

A

## SITALA PRASAD SHAW

v.

## THE STATE OF WEST BENGAL

October 15, 1974

[Y.V. CHANDRACHUD AND R.S. SARKARIA, JJ.]

B

*Constitution of India, Art. 22(5)—Maintenance of Internal Security Act, 1971—Period of detention—Habeas Corpus—Grounds of detention refer to a solitary incident—Particulars furnished stating “you have been acting” in a manner prejudicial to the maintenance of public order—If justifies inference that the detention order is based on undisclosed material.*

C

D

The petitioner was detained under the Maintenance of Internal Security Act 1971. The ground of detention referred to a solitary incident. The particulars furnished to the petitioner however stated that he was detained on the ground: “you have been acting”, in a manner prejudicial to the maintenance of public order. In a petition for *habeas corpus* it was contended that since the language used showed a culpable conduct over a long period of time, the detaining authority had before it material showing that the petitioner was indulging in a criminal course of conduct for a long period and as such material was not disclosed to the petitioner, he had no opportunity to meet it resulting thereby in the contravention of Art. 22(5) of the Constitution. It was also contended that since State Government approved a detention order bearing a date different from the one shown in the order served on the petitioner, State Government had before it some other order of detention while approving the petitioner's detention.

Confirming the order of detention,

E

HELD : In matters involving the liberty of the subject, the detaining authorities ought to exercise the greatest care in the discharge of their functions. But that does not justify an unrealistic dissection of detention orders. The counter affidavit filed by the State shows that no other material was taken into account. The use of expression “you have been acting”, though unfortunate does not support the submission that the detention order was founded on undisclosed material. [426C—E]

(2) The order of approval contains a typographical error which is clear from the fact that the number of detention order is correctly given and in the order confirming the detention order, after consultation with the Advisory Board the correct date of the detention order is mentioned. [426F-H]

F

ORIGINAL JURISDICTION: Writ Petition No. 118 of 1974.

Petition under Art. 32 of the Constitution.

R. L. Kohli, for the petitioner.

Dilip Sinha and G. S. Chatterjee, for the respondent.

The Judgment of the Court was delivered by

G

CHANDRACHUD, J.—The petitioner was detained by an order dated August 23, 1973 passed by the District Magistrate, Howrah, under the Maintenance of Internal Security Act, 1971. The order recites that the petitioner was detained with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

H

The particulars of the ground of detention refer to a solitary incident dated March 18, 1973. It is alleged that at about 2 p.m. on that date, the petitioner and his associates being armed with swords, Ballams and Lathis attacked a group of Bengalees at Rajnarayan Roy Choudhury Ghat Road, Shibpur, Howrah causing severe injuries to them. It is further stated that this conduct led to a reign of terror

in the locality as a result of which the shops and the doors of the road side houses were closed, people of the locality fled away in panic and the people were generally afraid of coming out of their houses for fear of being assaulted.

Learned counsel appearing on behalf of the petitioner has raised two points for our consideration in this petition for the writ of *habeas corpus*. The particulars furnished to the petitioner say that the petitioner was detained on the ground: "you have been acting" in a manner prejudicial to the maintenance of public order. The argument is that the order is founded on a single incident and therefore, the use of language showing that the culpable conduct on the part of the petitioner extended over an appreciably long period of time was wholly inappropriate. Inferentially, it is urged, the detaining authority had material before it showing that the petitioner was indulging in a criminal course of conduct for a long period of time and as such material was not disclosed to the petitioner, he had no opportunity to meet it, leading thereby to the contravention of Article 22(5) of the Constitution. We are not impressed by this submission. It is true that in matters involving the liberty of the subject, the detaining authorities ought to exercise the greatest care in the discharge of their functions. But that does not justify an unrealistic dissection of detention orders. The counter-affidavit filed on behalf of the State Govt. shows that no other material was taken into account by the detaining authority while passing the order of detention. Therefore, the use of the expression, "you have been acting" though unfortunate does not support the submission that the order of detention is founded on undisclosed material. The petitioner was expressly apprised that he had been acting in a manner prejudicial to the maintenance of public order "as evidenced by the particulars" furnished to him. The particulars refer only to a single incident.

The second ground of attack on the detention order is that when the State Government approved the detention on August 30, 1973 it passed an order approving a detention order dated "25-8-73". As the impugned order of detention is dated August 23, 1973 it is urged that while approving the detention of the petitioner, the State Government had before it some other order of detention. There is no substance in this contention. The order of approval contains but a typographical error. This is clear from the order passed by the State Govt. on November 8, 1973 confirming the order of detention after obtaining the opinion of the Advisory Board. The order of confirmation refers to the order of detention dated August 23, 1973. It must also be stated that as in the order of confirmation so in the order of approval, an express reference is made to the detention order bearing No. 1818-C. The order of detention passed against the petitioner on August 23, 1973 bears that very number which shows that the reference to an order dated "25-8-73" in the order of approval is a typographical mistake.

In the result, we confirm the order of detention and discharge the rule in this petition.

P.H.P.

*Petition dismissed.*