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BINOD SINGH

v.

DISTRICT MAGISTRATE DHANBAD BIHAR & OTHERS

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SEPTEMBER 26, 1986

[R.S. PATHAK AND SABYASACHI, MUKHARJI, JJ.]

National Security Act, s. 3(2)—Detention Order passed—Detenu already in custody in respect of criminal charge before actual service of detention order—Detention Order held invalid.

C

The respondent passed an order of detention in respect of the appellant under s. 3(2) of the National Security Act 1980, on the ground that the appellant's activities were prejudicial to the maintenance of public order. Several criminal cases were pending against the appellant when the aforesaid order was passed. The appellant had already surrendered in respect of a criminal charge against him before the order was served. He filed a writ petition in the High Court challenging the detention order, but it was dismissed without any speaking order.

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Aggrieved by the order of the High Court, the appellant filed the present criminal appeal by special leave as also a writ petition challenging the aforesaid order of detention on the ground that the order of preventive detention could only be justified against a person in detention if the detaining authority was satisfied that his release from detention was imminent and the order of detention was necessary for putting him back in jail. The service of order of detention on the appellant/petitioner while he was in jail was futile and useless since such an order had no application under s. 3(2) of the Act.

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Allowing the writ petition and the appeal in part,

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HELD: 1. The continued detention of the detenu under the Act is not justified. The order of detention therefore is set aside. However, this will not affect detenu's detention under the criminal cases. If however, the detenu is released on bail in the criminal cases already pending against him, the matter of service of the detention order under the Act may be reconsidered by the appropriate authority in accordance with law. [912E-F]

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A 2. In our constitutional framework, the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. [911F-G]

B In the instant case, when the actual order of detention was served upon the detenu the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release was taken into consideration by the detaining authority properly and seriously before the service of the order. If there were cogent materials for thinking that the detenu might be released, then these should have been made apparent. In the affidavits on behalf of the detaining authority though there are indications that transfer of detenu from one prison to another was considered but the need to serve the detention order while he was in custody was not properly considered by the detaining authority in the light of relevant factors. If that is the position then however disreputable the antecedents of a person might have been, without consideration of all the aforesaid relevant factors, the detenu could not have been put into preventive custody. Therefore, though the order of preventive detention when it was passed was not invalid, and on relevant considerations the service of the order was not on proper consideration. The order of detention is, therefore set aside. [911G-H; 912A-D]

Rameshwar Shaw v. District Magistrate, Burdwan & Anr., [1964] 4 SCR 921 and Ramesh Yadav v. District Magistrate Etc. and Others, [1985] 4 SCC 232, relied upon.

F CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 317 of 1986

From the Judgment and Order dated 27.2.1986 of the Patna High Court in C.W.J.C. No. 33 of 1986.

G With
W.P. (Criminal) No. 316 of 1986.

R.K. Garg and Miss Rani Jethmalani for the Appellant/Petitioner.

H D. Goburdhan for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Criminal Appeal No. 317 of 1986 arises out of the judgment and order of the High Court of Patna and the Writ Petition No. 316 is in respect of the same detenu. Both these challenge the order of detention dated 2nd January, 1986 passed by the respondent no. 1. The District Magistrate Dhanbad in respect of the petitioner under section 3(2) of the National Security Act, 1980, hereinafter called the 'Act' on the ground that the petitioner's activities were prejudicial to the maintenance of public order. Several criminal cases had been filed against the petitioner between 3rd January, 1983 to 18th February, 1985. On or about 2nd January, 1985 the order of detention was passed on an incident relating to the exchange of fire between two rival groups. The order states the grounds as follows:

1. On 24.12.1985, between 10 and 10.30. A.M. the subject alongwith Ramashish Bangali, Gulam, Rambriksha armed with Rifle, gun etc. came in Car No. BHG-9372 on Katras Coal Dump and started indiscriminate firing to kill Birendra Pratap Singh a rival of his calandestine business of coal to establish his criminal superiority in full view of the shopkeepers customers and passers by of the area. Birendra Pratap Singh and his associates who were there also returned the firing in same manner. As a result of this firing one innocent namely Brahamdeo Mishra was killed. The exchange of indiscriminate firing in the main market area of Katras created great panic and alarm in the area. The normal tempo of life was completely disturbed. The people started running helter and skelter for their lives. Shopkeepers put down their shutters. Doors and windows were closed. The vehicular traffic came to halt. This refers to Katras P.S. Case No. 331/85 dated 24.12.85 u/s 149/307/326 IPC/27 Arms Act.

