A

BORJAHAN GOREY

v.

THE STATE OF WEST BENGAL

August 1, 1972.

B [J. M. SHELAT, I. D. DUA AND H. R. KHANNA, JJ.]

Maintenance of Internal Security Act 26 *of* 1971, *s.* 3—*Detention under—Grounds supplied containing facts on which preventive proceedings under ss.* 109 *&* 110 *of the Code of Criminal Procedure could lie—Detention on such facts under Act whether barred—Corrections of facts whether can be gone into by this Court—Plea of* mala fides *whether established.*

C

The petitioner was detained by an order of the District Magistrate, Howrah and under the provisions of the Maintenance of Internal Security Act (26 of 1971). He was supplied the grounds of detention. He made a representation which was considered by the authorities under the Act and rejected. A petition under article 32 of the Constitution was then filed and the petitioner urged : (i) that the facts mentioned in the grounds of detention came within the purview of sections 109 and 110 of the Code D of Criminal Procedure and therefore his detention on those facts under s. 3 of the Act was unjustified; (ii) that the facts mentioned in the grounds were not correct and the order of detention was *mala fide.*

Dismissing the petition,

HELD : (i) Merely because a detenu is liable to be tried in Criminal E Court for the commission of criminal offences or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar government from taking action for his detention under the Act. The Act was passed in order to meet a serious situation affecting the security of India and the maintenance of public order as contemplated by section 3 of the Act. Judicial trial for punishing the accused for the commission of an offence as also preventive security proceedings in a criminal Court against a per- F son merely for keeping the peace or for good behaviour is a jurisdiction distinct from that of detention under the Act which has in view the object of preventing the detenu from acting in any manner prejudicial *inter alia* to the security of the State or maintenance of public order. The fields of these two jurisdictions, are not co-extensive nor are they alternative. The jurisdiction under the Act may be invoked when the available evidence does not come up to the standard of judicial proof but is otherwise cogent enough to give rise to suspicion in the mind of the authority concerned G that there is reasonable likelihood of repetition of past conduct which would be prejudicial *inter alia* to the security of the State or the maintenance of public order or even when the witnesses may be frightened or scared of coming to the Court and deposing about past acts on which the opinion of the authority concerned is based. This jurisdiction is sometimes called the jurisdiction of suspicion founded on past incidents and depending on subjective satisfaction. The authorities mentioned in section 3(2) H which include the District Magistrate are best suited to decide whether it is necessary to proceed under the Act, which decision rests on their subjective satisfaction. The grounds of detention relate to the past acts on which the opinion as to the likelihood of the repetition of such or similar acts is based, and those grounds are furnished to the detenu to inform

him as to how and why the subjective satisfaction has been arrived at so as to enable him to represent against them. The fact, therefore that a prosecution under the Code could have also been launched is not a valid ground for saying that it precludes the authority from acting under the Act.

(2) The District Magistrate is expected to know the situation prevailing in the district and to take suitable action for the maintenance of public order. His assessment of facts and his opinion on the propriety of making a detention order must be given due consideration and respect by this Court. The petitioner's representation was also duly considered by the State Government and rejected. The Advisory Board after hearing the detenu-petitioner in person also expressed opinion that there was sufficient cause for his detention. In these circumstances it was not possible for this Court in *habeas corpus* proceedings to hold an independent inquiry into the question whether or not the grounds on which the impugned order or detention was passed were false or non-existent. Nor could the impugned order be held to be *mala fide*. There being no legal infirmity in the order of the petitioners detention, and the facts affirmed by the District Magistrate which must be accepted on the facts and circumstances of the case to be true, being relevant to the object of the detention, this petition must fail.

ORIGINAL JURISDICTION : Writ Petition No. 192 of 1972.
(Under Article 32 of the Constitution of India for the enforcement of fundamental rights.)

Hiralal Jain for the petitioner.

P. K. Chakraborty and G. S. Chatterjee for the respondent

The Judgment of the Court was delivered by

Dua, J. This is a petition under Art. 32 of the Constitution challenging the order of the petitioner's detention dated September 23, 1971 made by the District Magistrate, Howrah, under s. 3, sub-ss. (1) and (2) of the Maintenance of Internal Security Act, 26 of 1971 (hereinafter called the Act). The petitioner Borjahan Gorey, who claims to be a labourer working in Gogalbhai Jute Mills was arrested on October 5, 1971 pursuant to the impugned order of detention. The grounds of detention were served on him on the same day. He made a representation to the State Government on October 25, 1971 which was duly considered by the said Government on October 29, 1971. His case was placed before the Advisory Board on November 1, 1971 as required by s. 10 of the Act and the said Board made its report on December 10, 1971. As in the opinion of the Board there was sufficient cause for the petitioner's detention the State Government confirmed the impugned order on December 23, 1971 and communicated this fact to the petitioner on the same day.

