Supreme Court of India
Rameshwar Shaw vs District Magistrate, Burdwan & ... on 11 September, 1963
Equivalent citations: 1964 AIR 334, 1964 SCR (4) 921
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B., Subbarao, K., Wanchoo, K.N., Ayyangar, N. Rajagopala, Mudholkar, J.R.

PETITIONER:
RAMESHWAR SHAW

Vs.

RESPONDENT:
DISTRICT MAGISTRATE, BURDWAN & ANR.

DATE OF JUDGMENT:
11/09/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
WANCHOO, K.N.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1964 AIR 334 1964 SCR (4) 921
CITATOR INFO :

R	1964 SC1120	(7,8,9,10,16)
D	1964 SC1128	(5)
D	1966 SC 340	(3,4,5,6)
F	1966 SC 740	(3)
E	1967 SC 241	(4,5,8)
RF	1967 SC 295	(60)
RF	1967 SC1797	(5)
RF	1973 SC 844	(2)
F	1973 SC 897	(6)
R	1974 SC 183	(29)
RF	1974 SC1336	(5)
D	1975 SC 90	(5,6,8)
R	1975 SC 919	(6,14)
RF	1975 SC1508	(4)
RF	1976 SC1207	(116,208)
F	1982 SC1539	(5)
R	1982 SC1543	(11,14)
R	1982 SC1548	(5)
R	1982 SC2090	(5)
RF	1986 SC2177	(30,32,37,39)
R	1987 SC2098	(7)
RF	1987 SC2332	(23)
RF	1988 SC 934	(12)

R	1989 SC2027	(13,14,18,19,20)
RF	1989 SC2265	(12)
R	1990 SC 516	(6,10)
RF	1990 SC1196	(7)
RF	1990 SC1202	(12)
RF	1991 SC2261	(5,12)

ACT:
Preventive Detention-Person in jail custody-Detention order, if can be served-Validity-"Satisfaction" of the authority-Preventive Detention Act, 1950 (Act 4 of 1950), s. 3(1).

HEADNOTE:
The petitioner was detained by the order of the District Magistrate under the provisions of the Preventive Detention Act, 1950. The order recited that the District Magistrate was satisfied that it was necessary to detain the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of Public order. This order was served on the petitioner on the 15th February 1963, while he was in jail custody as an under-trial prisoner in connection with a criminal case pending against him.
It was urged on behalf of the petitioner that the detention of the petitioner was not justified by the provisions of s. 3(1) of the Act and was as such invalid.
HELD (i) The reasonbleness of the satisfaction of the detaining authority cannot be questioned in a court of law for the reason that the satisfaction of the detaining authority to which s 3(1)(a) refers is his subjective satisfaction the adequacy of the material on which the said satisfaction purports to rest also cannot be examined in a court of law. That is the true legal position in regard to the satisfaction contemplated by s. 3(1)(a) of the Act.
The State of Bombay v. Atma Ram Sridhar Vaidya, [1951] S.C.R. 167, relied on.
(ii)The past conduct or antecedent history of a person can be taken into account in making a detention order, but the past conduct or antecedent history of the person, on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary.
Ujagar Singh v. The State of Punjab and Jagajit Singh v. The State of Punjab, [1952] S.C.R. 756, relied on.
(iii)As an abstract proposition of law, there may not be any doubt that s. 3(1)(a) of the Act does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail. But the relevant facts in connection with the making of the order may differ and that may make a difference in the application

of the principle that a detention order 59-2 S C India/64
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can be passed against a, person in jail. In dealing with this question, the considerations of proximity of time will be a relevant factor. The question as to whether an order of detention can be passed against a person who is in, detention or in jail, will always have to be determined in the circumstances of each case.
Basanta Chandra Ghose v. Emporer, A.I.R. 1945 F.C. 18, explained.
(iv)An order of detention cannot be validly served on a person who is already in jail custody and in respect of whom it is rationally not possible to predicate that if the said order is not served on him, he would be able to indulge in any prejudicial activity. Section 3(1) of the Act necessarily postulates that a personsought to be detained would be free to act in a prejudicial manner if he is not detained. In other words, the freedom ofaction to the person sought to be detained at the relevant time must be shown before an order of detention can be validly served on him under the said section. If a person is already in jail custody it cannot be rationally postulated that if he is not detained he would act in a prejudicial manner.
Labaram Deka Barua v. State, A.I.R. 1951 Assam 43, and Haridas Deka V. State, A.I.R. 1952 Assam 175, relied on.
Sahadat Ali v. State of Assam, A.I.R. 1953 Assam 97, referred to.
(v) The satisfaction that it is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is thus the basis of the order under s. 3(1)(a), and this basis is clearly absent in the case of the petitioner. The detention of the petitioner in the circumstances of this case, is not justified by s. 3(1)(a). In the present case the petitioner was ordered to be released on the ground that he was served with the order of detention whilst he was in jail custody.

