Pushkar Mukherjee & Ors vs The State Of West Bengal on 7 November, 1968

Equivalent citations: 1970 AIR 852, 1969 SCR (2) 635, AIR 1970 SUPREME COURT 852, 1970 SC CRI R 142, (1969) 2 SCR 635, (1970) 1 SCJ 724

Author: V. Ramaswami

Bench: V. Ramaswami, J.C. Shah, A.N. Grover

PETITIONER:
PUSHKAR MUKHERJEE & ORS.

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT:
07/11/1968

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
GROVER, A.N.

CITATION:
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1969 SCC (1) 10
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R 1972 SC1256 (8)
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RF 1972 SC1668 (6,7)
R 1972 SC1749 (7)
R 1972 SC2132 (4)
R 1973 SC 295 (7)
D 1973 SC 897 (12)
E 1973 SC1062 (4)
R 1974 SC 156 (4,6)
R 1974 SC 183 (18)
R 1974 SC 255 (11)
F 1975 SC 134 (6)
RF 1975 SC1215 (5)
R 1979 SC1925 (8,13)
R 1981 SC2166 (21)
RF 1985 SC 18 (15)

E	1987 SC 998	(2,6,9)
RF	1987 SC1748	(11)
RF	1988 SC 208	(7)
F	1989 SC 491	(17,19)
E	1990 SC 496	(6)
R	1990 SC1086	(18)

ACT:
Preventive Detention Act, s. 3(1)--"Public order", meaning of--whether takes in assault on solitary individuals-One of the grounds irrelevant or vague--If detention sustainable.

HEADNOTE:
In petitions for the writ of habeas corpus under Art. 32 of the Constitution for release from detention under orders passed under s. 3(2) of the Prevention of Detention Act,
HELD: The reasonableness of the satisfaction of the detaining authority cannot be; questioned in a Court of law; the adequacy of the material on which the said satisfaction purports to rest also cannot be examined in a Court of law. But if any of the grounds furnished to the detent are found to be irrelevant while considering the application of cls. (i) to (iii) of s. 3(1)(a) of the Act and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed. [640 H--641 C]
Even if any one of the grounds or reasons that led to the satisfaction was irrelevant, the order of detention would be invalid even if there were other relevant grounds, because it could never be certain to what extent the bad reasons operated on the mind of the authority concerned or whether the detention order would have been made at all if only one or two good reasons had been before them. Similarly, if some of the ground supplied to the detent are so vague that they would virtually deprive the detent of his statutory right of making a representation, that again may make the order of detention invalid. If, however, the grounds on which the order of detention proceeds are relevant and germane, to the matters which fall to be considered under s. 3(1)(a) of the Act, it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not reasonably based on any of the said grounds. 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. [641 B--F, 644 C-D]
In the present case, (1) with respect to some of the

petitioners three of the grounds of detention related to cases of assault on solitary individuals either by knife or by using crackers. It could not be held that these grounds had any relevance or proximate connection with the maintenance of public order. Therefore the orders of detention of these petitioners were illegal and ultra virex.

The expression "public order" in s. 3 (1) of the Act does not take in every kind of infraction of law. When two people quarrel and fight 'and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the

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ground that they were, disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest must be drawn and the, relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act. A District Magistrate is therefore entitled to take action under s. 3(1) of the Act to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances. The difference= between the concepts of 'public order' and 'law and order' is similar to the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic Jests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. 'Public' and 'private' crimes have been distinguished in the sense that some Offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. [641 H--642 D; 643 G, H]

The State of Bombay v. Atma Ram: Sridhar Vaidya, [1951] S.C.R. 167; Dr. Ram Manohar Lohia v. State of Bihar, [1966] 1 S.C.R. 709; Shibban Lal Saksena v. The State of Uttar Pradesh, [1954] S.C.R. 418, followed.

(2) One of the grounds of detention supplied to some of the other petitioners, stated, that they had become a menace to the society and there had been disturbances and confusion in the lives of peaceful citizens of the locality and that

the inhabitants thereof were in constant dread of disturbances of public order. The ground was extremely vague and gave no particulars to enable the petitioners to make an adequate representation against the order of detention and this infringed the Constitutional safeguard provided under Art. 22(5). Therefore, the orders of detention of these petitioners were illegal and ultra vires.

