Haradhan Saha & Another vs The State Of West Bengal & Ors on 21 August, 1974

Equivalent citations: 1974 AIR 2154, 1975 SCR (1) 778

Author: A.N. Ray

Bench: A.N. Ray, P. Jaganmohan Reddy, Kuttyil Kurien Mathew, M. Hameedullah Beg, A. Alagiriswami

PETITIONER:
HARADHAN SAHA & ANOTHER

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL & ORS.

DATE OF JUDGMENT21/08/1974

BENCH:
RAY, A.N. (CJ)
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RAY, A.N. (CJ)
REDDY, P. JAGANMOHAN
MATHEW, KUTTYIL KURIEN
BEG, M. HAMEEDULLAH
ALAGIRISWAMI, A.

CITATION:
1974 AIR 2154 1975 SCR (1) 778
1975 SCC (3) 198
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RF 1975 SC 522 (24)
R 1975 SC 550 (12,18)
F 1975 SC 623 (3)
F 1975 SC 775 (3)
R 1975 SC1165 (3)
R 1976 SC1207 (53,299)
R 1977 SC1027 (42,51,52)
D 1977 SC1096 (9)
R 1978 SC 597 (9,40,54,55,172,194,195,219)
E 1979 SC1945 (1,2,8)
R 1980 SC 898 (43)
R 1982 SC 710 (71)
MV 1982 SC1325 (80)
R 1985 SC1416 (103,104)
RF 1986 SC 555 (6)

R	1987	SC2332	(13)
R	1988	SC 227	(9)
R	1988	SC2090	(12)
RF	1989	SC1933	(28)
RF	1990	SC 231	(9)
RF	1991	SC 574	(11,19)
RF	1991	SC1090	(5)
RF&E	1992	SC1701	(27)

ACT:
Maintenance of Internal Security Act, 1971 (Act 26 of 1971)--Constitutional validity--Act Whether violative of Article 14, 19, 21 and 22--Held, the Act does not suffer from any constitutional infirmity.

HEADNOTE:
The petitioners were detained under the Act for acting in a manner prejudicial to the maintenance of supplies and services essential to the community. In the one case, the ground of detention was that the petitioner in collusion with his father had hoarded foodgrains, that he had no licence as required by the anti-hoarding control Order and that he was likely to withheld or impede supply of foodstuffs or rationed articles essential to the community. In the other case, the grounds were that the petitioner and his associates had smuggled 115 bags of rice covered by coal by engaging lorry without any valid permit or authority and in violation of control order and tried to frustrate the food and procurement policy of the Govt. and thus acted in a manner prejudicial to the maintenance of supplies and services Annual to the community. The petitioners challenged the respective orders of detention as having been made for a collateral purpose and contended that The Act was violative of Articles 14, 19, 21 and 22 of the Constitution of India. Dismissing the Writ petitions,
HELD : (1) Article 14 is inapplicable because preventive detention and Prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu. [787H]
The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him front committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Govt. from taking action for his detention under the Act. Second, the fact

that Police arrests a person and later on enfargs him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionay measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances. [788B-F]

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Borjahan Gorey v. The State of West Bengal. AIR 1972 SC 2256. Ashim Kumar Ray v. State of West Bengal, AIR 1972 SC 2561, Abdul Ajit v. The District Magistrate, Bardwan & Ors. AIR 1973 SC 770 and Debu Mahto v. The State of West Bengal AIR 1974 SC 816 relied on.

Biram Chand v. State of Uttar Pradesh & Ors, AIR 1974 SC 1161 overruled.

