

Narayan Chandra Ghosh Vs The State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: July 26, 1968

Acts Referred: Preventive Detention Act, 1950 " Section 11A, 13, 14

Citation: AIR 1969 Cal 234 : (1969) CriLJ 594 : (1969) 2 ILR (Cal) 371

Hon'ble Judges: T.P. Mukherji, J; R.N. Dutt, J

Bench: Division Bench

Advocate: Mukti Maitra, for the Appellant; S.N. Banerjee and Anil Kumar Sen, for the Respondent

Judgement

B.N. Dutt, J.

This is an application u/s 491 of the Code of Criminal Procedure for a Writ in the nature of Habeas Corpus against the detention without trial of Baidyanath Ghosh under Sub-section (2) of Section 3 of the Preventive Detention Act.

2. The detenu, Baidyanath Ghosh was taken into custody on July 7, 1967 on the basis of a detention order made by the District Magistrate.

Birbhum on the same day u/s 3 (2) of the Preventive Detention Act, 1950.

3. This application u/s 491 of the Code was made on July 28, 1967, when this Rule was issued. Subsequently, on an application on behalf of the

detenu, on September 28, 1967. the detenu was released on interim bail pending the hearing of the Rule. The Rule could be taken up for hearing

only today.

4. Mrs. Maltra. on behalf of the petitioner submits that the maximum period of detention, viz., one year has since expired and so the order of

detention has lost its force and has expired by efflux. of time. Mr. Sen on the other hand submits that the period during which the detenu has been

on bail should be deducted in calculating the period of one year from the date of detention and so the order of detention cannot be said to have

either lost its force or expired by this time. The decision on this question rests on the interpretation of the relevant sections of the Preventive

Detention Act, viz., Sections 11A, 13 and 14. u/s 11A the maximum period for which any person may be detained without trial in pursuance of

any detention order shall be 12 months from the date of detention. The detenu in this case has been detained with effect from July 7, 1967. So the

period of one year has expired on July 6, 1968. On a literal Interpretation, therefore, it must be said that the detention order has lost its force and

the maximum period of detention has expired. But Mr. Sen argues that the detention order should be taken to have remained suspended (for) the

period during which the detenu has been on bail under orders of this Court He relies on the principle Incorporated In Section 426 of the Code that

when a convicted person makes an appeal and is released on bail the sentence of imprisonment remains suspended during the period of ball. Mr.

Sen also refers to the decision in Emperor Vs. Masuria, where it has been said that even apart from the provisions of Section 426 of the Code,

when a person sentenced to Imprisonment on failure of Executing a bond u/s 123 of the Code is granted bail on appeal, the sentence of

imprisonment remains suspended during the period he remains on bail. Section 426 of the Code provides that when a person sentenced to

imprisonment files an appeal, the Appellate Court may order that the execution of the sentence be suspended. Here the Appellate Court itself

suspends the execution of the sentence. The same principle applies in the case of sentence of imprisonment on failure to execute bonds u/s 123 of

the Code. These are cases of sentence of imprisonment. But the detention under the Preventive Detention Act is not Imprisonment but preventive

detention and the maximum period of such detention cannot exceed 12 months from the date of detention. Once the detention order is made

effective by taking the detenu into custody, the period of 12 months starts to run out from the date of detention. The Court has power to grant him

interim bail. But, that does not operate as suspension of the detention order because, under the Preventive Detention Act itself, the detention order

has to expire on the expiry of 12 months from the date "of detention. This will be clear from Section 13 (2) of the Act which is as follows:--

13 (2). The revocation or expiry of a detention order shall not bar the making of a fresh detention order u/s 3 against the same person in any case

where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the

case may be, is satisfied that such an order should be made.

The Legislature, therefore, contemplated "expiry of the detention order" and Section 11A makes it clear when the detention order expires, that is,

on the expiry of 12 months from the date of detention. If the "detention order" expires after the lapse of 12 months from the date of detention,

then, though the detenu has been on bail under orders of Court, the "detention order" cannot remain alive after the lapse of 12 months from the

date of detention. Section 14 also makes it clear. u/s 14, the Government has a right to release the detenu on parole. But the law does not provide

that when the Government releases the detenu on parole, the detention order will survive even after the expiry of 12 months from the date of

detention or. In other words. Section 14 makes it clear that, even if a detenu is released on parole by the Government the detention order will

expire with the expiry of 12 months from the date of detention. The same principle should apply when instead of the detenu being released by the

Government on parole the detenu is released by orders of the Court because of the basic fact that the "detention order" expires on the expiry of 12

months from the date of detention. We are, therefore, unable to accept the contention of Mr. Sen and we hold that, since 12 months have expired

from the date when the detenu was taken into custody, the "detention order" must be said to have lost its force; in other words must be said to

have expired.

5. The present Rule has, therefore, become infructuous and stands discharged. The detenu is discharged from his bail bond.

6. This order will govern Criminal Miscellaneous Cases Nos. 190, 191, 265, 317, 333, 341/343, 344, 351, 355, 356, 417, 428, 448, 450 and

498 of 1967 as the same principle of law is involved because in all these cases 12 months have expired from the respective dates on which the

respective detenus were taken into custody.

T.P. Mukherji, J.

7. I agree.