Mohd. Salim Khan vs Shri C.C. Bose And Anr. on 25 April, 1972

Equivalent citations: AIR1972SC1670, 1972CRILJ1020, (1972)2SCC607, 1972(4)UJ943(SC), AIR 1972 SUPREME COURT 1670, 1973 SCC(CRI) 35 1972 SCD 997, 1972 SCD 997

Author: J.M. Shelat

Bench: H.R. Khanna, J.M. Shelat

JUDGMENT

J.M. Shelat, J.

1. In this petition under Article 32 of the Constitution the petitioner Mohd. Salim Khan, a detenu under the West Bengal (Prevention of Violent Activities) Act, being President's Act XIX of 1970, seeks to challenge the legality of the order of detention passed against him and his detention thereunder.

2. The impugned order was passed by the Additional District Magistrate, 24 Parganas on June 18, 1971 under Sub-section (1) read with Sub-section (3) of Section 3 of the Act, being satisfied that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of public order. In pursuance of the said order the petitioner was arrested on the same day and has since then been detained in jail. At the time of his arrest he was served with a copy of the grounds of detention.

3. There is no dispute that various steps following the issuance of the said order as envisaged by the Act were taken by the detaining authorities within the time prescribed by and in accordance with the provision of the Act. The petitioner had also made a representation which was duly considered by the Government along with the other relevant materials connected with his detention and was rejected. His case was also placed before the Advisory Board as required by the Act with all the relevant materials including the said representation. The Board reported, after considering those materials including his said representation, that in its opinion there was sufficient cause justifying his detention.

4. The grounds of detention referred to above stated :

> 1. That on April 22, 1971, at about 5 30 a.m. the petitioner along with his associates including one Dulal Dey, alias Dulal Kumar Bose, committed mischief by setting fire to a double decker State bus at Chetla Central Road and threw bombs aiming them at the said bus causing thereby damage to the said bus and also panic and disorder in

that area;

2. That on the same day at about 12.50 p.m. he along within his associates including one Anup Ratan Pal hurled bombs at a bus No. WBY 427 belonging to South Point School at South-end Park and also committed mischief to the said bus causing damage to it, and that as a result of his said act panic and confusion prevailed in that area.

5. There can be no manner of doubt that the acts stated in the said grounds and alleged to have been committed by the petitioner would fall under Section 3(2)(b) and also (d) of the Act, and would, therefore be relevant to the objects in relation to which an order of detention could be validly passed under the Act.

6. But in his representation dated July 1, 1971, which the petitioner submitted to the Government from Alipore Central Jail where he was then detained, the petitioner asserted in paras 3 and 4 thereof, firstly, that he was not acquainted with Chetla and Southend Park areas and therefore, could not have thrown bombs as alleged, and secondly, as regards his hurling bombs at 12.50 p.m. that day, he was busy with his studies in the National Library, Calcutta as he had to make preparations for the B.A. Part I Examination to be held on June 22, 1971.

7. It appears, however, that prior to the passing of the impugned order on June 18, 1971, the petitioner had been arrested by the police on May 22, 1971 in connection with the two incidents alleged in the said grounds for detention and proceedings had thereafter been taken against him in the Court of the Magistrate, First Class, Midnapore. In those proceedings the petitioner appears to have taken a some what different plea of alibi, in support of which he had produced an affidavit of one Sk. Nuruddin Ahmed dated September 23, 1971. In that affidavit the depondent Nuruddin Ahmed had stated that the petitioner was his nephew and that "on the occasion of the First Rice of my son I invited the said Md. Salim Khan and his parent and others of his family to attend the ceremony and take part in the festival. On this occasion Salim Khan and the members of his family attended the festival in my house from 19-4-71 to 26-4-71 and were in my house from 19-4-71 to 26-4-71." This plea was repeated by the petitioner in the present writ petition in its para 10, obviously with a view to challenge the statement in the said grounds of detention that the petitioner had on April 22, 1971, on two occasions, thrown bombs on buses in the Chetla Central Road and also in the Southend Park. The two pleas asserting alibi were clearly at variance with each other.

8. As aforesaid, the petitioner's ple of alibi and resulting therefrom his assertion that he could not physically be at the aforesaid places where he was alleged to have thrown bombs was not acceptable either to the Government or the Advisory Board.