(ii) The Constitution has conferred rights under Art. 19 and also adopted preventive detention to prevent the greater evil of elements imperilling the security, the safety of a State and the welfare of the nation. It is not possible to think that a person who is detained will yet be free to move or assemble or form associations or unions or have the right to reside in any part of India or have the freedom of speech or expression. A law which attracts Art. 19 therefore must be such as is capable of being tested to be reasonable under clauses (2) to (5) of Art. 19. [784C-E]

On the assumption that the Act which is for preventive detention, may be tested with regard to its reasonableness with reference to Art. 19, Sec. 3 of the Art is to be interpreted in the light of various existing statutes which deal with various acts mentioned in Section 3. The section provides for the detention of persons to prevent likely acts of come or acts which fall within its ambit. [785A-D]

A. K. Gopalan v. The State of Madras, 1950 SCR 88 and Rustom Cavasjee Cooper etc. v. Union of India & other (Bank Nationalization case) (1970) 3 SCR 530 referred to.

It is an established rule of this Court that a detenu has a right to be apprised of all the materials on which the order of detention is based or approved. The only exception is as provided in clauses (6) and (8) of Art. 22 where it is not necessary to disclose facts which may be against the public interest to disclose. [785D-E]

Procedural reasonableness flows from Art. 19. Principles of

natural justice are an element in considering the reasonableness of a restriction where Art. 19 is applicable. There is an obligation on the State and the Advisory Board to consider the representation of a detenu. There should be a real and proper consideration. The duty to consider the representation does not mean a personal hearing or the disclosure of reasons. There cannot be any abstract standard or general pattern of procedural reasonableness. The nature of the right infringed, the underlying purpose of the restrictions imposed, the extent and Urgency of the evil sought to be remedied thereby the disproportion of the imposition, the prevailing conditions at the time, all provide the basis for considering the reasonableness of a particular provision. Fairness denotes abstention from abuse of discretion. Even if Art. 19 be examined in regard to preventive detention it does not increase the content of reasonableness required to be observed in respect of orders of preventive detention. [786E-H]

(ii) Art 22(5) speaks of liberty and making a representation. The combined result of clause (4), (5) & (6) of Art. 22 is that a procedure which permits representation will give all the facts before the Board. Art. 22(5) shows that the law as to detention is necessary. The requirements of that law are to be found in Art. 22 which gives the mandate as to what will happen in such circumstances. The Article lays down substantive limitations as well as procedural safeguards. The principles of natural justice in so far as they are compatible with detention laws find place in Art. 22 itself and also in the Act. [785H-786B; 787D-E]

Section 8 of the Act which casts an obligation on the State to consider the representation affords the detenu all the rights which are guaranteed by Art

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22(5). The section is in complete conformity With Art. 22(5) because it follows the provisions of the Constitution. The Govt. considers the representation to ascertain essentialy whether the order is in conformity with the power Linder the law. The Board. on the other hand, considers whether in the light of ,he representation there is sufficient cause for detention. [785G; 786H-787B]

Sec. 14 of the Act clothes the authority with the power of revoking or modifying the detention order at any time. Such a power which is for the benefit of the detenu carries with it the duty to exercise that power whenever and as soon as changed or new factors call for the exercise of that power. This shows that the authorities can consider new facts or changed circumstances. [785C-D]

Fagu Shaw v. State of West Bengal AIR 1974 S.C. 613 referred to.

For the foregoing reasons, the Act does not suffer from any constitutional infirmity. [788F]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 1999 & 1913 of 1973.

Petitions under Article 32 of the Constitution of India. R. K. Garg, S. C. Agarwala, S. S. Bhatnagar and V. J. Francis, for the Petitioners (in both the Petitions). P. K. Chatterjee, and G. S. Chaterjee, for the Respondents. L. M. Singhvi and Y. M. Jain for the Applicant/Intervener (The State of Rajasthan) L. N. Sinha, Solicitor Gen. of India, P. P. Rao and R. N. Sachthey for the Attorney General for India. The Judgment of the Court was delivered by RAY, C.J. The constitutional validity of the Maintenance of Internal Security Act, 1971 being Act No. 26 of 1971 is challenged in these petitions.