JUDGMENT:

ORIGINAL JURISDICTION : Petition No. 145 of 1963. Petition under Art. 32 of the Constitution of India, for the enforcement of fundamental rights.

R. K. Garg, S. C. Agarawal, D. P. Singh and M. K. Ramamurthi for the Petitioner.

B. Sen and P. K. Bose, for the respondents.

September 11, 1963). The judgment of the Court was delivered by, GAJENDRAGADKAR J.-The short question which this petition for Habeas Corpus raises for our decision is whether the order of detention passed against, and served on the petitioner Rameshwar Shaw while lie was in jail custody

is justified by section 3(1) of the Preventive Detention Act, 1950 (No. 4 of 1950) (hereinafter called 'the Act'). The answer to this question would naturally depend upon a fair and reasonable construction of the relevant clause of the said section.

The District Magistrate, Burdwan, passed an Order on the 9th February, 1963, whereby he directed that the petitioner should be detained. The Order recites that the District Magistrate was satisfied that it was necessary to detain the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of public order. This order was served on the petitioner on the 15th February, 1963, in Burdwan Jail where he had been kept as a result of a remand order passed by a court of competent. Jurisdiction which had taken cognizance of a criminal complaint against him. As required by s. 7(1) of the Act, the grounds on which the petitioner's detention had been ordered by the detaining authority were communicated to him on the same day. In due course, the State Government approved of the said Order on the 16th February, 1963. The case of the detenu was then placed before the Advisory Board which recommended the continuance of the petitioner's detention. Thereafter, the State Government by its Order passed on the 23rd April, 1963 confirmed the detention of the petitioner under s. 11 of the Act. This Order of the State Government was ultimately served on the petitioner in the Burdwan Jail on the 29th April, 1963.

The grounds for the petitioner's detention which have been served on him indicate that material had been placed before the detaining authority which showed that the petitioner was indulging in anti-social activities and that in pursuance of the said activities, he had threatened many people with assault and in fact had assaulted them. These grounds further show that the petitioner had disturbed public order in areas within Faridpur, Andal, Raniganj and Assansol police stations within the district of Burdwan, and five instances were cited in support of this ground. The notice conveying the said grounds to the petitioner further alleged that as a result of the criminal activities of the petitioner set out in the notice, confusion had been created in the lives of the peaceful citizens of the areas, and so, the detaining authority was satisfied that it was necessary to detain the petitioner to prevent him from indulging in prejudicial activities. The notice further informed the petitioner that if he wanted to make a representation against the order of detention passed by the detaining authority, he should take steps to forward his representation as indicated in the notice. He was also told that in case his representation was received, his case would be forwarded to the Advisory Board, and if he desired to address the Advisory Board personally.., he might make a request in that behalf and the same would be considered. Mr. Garg for the petitioner has challenged validity of the petitioner's detention on several grounds. He contends that the detention of the petitioner is not justified by the provisions of s. 3(1) of the Act and as such is invalid. He also.argues that the order of detention has been passed against the petitioner by the District Magistrate, Burdwan, mala fide. According to him, the material facts stated in the notice served on the petitioner setting forth the grounds for his detention, are imaginary and nonexistent and some of the grounds are vague and irrelevant ; and he also contends that the affidavits filed on behalf of the respondents clearly indicate that some of the grounds on which the detaining authority relies and which must therefore, have weighed in his mind at the time when the detention order was passed, were not disclosed to the petitioner when notice of grounds was served on him, and that makes the communication of the grounds materially defective ; it also affected the petitioner's right to make an effective representation. These infirmities in the notice, says Mr. Garg, make the order of detention

invalid. It has also been suggested that the petitioner was in fact denied an opportunity to make his representation to the Advisory Board and that also introduces an infirmity in the order. Since we have come to the conclusion that the first contention raised by Mr. Garg is well-founded, we do not propose to consider the merits of the other arguments urged by him in support of his petition.