9. Since the petitioner was arrested on May, 26, 1971 in connection with the criminal proceedings taken against him in relation to the very incidents which were also the subject matter on which the impugned detention order was passed and there was some doubt as to whether he was in jail in connection with those proceedings on the day when the impugned order was passed, i.e., on June 18, 1971, we asked the State Government to furnish us further particulars both as regards the said

criminal proceedings and his whereabouts on June 18, 1971. The further particulars furnished by the Government show that the petitioner was arrested on May 26, 1971 in connection with the said incidents and was produced the next day before the Magistrate, Alipore. The petitioner remained in jail thereafter as an under trial prisoner until June 14, 1971, when the Magistrate granted him bail and released him from jail custody. On June 18, 1971, the Magistrate discharged the petitioner of the charges against him presumably on the ground that there was not adequate or satisfactory evidence against him. Thus, the petitioner was at large on June 18, 1971 when the impugned order detaining him was passed by the District Magistrate. The mere fact, however, that criminal proceedings in connection with the same incidents had been adopted against the petitioner and he had been discharged by the trying Magistrate does not mean that no valid order of detention could be passed against him in connection with those very incidents, or that such an order can for that reason be characterised as mala fide. It might well be that a magistrate trying a particular person under the CrPC has insufficient evidence before him, and therefore, has to discharge such a person. But the detaining authorities might well feel that though there was not sufficient evidence admissible under the Evidence Act for a conviction, the activities of that person, which they had been watching, were of such a nature to justify an order of detention. From the mere fact, therefore, that the Magistrate discharged the petitioner from the criminal case lodged against him it cannot be said that the impugned order was incompetent, nor can it be inferred that it was without a basis or mala fide, see Sahib Singh Dugal v. Union of India .

10. But Mr. Gupta urged that it was the duty of the police authorities, who requested the District Magistrate to issue the said order, to lay before him full particulars and information about the incidents alleged against the petitioner and the alleged part played by him therein and that such particulars should have included the fact of his having been tried by the Magistrate and discharged. He argued that such particulars were not part of the file in respect of the petitioner, and therefore, it must be held that the District Magistrate had been made to pass the order without his being made fully conversant about the petitioner and his alleged insolvent in the said two incidents.

11. There are two difficulties at least in sustaining such a contention. The first is that assuming that the particular file referred to by Mr. Gupta did not contain the information regarding the said discharge order passed by the Magistrate trying the said criminal case against the petitioner, that fact cannot necessarily mean that the District Magistrate did not otherwise have that information. The second difficulty is that under the Act the subjective satisfaction, which is the basis for an order under it, is that of the relevant District Magistrate and not of court of law, and for that reason the court is precluded from going into the question as to the adequacy or otherwise of the materials on which such satisfaction has been reached. Besides, the District Magistrate, who issued the order, is not the only and exclusive authority under the Act who has to be satisfied as to the necessity of the order of detention. The Act requires him to report the case to the Government, who in its turn has to be satisfied, on consideration of all relevant materials before it, that the order is both valid and prper. There is next the Advisory Board which has to consider once again all the relevant materials including the representation made by a detenu and has to give a personal hearing to him, if he so desires. It is, therefore, not possible to say that the detaining authorities did not have before them all relevant materials before each of them passed its respective order. The very fact that the impugned order was made on the very day that the petitioner was discharged in the said criminal case would

prima facie indicate that the District Magistrate had before him the fact of such discharge and hence passed the impugned order believing it to be necessary for preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. It is, thus, impossible to say that the District Magistrate was induced to make the impugned order without his being aware of the said case and the discharge order passed therein by the trying Magistrate.

12. Mr. Gupta next urged that though the Constitutional validity of the Act has been recently upheld in West Bengal v. Ashok Dey , that decision requires reconsideration inasmuch as the circumstances in which the President's rule was ushered in West Bengal and which formed the considerations on which this Court upheld the Act's validity no longer subsist. This contention, however, does not take into account the distinction between the necessity for the Act and its legal competency. Assuming that the circumstances owing to which the Act was enacted no longer subsist, that is a manner primarily for the Legislature and not for this Court to consider. It is true that the President's rule came to an end recently, but under Article 357(2) of the Constitution an Act passed by the President thereunder remains in force for one year the Proclamation made under Article 356 has ceased to operate. The operation of such an Act is not coterminous with the subsistence of the said Proclamation. There is, thus, no justification for the plea that the aforesaid decision, only recently given, need reconsideration.

13. There is, thus, no merit in either of the two contentions urged on behalf of the petitioner. Consequenly, the petition must fail and is accordingly rejected.