First, it is said that the law of preventive detention is unreasonable, and, therefore, it violates Article 19. Second, it is said that the Act violates Article 21 because the guarantee of a right to be heard is infringed. Third, it is said that the Act does not lay down the just procedure for giving effect to Article 22(5). Fourth, it is said that the Act violates Article 14 because it permits discrimination.

The Act confers power on the Central Government or the State Government to make orders directing detention of persons. Section 3 of the Act provides that when the Central Government or the State Government is 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 relations of India with foreign powers, or the security of India, or (ii) the security of the State or the maintenance of public order, or (iii) the maintenance of supplies and services essential to the community, District Magistrates, Additional District Magistrates or Commissioners of Police can pass orders of detention.

The Act provides in sub-sections (3) and (4) of section 3 that when any order is made for detention the officer shall forthwith report the fact to the State Government with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter. Further no order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government. The proviso to sub- section (3) states that where under section 8 the grounds of detention are communicated by the authority making the order after five days but not later than fifteen days from the date of detention, this subsection shall apply subject to the modification that for the words "twelve days", the words "twenty-two days" shall be substituted. When any order is made or approved by the State Government, the State Government shall, within seven days, 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, (-if the State Government have a bearing on the necessity for the order.

Section 7 of the Act states that if the Central Government or the State Government or an officer specified in Subsection (2) of section 3 of the Act has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself, a report in writing is to be made to the Presidency Magistrate or a Magistrate of the first class. Thereafter the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure 1898 (now the corresponding sections in the 1973 Act) shall apply in respect of the said person and his property as

if the order directing that he be detained were a warrant issued by the Magistrate. An order can also be passed directing such person to appear and if he fails to comply with the directions he shall unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

Section 8 provides that when a person is detained the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances not later than fifteen days, from the date of detention, communicate to him the ground on which the order has been made and shall afford him the opportunity of making a representation against the order to the appropriate Government.

The Government constitutes one or more Advisory Boards. The Board shall consist-of three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court. The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of the High Court to be its Chairman. A detention order is to be placed before the Advisory Board within 30 days from the date of detention under the order. The grounds:

> of detention, the representation made by the person concerned and the report of the officer making the order shall be placed before, the Advisory Board. These are the provisions of section 10 of the Act.
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> The Advisory Board under section 11 of the Act shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned and if, in any particular case, it considers it essential so to do or if the, person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within 10 weeks from the date of detention. The report of the Advisory Beard shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned. If here is a difference of opinion of the Advisory Board, the opinion of the majority of such members shall be deemed to be the, opinion of the Board. A person against,whom detention order has been made is not entitled to appear by a legal practitioner before the Advisory Board.
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> Under section 12 of the Act where the Advisory Board has re- ported that there is sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned. It the Advisory Board reports that there is no sufficient cause for detention the appropriate Government shall revoke the detention order.

Section 14 provides that without prejudice to the provisions of section 21 of the General Clauses Act, 1897 a detention order may, at any time, be revoked by the appropriate Government.

Section 15 provides that the appropriate Government may, at any time, direct the release of any person detained without conditions or upon such conditions specified in the direction. The Government may also cancel his release. In the background of these provisions of the Act the petitioners contend as follows : The Act does not provide for an objective determination of the facts which are the foundation of a decision for detention. The opportunity to make a representation cannot be reasonable if the order does not disclose the material on the basis of which the detaining authority arrives at a conclusion that grounds for detention exist. The representation cannot be reasonable if the detenu has no opportunity to test the truth of the materials relied on for detention. The Act does not define or lay down the standards for objective assessment of the grounds for detention. The Act does not, oblige the Government to consider the representation against detention and decide every detention on facts and on law against grounds communicated to the detenu.

In short, it is said that the order of detention should set out all. the materials on the basis of which the appropriate Government comes to a conclusion that it is necessary to detain a person. Mere recital in the order that with a view to preventing a person from acting in any manner prejudical to the defence of India, the relations of India with foreign powers, or the security of India, or the security of the State or the maintenance of public order, or the maintenance of supplies and services essential to the community does not enable the person detained to attack the grounds for detention and to prove by material in rebutal his innocence by consideration of the representation.