The Constitutional requirement that the ground must not be vague must be satisfied with regard to each of the grounds communicated to the person detained subject to the claim of privilege under el. (6) Art. 22 of the Constitution and therefore even though one ground was vague and the other grounds were not vague, the detention was not in accordance with procedure established by law and was therefore illegal. [648 B---C]

Dr. Ram Krishan Bhardwaj v. The State of Delhi, [1953] S.C.R. 708, followed.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 179 of 1968. Petition under Art. 32 of the Constitution of India for a writ in the nature of Habeas corpus.

R.L. Kohli, for the petitioners.

Debabrata Mukherjee and P.K. Chakravarti, for the respondent.

The Judgment of the Court was delivered by Ramaswami, J. In this case the petitioners have. obtained a rule calling upon the respondent, viz., The State of West Bengal to show cause why a writ of habeas corpus should not be issued under Art. 32 of the Constitution directing their release from detention under orders passed under s. 3(2) of the Preventive Detention Act, 1950 (Act IV of 1950), hereinafter called the 'Act'.

Cause has been shown by Mr. Debabrata Mukherjee and other Counsel on behalf of the respondent to whom notice of the rule was ordered to be given.

The case of the petitioners will be considered in the following three groups: (1) Petitioners nos. 2, 4, 5, 6, 16, 17, 20 and 26, (2) Petitioners nos. 1, 3, 7, 10, 12, 13, 19 and 22, (3) Petitioners nos. 8, 9 and 21. By the order of this Court dated October 18, 1968, the cases as regards petitioners nos. 11, 14, 15, 18, 23, 24, 25, 27 to 30 were dismissed as they were reported to have been released. As regards petitioner no. 5, Subhas Chandra Bose alias Kanta Bose, the order of detention was made on January 20, 1968 by the District Magistrate, Howrah and reads as follows:

> "No. 202/C Dated, Howrah, the 20th January, 1968 WHEREAS I am satisfied with respect to the person known as Shri Kanta Bose alias Subhas Chandra Bose son of Shri Sishir Kumar Bose of 26, Nilmoni Mallick Lane, P.S. and Distt Howrah, that

with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it is necessary so to do , therefore, in exercise of the powers conferred by Section 3(2) of the Preventive Detention Act, 1950 (Act IV of 1950), I make this order directing that the said Shri Kanta Bose alias Subhas Chandra Bose be detained.

Given under my hand and seal of office. Sd/- D.C. Mookherjee District Magistrate Howrah.

On the same date' the following grounds of detention were communicated to the detenu:

"You are being detained in pursuance of a detention order made under sub section (2) of section 3 of the Preventive Detention Act, 1950' (Act IV of 1950) on the following grounds:

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2. You have been acting in a manner prejudicial to the maintenance of public order by commission of offences of riotous conduct, criminal intimidation and assault as detailed below :--

(a) That on 3-11-65 at about 17/30 hrs. you assaulted Shri Ashutosh Dutta son of Shri Pyari Mohan Dutta of 55, M.C. Ghosh Lane, P.W. Howrah at the crossing of Panchanan Tala Road and M.C. Ghosh Lane, with knife causing bleeding injuries on his hand.

(b) That on 8-10-66 at about 16.00 hrs. while Shri Mahesh Prosad Bhagal son of Balgobinda Bhagal of 16, Belilious Road, P.S. Howrah was playing in an open field, you along with your associates demanded money from him and on his refusal you hurled cracker on him causing grievous injury on his right leg-

(c) That on 8-6-67 at about 11.40 hrs. you accosted one Sushanta Kumar Ghosh son of Manmatha Ghosh of 2/1/1, Danesh Sk. Lane inside a saloon at 255, Panchanantala Road on previous grudge and being intervened by Shri Shyamal Biswas son of Sandhya Biswas of 255, panchanantala Road, P.S. Howrah, you whipped out a dagger and assaulted Shri Biswas with the dagger causing injury on his hand.

(d) That on 23-11-67 at about 22.45 hrs. you hurled cracker on A.S.I.B. Kundu of Bantra P.S. while he was coming to Howrah along panchanantala Road in a wireless van and caused injury to the A.S.I. and damage to the wireless van.

(e) That on 7-1-68 at about 18.30 hrs. you threatened one Satya Narayan Prosad son of Late purusattam Prosad of 10, Debnath Banerjee Lane, P.S. Howtab with assault at the crossing of M.C. Ghosh Lane and Bellilious Road.

