

Abdul Aziz vs The Distt. Magistrate Burdwan & Ors on 11 October, 1972

Equivalent citations: 1973 AIR 770, 1973 SCR (2) 646, AIR 1973 SUPREME COURT 770, 1973 2 SCR 646, (1973) 1 SCC 301, 1973 SCC(CRI) 321

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, J.M. Shelat

PETITIONER:

ABDUL AZIZ

Vs.

RESPONDENT:

THE DISTT. MAGISTRATE BURDWAN & ORS.

DATE OF JUDGMENT 11/10/1972

BENCH:

CHANDRACHUD, Y.V.

BENCH:

CHANDRACHUD, Y.V.

SHELAT, J.M.

DUA, I.D.

CITATION:

1973 AIR 770 1973 SCR (2) 646

1973 SCC (1) 301

CITATOR INFO :

R 1974 SC2154 (34)

RF 1989 SC 371 (12)

ACT:

Maintenance of Internal Security Act, 26 of 1971--Murders alleged to be committed by petitioner whether have impact on 'public order as such--Validity of order of detention passed during pendency of prosecution for same incidents in respect of which detention order passed--Effect of delay in consideration of representation of detenu by State Government--Parliament whether competent to confer power on appropriate Government to pass order of detention for maintenance of 'public order'.

HEADNOTE:

The petitioner was detained under the Maintenance of Internal Security Act, 1971 by an order of the District Magistrate Burdwan, West Bengal. He challenged the order of detention in a writ petition under Art. 32 of the Constitution. The contentions urged in support of the petition were : (i) that the two incidents of murder mentioned in the grounds of detention were germane to law and order but could have no impact on 'public order' as such; (ii) that the order of detention was passed during the pendency of a prosecution launched against the petitioner for the very same incidents in regard to which the order of detention had been passed; (iii) that there was unreasonable delay in considering the petitioner's representation by the State Government; and (iv) that it was not open to the Parliament especially in view of the long title to the Act, to confer power on the appropriate Government to pass orders of detention for the maintenance of public order, as "internal security" cannot comprehend public order.

HELD : (i) The murders were stated to have been committed by the petitioner and his associates with the definite object of promoting the cause of the party to which they belonged. These, therefore, were not stray or simple cases of murder. Such incidents have serious repercussions not merely on law and order but on public order. [648A]

(ii) It has been held by this Court that the mere circumstance that a detention order is passed during the pendency of a prosecution will not vitiate the order. In conceivable cases it may become necessary to pass an order of detention in anticipation of an order of discharge or acquittal. [648E]

W.P. No. 112 of 1972, decided on 17th August 1972, referred to.

(iii) The petitioner's representation was received by the Government on 13th January 1972 and was rejected on 22nd February 1972. Apparently therefore there was delay in considering the P.-presentation. The affidavit on behalf of the State Government however showed that the representation could not be considered earlier because although the war with Pakistan had ended, its after-effects were still looming large in West Bengal and the officers of the State Government had to take appropriate steps for the return of the refugees who had taken shelter in West Bengal. The delay, thus, was satisfactorily explained. [648F]

(iv) Under Entry 3 of List III of the Seventh Schedule to the Constitution, Parliament has the power to legislate on "Preventive detention for reasons connected with the security of a State the maintenance of supplies and services essential to the community." Section 3(1)(a)(ii) of the Act 647

confers power on the Central Government to pass orders of detention with a view to preventing any person from acting in any manner prejudicial to the security of the State or the maintenance of public order. This power cannot be

controlled by anything stated in the long title of the Act. Besides the long title describes the Act as one for providing for detention for the purpose of maintenance of internal security and "matters connected therewith..... "Internal Security" is an expression of width sufficient to comprehend the concept of public order. Internal disturbances can threaten the security of the State and such disturbances may assume grave proportion so as to have a direct impact on public order. [649B]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 276 of 1972. Under Article 32 of the Constitution of India for issue of a writ in the nature of habeas corpus.

R. P. Kathuria, for the petitioner.

G. S. Chatterjee, for the respondents.

The Judgment of the Court was delivered by CHANDRACHUD, J.-This is a petition under Article 32 of the Constitution for the issue of a writ of habeas corpus for the release of the petitioner.

