Supreme Court of India
Debu Mahato vs The State Of West Bengal on 15 February, 1974
Equivalent citations: AIR 1974 SC 816, 1974 CriLJ 699, (1974) 4 SCC 135, 1974 (6) UJ 182 SC
Author: Bhagwati
Bench: D Palekar, P Bhagwati, V K Iyer
JUDGMENT Bhagwati, J.

1. The District Magistrate, 24 Parganas, in exercise of the power conferred upon him under Sub-section (1) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971, passed an order dated 28th August, 1972 directing that the petitioner be detained as it was necessary to do so with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. Pursuant to the order of detention the petitioner was arrested on 30th August, 1972 and immediately on his arrest the grounds on which the order of detention was made were served on him by a communication dated 28th August, 1972 made under Section 8 Sub-section (1) of the Act. There was only one ground set out in this communication and it was in the following terms.

That on 11-8-72 at about 14.05 hrs. you and your associates were removing three bales of empty gunny bags by breaking open wagon No. WR-386335 near Goala Fatak North Cabin of Naihati Railway Yard. Being challenged by the local R.G. members you and your associates fled away leaving behind the stolen Gunny bags.

The State Government thereafter placed before the Advisory Board the ground on which the order of detention was made as also the representation sent by the petitioner against the order of detention and on receipt of the report of the Advisory Board that there was in its opinion sufficient cause for the detention of the petitioner the State Government passed an order dated 7th October, 1972 confirming the detention of the petitioner. The petitioner thereupon submitted from jail the present petition challenging the legality of his detention and praying for a writ of habeas corpus for setting him free.

2. The petitioner contended that there was only one ground communicated to him under Section 8; Sub-section (1) as forming the basis of the order of detention and it was that on the night of 11th August, 1972 the petitioner with his associates was found removing three bales of empty jute bags after breaking a railway wagon in Naihati railway yard and when challenged by the local railway Protection Force the petitioner and his associates fled away leaving the booty. This ground, said the petitioner, was a single solitary ground which could hardly sustain the inference that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services essential to the community and with a View to preventing him from so acting it was necessary to detain him and the satisfaction of the District Magistrate in this behalf was no satisfaction at all and could not support the making of the order of detention. The respondent disputed the validity of this contention but realising that merely on the strength of the isolated act attributed to the petitioner in this ground, it was not possible to justify the satisfaction alleged to have been reached by the District Magistrate, the respondent urged that wagon breaking had become a menacingly frequent crime which was seriously affecting movement of essential commodities and in the context of this background, the act

of wagon breaking committed by the petitioner, though single and solitary, could reasonably lead to the satisfaction that it was necessary to detain the petitioner with a view to preventing him from indulging in further acts of wagon breaking. Now in a given situation where wagon breaking as a crime has assumed alarming proportions and it is seriously obstructing and thwarting smooth and quick flow of supplies and services essential to the community, even a single act of wagon breaking by an individual may be regarded in a different light and conceivably afford justification for reaching a satisfaction that such individual may be detained in order to prevent him from acting in a prejudicial manner. But here we do not find anything in the affidavit filed by the District Magistrate in reply to the petition even remotely suggesting that wagon breaking was a crime which had become very rampant and it was in the context of such a situation that the District Magistrate arrived at the requisite satisfaction even though the act on which the satisfaction was founded was just one single solitary act of wagon breaking. We fail to see how one solitary isolated act of wagon breaking committed by the petitioner could possibly persuade any reasonable person to reach the satisfaction that unless the petitioner was detained he would in all probability indulge in further acts of wagon breaking. No criminal propeneion for wagon breaking could reasonably be inferred from a single solitary act of wagon breaking committed by the petitioner in the circumstances of the present case. We must of course make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behavior of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. But whatever it be, it must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. It may be easier to draw such an inference where there is a series of acts evincing a course of conduct but even if there is a single act, such an inference may justifiably be drawn in a given case. Here, however that is not possible. We do not think that one single act of wagon breaking attributed to the petitioner was of such a character that any reasonable man could be satisfied, merely on the basis of the commission of such a solitary isolated act, that the petitioner would be likely to indulge in further acts of wagon breaking in future and in order to prevent him from doing so, he must be detained. The satisfaction of the District Magistrate recited in the order of detention was, therefore, no satisfaction at all or was in any event colourable and it could not form the basis for the making of the order of detention.

3. There was also another angle from which the validity of the order of detention was challenged on behalf of the petitioner. This second line of attack was based on the averments in paragraph 7 of the affidavit filed by the District Magistrate in reply to the petition. These averments showed that what weighted with the District Magistrate in making the order of detention was not merely one single solitary act of wagon breaking attributed to the petitioner in the grounds furnished to him, but also the fact that the petitioner was "one of the notorious wagon breakers and was engaged in systematic breaking of railway wagons and committing theft of rice and wheat" from railway wagons. The grounds on which the order of detention was really made, therefore, included the ground that the

petitioner was a notoricus wagon breaker who was systematically engaged in breaking railway wagons and committing theft of rice and wheat. This ground was, however, not communicated to the petitioner and he was not given an opportunity of making a representation against it. This was clearly in breach of the requirement of Sub-section (1) of Section 8 of the Act and it also constituted violatton of the Constitutional guarantee embodied in Article 22, Clause (5) of the Constitution. The order of detention was, thus, vitiated by a serious infirmity and it must be held to be invalid. We are supported in this view by two decisions of this Court in Shaik Hanif v. State of West Bengal W.P. Nos. 1979 of 1973 etc., dec. on February 1, 1974 and Bhut Nath Made v. State of West Bangal. W.P. No 1456 of 1973, decided on February 8, 1974.

4. We, therefore, allow the petition and issue a writ of habeas corpus quashing and setting aside the order of detention made against the petitioner. We may point out that, this being our view, we direct, on the conclusion of the hearing of the petition, that the petitioner be set at liberty forthwith and no futher order, therefore, now remains to be passed in that behalf.