

Supreme Court of India

Debu Ghose And Ors. vs State Of West Bengal on 15 October, 1971

Equivalent citations: AIR 1972 SC 530, 1972 CriLJ 317, (1972) 3 SCC 294

Author: D Palekar

Bench: A Ray, D Palekar

JUDGMENT D.G. Palekar, J.

1. These are petitions for an order in the nature of habeas corpus filed by Debu Ghose, Aswini Kumar Das and Manick Chandra Roy who have been detained by orders of District Magistrates under the provisions of the West Bengal (Prevention of Violent Activities) Act, 1970 being President's Act No. 19 of 1970.

2. Section 3(1) of that Act provides that the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to 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. Sub-section (2) defines the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" for the purpose of Sub-section (1) Sub-section (3) empowers certain authorities including the District Magistrate to pass orders under Sub-section (1). When an order of detention is made by the District Magistrate, he is required by Sub-section (4) to forthwith report the fact to the State Government together with the grounds on which the order has been made. Under Sub-section (5) the State Government is required to report the fact of detention to the Central Government if the order is made by itself or approved by it when made by the District Magistrate. Under Section 8(1) when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the State Government. Under Section 9 the State Government is required to constitute an Advisory Board and under Section 10 the State Government is required within 30 days from the date of detention to place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the person affected by the order and in case where the order has been made by an officer like a District Magistrate, also the report made by such officer under Sub-section (4) of Section 3. Under Section 11 the Advisory Board is required to submit its report to the State Government within ten weeks from the date of detention specifying 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. Under Section 12 the State Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit in all cases in which the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of the person. Section 13 provides that the maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Section 12 shall be twelve months from the date of detention.

3. Mr. Sharma, who appeared on behalf of Manick Chandra Roy in Writ Petition No. 210 of 1971 and was good enough to argue as amicus curiae on behalf of the other two detenus, raised a common point challenging the legality of the continued detention. He pointed out that in all these three cases

the confirmation order required to be made under Section 12 had not been made by the State Government within three months of the date of detention and, therefore, the continued detention of the petitioners after three months of the date of detention was illegal. After some discussion however, Mr. Sharma did not press the point because admittedly the vires of the relevant provisions of the Act had not been challenged before us.

4. We will now deal with each of the petitioners separately.

Writ Petition No. 202 of 1971.

5. The petitioner Debu alias Deba Prasad Ghosh was detained by an order of the District Magistrate, Howrah, dated December 23, 1970. The order was as follows:

Whereas I am satisfied with respect to the person known as Shri Debu alias Deba Prasad Ghosh son of late Jugal Krishna Ghosh of 39, Ram Kamal Bose Lane, P.S. Golabari, District Howrah, that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, I therefore in exercise of the powers conferred by Sub-section (1) read with Sub-section (3) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970), make this order directing that the said Shri Debu alias Daba Prasad Ghosh be detained.

On the same day the District Magistrate made his report to the Government. In pursuance of the order the petitioner was arrested on December 29, 1970 and on his arrest, was served with the order containing the ground for making the order of detention. The order was approved by the Government on 2-1-1971 and on the same day a report was sent by the Governor to the Central Government as required under the Act. On 15-1-1971 the petitioner's representation against his detention was received by the State Government and the same was rejected on 18-1-1971. On 27-1-1971 the relevant papers were placed before the Advisory Board which made its report on 1-3-1971 holding that there was sufficient cause for the detention of the said Debu Ghosh. The State Government confirmed the order on 28-5-1971 and continued the detention of the petitioner.

6. It was argued by Mr. Sharma that in the first place the ground on which the detention was ordered was vague and secondly that the ground was not one which could be regarded as involving an act "prejudicial to the maintenance of public order" The ground on which the detention order was passed reads as follows:

(1) That on 7-12-70 at 17.30 hours., you and your associates Fela, Rajaram, Sitaram, Bulu, Guru, Gopal and others being armed with bombs, Khojali, dagger etc., formed an unlawful assembly near Kalitala at Kshetra Mitra Lane and hurled bombs towards the sweetmeat shop of Tincowri Ghosh & Sons causing damage to the shop and injury to one customer. Consequently the local people became panicky and fled away from Kalitala.