Let us then read section 3(1) to determine the true scope and effect of the relevant clause on which Mr. Garg's argument is founded. Section 3(1) provides inter alia, that the Central Government or the State Government may-(a) if satisfied with respect of any person that with a view to preventing him from acting in any manner prejudicial to..... (ii) the security of the State or the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. It will be noticed that before an order of detention can be validly made by the detaining authorities specified by s. 3(2), the authority must be satisfied that the detention of the person is necessary in order to prevent him from acting in any prejudicial manner as indicated in clauses (i) to (iii) of s. 3(1)(a). It is hardly necessary to emphasise that since the Act authorises the preventive detention of citizens without a trial, the material provisions of the Act must be strictly construed and all safeguards which the Act has deliberately provided for the protection of citizens must be liberally interpreted. The argument which Mr. Garg has urged before us is that if a person is already under detention, it would not be reasonably possible for the appropriate authority to satisfy himself that the detention of such a person is necessary in order to prevent him from acting in any prejudicial manner. The basis of the order of detention which the authority is empowered to pass against a person under s. 3(1)(a) is that if the said order is not passed against him, he may act in a prejudicial manner. In other words the authority considers the material brought before it in respect of a person, examines the said material and first reaches a conclusion that the material shows that the said person may indulge in prejudicial activities if he is not prevented from doing so by an order of detention. How can the authority come to the conclusion that a person who is in jail custody may act in a prejudicial manner unless he is detained? The scheme of the section postulates that if an order of detention is not passed against ,a person, he would be free and able to act in a prejudicial manner. In other words, at the time when the order of detention is brought into force, the person sought to be detained must have freedom of action. That alone can justify the requirement of the section that the order of detention is passed in order to prevent a prejudicial acti-

vity of the person proposed to be detained. That, in substance, is the contention on which the validity of the petitioner's detention is challenged before us. It is true that the satisfaction of the detaining authority to which s. 3(1)(a) refers is his subjective satisfaction, and so is not justiciable. Therefore, it would not be open to the detenu to ask the Court to consider the question as to whether the said satisfaction of the detaining authority can be justified by the application of objective tests. It would not be open, for instance, to the detenu to contend that the grounds supplied to him do not necessarily or reasonably lead to the conclusion that if he is not detained, he would indulge in prejudicial activities. The reasonableness of the satisfaction of the detaining authority cannot be questioned in a Court of law; the adequacy of the material on which the said satisfaction purports to rest also cannot be examined in a Court of law. That is the effect of the true legal position in regard to the satisfaction contemplated by section 3(1)(a), vide The State of Bombay v. Atma Ram Sridhar Vaidya(1). There is also no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of clauses (i) to (iii) of s. 3(1) (a) and in that sense are

foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based *is open to challenge and the detention order liable to be quashed. Similarly, if some of the grounds supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making a representation, that again may introduce a serious infirmity in the order of his detention. If however, the grounds on which the order of detention proceeds are relevant and germane to the matters which fall to be considered under s. 3(1)(a), it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not reasonably based on any of the said grounds.

It is, however, necessary to emphasise in this connection that though the satisfaction of the detaining authority (1) [1951] S.C.R. 167, 176.

contemplated by s. 3(1)(a) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention on the ground of mala fides and in support of the said plea urge that along with other facts which show mala fides, the Court may also consider his grievance that the grounds served on him 'cannot possibly or rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner and in support of the plea of mala fides that this question can become justiciable; otherwise the reasonableness or propriety of the said satisfaction contemplated by s. 3(1)(a) cannot be questioned before the Courts.

It is also true that in deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that if the said person is not detained, he may act in a prejudicial manner, and this conclusion can be reasonably reached by the authority generally in the light of the evidence about the past prejudicial activities of the said person. When evidence is placed before the authority in respect of such past conduct of the person, the authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. That is why this Court has held in Ujagar Singh v. The State of Punjab and jagjit Singh -v. The State of Punjab(1) that the past conduct or antecedent history of a person can be taken into account in making a detention order, and as a matter of fact, it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.

In this connection, it is, however, necessary to bear in mind that the past conduct or antecedent history of the person on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary. It would, for instance, be irrational to take into account the conduct of (1) [1952] S.C.R. 756.

the person which took plate ten years before the date of his detention and say that even though after the said incident took place nothing is known against the person indicating his tendency to act in a prejudicial manner, even so on the strength of the said incident which is ten years old, the authority is satisfied that his detention is necessary. Inother words, where an authority is acting bona fide andconsidering the question as to whether a person should be detained, he would naturally expect

that evidence on which the said conclusion is ultimately going to rest must be evidence of his past conduct or antecedent history which reasonably and rationally justifies the conclusion that if the said person is not detained, he may indulge in prejudicial activities. We ought to add that it is both inexpedient and undesirable to lay down any inflexible test. The question about the validity of the satisfaction of the authority will have to be considered on the facts of each case. The detention of a person without a trial is a very serious encroachment on his personal freedom, and so, at every stage, all questions in relation to the said detention must be carefully and solemnly considered. Mr. Sen for the respondent has contended that it is, open to the authority to pass an order of detention against a person who may be at that time in detention, and in support of this argument, he has relied on the decision of the Federal Court in Basanta Chandra Ghose v. Emperor(1). In that case the main question which arose for the decision of the Court was, however, of a different character. It was urged on behalf of the detenu before the Court that where an earlier order of detention passed against him was held to be defective, though on formal grounds, it was not open to the authority to pass a subsequent order of detention against him on the same grounds as had been set out in support of the earlier order. This plea was rejected by the Court. Spems C.J. observed that "where the earlier order of detention is held defective merely on formal grounds, there is nothing to preclude a proper order of detention being based on the pre- existing grounds themselves, especially in cases in- (1) A.I.R. 1945 F.C. 18.

which the sufficiency of the grounds is not examinable by the Courts." It is in that connection that the learned C.J. added that there is equally no force in the contention that no order of detention can be passed against a person who is already under detention.

