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RAM KRISHNA PAUL

v.

THE GOVT. OF WEST BENGAL & ORS.

February 3, 1972

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[J. M. SHELAT, H. R. KHANNA AND K. K. MATHEW, JJ.]

*West Bengal (Prevention of Violent Activities) Act, 1970, s. 3—
Grounds of detention—One of the grounds extraneous in character.
Order of detention would be vitiated.*

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The petitioner was detained under section 6 of the West Bengal Prevention of Violent Activities Act, 1970. One of the grounds of detention which was supplied to the petitioner under sub-section (1) of section 8 was that he alongwith his associates went to a pharmacy posing himself as a purchaser of medicine and demanded money from the owner of the pharmacy in the name of collection towards party fund and out of fear the owner delivered Rs. 10/- to him. Quashing the order of detention,

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HELD : (i) The ground does not fall under any of the clauses of s. 3 setting out the circumstances under which a person can be ordered to be detained and is therefore extraneous in character.

(ii) There is no allegation in the ground that the petitioner had put any person in fear of any injury to that person or to any other. As such it cannot be said that the petitioner was guilty of extortion. Intentionally putting a person in fear of injury to himself or any other is a necessary ingredient of the offence of extortion. [403 B]

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(iii) There is nothing to show that the District Magistrate would have passed the order of detention of the petitioner in case he was not influenced by the facts mentioned in the ground. Therefore, the extraneous nature of even one of the grounds of detention would vitiate the order of detention. [403 D]

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ORIGINAL JURISDICTION : Writ Petition No. 307 of 1971.

Under article 32 of the Constitution of India for a writ in the nature of *habeas corpus*.

R. K. Jain, for the petitioner

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G. L. Mukhorthy and *G. S. Chatterjee*, for the respondent.

The Judgment of the Court was delivered by

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Khanna, J. This is a petition through jail under article 32 of the Constitution of India for the issuance of a writ of *habeas corpus* by Ram Krishna Paul 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.

The order of detention was made against the petitioner under sub-section (1) read with sub-section (3) of section 3 of the Act by the District Magistrate, Murshidabad on January 27, 1971. According to the order of detention, the District Magistrate was satisfied with respect to the petitioner that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessary to make an order directing his detention. The petitioner in pursuance of the detention order was arrested on January 28, 1971 and was served with the same day with the ground of detention together with vernacular translation thereof. Report about the making of the detention order was sent by the District Magistrate to the State Government along with the grounds of detention and other particulars on January 27, 1971. The report and the particulars were considered by the State Government and the order of detention was approved by the said Government on February 5, 1971. The same day the State Government submitted a report to the Central Government together with the grounds of detention and other particulars. On February 18, 1971 the State Government in its Home Department received representation dated February 15, 1971 sent by the petitioner. The said representation after consideration was rejected by the State Government on March 23, 1971. In the meanwhile, on February 25, 1971 the State Government placed the case relating to the petitioner before the Advisory Board. The representation made by the petitioner was sent by the State Government to the Board on March 23, 1971. The Advisory Board after hearing the petitioner, sent its report to the State Government on April 5, 1971. Opinion was expressed in its report by the Advisory Board that there was sufficient cause for the detention of the petitioner. The State Government confirmed the order of detention of the petitioner on May 31, 1971. The confirmation order was communicated to the petitioner as per memorandum dated June 10, 1971.

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

After hearing Mr. R. K. Jain who argued the matter *amicus curiae* on behalf of the petitioner and Mr. G. L. Mukhoti on behalf of the respondents on January 13, 1972, we directed that, for reasons to be recorded later, the petitioner should be set at liberty. We now proceed to give reasons in support of our decision.

Although a number of submissions were made on behalf of the petitioner at the hearing, it is, in our opinion, not necessary to deal with all of them as the detention order is liable to be quashed because one of the grounds for the detention of the petitioner was

A extraneous and did not in law justify the making of the detention order.

The grounds of detention which were supplied to the petitioner under sub-section (1) of section 8 of the Act read as under :

B “(1) That on 8-12-70 at about 20.00 hours you along with your associates went to Jnanada Pharmacy in Berhampore town posing yourself a purchaser of medicine and demanded money from the owner of the Pharmacy in the name of collection towards party fund. Out of fear, the owner of the pharmacy delivered Rs. 10/- to you.

C (2) That on 18-12-70 at about 20.00 hours you along with your associates had been to Punjab Dastralaya, Khagra, P. S. Berhampore and demanded Rs. 100/- from the shopkeeper at the point of dagger on the plea of collecting donation towards the party fund. Putting the owner of the shop in fear of instant death, you induced him to deliver up an amount of Rs. 100/- then and there.

D (3) That on 22-10-70 at about 19.30 hours you along with your associates had been to Jnanada Pharmacy, Berhampore town and demanded Rs. 250/- from the owner of the Pharmacy at the point of dagger putting him in fear of instant death. The owner of the Pharmacy was spared on payment of Rs. 50/- forthwith. You and your associates went away fixing 26-12-70 for payment of the remaining amount.

E (4) That on 26-12-70 at about 20.00 hours you along with your associates came to Jnanada Pharmacy, Berhampore and realised Rs. 20/- from the owner of the Pharmacy at the point of dagger putting him in fear of instant death.”

F The various circumstances under which a person can be ordered to be detained have been set out in the different clauses of section 3 of the Act. Ground No. 1 supplied to the petitioner, in our opinion, does not fall under any of those clauses. According to Mr. Mukhoti the facts set out in ground No. 1 would show that the petitioner received Rs. 10/- from the owner of Jnanada Pharmacy as a result of extortion. Extortion has been defined in section 383 of the Indian Penal Code as under :

G “Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby

dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion."

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It would appear from the above definition that before a person can be guilty of extortion, he should intentionally put any person in fear of injury, to that person or to any other, and thereby induce that person so put in fear to deliver to any person some property, valuable security or anything signed or sealed which may be converted into valuable security. Intentionally putting a person in fear of injury to himself or any other is, thus, a necessary ingredient of the offence of extortion. In ground No. 1, however, there is no allegation that the petitioner had put any person in fear of any injury, to that person or to any other. As such, it cannot be said that the petitioner was guilty of extortion.

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We thus find that ground No. 1 was of an extraneous character and did not justify an order of detention. There is also nothing to show that the District Magistrate would have passed an order of detention of the petitioner in case he was not influenced by facts given in ground No. 1. The extraneous nature of even one of the grounds of detention would, in our opinion, vitiate the order of detention.

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We, therefore, quash the order of detention of the petitioner.

K.B.N.