

Supreme Court of India

Firoj Farukee vs The State Of West Bengal on 3 February, 1972

Equivalent citations: AIR 1972 SC 2141, (1973) 3 SCC 903, 1972 (4) UJ 687 SC

Bench: H K Shelat, K Mathew

JUDGMENT J.M. Shelat

1. The order of detention impugned in this petition is in identical terms as the one in Writ Petition 322 of 1971. (Ananta Mukhi @ Ananta Hari v. The State of West Bengal). For the reasons given in the judgment in that petition the impugned order must be held to be bad. Consequently, the respondent state is directed to release the petitioner and set him at liberty forthwith.

H.R. Khanna, J. (K.K. Mathew J. Concurring) This is a petition through jail under Article 32 of the Constitution of India for the issuance of a writ of habeas corpus by Firoj Farukee who has been ordered to be detained under Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970), hereinafter referred to as the Act.

2. The order of detention which was made against the petitioner reads as under :

ORDER No. 1767-C. Dated, Sari, the 3rd May, 71.

Whereas I am satisfied with respect to the person known as Shri Firoj Farukee, son of Md. Nowman of Tikapara, P.S. Bolpur, Dist. Birbhum, 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, 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 Firoj Farukee be detained.

Given under my hand and seal of office.

Sd/-S.L. Bose 3-5-71.

District Magistrate, Birbhum.

3. The order of detention was made on May 3, 1971 and the same day the District Magistrate sent a report to the State Government about the passing of the detention order along with the grounds of detention and other necessary particulars. The petitioner was arrested on May 5, 1971 and was served with the grounds of detention also on the same day. On May 14, 1971 the State Government approved the detention order and also sent a report to the Central Government together with the ground, of detention and other necessary particulars. On June 3, 1971 the case of the petitioner was placed before the Advisory Board. Representation dated June 3, 71 made by the petitioner was received by the State Government on June 9, 1971. The said representation was considered by the State Government and was rejected as per order dated July 1, 1971. The representation was forwarded by the State. Government to the Advisory Board. The Advisory Board sent its report to the State Government on July 8, 1971. Opinion was expressed by the Advisory Board that there was

sufficient cause for the detention of the petitioner. The State Government Confirmed the order of detention on July 21, 1971.

4. The petition has been resisted by the respondents and the affidavit of Shri Manoranjan Dey, Assistant Secretary. Home (Special) Department, Government of West Bengal has been filed in opposition to the petition.

5. Mr. Santokh Singh who has argued the case *amicus curiae* on behalf of the petitioner, contends that the order of detention made against the petitioner by the District Magistrate shows an element of casualness and absence of due application of mind, as according to the order the petitioner was detained "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 urged that the use of the word "or" in the order shows that the detaining authority was not definite regarding the ground of detention. Similar argument was advanced before us in the case of *Ananta Mukhi alias Ananta Hari v. The state of West Bengal* (Writ Petition No. 322 of 1971, decided today) and was rejected. It has been held by us that the use of the word 'Or' in the detention order would not introduce an infirmity as might justify the quashing of that order.

6. It has also been urged that the order of detention was *mala fide*. There is, however, no material on the record as may justify an inference that the order was made *mala fide*.

The petition consequently fails and is dismissed.

In view of the opinion of the majority, the writ petition is dismissed.