

DEVI LAL MAHTO

v.

B STATE OF BIHAR AND ANR.

October 18, 1982

[D.A. DESAI AND R.B. MISRA, JJ.]

C *National Security Act, 1980—Sub-s. (2) read with sub-s. (3) of s. 3—Detention Order—Detenu already in jail—Detaining authority unaware—Inordinate delay in considering detenii's representation—Validity.*

D The petitioner who had been arrested on March 2, 1982 and whose application for bail had been rejected on March 25, 1982 was in jail when the District Magistrate, Dhanbad made the impugned order of detention against him on April 20, 1982 under sub-s. (2) read with sub-s. (3) of s. 3 of the National Security Act, 1980. Another application for bail moved by the petitioner was rejected on April 23, 1982. The grounds of detention were served on April 23, 1982 and the representation submitted to the State Government on May 13, 1982 was rejected on June 3, 1982 and the order of detention was confirmed on June 10, 1982.

E It was contended that the impugned order could not have been made against the petitioner as he was already in jail, that the order was vitiated by non-application of mind as the detaining authority was not even aware of the petitioner's custody in jail and as there was inordinate delay in considering the representation against the order.

Allowing the petition,

F HELD: When a preventive detention order is made against a person already deprived of his personal liberty, the detaining authority must show awareness of the fact that the person against whom the detention order is proposed to be made is already in jail and is incapable of acting in a manner prejudicial to the maintenance of public order and yet, for reasons which may appeal to the detaining authority on which its subjective satisfaction is grounded, a preventive detention order is required to be made. This awareness must appear in the order or in the affidavit justifying the order when challenged. [633 A-B]

G In the instant case neither in the order nor in the affidavit was there even a whimper of this aspect being present to the mind of the detaining authority while making the order. The order having been mechanically made and suffering from the vice of non-application of mind was vitiated. [633 C]

H *Rameshwar Shaw v. District Magistrate, Burdwan & Anr.* [1964] 4 S.C.R. 921; *Vijay Kumar v. State of J&K and Ors.* AIR 1982 SC 1023; *Biru Mahto v.*

District Magistrate, Dhanbad, [1983] 1 S.C.R. 584 and *M. Satyanarayana, etc. v. State of Andhra Pradesh & Ors.* [1983] 1 S.C.R. 635 followed.

(b) When a detention order is made in exercise of the power conferred by sub-s. (2) read with sub-s. (1) of s. 3 of the Act, sub-s. (4) makes it obligatory upon the State Government to examine the order and approve the same within a period of 12 days from the date of making the order. [633 G-H]

In the facts and circumstances of the instant case, a time of 21 days taken by the State Government in examining the representation of the detenu showed inordinate delay which vitiated the order. [634 B]

ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 1075 of 1982.

(Under article 32 of the Constitution of India)

V.J. Francis for the Petitioner.

S.N. Jha for the Respondent.

The Judgment of the Court was delivered by

DESAI, J. On October 4, 1982, we quashed and set aside the impugned detention order dated April 20, 1982, in respect of detenu Devi Lal Mahto, reserving the giving of the reasons for our order to a later date. Here are the reasons.

This is a petition under Article 32 for a writ of *habeas corpus* filed by detenu Devi Lal Mahto challenging the order of preventive detention dated April 20, 1982, made by the District Magistrate, Dhanbad.

Detenu Devi Lal Mahto was arrested on March 2, 1982, and was produced before the Chief Magistrate, Dhanbad, who remanded him to jail custody till March 17, 1982. On March 1982, detenu moved an application for bail which was fixed for hearing on March 24, 1982. On March 25, 1982 the bail application was rejected. On April 20, 1982, the District Magistrate, Dhanbad, made the impugned order of detention in exercise of the power conferred by sub-s. (2) read with sub-s. (3) of s. 3 of the National Security Act, 1980 ('Act' for short). The District Magistrate stated in his order that with a view to preventing the detenu from acting in a manner prejudicial to the maintenance of public order he be detained. Grounds of detention

A were served upon the detenu on April 23, 1982. Another application for bail moved by detenu was rejected on April 23, 1982. On May 13, 1982 the detenu submitted his representation to the State Government which came to be rejected by the State Government on June 3, 1982. The order of detention was confirmed by the State Government on June 10, 1982.

