

David Patrick Ward And Anr. vs Union Of India (Uoi) And Ors. on 26 August, 1992

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Bench: L.M. Sharma, S. Mohan, N. Venkatachala

JUDGMENT

N. Venkatachala, J.

1. This is a joint Writ Petition under Article 32 of the Constitution filed by Mr. David Patrick Ward as Petitioner-1, Mr. Steven Hillman as Petitioner-2, both being British Nationals, challenging the legality of the Detention Orders dated 31st January, 1992 made against them under Sub-sections (1) and (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as 'the Act') and seeking their release forthwith by issuance of Writs of Habeas Corpus to Respondents: (1) the Union of India, (2) the State of Uttar Pradesh, (3) the State of Nagaland.

2. Detention order made against each petitioner discloses that it had been made by Nagaland State Government with a view to prevent the concerned petitioner from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, the security of India, the security of the State of Nagaland and maintenance of public order. The ground of detention pertaining to each detention order being common and in identical terms, reads:

On 30th January, 1992 around 2030 hrs, four vehicles i.e. A/Car NLK-8701, A/Car NLH-6103, Tata truck NLH-8093 and Maruti Gypsy NLH-1115 were moving on road from Meluri to Kiphire. When they were signalled to stop by a patrol of 14 A.R. near Meluri, instead of stopping, fire was opened on the 14 A.R, patrol from M/Gypsy in which one rifleman of A.R. No. 143685 Shri Praveen Das was hit on the right shoulder. Assam Rifles returned fire on the M Gypsy killing Nipielie Chucha on the spot. At this, the occupants of the front three vehicles raised their arms and came out and were arrested by Assam Rifles. The arrested at this time included British national Shri Hillman Stephen Neil, nine insurgents and three drivers of these vehicles. Some documents, one diary and cash amounting to Rs. 8286 were recovered. One Chinese LMG and three Chinese rifles with 107 rounds of ammunitions, two VHF radio sets,

one video camera with 30 cassettes, one Pentax camera and a video camera charger set were also recovered. In the meantime, M/Gypsy being the last Vehicle quickly turned back and went towards Jessami. This Maruti Gypsy was finally intercepted around 2230 hrs by the 111 BSF jawans near Lanyie Bridge. From the M/Gypsy British national David Patrick Ward and one insurgent were arrested and the dead body of one insurgent was also recovered. Also from this M/Gypsy Rs. 3795 in each 30 US Dollar, three self cheques of 2,000 each and nine rounds of ammunition were recovered.

3. The list of the persons arrested from these four vehicles is as follows:

1. David Patrick Ward
2. Stephen Neil Hillman
3. SS 2/Lt. Vevochu S/o Mr. Vepahi
4. SS Sgt. Major Cupanyi S/o Mr. Thevio
5. SS Sgt. Major Nasu S/o Chasli
6. SS Sgt. Major Vetsoswu S/o Vekuye
7. SS : Cpl Veshukho S/o Vekhije
8. SS Pvt Sheiveyi S/o Mr. Javesayi
9. SS Pvt Mudokho S/o Mr. Veswoiita
10. Sri Kolezo Chase S/o Mr. Zakievilie Chase
11. Mr. Kholieveio S/o Mr. Nivepfuo
12. Mr. Zhopra S/o Mr. Sashito
13. Mr. Khriliehu S/o Mr. Moni Angami
14. Mr. Vilapralie S/o Mr. Neisatuo
15. Wakedo S/o Shri Nguchieni

4. It would be seen from the names mentioned above that you were a part and parcel in carrying out activities which are prejudicial to the following:

1. Defence of India
2. Relations of India with foreign powers
3. Security of India
4. Security of State of Nagaland
5. Maintenance of public order.

5. While the said ground of detention is put under the head "Schedule" in the Annexure to the Grounds of Detention communication, the latter is addressed to each petitioner by furnishing the following information for his guidance:

You have a right to make a representation to the State Government against above-said order. You have also a right to claim personal hearing before the Advisory Board.