3. You are hereby informed that you may make a representation to the State Government within 30 days of the receipt of the detention order and that such representation should be addressed to the Assistant Secretary to the Government of West Bengal, Home Department, Special Section, Writers' Buildings, Calcutta and forwarded through the Superintendent of the Jail in which you are detained.

4. You are also informed that under Section 10 of the Preventive Detention Act, 1950 (Act IV of 1950) the Advisory Board shall if you desire to be heard you in person and that if you desire to be so heard by the Advisory Board you should intimate such desire in your representation to the State Government.

Sd/-D.C. Mookerjee District Magistrate Howrah."

On March 19, 1968 the Advisory Board made a report under s. 10 of the Act stating that there was sufficient cause for detention of Sri Kanta Bose alias Subhas Ch. Bose. On March 30, 1968 the Governor of West Bengal confirmed the detention order under s. 11 (1) of the Act.

Section 3 of the Act provides:

> "3. (1) The Central Government or the State Government may--
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> (a) If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to--
>
> (i) the defence of India, the relation of India with foreign powers or the security of India, or
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> (ii) the security of the State or the maintenance of public order, or
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> (iii) the maintenance or supplies and a services essential to the community, or
>
> (b) if satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act 1946 (XXXI of 1946), that with a view to regulating his continued presence-in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such persons be detained. (2) Any of the following officers, namely,-(a) District Magistrates,
>
> (b) Additional District Magistrates specially empowered in this behalf by the State Government,
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> (c) the Commissioner of Police for Bombay, Calcutta, Madras or Hyderabad,
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> (d) Collector in the State of Hyderabad, may satisfied as provided in sub-clauses (2) and (3) of clause (a) of sub-section (1) exercise powers conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate together with grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order made 'after the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall remain in force for more than twelve days after the making thereof unless in the meantime it has 'been approved by State Government.

(4) When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have bearing on the necessity for the order."

Section 7 is to the following effect:

"7. '(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which order has been made, and shall afford him the earliest opportunity if making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

It will be noticed that before an order of detention can be validly made by the detaining authorities specified by s. 3(2) of the Act, the authority must be satisfied that the detention of the person is necessary in order to prevent him from acting in any prejudicial manner as indicated in cls. (i) to (iii) of s. 3(1) (a). It is well-settled that the satisfaction of the detaining authority to which s. 3(1)(a) refers is a subjective satisfaction, and so is not justifiable. Therefore it would not be open to the detenu to ask the Court to consider the question as to whether the said satisfaction of the detaining authority can be justified by the application of objective tests. It would not be open, for instance, to the detenu to contend that the grounds supplied to him do not necessarily or reasonably lead to the conclusion that if he is not detained, he would indulge in prejudicial activities. The reasonableness of the satisfaction of the detaining authority cannot be questioned in a Court of law; the adequacy of the material on which the said satisfaction purports to rest also cannot be examined in a Court of law. That is the effect of the true legal position in regard to the satisfaction contemplated by s. 3(1)(a) of the Act--(See the decision of this Court in The State of Bombay v. Atma Ram Sridhar Vaidya(1). But there is no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of cls. (i) to (iii) of s. 3(1)(a) and in that sense arc foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge 'and the detention order liable to be quashed. Similarly, if some of the grounds supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making a representation, that again may make the order of detention invalid. If, however,

the grounds on which the order of detention proceeds are relevant and germane to the matters which fall to be considered under s. 3 (1) (a) of the Act, it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not reasonably based on any of the said grounds.

It is also 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. The detenu may say that the passing of the order of detention was an abuse of the statutory power and was for a collateral purpose. In support of the plea of mala fides the detenu may urge that along with other facts which show mala fides, the grounds served on him cannot rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner that this question can become justifiable; otherwise the reasonableness or propriety of the said satisfaction contemplated by s. 3(1)(a) cannot be questioned before the Courts.

