Jit Bahadur Singh vs The State on 14 July, 1953

Equivalent citations: AIR1953ALL753, AIR 1953 ALLAHABAD 753

JUDGMENT

Agarwala, J.

1. This is an application in revision against an order directing the applicant Jit Bahadur Singh to furnish two sureties in Rs. 200/- with a personal bond in the like amount and to be of good behaviour for one year and to undergo one year's rigorous imprisonment in the event of his failure to execute the bond and to furnish the sureties. The applicant was tried under Section 110, Criminal P. C. on the ground that he possessed a bad reputation in the vicinity of his village and had no ostensible means of livelihood. Notice under Section 110 read with Section 112, Criminal P. C., was issued to the applicant. A large number of witnesses were examined on behalf of the prosecution. They deposed that the applicant was by habit a thief and a house-breaker and was known as such in his locality. He was suspected and named in several crimes. The accused also examined a large number of witnesses, but the learned Magistrate preferring the prosecution evidence to the defence evidence passed the order set out above against the applicant. The applicant appealed to the learned Sessions Judge but was unsuccessful.

2. In this revision application two points have been urged before us. In the first place, it has been urged that Sections 110, 118 and 123, Criminal P. C., under which action has been taken against the applicant have become void as they are contrary to the provisions of Clauses (4) to (7) of Article 22 of the Constitution. Section 110 enables a Magistrate mentioned in that section, who has received information that any person within the local limits of his jurisdiction is by habit a robber, house-breaker, thief or forger etc. to require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

Section 118 directs that if, upon such inquiry, it is proved that it is necessary for maintaining good behaviour that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly. Section 123 provides that if any person ordered to give security under Section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall be committed to prison..... until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

The applicant's contention is that when the applicant is detained for not providing the necessary sureties and for not executing the necessary bond which he is called upon to do under Section 118, he is, in effect, undergoing preventive detention, and since such preventive detention, may be for one year or even up to three years, it is in violation of Article 22(4) of the Constitution which

provides for detention not exceeding three months except in certain cases with which we are not concerned. Further, the Court acting under Sections 110, 118 and 123 does not comply with the formalities prescribed by that Article in regard to preventive detentions. In support of his contention Mr. P.C. Chaturvedi, learned counsel for the applicant, has relied upon the judgment of our brother Desai J. in the case of -- 'Deodat Rai v. State', AIR 1951 All 718 (A) decided by a bench of this Court, in which the learned Judge expressed an opinion that detention in the circumstances similar to those described above is preventive detention.

3. Article 22 deals with the arrest and detention of a person. Clause (1) of Article 22 lays down that alter a person is arrested, he must immediately be informed of the grounds of his arrest and that he should not be denied the right to consult, and to be defended by a legal practitioner of his choice. Clearly the arrest and detention of a person contemplated by the clause must be before he is tried in a Court of law. The same implication is contained In Clause (2)--a person who is arrested and detained in custody is required to be produced within twenty-four hours of his arrest before the nearest Magistrate. Clause (3) is an exception to Clauses (1) and (2). One of the exceptions is in the case of a person who is arrested or detained under any law providing for preventive detention. Therefore preventive detention spoken of here is arrest and detention before being produced before a Magistrate or tried in a Court of law.

Then follow Clauses (4), (5), (6) and (7) laying down the basic law for preventive detention. Clause (4) lays down that the preventive detention shall not be for a period longer than three months, except in two cases, first when an Advisory Board consisting of persons who are qualified to be appointed as Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention, and second when a law made by Parliament authorises the detention beyond a period of three months. Clause (5) provides that the grounds of detention shall be communicated to the detenu and an opportunity of making a representation against the order of detention shall be given to him as soon as possible. Clause (6) provides that the authority making the order of detention need not disclose facts which he considers to be against the public interest to disclose.