6. Each petitioner being served with the detention order made against him along with the ground of detention on 4.2.1992 is detained in pursuance thereof. Both the petitioners being lodged in 1/5 G.R. at Jessami Jail, to being with, are shifted on 12.2.1992 to Imphal Central Jail and thereafter on 15.2.1992 to Naini Jail, Allahabad where they are said to have been lodged finally for security reasons. A report on the said detentions is said to have been made on 18.2.1992, by the Nagaland State Government to the Central Government as required by Sub-section (5) of Section 3 of the Act. Nagaland State Government is said to have also made reference to Advisory Board respecting the detentions of the petitioners as required by Section 10 of the Act. Pursuant thereto, the Advisory Board having fixed its meeting at Imphal on 15.3.1992 has heard the petitioners in person on their detentions. After such hearing, the Advisory Board being of the opinion that there was sufficient cause for detention of the petitioners, a report is sent to Nagaland State Government which on consideration of that report has confirmed the detention orders on 2.4.1992.

7. Petitioners have subsequently on 24.4.1992 filed the present joint Writ Petition challenging the legality of the said detention orders made against them and their continued detention.

8. Ms. Indira Jaising, learned Counsel for the petitioners, urges the following points for our consideration:

1. Neither of the petitioners was served with the detention order and grounds of detention made against him. Therefore, no effective representation could be made. It is the duty of the State Government to prove that there has been a proper service of the detention order and the grounds of detention. That burden of proof has not been discharged.

2. The grounds of detention are vague. They consist of nothing more than repetition of the Sections of the National Security Act. The vagueness of the grounds would be enough to invalidate the orders of detention as laid down by this Court in *Khudiram Das v. The State of West Bengal and Ors.* , *State of Punjab and Ors. v. Jagdev Singh Talwandi* at page 604.

3. When a representation had been made to the State Government, it has not been considered on the ground of pendency of writ petition. The procedure adopted is wholly wrong because this Court in more than one case had emphasised the need for expeditious consideration of representation, as in *Narendra Purshotam Umrao v. B.B. Gujral and Ors.* [1979] 2 SCC at page 644 (paragraph 24) and *Syed Farooq Muhammad v. Union of India and Anr.* .

4. If the object of preventive detention is to prevent the detainee from indulging in subversive activities, one of the petitioners as had expressed the desire to return to his country, he must have been deported.

5. The next submission of the learned Counsel for the petitioners, is that on the solitary incident which took place on 30.1.1992 the detention could not have been ordered. In support of this submission, reliance is place on *Debu Mehta v. The State of West Bengal and M. Mohamed Sulthan v. Joint Secretary to Government of India, Finance Department and Ors.* [1991] 1 SCC 144.

6. Without prejudice to the said submissions, she urges, assuming that the order of detention is valid, the condition of detention can be reviewed by this Court as laid down in *A.K. Roy v. Union of India and Ors.* [1982] 1 SCC 271 at page 323 (paragraph 73). Therefore, at least, the prayer of the petitioners for transfer to Central Jail, Tihar, Delhi could be ordered. Then alone, the petitioners will be in a position to contact the British High Commission and get their grievances redressed effectively. This is the spirit of Article 36 of the Vienna Convention on Consular Relations. Under the said Article, the Consular Officers have the right to visit a national of the sending State who is in prison or under detention and to arrange for his legal representation. Presently, that valuable right is denied to the petitioners.

9. In opposition to this, learned Additional Solicitor General, Mr. Altaf Ahmad, appearing for the Union of India, submits that it is incorrect to contend that service of detention orders was not made on the petitioners. He produced documentary proof in support of service of the order of detention. As a matter of fact, it has been categorically stated so in the counter affidavit of the third respondent, the State of Nagaland, annexing the copies of acknowledgements to it. This will clearly prove service of the detention order.

10. Equally, it is incorrect to contend that the grounds of detention are vague. The incident on 30/31.1.1992 which forms the grounds of detention discloses that the occupants of the motor vehicle in which one of the petitioners was moving, fired on the patrol party and injured one Assam Rifles

jawan, by name, Praveen Das. Only after a chase, the DIG of Assam Rifles was able to arrest at 2230 hrs petitioner-1, David Patrick Ward, Certainly these grounds coupled with recovery of arms and ammunition would clearly establish that there is no vagueness at all as far as the grounds of detention are concerned.

11. It is true that a representation was forwarded by the Jail Authority at Naini Jail as per the letter dated 27.4.1992. That was received on 5.5.1992 by the State Government. While the State Government took necessary steps to process the same for consideration, the Writ Petitions came to be filed on 5.5.1992 on which the State Government received notice on 13.5.1992. Therefore, the question of consideration of the representation did not arise at all since by then the petitioners had questioned the validity of detention orders.

