Sadhu Roy vs The State Of West Bengal on 22 January, 1975

Equivalent citations: 1975 AIR 919, 1975 SCR (3) 291, AIR 1975 SUPREME COURT 919, (1975) 1 SCC 660 1975 SCC(CRI) 296, 1975 SCC(CRI) 296, 1975 CRI. L. J. 784, 1975 3 SCR 291 1976 (1) SCJ 334, 1976 (1) SCJ 334

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, Ranjit Singh Sarkaria

PETITIONER:
SADHU ROY

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT22/01/1975

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
SARKARIA, RANJIT SINGH

CITATION:
1975 AIR 919 1975 SCR (3) 291
1975 SCC (1) 660
CITATOR INFO :
RF 1975 SC1165 (5)

ACT:
Maintenance of Internal Security Act (26 of 1971) S. 3.--Preventive detention after discharge by Criminal Court for offences which are grounds of detention--When valid.

HEADNOTE:
The petitioner was detained under s. 3 of the Maintenance of Internal Security Act, 1971. The grounds of detention were that twice on the same day he and his associates, armed with dangerous weapons, committed thefts of overhead copper wire, the first time in broad day light and then at about mid night. On both occasions they were challenged by public servants, members of the para police force, attached to the railway administration but the petitioner and his associates escaped after attacking the members of the Railway Police

Force. The petitioner was arrested in connection with the two incidents. His name was not in the F.I.R. but was gathered in the course of investigation. The police, however reported that the petitioner being a dangerous person, witnesses were afraid to depose against him in open court and so he was discharged. He was, however, taken into custody the same day of discharge pursuant to the detention order.

Allowing the petition challenging the detention.

HELD : 1(a) The discharge or acquittal by a criminal court is not necessarily a bar to preventive detention on the same facts for 'security' purposes. But if such discharge or acquittal proceeds on the footing that the charge is baseless or false, preventive detention on the same condemned facts may be vulnerable on the ground that the power of detention has been exercised in a mala fide or colorable manner.

(b) The executive authority may act on subjective satisfaction and is immunised from judicial dissection of the sufficiency of the material. But the executive conclusion regarding futuristic prejudicial activities of the detenu and its nexus with his past conduct though acceptable is not invulnerable.

(c) The satisfaction though attenuated by 'subjectivity' must be real and rational, must flow from an advertence to relevant factors, and not be a mockery or mechanical chant of statutorily sanctified phrases. The subjective satisfaction must be actual satisfaction.

(d) One test to check upon the colorable nature or mindless mood of the alleged satisfaction of the authority,is to see if the articulated 'grounds' are too groundless to induce credence in any reasonable man or too frivolous to be brushed aside as fictitious by a responsible instrumentality.

(e) If witnesses are frightened off by a desperate criminal, the court may discharge for deficient evidence but on being convinced (on police or other materials coming within his ken) that witnesses had been scared of testifying, the District Magistrate may still invoke his preventive power to protect society.

(f) But if on a rational or fair consideration of the police version or probative circumstances he should have rejected it the routinisation of the satisfaction, couched in correct diction. cannot carry conviction about its reality and on a charge of mala fides or misuse of power being made, the court can examine the circumstances. [297 D-298 C]

(2) Merely to allege that witnesses were panicked away from testifying to truth cannot be swallowed gullibly when the witnesses are members of the Railway Protection Force and the offenses against public property were of grave character. [299 B-C]

292

(3)In a case like the present, where the circumstances Of the non-prosecution strongly militate against the reality of the petitioner's involvement in the occurrence, the subjective satisfaction of the District Magistrate must be spoken to by him. While the detainer's on oath is not always insisted on as the price for sustaining the order, subjective satisfaction, being a mental fact or state is best established by the author's affidavit and not that of a stranger in the secretariat familiar with the papers. But in the present case, the District Magistrate's affidavit is not available and the reason given for his not filing his affidavit is not convincing. If the District Magistrate had sworn an affidavit that the identity of the petitioner as participant in the two incidents was not known to the Railway Protection Force and that other villagers made them out as the gang was decamping with the booty, the detention might have been upheld. But there is no such averment and the bare ipse dixit of the Deputy Secretary in the Home Department that witnesses were afraid to depose is too implausible and tenuous to be acceptable even for subjective satisfaction. [298 E-F; 299 A-B, C-E]

[Were a grievous crime against the community has been committed the culprit must be subjected to condign punishment so that the penal law may strike a stern blow where it should. Detention is a softer treatment. Further, if the is innocent the process of the law should give him a fair chance and that should not be scuttled by indiscriminate to easy but unreal orders of detention un-bound by precise time.]. [300 C-E]

Srilal Shaw v. The State of West Bengal Writ Petition No. 453 of 1974. decided on 4-12-74 and Jaganath's case [1966] 3 S.C.R. 134 and 138, followed.