(As an abstract proposition of law, there may not be any doubt that s. 3 (1) (a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail. Take for instance, a case where a person his been sentenced to rigorous imprisonment for ten years. It cannot be seriously suggested that soon after the sentence of imprisonment is pronounced on the person, the detaining authority can make an order directing the detention of the said person after he is released from jail at the end of the period of the sentence imposed on him. In dealing with this question, again the considerations of proximity of time will not be irrelevant. On the other hand, if a person who is undergoing imprisonment, for a very short period, say for a month or two or so, and it is known that he would soon be released from jail, it may be possible for the authority to consider the antecedent history of the said person and decide whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid ,order of detention a few days before the person is likely to be released. The antecedent history and the past conduct on which the order of detention would be based would, in such a case, be proximate in point of time and would have a rational connection with the conclusion ,drawn by the authority that the detention of the person after his release is necessary. It may not be easy to discover such rational connection between the antecedent history of the person who has been sentenced to ten years' rigorous imprisonment and the view that his detention should be ordered after he is released after running the whole of his sentence. Therefore, we are satisfied that the question as to whether an order of detention can be

passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.

The question which still remains to be considered is can a person in jail custody, like the petitioner, be served with an order of detention whilst he is in such custody? In dealing with this point, it is necessary to state the relevant facts which are not in dispute. The petitioner was arrested on the 25th January, 1963. He has been in custody ever since. On the 15th February, 1963 when the order of detention was served on him, he was in jail custody. On these facts, what we have to decide is : was it open to the detaining authority to come to the conclusion that it was necessary to detain the petitioner with a view to prevent him from acting in a prejudicial manner when the petitioner was locked up in jail? We have already seen the logical process which must be followed by the authority in taking action under s. 3(1)(a). The first stage in the process is to examine the material adduced against a person to show either from his conduct or his antecedent history that he has been acting in a prejudicial manner. If the said material appears satisfactory to the authority, then the authority has to consider whether it is likely that the said person would act in a prejudicial manner in future if he is not prevented from doing so by an order of detention. If this question is answered against the petitioner, then the detention order can be properly made. It is obvious that before an authority can legitimately come to the conclusion that the detention of the person is necessary to prevent him from acting in a prejudicial manner, the authority has to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail custody, how can it rationally be postulated that if he is not detained, he would act in a prejudicial manner At the point of time when an order of detention is going to be served on a person, it must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is thus the basis of the order under s. 3(1)(a), and this basis is clearly absent in the case of the petitioner. Therefore, we see no escape from the conclusion that the detention of the petitioner in the circumstances of this case, is not justified by s. 3(1)(a) and is outside its purview. The District Magistrate, Burdwan who ordered the detention of the detenu acted outside his powers conferred on him by s. 3(1)(a) when he held that it was necessary to detain the petitioner in order to prevent him from acting in a prejudicial manner. That being so, we must hold that Mr. Garg is right when he contends that the detention of the petitioner is not justified by s. 3 (1) (a). In this con- nection, we may add that the Assam High Court in two of its decisions appears to have taken the same view about the scope and effect of the relevant provisions of s. 3(1)(a) of the Act, vide Labaram Deka Barua & Anr. v. The State (1), and Haridas Deka v. State (2).

Mr. Sen has, however, relied on the decision of the Assam High Court in Sahadat Ali v. The State of Assam & Ors.(3). In that case it appeared that the Government had decided in public interest to abandon the prosecution which was pending against the detenu. The said decision was duly conveyed to the police and so, the police reported under section 173 of the Criminal Procedure Code for the release of the detenu. In anticipation of this release, the order of detention was passed against him and it was served on him after he was ac- tually released. These facts clearly illustrate how an order of detention can be passed against a person even though he may be in detention or jail

custody, and also show that the,-said order should be served on the detenu after he is released. The test of proximity of time is fully sa- tisfied in such a case and no invalidity or infirmity is attached to the making of the order or its service. Therefore, we do not think that the decision in Sahadat Ali case is of any assistance to Mr. Sen.

(1) A.I.R. 1951 Assam 43 (2) A.I.R. 1952 Assam 175.

(3) A.I.R. 1953 Assam 97.

The result is, the petition succeeds and the order of detention passed against the petitioner by the District Ma- gistrate, Burdwan, on the 9th February, 1963, is set aside. We direct that the petitioner should be released forthwith. Petition allowed.