12. It is not for the petitioners to say as to whether they should be detained or deported. The only requirement under the law is whether there are good grounds for invoking Section 3 of the Act. Certainly, in this case, there are valid grounds for detention.

13. There is no such thing as a rule of thumb that a solitary act cannot form the basis of detention. As a matter of fact, in *Haradhan Saha v. The State of West Bengal and Ors.* and *Mrs. Saraswathi Seshagiri v. State of Kerala and Anr.*, this Court had upheld the detention orders based on solitary act.

14. From the point of view of security, it is not possible to transfer the petitioners to Delhi Jail.

15. We shall now take up the points for consideration seriatim.

1. Whether service of detention order had been effected?

16. With regard to service of grounds of detention, the petitioners would assert non-service both in the Writ Petitions as well as the rejoinders. However, in the counter affidavit filed on behalf of third respondent, the State of Nagaland, it is categorically averred that the petitioners were actually served on 4.2.1992 with the detention orders and the grounds of detention by the SDO (Civil) Meluri. Necessary acknowledgements also had been obtained from them. As a matter of fact, learned Additional Solicitor General, in support of this averment produced before us the necessary records. We have perused them and we are satisfied that the detention orders and the grounds of detention had been served. The signatures (which are not disputed by the petitioners) had also been obtained acknowledging the receipt of the original documents. Besides, the ground of non-service was not even put forth before the Advisory Board. Under these circumstances, the argument that these documents had been brought about for purposes of the case is not tenable. Therefore, we hold that there was proper service on 4.2.1992.

2. Grounds of detention whether vague?

17. Material facts and circumstances on which orders of detention are based, are stated in the grounds of detention very clearly. Grounds of detention are comprised of the following, as becomes

apparent from them:

- (i) There was a convoy of four fast moving motor vehicles driven by expert drivers.
- (ii) Those motor vehicles were under the complete control of 10 Naga insurgents and their associates who were the occupants of the vehicles.
- (iii) The insurgents and the associates were armed with modern and sophisticated weapons, such as, Chinese Live Machine Gun (LMG), three Chinese rifles together with a large quantity of ammunition as 116 rounds. Not only that, they had been used to avert their arrest by 14 Assam Rifles patrol party.
- (iv) There were necessary equipments for preparing documentary of the struggle of insurgents and their associates for establishment of independent Nagaland State, such as, two VHF radio sets, one video camera charger, etc.
- (v) The convoy was moving during night in the disturbed area where Naga insurgency was on the rise and secessionist activities of Naga were on the increase.
- (vi) While halt signal was given to the convoy, the occupants opened fire and caused injury to Praveen Das, one of the members of the patrol party.
- (vii) While Hillman Stephen Neil, petitioner-2, surrendered, David Patrick Ward, petitioner-1 was arrested only after a chase.
- (viii) Seizure of large amount of money consisting of both Indian and foreign currency to fund insurgent activity.

18. These are the grounds on which the satisfaction under Section 3 of the Act came to be arrived at. We are unable to persuade ourselves to hold that they are either vague or ambiguous. On the contrary, they are very specific and dear. It is true as laid down in Khudiram Das (supra) and Jagdev Singh Talwandi (supra) that if the grounds are vague, no effective representation could be made. Such vagueness would vitiate the order of detention. But, here, as explained, the grounds of detention being specific and clear and not vague or ambiguous, the said decisions of this Court cannot be availed of for advancing the point under consideration. Hence, the point does not merit acceptance.

19. Before parting with this point, we may also consider whether a solitary act would be enough to form the basis of detention.

3. Whether order of detention could be found on a solitary act?

20. Mrs. `Saraswathi Seshagiri v. State of Kerala and Anr. (supra) is a ruling cited by learned Additional Solicitor General. In that case, the wife of the detenu in a petition presented by her under

Article 32 of the Constitution had challenged the validity of the detention order made against her husband. The contention there was that a solitary incident of an attempt on the part of the detenu to export Indian currency to foreign countries, would hardly be sufficient to warrant an inference that the detenu will repeat such activity in further also and that his detention was necessary to prevent him from doing so in future. This Court negated that contention relying on an observation in *Debu Mahato v. The State of West Bengal*, by stating thus:

From the aforesaid observation, it is evident that an inference in each case will depend on the nature of the act and the attendant circumstances. In the present case, the detenu tried to export Indian currency to the tune of Rs. 2,88,900 to a foreign country in a planned and premeditated manner by clever concealment of it in several parts of his baggage. This fully justified the detaining authority in coming to the conclusion that he might repeat his illegal act in future also and that his detention was necessary to preventing him from repeating the same in future. His past act in the circumstances might be in index of his future conduct.