Both these clauses clearly indicate that preventive detention there spoken of is detention otherwise than by order of Court without any judicial enquiry. Preventive detention of the kind mentioned in Article 22 is quite different and distinct from measures which may be ordered by way of prevention of crimes under Chapter VIII, Criminal P. C. These measures consist of (a) taking security for keeping the peace when a person is convicted of a crime--Section 106, (b) taking security for keeping the peace when there has been no conviction--Section 107 and (c) taking security for good behaviour -- Section 108. This may be from three different kinds of persons: (1) persons disseminating seditious matter--Section 108, (2) vagrants and Suspected persons--Section 109, and (3) habitual offenders ---Section 110.

All these provisions deal with cases in which an order has to be made by a Magistrate for sufficient reasons which are proved to his satisfaction upon an enquiry duly held by him as a Court of law. Indeed the provisions of Chapter VIII, Criminal P. C. do not contemplate detention in the first instance. In the first instance security for keeping the peace of being of good behaviour is demanded

and detention is ordered only when security is not furnished. It is true that an order for furnishing security may be passed before an order for arrest and preventive detention governed by Article 22 of the Constitution is made, and the mere fact that security is first demanded and detention is ordered only when it is not furnished will not make the order of detention anything other than an order of preventive detention to which Article 22 will apply.

But the main distinction, as we have already observed, between the preventive detention under Article 22 and the preventive detention which is ordered on the failure of furnishing security under Chapter VIII, Criminal P. C., lies in this that the order in the latter case is made after full investigation by a Magistrate sitting as a Court of law in which full opportunity is offered to the person concerned to appear and defend himself by counsel and prove his case.

4. This view finds support from a recent decision of the Supreme Court in -- 'the State of Punjab v. Ajaib Singh', AIR 1953 SC 10 (B). This was a case under the Abducted Persons (Recovery and Restoration) Act, 1949 and the Court had to consider the nature of detention under Article 22. It was held that the detention dealt with in Clauses (1) and (2) of Article 22 does not refer to detention pursuant to a warrant issued by a Court of law. We are of opinion that the detention to which the other clauses of Article 22 apply is also made otherwise than by an order of a Court.

5. In -- 'AIR 1951 All 718' (A) an order for furnishing security to be of good behaviour was passed against a person under the provisions of Section 3 (1) (a) (i) of the U. P. Prevention of Crimes (Special Powers) (Temporary) Act, No. 5 of 1949. The provisions of the Act were analogous to Section 110, Criminal P. C., but more drastic in their nature.

6. The argument on behalf of the Crown in that case was that it was punitive detention because the order of detention was made on disobedience of the order to furnish security, but Desai J. repelled this contention and held that the order was not by way of punitive detention but was by way of preventive detention. In this respect he differed from the opinion of Dayal J. expressed by him in -- 'Harpal Singh v. State', AIR 1950 All 562 (C) that the detention under Section 123-A, Criminal P. C. was punitive and not preventive.

7. It may be that the detention ordered as a result of failure to furnish security under Section 123, Criminal P. C., may be described as preventive detention rather than punitive detention. This does not, however, conclude the matter and it does not follow that the preventive detention ordered under Section 123, Cr. P. C., is of the same nature as preventive detention to which Article 22 applies. We are, therefore, of opinion that Article 22 of the Constitution has no application to an order made under Sections 110, 118 and 123, Criminal P. C., and the said sections have not been rendered void by Article 22.

8. The second point raised by the learned counsel for the applicant is that the order of the learned Magistrate that the applicant should either furnish the security and execute the, bond or, in the alternative, go to jail for one year is bad in law.

9. His contention is that such an order, framed in the alternative, cannot be passed under the provisions of Section 110, Cr. P. C. According to him an order for commitment to prison can only be passed at a later stage and in a Separate proceeding by the Magistrate under the provisions of Section 123 of the Code of Criminal Procedure. We see no force in this contention either. When security is not furnished as directed by the Magistrate, the order of detention is made without any further enquiry. Therefore if the Magistrate in his order demanding security adds that, if security is not furnished the person concerned will have to be sent to prison, he is merely issuing a warning to him which does not prejudice him at all. Before he is taken into custody on his failure to furnish security, the Magistrate will no doubt pass a fresh order under Section 123.

10. In the result the application is dismissed.