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KRISHNA LAL DUTTA

v.

THE STATE OF WEST BENGAL

February 21, 1974.

B

[M. H. BEG AND R. S. SARKARIA, JJ.]

Preventive detention—Matters taken into account for ordering detention—Duty to communicate to detenu to enable him to explain.

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The order detaining the petitioner under the Maintenance of Internal Security Act, 1971, mentioned the sole ground that on the night of October 11, 1972, the petitioner and his associates committed theft of some tea chests from a *running goods train* and that they fled, when challenged, leaving behind three chests of tea at the P.O. In his petition for the issue of a writ of *habeas corpus* the petitioner contended that it was impossible to commit theft from a running train as described. In the counter affidavit, it was stated that what was meant by *running train* was a train which had come to a stop due to some traffic restriction. It was also stated that the petitioner was a notorious wagon breaker operating near the Railway Station, but this allegation was never communicated to the petitioner. Even the record relating to the detention nowhere referred to the petitioner as a 'notorious wagon breaker'. In the record the incident of 11th October was mentioned, a description of the modus operandi of a gang of thieves operating on passenger trains was given, and it was also mentioned that the activities of that gang commenced after the incident of 11th October. There was however no indication as to how any information whatsoever came to the District Magistrate, who passed the order of detention, from any source whatsoever that the petitioner was a member of that gang.

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Allowing the petition,

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HELD : The Court is not concerned with the adequacy or sufficiency of a ground of detention. In the present case, there is clear nexus between the sole ground for detention given and the maintenance of the essential supplies and services, but the ground is vague in so far as it is not apparent what is meant by the words "the P.O." The grounds given could not enable the petitioner to effectively exercise his constitutional right of making a representation against his detention. Further, matters which were never communicated to the petitioner have been taken into account while ordering the detention. Presuming that whatever was in the record operated against the petitioner he should have been given fuller information of the allegations against him. No explanation has been given as to why that was not done. [452 D-G]

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[Those exercising drastic powers of preventive detention should at least take care to ascertain whether a detention is being ordered in a manner and on materials which disclose that it is really necessary to order a detention with a view to preventing the person to be detained from acting in a manner prejudicial to the objects for which preventive detention may be lawfully ordered.] [452 C-D]

Prabhu Dayal Deorh v. District Magistrate, Kamrup & Ors., A.I.R. 1974 S.C. 183, followed.

ORIGINAL JURISDICTION : Writ Petition No. 845 of 1973.

Under Art 32 of the Constitution for the issue of a writ in the nature of *habeas corpus*.

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S. N. Jain, for the petitioner.

P. K. Chakravarty and G. S. Chatterjee, for the respondent.

The Judgment of the Court was delivered by

BEG, J. The petitioner, a citizen of India, has filed this *habeas corpus* petition challenging the order of his detention, dated 24-11-1972, passed under Section 5 clause (a) of Maintenance of Internal Security Act, 1971 (hereinafter referred to as 'the Act').

It appears that the petitioner was actually arrested on 20-11-1972 and that the detention order was passed subsequently on 24-11-1972, and, on that very date, the petitioner was served with the document containing the sole ground of detention given as follows :—

"1. That on 11-10-72 at about 01.55 hrs., you along with your associates, being armed with bombs and other weapons, victimised wagon No. NR 17393 Ex Bro to KPD attached to running goods train in EC 249 DN near the Booster Sub-station of Dum Dum Jn. R/S when the train slowed down for traffic restriction and committed theft in respect of tea chests. Train guard RPF party challenged you and your associates when you hurled bombs towards the RPF party. RPF RK Sitaram Rai fired one round in self defence when you and your associates fled away leaving behind three chests of tea at the P.O.

Your action caused disruption of train service for a considerable time and affected supplies and services.

You have thus acted in a manner prejudicial to the maintenance of supplies and services essential to the community".

After giving what is marked as ground number 1 only, implying thereby that there was no other ground of detention, the document proceeds :

"You are hereby informed that you may make a representation to the State Government against the detention order and that such representation shall be addressed to the Assistant Secretary, Home (Special) Department, Government of West Bengal and forwarded through the Superintendent of the Jail in which you have been detained as early as possible. Under Section 10 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971) your case shall be placed before Advisory Board within thirty days from the date of your detention under the order.

You are also informed that under Section 11 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971), the Advisory Board shall if you desire to be so heard, hear you in person, and, if you desire to be so heard by the Advisory Board, you shall intimate such desire in your representation to the State Government".

