act. We are unable to accept this contention.

- B The Act was brought on the statute book in 1971 in order to provide for detention in certain cases for the purpose of maintenance of internal security and matters connected therewith. Its enactment was necessitated because in view of the prevailing situation in the country and the developments across the border it was considered necessary for urgent and effective preventive action in the interest of national security, to have powers of preventive detention to deal effectively with threats to the defence and the security of India because the existing laws available to deal with the situation were not found to be adequate. The emergent requirement for such a law would be obvious from the fact that before its enactment it had been considered necessary to promulgate the Maintenance of Internal Security Ordinance, 1971 which was replaced by the present Act. Under s. 3(1) of the Act, the Central Government or the State Government may, if satisfied with respect to any person, that with a view to preventing him from acting in any manner prejudicial to, *inter alia*, the security of the State or the maintenance of supplies and services essential to the community, it is necessary to do so, make an order directing that such person be detained. Sub-section (2) of this section authorises District Magistrates and certain other officers, if satisfied as above to exercise the power conferred by sub-s. (1). It is quite clear that this section carries out the statutory purpose of preventive detention and it has nothing to do with trial and punishment of persons for commission of offences. Indeed, it is precisely because the existing law providing, for the punishment of persons accused of commission of offences and, for prevention of offences, is not found adequate for dealing with the situation for effectively preventing, in the interest of national security etc., the commission of prejudicial acts in future, that the provisions of this Act were enacted and are intended to be utilised. If, therefore, for any reason it is not possible to successfully try and secure the conviction and imprisonment of the persons concerned for their past activities, which amount to an offence, but which are also relevant for the satisfaction of the detaining authority for considering it necessary that a detention order under s. 3 be made for preventing such persons from acting in a prejudicial manner as contemplated by that section, then, the Act would indisputably be attracted and a detention order can appropriately be made.
- H The detention order in such a case cannot be challenged on the ground that the person ordered to be detained was liable to be tried for the commission of the offence or offences founded on his conduct. on the basis of which, the detention order has been

made or that proceedings under Chapter VIII, Cr.P.C. could be initiated against him. The object, scheme and language of the Act is clearly against the petitioner's submission. The Act creates in the authorities concerned a new jurisdiction to make orders for preventive detention on their subjective satisfaction of grounds of suspicion of commission in future of acts prejudicial to the community in general. This jurisdiction is different from that of judicial trial in courts for offences and of judicial orders for prevention of offences. Even unsuccessful judicial trial or proceeding would, therefore, not operate as a bar to a detention order or render it *mala fide*. The matter is also not *res integra*.

Indeed, while dealing with the Defence of India Rules which also empowered the Government of India to make orders of preventive detention this Court in *Sahib Singh Dugal v. Union of India*⁽¹⁾ repelled a similar contention in the following words :

"The next contention on behalf of the petitioners is that the order is *mala fide*. The reason for this contention is that it was originally intended to prosecute the petitioners under s. 3 of the Official Secrets Act and when the authorities were unable to get sufficient evidence to obtain a conviction they decided to drop the criminal proceedings and to order the detention of the petitioners. This by itself is not sufficient to lead to the inference that the action of the detaining authority was *mala fide*. It may very well be that the executive authorities felt that it was not possible to obtain a conviction for a particular offence under the Official Secrets Act, at the same time they might reasonably come to the conclusion that the activities of the petitioners which had been watched for over two years before the order of detention was passed were of such a nature as to justify the order of detention. We cannot infer merely from the fact that the authorities decided to drop the case under the Official Secrets Act and thereafter to order the detention of the petitioners under the Rules that the order of detention was *mala fide*. As we have already said, it may not be possible to obtain a conviction for a particular offence; but the authorities may still be justified in ordering detention of a person in view of his past activities which will be of a wider range than the mere proof of a particular offence in a court of law. We are not therefore prepared to hold that the orders of detention in these cases were *mala fide*".

(1) [1966] 1 S.C.R. 313.

A This decision was followed by this Court in *Mohd. Salim Khan v. C. C. Bose & anr.*⁽¹⁾. A similar view was also taken by this Court in *Borjahan Gorey v. State of West Bengal*⁽²⁾ where it was observed :

B "The preventive detention provided by the Act is apparently designed to deal urgently and effectively with the more serious situation, *inter alia*, affecting the security of India and the maintenance of public order as contemplated by section 3 of the Act. The liability of the detenu also to be tried for commission of an offence.....do not in any way as a matter of law affect or impinge upon the full operation of the Act.