Besides the aforesaid ground the following cases are also referred hereunder as background to show the criminality of the subject.

1. KATRAS P.S. CASE No. 5/83 dated 3.1.83 u/s 147, 341/353/307 I.P.C.

In this case subject and his associates tried to set free

A the trucks and driver from the police custody by force and when he failed in his attempt he threatened the police officer and CISF Personnel to do away with their lives, C.S. No. 5/83 has already been submitted in this case.

B 2. Katras P.S. Case No. 303/83 u/s 147/148/452/323 IPC.

C In this case subject and his associates went to the tailoring shop of Saukat Ansari and asked him to keep his cloths ready by 9.10.83 and on his refusal, he assaulted him in presence of customers and others C.S. No. 196/83 has already been submitted in this case.

D 3. Jogta P.S. Case No. 22/84 dated 11.3.84 u/s 147/148, 307/326/353/333/324/325 I.P.C./27 Arms Act.

E In this case subject and his associates opened fire on police party who went to apprehend Raghunath Singh absconder under NSA. As a result of this indiscriminate firing by him and his associates one Police Officer namely Shri R.K. Verma, received serious head injury and is still incapable to work. Charge sheet No. 25/84 has already been submitted in this case.

F 4. Jogta P.S. Case No. 9/85 dated 18.2.85 u/s 369, 307/323/324/176/341 P.C./27 Arms Act.

G In this case Sisir Rajan Das, who was coming in a religious procession on the eve of Shivratri and was *dancing in the role of Shiva* was compelled by his associates to dance before the marriage party of subject's sister. Sri Sisir Rajan Das, however, acceded to their request and started dancing. When he was dancing *some of the members opened fire on him as a result of which he fell down*. The subject and his associates however put his body in his car and fled away. Neither Shri Das nor his body could be traced out till date.

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Charge sheet No. 20/85 has already been submitted in this case. (Emphasis supplied) A

5. Jogta P.S. Case No. 68/85 dated 1.12.85 u/s 341/34 IPC. B

In this case subject threatened Sri Krishanà Ballav Sahay, General Secretary, Colliery Shramik Sangh, Sijua, to do away with his life if he takes out any procession or oppose him. C

It is the case of the detenu that the order of detention was made on one incident relating to exchange of fire between two rival groups. A criminal case had been registered in relation to the said incident pursuant to which the petitioner was already in custody. The order of detention though dated 2nd January, 1986 was served on or about 11th January, 1986. It is the case of the appellant/petitioner that the detenu was not served with all the documents referred to and/or relied on. The detenu was served with order of approval of the said order of detention by the Government of Bihar. The petitioner/appellant made representation on 22nd January, 1986 and the petitioner/appellant was informed that the said representation was rejected. Thereafter the petitioner's appellant's matter was referred to the Advisory Board. The petitioner/appellant states that he desired that he should be heard in person by the Advisory Board. The petitioner/appellant submits that he was produced before the Advisory Board but he was not given any hearing. By letter dated 22nd February, 1986 the petitioner/appellant was informed that the Advisory Board had confirmed the order of detention. The petitioner/appellant thereafter filed a writ petition in the High Court of Patna which was dismissed without any speaking order. D

The grounds of challenge are all stated in the writ petition as well as special leave petition. The petitioner/appellant was in detention when the petitioner/appellant was served with the order of detention. There were criminal cases against the petitioner. There was a murder case in respect of Crime No. 331 of 1985. In the said case investigation was in progress and the defence of the petitioner in the murder case was that he was falsely implicated and was not at all concerned with the murder. When the order was passed, the petitioner had not surrendered but when the order was served, the petitioner had already surrendered in respect of the criminal charge against him. At the relevant time the petitioner was undertrial in the said criminal case. E

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A It is the contention of the petitioner/appellant that the order of preventive detention could only be justified against a person in detention if the detaining authority was satisfied that his release from detention was imminent and the order of detention was necessary for putting him back in jail. The service of order of detention on the petitioner while he was in jail was futile and useless since such an order had no application under section 3(2) of the Act.