Rameshwar Shaw [1964] 4 S.C.R. 921 926. Hoorchand's cast A.I.R. 1974 S.C. 2120; Golam Hussain v. Commissioner of Police [1974] 4 S.C.C. 530, 534 and Dulal Roy v. The District Magistrate, Burdwan [1975] 3 S.C.R. 186 referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 429 of 1974. Under Art. 32 of the Constitution of India.

Shiv Pujan Singh, for the petitioner.

G. S. Chatterjee, for the respondent.

The Judgment of the Court was delivered by KRISHNA IYER, J.-Shri S. P. Singh, appearing as amicus curiae has urged a few points in support of his submission that the petitioner detenu, very

poor and not fallen into criminal company, is entitled to be set free, the order being illegal.

The obnoxious acts, with futuristic import, relating to the detention, have been set out in the grounds annexed to the order and are repeated in the affidavit of the Deputy Secretary, Home (Special) Department, Government of West Bengal, based on the records available in the Secretariat. The District Magistrate of Purulia, nearly three long years ago, passed the order of detention against the petitioner on February 2, 1972 on receipt of materials regarding the pre-judicial activities of the detenu and on being subjectively satisfied of the need for the detention under s.3 of the Maintenance of internal Security Act, 1971 (Act of 1971) (her r called the MISA, for short).

The two criminal adventuress of the petitioner which persuaded the District Magistrate to prognosticate about his prejudicial activities were allegedly indulged in on September 3, 1971. The grounds of detention are that on that date, in two separate dramatic sallies, the detenu and his associates went armed with hacksaws, lathis etc., and what not, committed theft of overhead copper catenary wires and certain other items from a place between Anaka and Bagalia railway stations. On the first occasion, which was during broad daylight, the miscreants were challenged 'by the R. S. Members' but were scared away by the petitioner and his gang repeated the theft of traction wire etc., at stone throw. On the second occasion, which was at about mid-night about the same spot 'When resisted by the duty RPF Rakshaks with the help Of villagers, ballasts were pelted at them by the violent in uders who made good their escape with the gains of robbery. on these two frightful episodes, the detaining authority came to the requisite conclusion about danger to the community, which is recited in the order. The question is whether, in the facts and circumstances of the case, the order can be impugned as colorable or exercise of power based on illusory or extraneous circumstances and therefore void. An examination of the surrounding set of facts, serving as backdrop or basis, becomes necessary to appreciate the argument that the subjective satisfaction of the authority did not stem from any real application of his mind but as a ritualistic recital in a routine manner. It is admitted in paragraph 6 of the counter affidavit that the two incidents were investigated as GRPS Case No. 1 and No .2. The petitioner was arrested in connection with the said cases on September 9. 1971 and the police submitted a final report in both the cases on January 6, 1972 and February 9, 1972 respectively, 'not because there was no evidence against the petitioner but because the detenu- petitioner being a dangerous person, witnesses were afraid to depose against him in open Court'. It may be mentioned here that the petitioners name was not in the FIR but is alleged to have been gathered in the, course of the investigation. However, be was discharged from the two cases on February 9, 1972 but was taken into custody the same day pursuant to the detention order. Thereafter the prescribed formalities were followed and there is no quarrel about non-compliance in this statutory sequence. The crucial submission that deserves close study turns on the colorable nature or mindless manner of the impugned order. What are the facts germane to this issue? It is seen that the petitioner's name is not in the first information statements. Had a court occasion to adjudge the guilt of an accused person charged with serious crime committed in the presence of quasi-police officers and his name is not seen in the earliest report, to the police, that would have received adverse notice unless explained. Likewise, the circumstance that the final report to the Court terminated the criminal proceedings may, unless other reasons are given, militate against the implication of the petitioner since s. 169 Cr.P.C. refers to two situations one of

which at least nullifies possible inference of incrimination i.e., that there is no 'reasonable ground of suspicion to justify the forwarding of the accused to a magistrate'. It behoves the detaining authority to tell this Court how he reached his mental result in the face of a 'release report' by the police. For, the legal label that the satisfaction of the executive authority about potential prejudicial activity is 'subjective' does not mean that it can be irrational to the point of unreality. Subjective satisfaction is actual satisfaction, nevertheless. The objective standards which courts apply may not be applied, the subject being more sensitive; but a sham satisfaction is no satisfaction and will fail in court when challenged under Art. 32 of the Constitution. If material factors are slurred over, the formula of 'subjective, satisfaction' cannot salvage the deprivatory order. Statutory immunology hardly saves such invalidity. After all, the jurisprudence of 'detention without trial is not the vanishing point of judicial review. The area and depth of the probe, of course, is conditioned by the particular law, its purpose and language. But our freedoms axe not wholly free unless the judiciary have a minimal look at their executive deprivation, even though under exceptional situations.