We do not think that the ground is vague. Grounds are given to the detenu to enable him to make an effective representation to the State Government and such grounds would be regarded as vague, if

they did not contain sufficient particulars to enable the petitioner to make a proper representation. In the present case the time and place of occurrence are clearly specified; the names of the petitioner's associates have been given and the actual act committed by them is also mentioned. Sufficient particulars are given in the ground to enable the petitioner to make his representation and, therefore the ground cannot be regarded as vague.

7. As to whether the ground if believed to be true, involved "an act prejudicial to the maintenance of public order" we have to go to the definition given in Sub-section (2) of Section 3. One of such acts coming under the definition of that expression is found in Clause (d) of that sub-section which reads as follows:

(d) committing, or instigating any person to commit any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act, 1959 (54 of 1959) or the Explosive Substances Act, 1908, (6 of 1908) where the commission of such offence disturbs, or is likely to disturb public order.

Since bombs were hurled at the sweetmeat shop of Tincowri Ghosh & Sons causing damage to the shop and injury to one customer, an offence under the Explosive Substances Act, 1908 had been committed; and since the local people became panicky and fled away from Kalitala, the "commission of the offence disturbed public order. The expression "public order" has been explained at length by this Court in *Madhu Limaye v. Sub Divisional Magistrate, Monghyr* and includes generally absence of all acts which are a danger to the security of the State and also acts which are comprehended by the expression 'ordre publique' which means the absence of insurrection, riot turbulence, or crimes of violence". Since in the present case the petitioner along with his associates committed crimes of violence by throwing bombs at a shop, he has clearly disturbed public order and therefore he has acted in a manner prejudicial to the maintenance of public order as defined in Sub-section (2) of Section 3 of the Act.

8. Therefore, there is no substance in the two points raised by Mr. Sharma on behalf of this petitioner Writ Petition No. 208 of 1971.

9. The petitioner Aswini Kumar Das was detained in pursuance of the order passed by the District Magistrate 24 Parganas, on 29-12-1970. The order reads as follows:

Whereas I am satisfied with respect to the person known as Shri Aswini Kumar Das & Arun son of Late Akshey Kumar Das of 40. Kumar Para Lane P.S. Jadhavpur, District 24 Parganas that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, I therefore in exercise of the powers conferred by Sub-section (1) read with Sub-section (3) of Section 3 of the West. Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970), make this order directing that the said Shri Aswini Kumar Das Arun be detained.

The petitioner was arrested on December 31, 1970. He was also served with the grounds on which the detention had been ordered. On 2-1-1971 the District Magistrate made his report to the State

Government and the detention was approved by the Governor on 9-1-1971. On the same day, a report was made to the Central Government, as required under the Act. The petitioner represented against the detention order on 29-1-1971 but the same was rejected. The Advisory Board made its report on 28-2-1971 and the finding of the Advisory Board was that there was sufficient cause for the detention of the petitioner.

10. The points raised by Mr. Sharma in this case were the same as were raised in the petition discussed earlier. The grounds communicated by the Magistrate to the petitioner are as follows:

(1) On 7-8-70, you and your associates being armed with bombs, swords and other lethal weapons attacked the members of a procession which was organised by some local people at B B. Chatterjee Road, P.S. Jadavpur. You also exploded bombs causing injuries to some of the processionists. You created panic and scare. You, therefore, disturbed the public order.

(2) On 20-8-70 you and your associates being armed with bombs and other explosives attacked the inhabitants of Uttarpara. You exploded bombs causing injuries to two children. You created panic in the locality which was likely to disturb the public order.

(3) On 27-11-70 you and your associates being armed with bombs and other explosives attacked some men of a party while they were fixing posters at B. B. Chatterjee Road, P.S. Jadhavpur. You exploded high explosive bombs and created terror and panic in the area which was likely to disturb the public order.

We do not think that the grounds are, vague. In each of the grounds, sufficient particulars have been given which would enable the petitioner to make effective representation. The dates of the three occurrences, their place, and the manner in which the acts were committed have been specified. A grievance was made that the names of the petitioner's associates have not been specified. That, in our opinion, is no defect in the circumstances of this case. There is also no doubt that if these grounds are believed to be true, they involve acts pre-judicial to the maintenance of public order as already discussed.

