Supreme Court of India
Babulal Das vs The State Of West Bengal on 17 January, 1975
Equivalent citations: 1975 AIR 606, 1975 SCR (3) 193
Author: V Krishnaiyer
Bench: Krishnaiyer, V.R.

PETITIONER:
BABULAL DAS

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT17/01/1975

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
SARKARIA, RANJIT SINGH

CITATION:
1975 AIR 606 1975 SCR (3) 193
1975 SCC (1) 311
CITATOR INFO :
RF 1975 SC1165 (13)
RF 1987 SC1383 (9)

ACT:
Maintenance of Internal Security Act, 1971 (Act XXVI of 1971), Section 3(1)(a)(ii)-Detention order, whether illegal on account of solitary incident.

HEADNOTE:
The petitioner has been detained in pursuance of the order of detention passed by the District Magistrate under sub-s. (1)(a)(ii) of s. 3 of the Maintenance of Internal Security Act, 1971. The act imputed to the detenue is as follows :

> "That on 16-2-73 between 10-08 and 10-14 hours you, along with your other associates, being armed with gun and other weapons committed a dacoity in a 3rd class compartment of running train S 110 Dn. between Habibpur R.S. and Kalinarayanpur Junction R.S. in Ramaghat-Santipur Section and snatched away cash Rs. 30,000/- from Shri Ashutosh Pal of Calcutta causing bullet injuries to him putting all passengers to fear of death."

It was contended for the detenu that a solitary incident

cannot imperil internal security and therefore, the order is illegal.
Rejecting the contention and dismissing the writ petition
HELD:One who reads the ground of detention, will be alarmed by the training and planning and sinister preparation of skill and spirit which has. made possible the commission of the act imputed organised dacoity in a running railway train by an armed gang equipped with fire-arms and putting, innocent passengers to Peril to life and property... Such action is so manifestly suggestive of desperate daring, organised ganging and habitual proclivity to. violence that it cannot be held unreasonable to infer therefrom a trendy course of criminal conduct-although intercepted or detected but once likely to break public order in a brazen manner and panicking the community by show of force. In this view, the petitioner's detention cannot be castigated as illegal. [194F-G]
Obiter It is fair that persons kept incarcerated and embittered without trial should be given some chance to reform themselves by reasonable recourse to the parole power under s. 15. Calculated risks. by release for short periods may, perhaps, be a social gain, the beneficent jurisdiction being wisely exercised, [195F]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 444 of 1974. Petition under Art. 32 of the Constitution of India. O. P, Malviya, for the petitioner.

M. M. Kshatriya, and G. C. Chatterjee, for the respondent. The Judgment of the Court was delivered by KRISHNA IYER, J.-A single act of outrageous violence, in a running train on February 16, 1973 by an armed gang, of which the petitioner was alleged to be a member, persuaded the District Magistrate of Nadia to direct his detention under sub-S. (1) (a) (ii) of S. 3 of the Maintenance of Internal Security Act, 1971 (Act XXVI of 1971) (hereinafter called the MISA, for short). The subsequent statutory requirements have been fulfilled impeccably and the only major sub 14-L379 Sup.C 75 mission of the petitioner is that on merits, he is not guilty, that a case charge-sheeted against him has ended in a discharge and that a single incident is insufficient to constitute 'a stream of tendency' warranting preventive detention. Most of the submissions urged have no force. The fact that the petitioner was discharged by a court for the same crime does no bear on the power to detain, nor are we impressed with the other arguments urged before us. Learned counsel Sri Malviya, appearing amicus curiae, strenuously contended that one swallow does not make a summer and likewise a solitary incident cannot imperil maintenance of internal security and so the order is bad. He relied on certain rulings of this Court and, rightly so. This Court has been vigilant to see that isolated offences are not exploited by executive authorities for clamping down preventive detention insouciantly to by-pass the normal judicial processes. But there is one exceptional category of cases where an only dangerous deviance may itself demonstrate its potentiality for continuing criminality and indicate previous practice, experiment and expertise. In such a narrow category of causes it is

difficult to predicate abuse of power or absence of application of mind by the authority if preventive detention is directed solely on one specialised crime.