On 16th November, 1971 the District Magistrate Burdwan, West Bengal, passed an order under the Maintenance of Internal Security Act, 26 of 1971, that the petitioner be detained "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order". The petitioner was arrested on 17th December 1971 and on the same date the rounds of detention were served on him. The petitioner's case was placed before the Advisory Board on 7th January 1972, his representation was received by the Government on 13th January 1972 and was rejected on 22nd February, 1972.

Two grounds were furnished to the petitioner in justification of the order of detention. It was stated firstly, that the petitioner and his associates were members of an extremist party (CPI-ML), that on 16th August 1971, they armed themselves with lethal weapons like firearms, choppers and daggers with a view to promoting the cause of their party, that they raided the house of one Durgapada Rudra and murdered him and that the aforesaid incidents created a general sense of insecurity, as a result of which the residents of the locality could not follow their normal avocations for a considerable period. The second ground of detention is that on 22nd May, 1971 the petitioner and his associates raided the house of Smt. Kshetromoni Choudhury and murdered one Umapada Mallick who was staying in that house. This incident is also stated to have created a general sense of insecurity amongst the residents of the, locality.

Learned counsel appearing in support of the petition contends that these two incidents are but simple cases of murder, germane to law and order, but which could have no impact on "public order" as such. A short answer to this contention is that the, murders are stated to have been

committed by the petitioner and his associates with the definite object of promoting the cause of the party to which they belonged. These, therefore, are not stray or simple cases of murder as contended by the learned counsel. Such incidents have serious repercussions not merely on law and order but on public order. We may mention that a similar contention was rejected by this Court in Writ Petition No. 190 of 1972 decided on 31st July 1972.

It is then contended that the order of detention was passed during the pendency of a prosecution launched against the petitioner for the very same incidents in regard to which the order of detention has been passed and thereby the order is vitiated. One of the two incidents is a legend to have taken place on 16th August 1971 and immediately thereafter the petitioner was arrested. He was produced before the Judicial Magistrate, Kalna on 10th September 1971 who enlarged him on bail on 6th October 1971. The petitioner was eventually discharged by the learned Magistrate on 16th December 1971, but in the meanwhile, the order of detention was passed on 16th November 1971 and the petitioner was arrested in pursuance of that order on 17th December 1971. In regard to this contention it may be sufficient to draw attention to the decision of this Court in Writ Petition No. 112 of 1972 decided on 17th August 1972. It was held therein that the mere circumstance that a detention order is passed during the pendency of a prosecution will not vitiate the order. In conceivable cases it may become necessary to pass an order of detention in anticipation of an order of discharge or acquittal.

The next challenge to the order of detention is that the delay of about 40 days caused in considering the representation made by the petitioner is fatal to the order. The petitioner's representation was received by the Government on 13th January 1972 and was rejected on 22nd February 1972. Apparently therefore there was delay in considering the representation but, the affidavit of the Deputy Secretary Home (Special) Department, Government of West Bengal, shows that the representation could not be considered earlier because although the war with Pakistan had ended, its after-effects were still looming large in West Bengal and the officers of the State Government had to take appropriate steps for the return of the refugees who had taken shelter in West Bengal. The delay, thus, is satisfactorily explained.

The last contention advanced on behalf of the petitioner is that the Maintenance of Internal Security Act, 1971 having been passed for the maintenance of internal security- it was not open to the Parliament to confer power on the appropriate Government to pass orders of detention for the maintenance of public order, as "internal security" cannot comprehend "public order". Learned counsel draws support to his argument, partly from the long title to the Act, which describes it as "an Act to provide for detention in certain cases for the purpose of maintenance of internal security and matters connected therewith". We see no merit in this contention. In the first place, under Entry 3 of List II of the Seventh Schedule to the Constitution, Parliament has the power to legislate on "Preventive detention for reasons connected with the security of a State. the maintenance of public order, or the maintenance of supplies and services essential to the community". Section 3(1) (a) (ii) of the Act confers power on the Central Government and' the State Government to pass orders of detention with a view to, preventing any person from acting in any manner prejudicial to the security of the State or the maintenance of public order. This power cannot be controlled by anything stated in the long title of the Act. Besides, the long title describes the Act as- one for

providing for detention for the purpose of maintenance of internal security and "matters connected therewith".

"Internal' Security" is an expression of width sufficient to comprehend the concept of public order. Internal disturbances can threaten the security of the State and such disturbances may assume grave proportions so as to have a direct impact on public order. In the result the petition, fails and is dismissed.

G.C.

Petition dismissed