Nizamuddin vs The State Of West Bengal on 5 November, 1974

Equivalent citations: 1974 AIR 2353, 1975 SCR (2) 593, 1975 CRI. L. J. 12, 1975 3 SCC 95 1975 2 SCR 593, 1975 2 SCR 593, 1975 2 SCR 593 1975 3 SCC 95, 1975 3 SCC 95, AIR 1974 SUPREME COURT 2353, (1975) 3 SCC 395 1975 SCC(CRI) 21, 1975 SCC(CRI) 21

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Y.V. Chandrachud

PETITIONER:
NIZAMUDDIN

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT05/11/1974

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
CHANDRACHUD, Y.V.

CITATION:
1974 AIR 2353 1975 SCR (2) 593
1975 SCC (3) 95
CITATOR INFO :
F 1975 SC 728 (3)
RF 1976 SC1207 (560)
R 1979 SC 447 (6)
RF 1980 SC1983 (4)
RF 1987 SC1472 (12)
F 1989 SC1282 (9)
R 1990 SC 220 (6)
F 1992 SC1900 (14)

ACT:
Preventive Detention-Delay in arresting detenu pursuant to order of detention-Duty of detaining authority to explain.

HEADNOTE:
On 14th April, 1973, the petitioner was alleged to have

committed theft of aluminium wire and a criminal case was filed but it was ultimately dropped and the petitioner was discharged, because, the witnesses were not willing to give evidence for fear of danger to their life. On 10th September, 1973, the District Magistrate passed an order under s. 3(2)(i) of the Maintenance of Internal Security Act, 1971, detaining the petitioner with a view to prevent- ing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community, on his subjective satisfaction, based upon the solitary incident of the theft of aluminum wire. The petitioner was actually detained on 23rd November, 1973.

Allowing the petition challenging the order of detention,

HELD : The condition precedent for the making of the order of detention, namely the existence of a. real and genuine subjective. satisfaction of the District Magistrate was not satisfied in the case. and consequently, the order of detention must be quashed and set aside. [596D-E]

(a) It must be assumed that the petitioner was discharged on or about 10th September, 1973, because, the District Magistrate must have made the order of detention in anticipation of the order of discharge. If that was so, though the petitioner was available for detention, there was a delay of about two and half months in detaining the petitioner pursuant to the order of detention. This delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate recited in the order of detention. If the District Magistrate was really and genuinely satisfied he would have acted with greater promptitude. But he has not offered any explanation as to why the petitioner was not detained until 23rd November, 1973, more than two months after he made the order of detention. [595D-H]

(b) It is the obligation of the State or the detaining authority in making its return to the rule nisi, in cases of habeas corpus, to place all the relevant facts before the court and if there is any delay in arresting the detenu pursuant to the order of detention, which is prima facie unreasonable, the State must explain the delay. The State cannot contend that the petitioner has not raised the contention in his petition. [596B-C]

Sk. Serajul v. State of West Bengal W.P. 2000 of 1973, decided on September 9, 1974, followed.

JUDGMENT:

ORIGINAL APPELLATE JURISDICTION: Writ Petition No. 319 of 1974.

Petition under Article 32 of the Constitution. Anil Kumar Gupta, for the petitioner.

P. Chatteriee and G. S. Chatterjee, for the respondents. The Judgment of the Court was delivered by BHAGWATI, J. The petitioner challenges his detention under an order dated 10th September, 1973 made by the District Magistrate, Burdwan under section 3(2)(i) of the Maintenance of Internal Security Act, 1971. There were several grounds urged before us for challenging the validity of the order of detention but it is not necessary to refer to them since we find that there is one ground which is sufficient to dispose of the petition. To appreciate this ground it is necessary to notice a few facts.