An annexure to the affidavit filed by a Special Secretary in the Home Department of the Government of West Bengal, who was

A the District Magistrate concerned when the impugned detention order was made against the petitioner, is a copy of the petitioner's representation addressed to the Government. In the representation as well as in the petition before us, the petitioner asserts that the allegations against him are absolutely untrue. In his application to this Court he states that it is "palpably false and impracticable" to allege that the petitioner, with some associates, committed theft of some tea chests from a running wagon and that he fled when challenged, leaving behind three chests of tea "at the P.O.". Be that as it may, it is difficult to understand what is meant by "the P.O." In his representation to the Government, the petitioner had submitted that there was no evidence that he was identified by anybody as a participator in the incident.

C In the affidavit in opposition to the petition, the official concerned, who had passed the detention order, stated :

"The running goods train as stated therein actually means a goods train which had come to a stop due to traffic restriction and not actually a running one as sought to be suggested by the petitioner".

D The affidavit also contained the statement :

"It appears from the records that the petitioner is a notorious wagon breaker operating near Dum Dum Junction Railway Station".

E Learned Counsel appearing for the State of West Bengal was asked to explain how the petitioner could possibly make an effective representation against his detention when the District Magistrate had a stationary train in mind which he actually described as "a running goods train" in the grounds of detention, when it was not indicated what was meant by "the P.O.", and when the allegation that the petitioner was a "notorious wagon breaker operating near Dum Dum Junction Railway Station" was never communicated to him although it, apparently, formed one of the grounds on which the detention was ordered. In reply, learned Counsel for the State of West Bengal stated that he had the whole record before him on which the detention was ordered and he placed that record before us. We were unable to find any mention in this record that the petitioner was "a notorious wagon breaker". On the other hand, we found a description there of the *modus operandi* of a gang of thieves operating on passenger trains which used to deprive the passengers of their trunks and other goods while one of the members of the gang sat near the passengers with a newspaper spread out in front of him which would be read out loudly to distract their attention and used also to obstruct their view. It is mentioned there that the activities of this gang commenced after the incident of 11-10-1972. It is also mentioned there that a number of incriminating articles were recovered from members of this gang of thieves including the petitioner and that prosecutions were pending against them.

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It is true that the incident which occurred at about 2 a.m. on 11-10-1972, forming the ground of detention, is also mentioned in the record, but, there is no indication as to how any information whatsoever came to the District Magistrate from any source whatsoever that the petitioner was a member of the gang which was concerned with such an incident. Presumably, this was the whole record as learned Counsel for the State informed us. This makes the petitioner's assertion, that he was not only arrested on 20-10-1972 for reasons not disclosed to him, but, when sufficient evidence could not be found against him by the local officials, a detention order was made on a ground, covered by the Act, which could be conveniently trotted out at the time, seem plausible. Deprivation of a citizen's personal liberty is a serious matter. Those exercising drastic powers of preventive detention, which are entrusted to them for protecting valuable social and public interests, should at least take care to ascertain whether a detention is being ordered in a manner and on materials which disclose that it is really "necessary" to order a detention with a view to preventing the person to be detained from acting in any manner prejudicial to the objects for which preventive detention may be lawfully ordered. If they misuse these powers, by acting unreasonably, capriciously, arbitrarily, or in a malafide manner, public confidence in them is shaken. We are unable to say whether the District Magistrate acted unreasonably in making the detention order. But, presuming that, whatever was in the record operated, as learned Counsel for the State asserted, against the petitioner, he should have been given fuller information of allegations against him. It is not explained why this was not done. B C D

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We are not concerned here with the adequacy or sufficiency of a ground of detention. There is clearly a nexus between the sole ground for detention given and the maintenance of essential supplies and services. But, as indicated above, we have found that matters which were never communicated to the petitioner also appear to have been taken into account while ordering the detention of the petitioner. Further more the sole ground of detention is vague in so far as it is not apparent what is meant by the words "the P.O." Recently, it was held by this Court in *Probhu Dayal Deorah Vs. District Magistrate, Kamrup & Ors.*,⁽¹⁾ that vagueness of a single ground could vitiate a detention order. The grounds given could not, in our opinion enable the petitioner to effectively exercise his constitutional right of making a representation against his detention. F

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The result is that we allow this petition and declare the detention of petitioner to be illegal. We order that the petitioner be released forthwith.

V.P.S.

Petition allowed..