The question to be considered in the present case is whether grounds (a), (b) and (e) served on Subhas Chandra Bose are grounds which are relevant to "the maintenance of public order". All these grounds relate to cases of assault on solitary individuals either by knife or by using crackers and it is difficult to accept the contention of the respondent that these grounds have any relevance or proximate connection with the maintenance of public order. In the present case we are concerned with detention under s. 3(1) of the Preventive Detention Act which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. Does the expression "public(1) [1951] S.C.R. 167.

order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act. A District Magistrate is therefore entitled to take action under s. 3 (1) of the Act to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances. In Dr. Ram Manohar Lohia v. State of Bihar(1), it was held by the majority decision of this Court that the expression "public order" was different and does not mean the same thing as "law and order". The question at issue in that case was whether the order of the District Magistrate, Patna under Rule 30(1)(b) of the Defence of India Rules, 1962 against the petitioner was valid. Rule 30(1)(b) provided that a State Government might, if it was satisfied with respect to a person that with a view to preventing him from acting in a

manner prejudicial to 'public safety and maintenance of public order' it is necessary to do so, order him to be detained. The order of the District Magistrate stated that he was satisfied that with a view to prevent the petitioner from acting in any manner prejudicial to the 'public safety and the maintenance of law and order,' it was necessary to detain him. Prior to the making of the order the District Magistrate had, however, recorded a note stating that having read the report of the Police Superintendent that the petitioner's being at large was prejudicial to 'public safety' and 'maintenance of public order', he was satisfied that the petitioner should be detained under the rule. The petitioner moved this Court under Art. 32 of the Constitution for a writ of habeas corpus directing his release from detention, contending that though an order of detention to prevent acts prejudicial to public order may be justifiable ,an order to prevent acts prejudicial to law and order would not be justified by the rule. It was held by the majority judgment that what was (1) [1966] 1 S.C.R. 709, meant by maintenance of public order was the prevention of disorder of a grave nature, whereas, the expression 'maintenance of law and order' meant prevention of disorder of comparatively lesser gravity and of local significance. At page 746 of the Report, Hidayatullah, J. as he then was, observed as follows in the course of his judgment:

> "It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an 'act may affect public order but not security of the State. By using the expression 'maintenance of law and order' the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

The order no doubt mentioned another ground of detention, namely, the prevention of acts prejudicial to public safety, and in so far as 'it did so, it was clearly within the rule. But the order of detention must be held to be illegal, though it mentioned a ground on which a legal order of detention could have been based, because it could not be said in what manner and to what extent the valid and invalid grounds operated on the mind of the authority concerned and contributed to the creation of his subjective satisfaction. It was accordingly held that the order of detention made by the District Magistrate was invalid and the petitioner should be set at liberty. In our opinion, the principle laid down in this case governs the decision in the present case also and the order of the District Magistrate, Howrah dated January 20, 1968 must be held to be ultra vires and illegal.

The difference between the concepts of 'public order' and law and order' is similar to the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr. Allen has distinguished 'public' and 'private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest 'and affect indivi-

duals only remotely. (see Dr. Allen's Legal Duties, p.

249). There is a broad distinction along these lines, but differences naturally arise in the application of any such test. The learned author has pointed out that out of 331 indictable English offences 203 are public wrongs and 128 private wrongs.

The argument was, however, stressed by Mr. Mukherjee on behalf of the respondent that the other grounds, viz., (c) and (d) mentioned in the order of the District Magistrate dated January 20, 1968 are more serious in character and may be held prejudicial to public order. We shall assume in favour of the respondent that grounds (c) and (d) are matters prejudicial to: public order. But even upon that assumption the order of detention must be held to be illegal. It is now well-established that even if any one of the grounds or reasons that led to the satisfaction is irrelevant, the order of detention would be invalid even if there were other relevant grounds, because it can never be certain to what extent the bad reasons operated on the mind of the authority concerned or whether the detention order would have been made at all if only one or two good reasons had been before them.--(See the decisions of this Court in Shibban Lal Saksena v. The State of Uttar Pradesh(1) and Dr. Ram Manohar Lohia v. State of Bihar(2). For these reasons we hold that the order of detention made by the District Magistrate, Howrah under s. 3(2) of the Act dated January 20, 1968 against petitioner Subhas Chandra Bose alias Kanta Bose and the consequent order made by the Governor dated March 30, 1968 confirming the order of detention under s. 11 (1) of the Act must be declared to be illegal and accordingly the petitioner. Subhas Chandra Bose alias Kanta Bose is entitled to be released from custody forthwith.