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In the affidavit of the District Magistrate, the detaining authority, it has been stated that the activities of the petitioner's brother and the petitioner have disturbed the normal tempo of life in Katras and Jogta Police Stations in Dhanbad area. The series of offences

C against the detenu and the manner of their perpetuation, which have been noted before, indicate a calculated move to create panic and fear in the mind of the people. It further appears from the affidavit of the District Magistrate filed before the High Court of Patna that the petitioner was absconding from the very day of the issuance of the detention order. There is a statement in the order as follows—

D "Subject is already in jail. He is likely to be enlarged on bail. Hence detention order served in jail."

E According to the District Magistrate when police pressure to apprehend him became heavy, the detenu opted to surrender before the Sub-Divisional Judicial Magistrate on 10th January, 1986 in substantive case to frustrate the service of the detention order. It has been further stated that the service of the detention order had been properly made. Grounds were all indicated. All the documents which formed the basis of detention were supplied to the detenu. His representation was duly considered and rejected. The grounds stated that there was indiscriminate firing on 24th December, 1985 on Katras Coal Dump

F and the petitioner started indiscriminate firing to kill Birendra Pratap Singh a rival of his calandestine business of coal to establish the criminal superiority in full view of the shopkeepers, customers and passers by of the area. The acts alleged created a terror and not only law and order problem but problem of public order. In those circumstances it appears that the grounds for forming the satisfaction for the need for

G the detention were there, and there was rational nexus between the object of the order as contemplated by the Act and the materials on record. The principles applicable in these types of preventive detention cases have been discussed in the decisions of *Suraj Pal Sahu v. State of Maharashtra & Ors.*, W.P. (crl) No. 2 96/86 with SLP (crl) No. 1265/86 dt. 25.9.86 and *Raj Kumar Singh v. The State of Bihar & Ors.* Crl A. 353/86 with W.P. (crl) 27/86 dt. 26.9.86. Judged on the basis of

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the said principles there is no ground for interference with the order of detention as passed. It, however, appears that after the order of detention was passed and before the actual service of the order of detention, the petitioner was taken into custody. From the affidavit of the District Magistrate it does not appear that either the prospect of immediate release of the detenu or other factors which can justify the detention of a person in detention were properly considered in the light of the principles noted in the aforesaid decision and especially in the decisions, in *Rameshwar Shaw v. District Magistrate, Burdwan & Anr.*, [1964] 4 SCR 921 and *Ramesh Yadav v. District Magistrate Etah and others*, [1985] 4 SCC 232 though there was a statement to the effect that the petitioner was in jail and was likely to be enlarged on bail. But on what consideration that opinion was expressed is not indicated especially in view of the fact that the detenu was detained in a murder charge in the background of the facts mentioned before. His application for bail could have been opposed on cogent materials before the Court of Justice.

In this case there were grounds for the passing of the detention order but after that the detenu has surrendered for whatever reasons, therefore the order of detention though justified when it was passed but at the time of the service of the order there was no proper consideration of the fact that the detenu was in custody of that there was any real danger of his release. Nor does it appear that before the service there was consideration of this aspect properly. In the facts and circumstances of this case, therefore, the continued detention of the detenu under the Act is not justified.

It is well settled in our Constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an *ipso dixit*

A of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens. In the affidavits on behalf of the

B detaining authority though there are indications that transfer of the detenu from one prison to another was considered but the need to serve the detention order while he was in custody was not properly considered by the detaining authority in the light of the relevant factors. At least the records of the case do not indicate that. If that is the position, then however disreputable the antecedents of a person

C might have been without consideration of all the aforesaid relevant factors, the detenu could not have been put into preventive custody. Therefore, though the order of preventive detention when it was passed was not invalid and on relevant considerations, the service of the order was not on proper consideration.

D It may be mentioned that in the petition it is nowhere stated that the detenu has since been released or that the prospect of his imminent release was properly and with seriousness considered by the detaining authority.

E The order of detention, therefore, is set aside. The writ petition and the appeal are allowed to the extent indicated above. This, however, will not affect detenu's detention under the criminal cases. If, however, the detenu is released on bail in the aforesaid criminal cases, the matter of service of the detention order under the Act on the aforesaid materials may be reconsidered by the appropriate authority in accordance with the law. There is no statement in the petition that the detenu is on bail. There will, therefore, be no orders for release of the detenu.

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M.L.A.

Petition and Appeal allowed.