21. To similar effect is the ruling in *Haradhan Saha v. The State of West Bengal and Ors.* where the order of detention which was founded on a solitary act was upheld by this Court. In paragraph 37 of the ruling, it is stated thus:

37. The ground given in *Madan Lal Agarwala's* case is that he in collusion with his father had hoarded 8 quintals 84 kg. of rice, 2 quintals 88 kg. of flour and 1 quintal 96 kg. of suji and further that he had no licence as required by Section 4 of the West Bengal Essential Foodstuffs Anti-Hoarding Order, 1966. The detaining authority said in the ground:

It is apparent in the aforesaid facts that you in collusion with your father are likely to withhold or impede supply of foodstuffs or rationed articles essential to the community.

The future behaviour of *Madan Lal Agarwala* based on his past conduct in the light of surrounding circumstances is the real ground of detention. It is needless to stress the obvious that *Madan Lal Agarwala's* acts are gravely prejudicial to the maintenance of supplies essential to the community.

22. Therefore, it cannot be contended that as a rule a solitary act can never form the basis of an order of detention.

23. Even in the ruling of *Mrs. Saraswathi Seshagiri (supra)* relied on by learned Counsel for the petitioners the following observation made by this Court in *Debu Mahato v. The State of West Bengal*, is excerpted:

...We must, of course, make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he

might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may, in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act of a series of acts. But whatever it be, it must be of such a nature that an inference can reasonably be drawn from it that a person concerned would be likely to repeat such acts so as to warrant his detention....

24. Tested in the light of the above decisions, certainly, the acts in which the petitioners indulged would form the basis of detention. The detaining authority can base its order of detention even on a solitary act provided that the conduct of the person concerned with the act in the circumstances in which it was committed, is of such a nature as would enable the formation of requisite satisfaction that the person, if not prevented by an order of detention, is likely to indulge in repetition of similar acts in future. That is certainly so in the present case, having regard to the various circumstances from the beginning, viz. the concealment of the purpose of visit, the entry without permit in the prohibited area upto the time of arrest of the petitioners. Therefore, the grounds of detention relating to what occurred on the night between 30th and 31st January, 1992 sufficed for making the detention orders under challenge. Debu Mahato (supra) and M. Mohamed Sultan (supra), the decisions of this Court on which reliance is placed to support the point under examination, indeed go against the point. Hence, the point cannot succeed.

4. Non-consideration of representation

25. The representation stated to have been sent to the State Government, it is fairly conceded is nothing more than a copy of the writ petitions filed before this Court. That was received by the State Government through Naini Jail authorities on 5.5.1992. As stated in the affidavit of the third respondent while steps were taken by the State Government for processing the same for consideration, the writ petitions have come to be filed on 5.5.1992. Notice on the writ petitions was received by the State Government on 13.5.1992. Therefore, the question of consideration of the representation on a matter, which is sub-judice did not arise. If regard is had to the clear and firm stand taken in the counter affidavit filed on behalf of the State Government that the reliefs sought by the petitioners in the writ petitions cannot be granted, question of the State Government now considering the representation, which is nothing but the writ petition itself, does not arise. In this situation, the decision of this Court in Narendra Purshotam Umrao (supra) and Syed Farooq Mohammad (supra), on the basis of which need for expeditious consideration of representation by the State Government was emphasised cannot be of any help.