C The reason is obvious. Judicial trial for punishing the accused for the commission of an offence..... is a jurisdiction distinct from that of detention under the Act, which has in view, the object of preventing the detenu from acting in any manner prejudicial *inter alia* to the security of the State or maintenance of public order. The fields of these two jurisdictions are not co-

D extensive nor are they alternative. The jurisdiction under the Act may be invoked, when the available evidence does not come up to the standard of judicial proof but is otherwise cogent enough to give rise to suspicion in the mind of the authority concerned that there is a reasonable likelihood of repetition of past conduct

E which would be prejudicial *inter alia* to the security of the State or the maintenance of public order or even when the witnesses may be frightened or scared of coming to a court and deposing about past acts on which the opinion of the authority concerned is based. This jurisdiction is sometimes called the jurisdiction of suspicion founded on past incidents and depending on

F subjective satisfaction..... The grounds of detention relate to the past acts on which the opinion as to the likelihood of the repetition of such or similar acts is based and those grounds are furnished to the detenu to inform him as to how and why the subjective satisfaction has been arrived at so as to enable him to represent against them. The fact, therefore, that a prosecution under the Code could also have been

G launched is not a valid ground for saying that it precludes the authority from acting under the Act."

H The grievance that the petitioner ought to have been proceeded against in a court of law and that the investigating agency did not put him on a regular trial for want of evidence can thus be

(1) [1972] 2 S.C.C. 607.

(2) [1972] 2 S.C.C. 550.

no bar to his detention if the detaining authority under the Act is satisfied that it is necessary to make the order of preventive detention on the grounds contemplated by the Act. A

The grounds on the basis of which the petitioner has been detained are clear, relevant and germane to the object and purpose for which preventive detention is authorised by the Act. The petitioner is stated to have committed theft of electric copper wires on January 6 and 12, 1972. When he was challenged by the inhabitants of the area he and his associates hurled bombs towards them. The theft of electric wire totally disrupted electric supplies for several hours in the areas concerned. This conduct is very relevant for satisfying the authority concerned that it is prejudicial to the maintenance of supplies and services essential to the community and if such authority considers it necessary on this ground to detain him with a view to preventing him from repeating such acts, then, the order of detention would indubitably and legitimately fall within the purview of s. 3 of the Act. The detention order is not open to challenge in these proceedings on the grounds averred in the writ petition and urged by the learned counsel at the bar. In this connection, Sri Chatterji also drew our attention to *Arun Kumar v. State of West Bengal*⁽¹⁾ and *Sasti Chowdhary v. State of West Bengal*⁽²⁾. B C D

No doubt, the right to personal liberty of an individual is jealously protected by our Constitution but this liberty is not absolute and is not to be understood to amount to licence to indulge in activities which wrongfully and unjustly deprive the community of the society of essential services and supplies. The right of the society as a whole is, from its very nature, of such greater importance than that of an individual. In case of conflict between the two rights, the individual's right is subjected by our Constitution to reasonable restrictions in the larger interests of the society. E F

Before concluding, however, we consider it proper to refer to one other matter which appears to be of importance. According to the counter-affidavit the order of detention has been approved by the State Government under s. 3(3) of the Act on February 18, 1972. This is clearly incorrect. We find from the original order of approval from the record (which was produced by the counsel for the State under our directions) that it was drafted on February 19, 1972 but actually signed by the Deputy Secretary on behalf of the Government on February 21, 1972. The order of approval must, therefore, be considered to have been made only on the day when it was signed, i.e., February 21, 1972. We are unable to find any cogent reason for the sworn assertion in the C II

(1) A.I.R. 1972 S.C. 1858.

(2) A.I.R. 1972 S.C. 1668.

- A counter-affidavit that this order had been approved on February 18, 1972. We feel that the counter-affidavit produced in this Court in answer to the challenge to the preventive detention of the detenu should contain all the facts correctly and full disclosure must be made without any reservation. It must be remembered that the personal liberty of an individual has been given an honoured place in the fundamental rights which our Constitution has jealously protected against illegal and arbitrary deprivation, and that this Court has been entrusted with a duty and invested with a power to enforce that fundamental right. It is, therefore, obligatory on the part of the State to place before this Court all the relevant facts relating to the impugned detention truly, clearly and with the utmost fairness. This Court normally accepts without reservation the sworn affidavits by responsible officers on the assumption that the facts stated therein are absolutely true and that there is no mis-statement or concealment of relevant facts. It is, therefore, incumbent on the officer concerned swearing the counter-affidavit to take good care to satisfy himself that what he states on oath is absolutely true according to the record.

This petition fails and is dismissed.

V.P.S.

Petition dismissed.