We may here refer to what a bench of five Judges of this Court observed in the vintage ruling Rameshwar Shaw(1) :

> "It is however necessary to emphasise in this connection that though the satisfaction of the detaining authority contemplated by S. 3 (1)
>
> (a) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention on the ground of mala fides and in support of the said plea urge that along with other which show, mala fides, the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner and in ' support of the plea of malafides that this question can become justiciable; otherwise the reasonableness or propriety of the said satisfaction contemplated by S. 3 (1) (a) cannot be questioned before the Courts."

Back to the facts. Of course, the mere circumstance that the aim of the petitioner was gathered in the course of the investigation is neither here nor there and cannot help him in the tall contention that for that reason the order of detention is a make-believe. The conspectus of circumstances placed before the authority and his rational response, having regard to the duty to immobilise dangerous delinquents from molesting the community-these are pertinent factors to decode the responsible reality of the satisfaction, although not the plenary rightness of the detention order.

There are a few vital facts which loom large in this context. One is that court discharged the accused, the reason alleged in the counter being that [1964] 4 S.C.R. 921, 926.

> "The police submitted final report in those cases on 6-1-72 and 9-2-72 respectively not because there was no facts which show malafides, the Court may also consider his evidence against the petitioner but because the detenu petitioner being a dangerous person witnesses were afraid to depose against him in open court."

What is the impact of a discharge of the accused by the criminal court based on police reports on the validity of the detention order against the same person based on the same charge in the context of a contention of a non- application of the authority's mind ? The two jurisdictions are different, the two jurisprudential principles diverge, the objects of enquiry and nature of mental search and satisfaction in the two processes vary. The argument that detention without trial, for long spells as in this instance, is undemocratic has its limitations in modern times when criminal individuals hold the community to ran- som, although vigilant check of executive abuse becomes a paramount judicial necessity. We, as judges and citizens, must remember that, in law as in life, the dogmas of the quiet past are not adequate to the demands of the stormy present and the philosophy and strategy of preventive detention has come to stay. We may merely observe that we are not legally impressed with counsel's persistent point that solely or mainly because the petitioner has been discharged in the two criminal cases he is entitled to be enlarged from preventive captivity.

Even so, it does not follow that the extreme view propounded by the counsel for the State that the termination of the proceedings in a criminal case on identical facts is of no consequence is sound. In this connection, we may draw attention to a few decisions of this Court cited at the bar. Chandrachud J., speaking for the Court, recently observed in Srilal Shaw v. The State of West Bengal(1), dealing with a situation somewhat like the one in this case, thus):

> "This strikes us as a typical case in which for no apparent reason a person who could easily be prosecuted under the punitive laws is being preventively detained. The Railway Property (Unlawful Possession) Act, 29 of 1966, confers extensive powers to bring to book persons who are found in unlawful possession of railway property. The first offence is punishable with a sentence of five years and in the absence of special and adequate reasons to be mentioned in the judgment the imprisonment shall not be less than one year. When a person is arrested for an offence punishable under that Act, officers of the Railway Protection Force have the power to investigate into the alleged offence and the statements recorded by them during the course of investigation do not attract the provisions of section 162, Criminal Procedure Code. (See Criminal Appeal No. 156 of 1972 decided on 23-8-1974). If the facts stated in the ground are true, this was an easy case to take to a successful termination. We find it impossible of accept that the prosecution could not be proceeded with as the witnesses (1) Writ Petition No. 453 of 1974, decided on 4-12-74.

were afraid to depose, in the public against the petitioner. The Sub-inspector of Police who made the Panchnavna, we hope, could certainly not be afraid of giving evidence against the petitioner. He had made the Panchnama of seizure openly and to the knowledge of the petitioner. Besides, if the petitioner's statement was recorded during the course of investigation under the Act of 1966, that itself could be relied upon by the prosecution in order to establish the charge that the petitioner was in unlawful possession of Rail-, way property." (emphasis ours) Again, in Noorchand's case(1) Gupta J., delivering judgment for Court, held:

> "We do not think it can be said that the fact that the petitioner was discharged from the criminal cases is entirely irrelevant and of no significance; it is a circumstance

> which the detaining authority cannot altogether disregard. In the case of Bhut Nath Mate v. State of West Bengal (AIR 1974 SC 806) this Court observed:
>
> ". detention power cannot be quietly used to subvert, supplant or to substitute the punitive law of the Penal Code. The immune expedient of throwing into a prison cell one whom the ordinary law would take care of, merely because it is irksome to undertake the inconvenience of proving guilt in court is unfair abuse."