The petitioners contend that the Act permits detention for two years and even until the expiry of the period of proclamation of emergency and therefore it is an unreasonable restriction in violation of Article 19 without a six monthly review with a judicial approach. With regard to the report of the Advisory Board it is said that the reasons for rejecting representation must be available to the person detained. This is said to be necessary to enable the person detained to come up, before the Court for judicial review and in aid of his right to liberty, The petitioners, therefore, contend that the law of preventive detention is unreasonable, in violation of Article 19 inasmuch as the, order of detention can be passed on acts sought to be prevented which acts are not defined. It is said that the power is so unguided that acts forbidden and acts not forbidden by law are treated, alike to be the foundation for detention.

The petitioners contend that Article 21 is violated because a detenu is not given the right to be heard on all facts and circumstances. The petitioners submit that whether deprivation of liberty is punitive or preventive, the right to be heard is guaranteed by Article 21.

The petitioners contend that Article 22 is violated by the Act because it does not provide for impartial and judicial consideration of, the representation by the Government. The Act merely reproduces the language of Article 22 which creates a fetter on the power GI the legislature. This Act does not provide any machinery and jug(., procedure for giving effect to Article 22(5). The acts sought to be prevented and which are mentioned as grounds for detention are not defined. Therefore power A unguided and un-bridled. The Act is so framed by reproducing Article 22(5) that nothing is shown to spell out the requirements of procedure available in a reasonable manner. to ensure fair play and justice against grounds communicated and not withheld under Article 22(6).

Finally, the petitioners contended that section 3 of the Act violated Article 14 because it permits the same offence to be a ground for detention in different and discriminatory ways. The petitioners submit that A may be prosecuted but not detained preventively or B may not be prosecuted but only detained preventively or C may be prosecuted and also detained preventively.

The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The, basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent.

Constitution has conferred rights under Article 19 and also adopted preventive detention to prevent the greater evil of elements imperiling the security, the safety of a State and the welfare of the Nation. It is not possible to think that a person, who is detained will yet be free to move or assemble or form association or unions or have the right to reside in any part of India or have the freedom of speech or expression. Suppose a person is convicted of an offence of cheating and prosecuted after trial, it is not open to say that the imprisonment should be tested with reference to Article 19 for its reasonableness. A law which attracts Article 19 therefore must be such as is capable of being tested to be reasonable under clauses (2) to (5) of Article

19.

This Court in A. K. Gopalan v. The State of Madras [1950] S. C. R 88 held that Article 22 is a complete code and Article 19 is not invoked in those cases. It is now said that the view in Gopalan's case (supra) no longer holds the field after the decision in the Bank Nationalisation case [1970] 3