In the present case the act imputed to the detenu is set out in the detention order thus:

> "That on 16-2-73 between 10-08 and 10-14 hours you, along with your other associates, being armed with gun and other weapons committed a dacoity in a 3rd class compartment of running train S. 1 10 Dn. between Habibpur R.S. and Kalinarayanpur Junction R. S. in Ramaghat- Santipur Section and snatched away cash Rs. 30.000/- from Shri Ashutosh Pal of Calcutta causing bullet injuries to him putting all passengers to fear of death.."

He who runs and reads-if the statement were true and its veracity is unavailable for judicial scrutiny-will be alarmed by the training and planning and sinister preparation of skill and spirit which has made possible the commission of the act imputed-organized dacoity in a running railway train by an armed gang equipped with firearms and putting innocent passengers to peril to life and property. Such action is so manifestly suggestive of desperate daring, organized ganging and habitual proclivity to violence that it cannot be held unreasonable to infer therefrom a trendy course of criminal conduct-although intercepted or detected but once-likely to break public order in a brazen manner and panicking the community by show of force. We are not concerned with the merits of the alleged offence, since that is assigned by the Legislature to the_ subjective satisfaction of the authority. In this view, the petitioner's detention cannot, in the present case, be castigateD as illegal, since we regard it as exceptional. While discharging the rule issued and dismissing the petition, we wish to emphasize that s. 15 is often lost sight of by the Government in such situations, as long term preventive detentions can be self-defeating or criminally counter-productive. Section 15 reads:

> "15. Temporary release of persons detained- (1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release. (2) In directing the release of any person under subsection (1), the appropriate. Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.
>
> (3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.
>
> (4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term may extend to two years, or with fine, or with both.

> (5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof."

We consider that it is fair that persons kept incarcerated and embittered without trial should be given some chance to reform themselves by reasonable recourse to the parole power under s. 15. Calculated risks, by release for short periods may, perhaps, be a social gain, the beneficent jurisdiction being wisely exercised. In this context we would recall the observations made by this Court in Anil Dey v. State of West Bengal.() "The petition, therefore, deserves to be dismissed. However, the fact remains that the petitioner was arrested in September 1972, and has been in deterrent incarceration for nearly a year and half. Prolonged imprisonment without trial alienates the individual against society and makes him a vengeful enemy when he ultimately emerges from the prison cell. Indeed, it is a serious injury inflicted on an individual by the State which can be justified as a measure of social defence only in extreme circumstances. But to jail a man on subjective satisfaction of possible prejudicial activity and to forget about him after the statutory formalities have been perform- (1) A.I.R. 1974 S.C. 832.

.lm15 ed is not fair to the constitutional guarantees. It is appropriate for a democratic government not merely to confine preventive detention to serious cases but also to review, periodically the need for the continuance of the incarceration. The rule of law and public conscience must be respected to the maximum extent risk-taking permits, and we dismiss the present petition with the hopeful thought that the petitioner and others like him will not languish in prison cells for a day longer than the administrator thinks is absolutely necessary for the critical safety of society." The State may be reminded, in its own interests, of this Court's anxious admonition in Gama(1) :

> "If the detaining authority takes the chance of conviction and, when the court verdict goes against it, falls back on its detention power to punish one whom the Court would not convict, it is an abuse and virtual nullification of the judicial process. If honestly finding a dangerous person getting away with it by over-awing witnesses or concealing the commission cleverly, an authority thinks. on the material before him that there is likelihood of and need to interdict public disorder at his instance he may validly direct detention. The distinction is fine but real."

We hope the humanist mandate in s. 15 of the MISA will not rust in the statute book but will be used by Government to humanise, by gradual assimilation into society, those who, with blood-shot eyes, hate and intimidate their fellow men. The rare use of this provision suggests that the compassion and conscience of the law must be actively shared by the men who operate the machine from executive cells. V.M.K. Petition dismissed.

(1) [1974] 4 S.C.C. 530. 534.