If as the petitioner has asserted, he was discharged because t 'here was no material against him and not because witnesses were afraid to give evidence against him, there would be apparently no rational basis for the subjective satisfaction of the detaining authority. It is for the detaining authority to say that in spite of the discharge he was satisfied, on some valid material, about the petitioner's complicity in the criminal acts which constitute the basis of the detention order. But, as stated already, the District Magistrate Malda, who passed the order in this case, has not affirmed the affidavit that has been filed on behalf of the State."

There was reference at the bar to the ruling reported as Golam Husvain v. Commissioner of Police(2) where the Court clarified that there was no bar to a detention order being made after the order of discharge by the criminal court, but emphasized the need to scan the ,order to prevent executive abuse in the following words:

> "Of course, we can visualise extreme cases where a Court has held a criminal case to be false and a detaining authority with that judicial pronouncement before him may not reasonably claim to be satisfied about prospective prejudicial activities based on what a Court has found to be baseless."

(1) A.I.R. 1974 S.C. 2120.

(2) [1974]4 S.C.C. 530.

Maybe, we may as well refer to the, vintage ruling in Jagannath's care(1) where Wanchoo J., (as he thn was) spoke for a unanimous Court :

> order of detention should show that it had acted with all due care and caution and with the sense of responsibility necessary when a citizen is deprived his liberty without trial. We have therefore to see whether in the present case the authority concerned has acted in this manner or not. If it has not so acted and if it appears that it did not apply its mind properly before making the order of detention the order in question would not be an order under die Rules and the person detained would be entitled to release." The precedential backdrop help crystallize the jurisprudence of, preventive detention, an odd but inevitable juridical phenomenon, in a suicide manner and to the extent relevant to the case. Although. the circumstances of each case will ultimately demarcate the callous, or colorable exercise of power from the activist or alert application of the executive's mind in making the impugned order,

some clear. guidelines, though overlapping, help application of the law:

(1) The discharge or acquittal by a criminal court is not necessarily a bar to preventive detention on the same facts for 'security' purposes. But if such discharge or acquittal proceeds on the footing that the charge is false or baseless, preventive detention on the same condemned facts may be vulnerable on the ground that the power under the MISA has been exercised in a malafide or colorable manner. (2) The executive may act on subjective satisfaction and is immunised from judicial dissection of the sufficiency of the material. (3) The satisfaction, though attenuated by 'subjectivity' must be real and rational, not random divination, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases.

(4) The executive conclusion regarding futuristic prejudicial activities of the detenu and its nexus with his past conduct is acceptable but not invulnerable. The court can lift the verbal veil to discover the true face.

(5) One test to check upon the recolourable nature or mindless mood of the alleged satisfaction of the authority is to see if the articulate 'grounds' are too groundless to induce credence in any reasonable man or to frivolous to be brushed aside as fictitious by a (1) [1966] 3 S.C.R. 134,138.

responsible instrumentality. The court must see through mere sleights of mind played by the detaining authority. ' (6) More concretaly, if witnesses are frightened off by a desperate criminal, the court may discharge for deficient evidence but on being convinced (on police or other materials coming within his ken) that witnesses had been scared of testifying, the District Magistrate may still invoke his preventive power to protect society.

(7) But if on a rational or fair consideration of the police version or probative circumstances he would or should necessarily have rejected it, the routinisation of the satisfaction, couched in correct diction, cannot carry conviction about its reality or fidelity, as against factitious terminological conformity. And on a charge of malafides or misuse of power being made, the court can go behind the facade and reach at the factum.

So viewed, how does the petitioner's case stand?

The petitioner's identity and involvement must, in some manner, brought home, sufficient for the subjective satisfaction of a responsible officer not merely for his hunch or intuition. Let us assume in favour of the officer that such material was present before him when he passed the order of detention. This should be revealed to the court hearing the habeas corpus motion, in a proper return in the shape of an affidavit. While we agree that the detainer's own oath is not always insisted on as the price for sustaining the order, subjective satisfaction, being a mental fact or state is best established by the author's affidavit, not a stranger in the Secretariat familiar with papers, but the mind of the man who realised the imperativeness of the detention. This is not a formality when the

subject-matter is personal liberty and the more 'subjective' the executive's operation the more sensitive is procedural insistence. Here the District Magistrate's affidavit is unavailable.