S.C.R. 530. In the Bank Nationalisation case (supra) this Court held that Article 31(2) is not a complete protection for acquisition of property by the two tests of authority of law and compensation. This Court said that the direct impact of such an act of acquisition might invade rights, under Article 19, and, therefore, the acquisition could be tested as to whether it was a reasonable restriction on the rights guaranteed under Article 19. Article 19(1)(f) deals with the right to acquire, hold and dispose of property. It is apparent that after a person's property has been acquired by the State he cannot acquire, hold or dispose of the same property. In the Bank Nationalisation case (supra) it is said that the acquisition which left the Banks free to do business other than banking was rendered unreasonable by, reason of the Banks being deprived of the wherewithal to carry on the business. The right guaranteed under Article 19(1)(g) to carry on any occupation, trade or business were therefore held to be directly invaded by the nationalisation of Banks. It is in this context that the Bank Nationalisation case (supra) held that in spite of Article 31(2). the acquisition of property directly impinged on the right of the Banks to carry on business other than Banking guaranteed under Article 19(1)(g) and Article 31(2) was not a protection against infringement of that guaranteed right. We may proceed on the assumption that the Act which is for preventive detention may be tested with regard to its reasonableness with reference to Article 19. Section 3 of the Act is to be interpreted in the light of various existing Statutes which deal with the various acts mentioned in section 3. Acts sought to be prevented are found in various legislations like the Essential Commodities Act, the Essential Services Act. It is not necessary that the person to be detained should have actually committed a crime or a forbidden act. In some cases the person who has not already committed a crime is likely to commit an act to prevent which section 3 provides for detention of such a person. Some times it may be possible that an act which is not forbidden by law may fall within the ambit of section 3, Such cases may be dealing with relations of India with foreign powers or maintenance of public order, The Preventive Detention Act of 1950 was considered by this Court and. it is an established rule of this Court that a detenu has a right to be apprised of all the materials on which the order of detention is based or approved. The only exception is as provided in clauses (6) and (8) of Article 22 where it is not necessary to disclose facts which may be considered to be against the public interest to disclose. The representation of a detenu is to be considered. There is an obligation on the State to consider the representation. The Advisory Board has adequate power to examine the entire materials. The Board can also call for more materials. The Board may call the detenu at his request. The constitution of the Board shows that it is to consist of Judges or persons qualified to be Judges of the High Court. The constitution of the Board observes the fundamental of fair play and principles of, natural justice. It is not the requirement of principles of natural justice that there must be an oral hearing. Section 8 of the Act which casts an obligation on the State to consider the representation affords the detenu all the rights which are guaranteed by Article 22(5). The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considered whether in the light of the representation there is sufficient cause for detention. The representation is to be considered by the Advisory Board by following the substance of natural justice as far as it is consistent with the nature of the impugned Act, the nature of the relative juris diction of the Government and of the Advisory Board. Procedural reasonableness for natural justice flows from Article 19. Article 22(5) speaks of liberty and making of representation. The combined result of clauses (4), (5) and (6) of Article 22 is that a procedure which 4-L192Sup.Cl 75 permits representation will give all the facts before the Board. Article 22(5) shows that law as to detention is

necessary. The requirements of that law are to be found in Article 22. Article 22 gives the mandate as to what will happen in such circumstances.

The opinion of the Board as well as the order of the Government rejecting the representation of the detenu must be after proper consideration. There need not be a speaking order. There is also no failure of justice by the order not being a speaking order. All that is necessary is that there should be a real and proper consideration by the Government and the Advisory Board.

Section 14 of the Act clothes the authority with the power of revoking or modifying the detention order at any time. Such a power which is for the benefit of the detenu carries with it the duty to exercise that power whenever and as soon as changed or new factors call for the exercise of that power. This shows that the authorities can consider new factors or changed circumstances. This Court has already held in Fagu Shaw etc. v. State of West Bengal A.I.R. 1974 S.C. 613 that when Parliament prescribed two years or until the expiry of the Defence of India Act, whichever is later, it satisfied the requirements of Article 22(7)(b) of fixing the maximum period. The further requirement of a six monthly review as contended for by the petitioners suggests a new provision. That does not go to reasonableness but to policy of legislature and due process of law. Section 8 of the Act follows the provisions of Article 22(5) of the Constitution. Article 22(5) enjoins upon the detaining authority obligation to afford the detenu earliest opportunity of making a representation against the order. An opportunity of making a representation cannot be equated with an opportunity of oral hearing or hearing before a Court and the procedure of judicial trial. As long as there is an opportunity to make a representation against the order of detention and a long as a representation is to be considered by the Advisory Board there is no unreasonableness in regard to the procedure. The duty to consider the representation does not mean a personal hearing or the disclosure of reasons. Procedural reasonableness which is invoked by the petitioners cannot have any abstract standard or general pattern of reasonableness. The nature of the right infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied there by, the disproportion of the imposition, the prevailing conditions at the time, all provide the basis for considering the reasonableness of a particular provision. The procedure embodied in the Act has to be judged in the context of the urgency and the magnitude of the problem, the underlying purpose of the restrictions and the prevailing conditions.