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D Mr. V.J. Francis, learned counsel who appeared for the petitioner canvassed three contentions before us. They are : (i) the detenu being already deprived of his personal liberty having been confined in jail from March 2, 1982, and his bail application having already been rejected on March 25, 1982, he was not even if so inclined, in a position to repeat his activity and therefore, the preventive detention order could not be made against him with a view to preventing him from indulging into activity prejudicial to the maintenance of public order ; (ii) the detaining authority was not even aware that the detenu was already in jail when he made the impugned detention order and, therefore, the order suffers from the vice of non-application of mind which would vitiate the order ; and (iii) there was inordinate delay which has remained unexplained in considering the representation of the detenu and, therefore, the detention order is vitiated.

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G Undoubtedly, for a period of one month and 18 days the detenu was in jail, his bail application having been rejected nearly 25 days before the date of the impugned detention order. It is difficult to appreciate how the District Magistrate was subjectively satisfied that a detention order in respect of the detenu was necessary with a view to preventing him from acting in a manner prejudicial to the maintenance of public order. This aspect we have most meticulously examined in four decisions of this Court, and therefore, we need not examine the same again. As early as in *Rameshwar Shaw v. District Magistrate, Burdwan & Anr.*,⁽¹⁾ and as late as *Vijay Kumar v. State of J & K and Ors.*⁽²⁾, the two recent most decisions in *Biru Mahato v. District Magistrate, Dhanbad*⁽³⁾, and *M. Satyanarayana, etc. v. State of Andhra Pradesh & Ors.*,⁽⁴⁾ it has been held that one can envisage a hypothetical case in which a preventive detention order

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(1) [1964] 4 SCR 921.

(2) A.I.R. 1982 S.C. 1023.

(3) [1983] 1 S.C.R. 584.

(4) [1983] 1 S.C.R. 635.

may have to be made against a person already deprived of his personal liberty by being confined or detained in jail but in such a situation the detaining authority must show awareness of this fact that the person against whom the detention order is proposed to be made is already in jail and is incapable of acting in a manner prejudicial to the maintenance of public order and yet for the reasons which may appeal to the District Magistrate on which his subjective satisfaction is grounded a preventive detention order is required to be made. It is further held that this awareness must appear either in the order or in the affidavit justifying the impugned detention order when challenged. Neither in the order nor in the affidavit we find even a whimper of this aspect being present to the mind of the detaining authority while making the detention order. Therefore, it clearly discloses non-application of mind and following the aforementioned decisions it must be held that the order of preventive detention having been mechanically made and suffering from the vice of non-application of mind is vitiated.

The last contention is that there was an inordinate delay in considering the representation of the detenu and, therefore, the detention order is vitiated. The detenu made a representation on May 13, 1982. It also transpires that the case of the detenu was referred to the Advisory Board on May 15, 1982. The affidavit in reply recites that the representation was rejected by the State Government on June 3, 1982. How the representation was dealt at various levels from May 13, to June 3, has not been dealt with in the affidavit on behalf of the respondents. It may be mentioned here that the counter-affidavit on behalf of the respondents has been filed by one G.P.A. Kujur who has described himself as Deputy Collector of Dhanbad. Obviously he was not the detaining authority. The detaining authority though impleaded as a respondent has not filed the affidavit. Mr. Jha, learned counsel who appeared for the respondents after referring to the file with him urged that the representation was received on May 14, 1982 and it was on May 24, 1982, that its examination commenced. There was no further detail available as to how it was dealt with. When a detention order is made by the District Magistrate in exercise of the power conferred by sub-s. (2) read with sub-s. (3) of s. 3 of the Act, sub-s. (4) makes it obligatory upon the State Government to examine the order and approve the same within a period of 12 days from the date of making of the order. There is a proviso appended to the section which is not relevant. There is nothing to show that the order was approved.

- A** There is nothing to show why for a period of 10 days the representation was not examined by the competent authority. There is nothing to show how the file moved after May 24, 1982, till the representation was rejected on June 3, 1982. In our opinion in the facts and circumstances of this case a time of 21 days taken by the State Government in examining the representation of the detenu made under s. 8 of the Act shows inordinate delay in dealing with the representation and that would vitiate the order.
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For these reasons we had quashed and set aside the impugned detention order.

H.L.C.

Petition allowed.