In the case of petitioner 2, Sukumar Chaudhury, no. 4, Tarapada Bhowmick, no. 6, Golam Rasul Molliek, no. 16, Sk. Sharafat, no. 17, Hanif Mirza, no. 20, Sk. Mann, and no. 26, Chittaranjan Majhi, the orders of detention suffer from the same defect as that in the case of petitioner no. 5, Subhas Chandra Bose alias Kanta Bose. For the reasons already given we hold that the orders of detention made under s. 3(2) of the Act and the orders of confirmation by the State Government under s. 11 (1) of the Act in the case of all these petitioners are illegal and ultra vires and these petitioners are also entitled to be set at liberty forthwith.

We pass on to consider the case of the petitioner mentioned in Group 2. As regards Pushkar Mukherjee, petitioner no.

(1) [1954] S.C.R. 418.

(2) [1965] 1 S.C.R. 709;-

the order of detention was made by the District Magistrate, 24--Parganas on September 19, 1967 and reads as follows:

> "Whereas I am satisfied with respect to the person known as Shri Pushkar Mukherjee, son of Late Jaladhar Mukherjee, Madhyamgram (Bireshpally), P.S. Baraset, Dist. 24-Parganas that with a view to preventing him from acting in a

manner prejudicial to the maintenance of Public order, it is necessary so to do. And, therefore, in exercise of the power conferred by Section 3(2) of the Preventive Detention Act, 1950 (Act IV of 1950) I make this oder directing that the said Shri Pushkar Mukherjee, son of Late Jaladhar Mukherjee be detained.

Sd. B. Majumdar, District Magistrate, 24-Parganas."

The grounds of detention were served upon the detenu on the same date and are to the following effect:

"Grounds for detention under sub-section 2 of section 3 of the Preventive Detention Act 1950 (Act IV of 1950).-- To Shri Pushkar Mukherjee, s/o Late Jaladhar Mukherjee, of Madhyamgram (Bireshpally), P.S.--Baraset, District--24-Parganas.

In pursuance of the provision of Section 7 of the Preventive Detention Act, 1950 (Act IV of 1950) as amended by the Preventive Detention (Amendment) Act, 1952 and 1954, you Shri Pushkar Mukherjee, s/o Late Jaladhar Mukherjee of Madhyamgram (Bireshpally), P.S. Baraset, 24-Parganas are hereby informed that you are being detained under section 3(1)(a)(ii) of the Preventive Detention Act, 1950 on the following grounds :--

1. That you have been acting in a manner prejudicial to the maintenance of public order by the commission of offences of riotous conduct, criminal intimidation and assault as detailed below :--

(i) That on 26-3-1967 at about 11.00 hrs. you along with your associates Harisikesh Samadder 'and others being armed with dagger, spear and iron rods demanded money for drinks from Shri Joy Nath Roy in his Khatal at Katakhal Ganga Nagar, P.S. Baraset and on his refusal to pay the money you along with your associates dragged him out of his room and assaulted' him and his friend Sudhir Ghose causing injuries on their persons.

(ii) That on 19-6-1967 evening you along with your associates threatened Sushil Kumar Chakravorty of Madhyamgram with assault when he was returning home from New Barrackpore Rly Station apprehending that he might inform the police for your arrest in connection with Baraset P.S. Case no. 56 dated 24-3-1967 u/s 302/394 I.P.C. which was pending investigation.

(iii) That on 8-7-1967 at about 22.00 hrs. you along with your associates Kalyan Chakraborty and others again threatened Shri Sushil Kumar Chakraborty of Madhyamgram with assault out of previous grudge when he was returning to his house from New Barrackpore Rly Stn.

(iv) That you were detained for your rowdy activities u/s 30(1) of the D.I. Rules 1962 from 22-4-1964 under Govt.

Order no. 1233 H.S. dated 15-4-1964 and was released from detention on 4-10-1965.

(v) That for your rowdy activities you were detained on 19-9-1966 under P.D. Order no. 163/66 which was confirmed under Govt. Order no. 8999 H.S. dated 26-11-1966 and you were released from such detention on 13-3-1967 under Order no. 1095 H.S. dated 13-3-1967 during General release. II. Thus from your activities subsequent to your release from detention under the P.D. Act on 13-3-1967 it appears that the detention did not produce the sobering effect on you. You have become a menace to the society and there have been disturbances and confusion in the lives o,f peaceful citizens of Baraset and Khardah P.S. areas under 24-Parganas District and the inhabitants thereof are in constant dread of disturbances of public order.

III. For the above reasons, I am satisfied that you are likely to act in a manner prejudicial to the maintenance of public peace and order, and therefore, I have passed an order for your detention to ensure the maintenance of Public Order.