Principles of natural justice are an element in considering the reasonableness of a restrictions where Article 19 is applicable. At the stage of consideration of representation by the State Government, the obligation of the State Government is such as Article 22(5) implies. Section 8 of the Act is in complete conformity with Article 22(5) because this section follows the provisions of the Constitution. If the representation of the detenu is received before the matter is referred to the Advisory Board, the detaining authority considers the representation. If a representation is made after the matter has been referred to the Advisory Board, the detaining authority will consider it before it will send representation to the Advisory Board.

Elaborate rules of natural justice are excluded either expressly or by necessary implication where procedural provisions are made in the statute or where disclosure, of relevant information to an interested party would be contrary to the public interest. If a statutory provision excludes the

application of any or all the principles of natural justice then the Court does not completely ignore the mandate of the legislature. The Court notices the distinction between the duty to act fairly and a duty to art judicially in accordance with natural justice. The detaining authority is under a duty to give fair consideration to the representation made by the detenu but it is not under a duty to disclose to the detenu any evidence or information. The duty to act fairly is discharged even it there is not an oral bearing. Fairness denotes abstention from abuse of discretion. Article 22 which provides for preventive detention lays down substantive limitations as well as procedural safeguards. The principles of natural justice in so far as they are compatible with detention laws find place in Article 22 itself and also in the Act. Even if Article 19 be examined in regard to preventive detention it does not increase the content of reasonableness required to be observed in respect of orders of preventive detention. The procedure in the Act provides for fair consideration to the representation. Whether in a particular case, a detenu has not been afforded an opportunity of making a representation or whether the detaining authority is abusing the powers of detention can be brought before the Court of Law.

The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not over lap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

The recent decisions of this Court on this subject are many. The decisions in Borjahan Gorey v. The State of West Bengal reported in A.I.R. 1972 S.C. 2256, Ashim Kumar Ray v. State of West Bengal reported in A.I.R. 1972 S.C. 2561., Abdul Aziz v. The Distt. Magistrate, Burdwan & Ors. reported in A.I.R. 1973 S.C. 770 and Debu Mahto v. The State of West Bengal reported in A.I.R. 1974 S C. 816 correctly lay down the principles to be followed as to whether a detention order is valid or not. The, decision in Biram Chand v. State of Uttar Pradesh & Ors. reported in A.I.R. 1974 S.C. 1161 Which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under-the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate, issuing an order under the

preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.

For the foregoing reasons, we are of opinion that the Act does not suffer from any constitutional infirmity In the case of Madanlal Agarwala it is submitted that the detention order was for a collateral purpose because he was released on 26 March 1973 & the detention order was of the same day. It was also said that one incident was said to be the ground in the order of detention and one incident should not suffice for an order of detention.

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 need- less to stress the obvious that Madan Lal Agarwala's acts are gravely 'prejudicial to the maintenance of supplies essential to the community.

It was said in the case of Haradhan Saha that he was released on 25 July, 1973 and he was arrested on 7 August, 1973, pursuant to, a detention order dated 31 July, 1973, It is, therefore,, said that the detention order was passed for collateral purposes. The grounds in the detention order are that on 19 June, 1973 Haradhan Saba with his associates was smuggling 115 bags of rice weighing 93 quintals 80 kgs. to Calcutta covered by coal by engaging lorry without any valid permit or authority. Haradhan Saha violated the provisions of West Bengal Rice and Paddy (Restriction on Movement by Night) Order, 1969 and West Bengal Rice and Paddy (Licensing and Control) Order, 1967 and tried to frustrate the food and procurement policy of the Government. These grounds concluded by stating that Haradhan Saha acted in a manner prejudicial to the maintenance of supplies and services essential to the community. This again illustrates as to how these detention orders came to be passed to prevent the likelihood of such acts prejudicial to the maintenance of supplies essential to the community.

The petitions are therefore dismissed.

S. B. W. Petitions dismissed