Another obstacle in the way of the State, which has to be surmounted, consists in the circumstances that both the criminal occurrences took place in the presence of public servants, members of the para-police forces attached to the railway administration. Indeed, the case is that some of these officials were terrorized and over-awed before the stolen articles were removed. Naturally, one would expect a serious crime like railway property being removed by show of violence being the subject-matter of the prosecution. In the present case. the District Magistrate does not swear an affidavit himself and what is stated is that he is now posted in Sikkim and is not 'presently available for affirming the affidavit'. In a case where a personal expla- nation is necessary, Sikkim is not too distant and so we have to see Whether the District Magistrate has, in the instant case, to show why, when the cases were discharged by the trying magistrate, he thought there was enough material for preventive detention. True, the Home Department official, informed by the records, has sworn that the police report for non-prosecution was 'not because there was no offence against the petitioner but because the detenu petitioner being a Jangerous person witnesses were afraid to depose against him in open court'. Maybe this is true, but the subjective satisfaction of the District Magistrate must be spoken to by him, particularly in a situation where the circumstances of the non- prosecution strongly militate against the reality of the petitioner's involvement in the occurrence. After all, merely to allege that witnesses were panicked away from Testifying to truth cannot be swallowed gullibly when the witnesses Themselves are members of a railway protection force and the offenses against public property are of a grave, character. The observations of Chandrachud J. in Srilal Shaw, quoted earlier, are in point. In the case of non-officials, maybe they are afraid to give evidence against dangerous characters for fear of their life but such an excuse or alibi is ordinarily unavailable where the witnesses are para-police public servants. If the District Magistrate had sworn an affidavit that he identity of the petitioner, as participant in the crime, was not known of the railway protection force and that other villagers made them out is the gang was decamping with the booty, something may be said for he plea. There is no such averment in the counter-affidavit and the pare ipse dixit of the Deputy Secretary in the Home Department that witnesses were afraid to depose is too implausible and tenuous to be acceptable even for subjective satisfaction. After all, freedom is not bubble to be blown away by executive whif or whim. For, as pointed put by Gajendragadkar J. (as he then was) in Rameshwar Shaw (supra) it p. 930 :

> "At the point of time when an order of detention is going to be served on a person, it must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention."

Had the statement been of the detaining authority, had the deponent furnished some fact which would or could make any reasonable man believe that the witnesses were likely to shy away from the court for far of the petitioner, bad the affidavit thrown some light on the dark lint behind the non-prosecution in court due to non-disclosure of evidence or to indicate that the final report of investigation was not on account of the absence of any reasonable suspicion but because of the deficiency of evidence (S. 169 Cr.P.C. contemplates both types of situations and the copy of the

report was easy to produce), we might have upheld the detention. In Dulat Roy v. The District Magistrate Burdwan(1) this question has been dealt with in some detail. The flaw in the order flows from non-explanation of how the District Magistrate has made his inference in the circumstances indicated.

(1) [1975] 3 S.C.R. 186.

Without more, we are inclined to the view that the observations of Wanchoo J. (as he than was) in Jagannath (supra), at p. 138, applies "This casualness also shows that the mind of the authority concerned was really not applied to the question of detention of the petitioner in the present case. In this view of the matter we are of opinion that the petitioner is entitled to release as the order by which he was detained is no order under the Rules for it was passed without the application of the mind of the authority con In the present case, on account of the special reasons set out above, who are far from satisfied that the detention order is not a cloak to avoid the irksome procedure of a trial in Court.

There are two social implications of dropping prosecutions and resorting to substitutive detentions which deserve to be remembered. Where a grievous crime against the community has been committed, the culprit must be subjected to condign punishment so that the penal law may strike a stem blow where it should. Detention is a softer treatment than stringent sentence and there is no reason why a dangeral should get away with it by enjoying an unfree but unpaid holiday. Secondly, if the man is innocent, the process of the law should give him a fair chance and that should not be scuttled by indiscriminate resort to easy but unreal orders of detention unbound by precise time. That is a negation of the correctional humanism of our system and breeds bitterness, alienation and hostility within the cage. We accordingly allow me writ petition, make the rule absolute and' direct that the petitioner set free. V.P.S. Petition allowed.