11. It was faintly argued that after the authorities were satisfied that offences of violence like the above had been committed by the detenus, they could have been properly prosecuted in a court of law and since no prosecution was launched against them, the detention was mala fide. There is no substance in this argument. In the first place, we do not know whether the authorities could have obtained sufficient evidence against the petitioners for successfully prosecuting them in the ordinary course. There are decided cases in which the detention order has been upheld even after a prosecution was launched but was withdrawn before the detention was made. It has been held that a mere decision to drop a prosecution before passing an order of detention cannot be regarded as mala fide. See: *Sahib Singh Dugal v. Union of India*. It was observed at page 317:

It may very well be that the executive authorities felt that it was not possible to obtain a conviction for a particular offence under the Official Secrets Act; at the same time they could reasonably come to the conclusion that the activities of the petitioners which had been watched for over two years

before the order of detention was passed were of such a nature as to justify the order of detention.

Writ Petition No. 210 of 1971.

12. The petitioner in this case is Manick Chandra Roy and the order of his detention was passed by the District Magistrate, Burdwan, on 5-1-1971. On the same day the detention was reported to the State Government. On 7-1-1971, the petitioner was arrested and the grounds were served on him. The detention was approved by the State Government on 14-1-1971 and the report was sent to the Central Government on the same day. On 20-1-1971 the petitioner made a representation to the State Government but the same was rejected on 30-1-1971. The papers were placed before the Advisory Board on 3-2-1971 and on considering his case, the Advisory Board made its report on 6-3-1971 holding that there was sufficient cause for the detention of the petitioner. The detention order was thereafter confirmed by the State Government on 8-7-1971 and the petitioner was continued in detention. The grounds for his detention were as follows:

(1) That on 8-3-70 you, Manik Roy and, your associates assembled in an abandoned quarter at Damodar Railway Colony, P.S. Hirapur, in Burdwan District and were preparing bombs with a view to using the same in the commission of theft from railway wagons in case any resistance be offered in the operation and thereby acted in a manner disrupting public order. On receipt of this information, Hirapur police conducted raid in the aforesaid quarter on 8-3-70 between 13.30 and 14.00 hours when sixteen live bombs, 400 grams of rivet, 200 grams of jute string, some yellow papers and other incriminating articles for preparing bombs were recovered from there and on getting scent of Police you and your associates fled away and you and eight of your associates could be recognised by Police. Reference Hirapur P.S. Case No. 5 dated 8-3-70 Under Section 143 I.P.C. 6(3) Indian Explosives Act.

(2) That on 6th December 1970, at about 18.15 hours you acted in a manner prejudicial to the maintenance of public peace, safety and tranquillity by attempting to murder one Chhabila Singh, whom you mistook to be of the Criminal Investigation Department (Police), who was present near Damodar Radhanagar Railway crossing P.S. Hirapur, district Burdwan, where you with your associates had been loading materials obtained by breaking wagons in a truck being armed with lethal weapons bombs, pipe guns, pistols and iron rods but luckily he (Chhabila Singh) escaped. This refers to Hirapur P.S. Case No. 5 dated 6-12-1970 Under Section 148/149/141 I.P.C. and Section 3/5 Explosive Substances Act/ 25(1)(a)/27 Indian Arms Act.

It appears that on some of the facts in ground No. 1 a prosecution was contemplated but a few weeks before the detention order, the prosecution was dropped. That, however, did not prevent the authority as already shown from passing an order of detention. It is true that the first ground refers to an incident which took place on 8-2-1970 - many months before the detention order was passed. But that ground has great relevance to the second ground which describes an incident on 6th December, 1970. The two grounds read together go to show that the petitioner and his associates had indulged in manufacturing bombs with a view to facilitate breaking of wagons and terrorizing the public, should resistance be offered. As a matter of fact on December 6, 1970 the petitioner and his associates who were assembled with lethal weapons like bombs, pipe guns, pistols and iron rods

for their operation of breaking wagons and loading the looted material in a truck near Damodar Radhanagar Railway Crossing attempted to murder one Chhabila Singh who was nearby under the impression that he was a member of the police force. The activity of manufacturing bombs had a definite object namely to facilitate, openly and in the view of the public, the breaking of railway wagons and looting them. The public were held at bay by the petitioner and his associates with their bombs, pipe guns, pistols, iron rods etc. There can be no doubt, therefore, that the grounds on which the detention order was passed disclosed that the petitioner and his associates were acting in a manner prejudicial to the maintenance of public order.

13. We do not consider that the grounds given for detention are vague. In fact the petitioner had made a lengthy representation against these grounds and there was no grievance in his representation that the grounds were vague.

14. On the whole, therefore, there is no substance in the petitions. The petitions are therefore rejected.