IV. You are further informed that you have right to make a representation in writing against this order under which you are detained. If you wish to make such a representation, you should address it to the Assistant Secretary, Govt. of West Bengal (Home Special) Department, Writers' Buildings, Calcutta through the Superintendent of your Jail as soon as possible. Your case will be submitted to the Advisory Board within 30 days of your detention and your representation if received later, may not be considered by the Board.

V. You are also informed that under Section 10 of the Preventive Detention Act, 1950 (Act IV of 1950), the Advisory Board, shall, if you desire to be heard, hear you in person and that if you desire to be so heard by the Advisory Board you should A intimate such desire in your representation to the State Government.

Sd. B. MAJUMDAR.

District Magistrate, 9-9-67.

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On May 23, 1968, the Advisory Board reported that there was sufficient cause for detention of the detenu. On June 12, 1968 the Government of West Bengal confirmed the order of detention under s. 11 (1) of the Act.

It appears to us that ground no. 2 is extremely vague. Ground no. 2 states "You have become a menace to the society and there have been disturbances and confusion in the lives of peaceful citizens of Baraset and Khardah P.S. areas under 24-Parganas District and the inhabitants thereof are in constant dread of disturbances of public order." It is manifest that this ground is extremely

vague and gives no particulars to enable the petitioner to make an adequate representation against the order of detention and thus infringes the constitutional safeguard provided under Art 22 (5) Reference may be made in this connection to the decision of this court in the state of Bombay v. Alma Ram ion of this Court in The State Sridhar Vaidva(1) in which Kania of Bombay v. Atma Ram C.J. observed as follows:

> "What is meant by vague ? Vague can be considered as the antonym of 'definite'. If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is however improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained' person to legitimately meet the charge against him because the only answer which he can make is to say that he did not act as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention. It' cannot be disputed that the represen-
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> (1) [1951] S.C.R. 167.

tation mentioned in the second part of article 22(5). must be one which on being considered may give relief' to the detained person."

It was, however, argued by Mr. Debabrata Mukherjee on behalf of the respondent that even though ground no. 2 may be vague, the other grounds supplied to the detenu are not vague and full and adequate particulars have been furnished. But it is well-established that the constitutional requirement that the grounds must not be vague must be satisfied with regard to each of the grounds communicated to the person detained subject to the claim of privilege under cl. (6) of Art. 22 of the ConstitUtion 'and therefore even though one ground is vague and the other grounds are not vague, the detention is not in accordance with procedure established by law and is therefore illegal.--(See the decision of this Court in Dr. Ram Krishan Bhardwaj v. The State of Delhi(1). For these reasons we hold that the order of detention made against the petitioner, Pushkar Mukherjee by the District Magistrate, 24-Parganas on September 19, 1967 and 'the consequent order of the Governor of West Bengal dated June 12, 1968 confirming the order of detention were illegal and ultra vires and the petitioner is entitled to be set at liberty forthwith.

In the case of petitioners no. 3, Barun Kumar Hore, no. 7 Karfick Dey, no. 10, Ajit Basak, no. 12, Sk. Idris, no. 13, Shamsuddin Khan, no. 19, Khokan Mitra and no. 22, Ranjit Kumar Ghosal, the orders

of detention suffer from the same legal defect as the order of detention in the case of petitioner no. 1, Pushkar Mukherjee. For the reasons already stated, we hold that the orders of detention and the orders of confirmation made by the State Government under s. 11 (1) of the Act in the case of these seven petitioners also are illegal and ultra vires and these petitioners are also entitled to be set at liberty forthwith.

As regards the cases of the remaining petitioners, nos., 8, 9 and 21, Chandan P. Sharma, Sk. Sahajahan and Bind Parmeshwar Prasad, alias Bindeshwari Prosad respectively, we have persued the orders of detention and the grounds supplied to these petitioners. It is not shown by learned Counsel on their behalf that there is any illegality in the orders of detention or in the subsequent procedure followed for confirming these orders. In our opinion, no ground is made out for grant of a writ of habeas corpus so far as these petitioners are concerned. Their applications for grant of a writ of habeas corpus are accordingly rejected. We desire to say that we requested' Mr. Kohli to assist us on behalf of the petitioners and we are indebted to him for his assistance.

Y.P. Petitions dismissed.

(1) [1953] S.C R. 708.