The order of detention was made on 10th September, 1973 and it was based on the subjective satisfaction of the District Magistrate that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. This subjective satisfaction, according to the grounds of detention furnished to the petitioner, was founded on a solitary incident of theft of aluminums wire alleged to have been committed by the petitioner on 14th April, 1973. It appears that in respect of this incident a criminal case was filed inter alia against the petitioner in the Court of Sub-Divisional Judicial Magistrate, Asansol, but, as the affidavit-in-reply filed by the District Magistrate shows, the witnesses were unwilling to depose against the petitioner in open Court on account of fear of danger to their life and the prosecution was-, therefore, constrained to drop th criminal case and the petitioner was discharged. However, the date when the petitioner was discharged was not set out in the affidavit- in-reply. The petitioner was thereafter detained on 23rd November, 1973 pursuant to the order of detention. There was thus a time lag of about two and a half months between the date of the order of detention and, the date when the petitioner was actually detained. The petitioner contended that since, the District Magistrate did not state in his affidavit-in-reply as to when the petitioner was discharged, it must be presumed that the petitioner was discharged on or about 10th September, 1973 and was available for being detained under the order of detention and yet he was not arrested for a period of two and a half months until 23rd November, 1973 and that shows that there was no real necessity to detain the petitioner with a view to preventing him from acting in a prejudicial manner and the subjective satisfaction of the District Magistrate founding the order of detention was not genuine. There is- great force, in this contention of the petitioner and it must result in invalidation of the order of detention.

It is obvious from the facts set out in the affidavit-in- reply that the, petitioner-was arrested in connection with the criminal case arising out of the incident dated 14th April, 1973 set out in the grounds of detention. The criminal case was ultimately dropped as the witnesses were not willing to come forward to give evidence for fear of danger to their life and the petitioner was discharged. The date of discharge of the petitioner was, however not set out in the affidavit in-reply. We asked the learned counsel appearing on behalf of the respondent as to whether.there was any record with him from whick he could tell us as to' What was the date on which the petitioner was discharged but he stated that the only record which he had was that relating to the order of detention and the record relating to the criminal case had not been sent to him. We were told that even the history-sheet of the petitioner, which was before the District Magistrate when he made the order of detention, did not give the date when the criminal prosecution was dropped that the petitioner was discharged. It did not even make any reference to the criminal case. This is rather unfortunate. He should have thought that the fact that a criminal case is pending against the person who is sought to be

proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. That circumstance might quite possibly have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate. But that is a different question altogether and it need not detain us. The fact remains that there was no record with the learned counsel appearing on behalf of the respondent from which he could give us the date when the petitioner was discharged. In view of this failure on the part of the respondent to supply information to the Court as to then the petitioner was discharged, we must proceed on the assumption that he must have been discharged on or about 10th September, 1973. The order of detention must have been made by the District Magistrate in anticipation of the discharge of the petitioner and the discharge of the petitioner can, therefore, be presumed to have taken place at or about the time when the order of detention was made, that is, 10th September, 1973. But if that be so, the conclusion is inescap-able that though the petitioner was available for detention since about 10th September, 1973, he was not detained for a period of about two and a half months upto 23rd November, 1973. There was delay of about two and a half months in detaining the petitioner pursuant to the order of detention and this delay, unless satisfactorily ex- plained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate recited in the order of detention. It would be reasonable to assume that if the District Magistrate was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude in securing the arrest of the petitioner immediately after the invoking of the order of detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. of course when we say this we must not be understood to mean that whenever there is delay in arresting the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar acts and circumstances. The detaining authority may have a reason- able explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine. But here we find that though an affidavit-in-reply was filed by the District Magistrate himself, no explanation was forthcoming in this affidavit as to why the petitioner was not arrested until 23rd November, 1973, though the order of detention was made as far back as 10th September, 1973. The learned counsel appearing on behalf of the respondent contended that the State was not expected to render any explanation in regard to the delay in arresting the petitioner pursuant to the order of detention because no such complaint was made in the petition. But this is hardly an argument which can avail the State when it is called upon to answer a rule issued on a petition for a writ of habeas corpus. It is the obligation of the State or the detaining, authority in making its return to the rule in such a case to place all the relevant facts before the Court and if there is any delay in arresting the detenu pursuant to the order of detention which is prima facie unreasonable, the State must give reasons explaining the delay. Vide Sk. Serajul v. State of West Bengal.(1) Since in the present case no explanation for the delay has been given in the affidavit-in reply filed by the District Magistrate, we are not at all satisfied that the District Magistrate applied his mind and arrived at a

real and genuine subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner. The condition precedent for the making of the order of detention was, therefore, not satisfied and consequently the order of detention must be quashed and set aside. We accordingly quash and set aside the order of detention and direct that the petitioner be set at liberty forthwith. V.P.S. Petitioned allowed.

(1) W.P. 2000 of 1973, decided on September 9, 1974