5. Whether petitioners ought to have been deported?

26. Certainly, if there are good grounds to form the subjective satisfaction under Section 3 of the Act, it is not for the Court to say which is a better course; either to detain the petitioners by an order

of preventive detention or to deport them. Petitioners are known to belong to a U.K. based organisation called "Naga Vigil" as is disclosed in the counter affidavit of Home Commissioner of Nagaland State Government. It is said in that counter affidavit that the petitioners had entered Nagaland without obtaining 'Restricted Area Permit' as required under the Foreigners (Protected Areas) Order, 1958 issued by the Government of India. It is further said there, that the petitioners were moving from place to place in the districts of Kohima, Phek and Tuensang in the company of insurgents and secessionist groups and indulging in activities, which were detrimental to the security of India, maintenance of public order of the State of Nagaland and also maintenance of relations of India with foreign powers. Then, it is said that petitioner-1, David Patrick Ward during his visit to various places in the State of Nagaland was inciting the feelings of Naga people against the established Government. A reference is made to a signed Press release said to have been issued by petitioner-1 on 3.12.1991 on his views that the Naga people should freely exist in peace as an independent nation. From the counter affidavit filed by the Deputy Secretary to the Ministry of Home Affairs of the Government of India, it is disclosed that the petitioners 1 and 2 took Visas from the High Commission of India at London to visit India for a holiday and the places they desired to visit in India were Delhi-Agra-Calcutta. Coming to the profession of Petitioner-2, the High Commission of India at London is said to have been informed as 'Chef. After coming to India, they have entered the State of Nagaland without the 'Restricted Area Permits' and joined the Naga Federal Government activists whose goal was the achievement of People's Republic of Nagaland and had prepared a documentary without the permission of the authorities, to incite the people of Nagaland against the Government of India, As is seen from the incidents adverted to in the grounds of detention, petitioner-1 had even tried to evade arrest from the Indian security forces. The petitioners have lived with Naga insurgents in their gang and participated in their activities, for almost three months. If regard is had to be pretext on which the petitioners had entered India, the non-disclosure by them of the real purpose for which they were visiting India, and attempts made by them to evade arrest from the Indian security forces by opening fire against them, it would be difficult to think that their deportation from India will not make them return to India by some means or the other to carry on the prejudicial activities which were carried on by them before their detention, along with Naga insurgents and secessionists, against the established State Government and the Central Government.

27. If under these circumstances, the authorities are not in favour of deportation of the petitioners to their country, we cannot find fault with them.

6. Transfer to Tihar Jail, Delhi:

28. The last point which requires to be considered is the prayer of the petitioners that they may be shifted to Tihar Jail, Delhi. In support of the prayer, Article 36 of Vienna Convention on Consular Relations is relied on. Article 36(1)(c) says as follows:

(c) Consular officers shall have the right to visit a national of the sending State who is in person, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a

judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

29. It may be easy for the officers of the British High Commission in New Delhi to visit the petitioners and arrange for their legal representation if they are put in Tihar Jail at Delhi. But in our considered opinion, that alone cannot be the criterion, if consideration of security comes to the fore. In the counter affidavits filed on behalf of the respondents, it is made clear that the security considerations have made the authorities concerned to take the view that keeping of the petitioners in Naini Jail at Allahabad would be most appropriate. It is said in the counter affidavits that whenever visits are desired by the officials of the British High Commission, appropriate arrangements will be made for their easy access to the petitioners. In the instant case, we have pointed out while dealing with the contentions raised by learned Counsel for the petitioners that the petitioners are those determined to fight for the cause of Naga insurgents, as members of a U.K. based organisation known as 'Naga Vigil'. If the authorities concerned who have taken a conscious decision, as is disclosed from their counter affidavits, that the need of security requires that the petitioners should be kept in Naini Jail at Allahabad and have come forward to offer all facilities to the officers of the British High Commission desirous of visiting them at Naini Jail, Allahabad to have easy access to the petitioners, we find it difficult to grant the prayer in the petitions seeking the shifting of the petitioners from Naini Jail, Allahabad to Tihar Jail, Delhi.

30. When the authorities have come forward to afford all facilities to the officers of British High Commission who desire to visit the petitioners in Naini Jail at Allahabad, it cannot be said that they are acting contrary to the view expressed by this Court in A.K. Roy (supra) as to need of affording facilities to those who desire to meet detenus in Jail. However, we are not to be understood that the Court is powerless to examine the conditions of preventive detention under Section 5 where a case warrants such examination. But in this case, having regard to its facts and a conscious decision taken by the respondents, from the point of view of security, to detain the petitioners in Naini Jail, Allahabad, we do not think we could concede to their request to shift them to Tihar Jail at Delhi, more so, when the counter affidavit indicates that whenever visits are desired by officers of British High Commission, proper arrangements will be made in that behalf.

31. In the result, the Writ Petitions are dismissed.