The grounds for the petitioner's detention duly communicated to him under s. 8(1) of the Act are :—

"(1) On 7-7-71 after 19.30 hours you and your associates Asto Patra, Netai Patra, Habi Khara and

A others terrorised the members of the public, who assembled in the field of Shri Saraj Ghosal near Fuleswar Rly. Station to decide the actions to be taken against the anti-social activities, like snatching away valuables from the passengers from running trains, carried on by you and your associates, by exploding
B bombs at a distance of 8/10 cubits from the place of meeting. The local people being panicky started running helter and skelter but you and your associates obstructed them by brandishing swords and iron rods.

2. On 6-8-71 at about 11.45 hours, you and your
C associates Netai Patra, Asto Patra, Amjed, Habi Khara and 15/20 others being armed with ballam, sword and bombs etc., formed an unlawful assembly in front of the shop of Pranab Sarkar of Kalsafa market, P. S. Uluberia and attacked one Basudev Sarkar causing severe injuries on his person. When resisted by the members of the public, you and your associates attack-
D ed them causing injuries to some of them and terrorised them by hurling bombs towards them. Being panick-stricken, the local people started to run aimlessly and the market was closed instantaneously. You and your associates created a reign of terror and continued your rowdy activities till a police party reached there."

E

The first point presented by Shri Hiralal Jain, learned counsel appearing as *amicus curiae* against the petitioner's detention is that the grounds, on the basis of which the impugned detention order has been made, disclose facts which would squarely fall within the purview of ss. 109 and 110 of the Code of
F Criminal Procedure and, therefore, the petitioner should have been appropriately proceeded against under those sections rather than detained under s. 3 of the Act. Our attention was not drawn by the learned counsel to any statutory provision, nor was any precedent or principle cited by him in suport of this contention.

G Now merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure, would not by itself debar the government from taking action for his detention under the Act. The scheme of the Act
H as disclosed by its clear language does not lend any support to the contention urged by Shri Jain. Besides, the object and purpose of bringing the Act on the statute book also clearly shows that in view of the prevailing situation in the country

and the developments across the border in July, 1971 the need was felt for urgent and effective preventive action in the interest of national security and the Act was restrospectively enacted to replace the Maintenance of Internal Security Ordinance, 1971. The preventive detention provided by the Act is apparently designed to deal urgently and effectively with the more serious situation, *inter alia*, affecting the security of India and the maintenance of public order as contemplated by s. 3 of the Act. The liability of the detenu also to be tried for commission of an offence or to be proceeded against under Chapter VIII of the Code of Criminal Procedure which deals with prevention of less serious disturbances and requires execution of bonds on the basis of the acts disclosed in the grounds do not in any way as a matter of law affect or impinge upon the full operation of the Act. The reason is obvious. Judicial trial for punishing the accused for the commission of an offence as also preventive security proceedings in a criminal court against a person merely for keeping the peace or for good behaviour under Chapter VIII of the Code of Criminal Procedure, we may appropriately point out, is a jurisdiction distinct from that of detention under the Act, which has in view, the object of preventing the detenu from acting in any manner prejudicial *inter alia* to the security of the State or maintenance of public order. The fields of these two jurisdictions are not co-extensive nor are they alternative. The jurisdiction under the Act may be invoked, when the available evidence does not come up to the standard of judicial proof but is otherwise cogent enough to give rise to suspicion in the mind of the authority concerned that there is a reasonable likelihood of repetition of past conduct which would be prejudicial *inter alia* to the security of the State or the maintenance of public order or even when the witnesses may be frightened or scared of coming to a court and deposing about past acts on which the opinion of the authority concerned is based. This jurisdiction is sometimes called the jurisdiction of suspicion founded on past incidents and depending on subjective satisfaction. The jurisdiction for trial or for preventive proceedings under Chapter VIII. Code of Criminal Procedure cannot be successfully invoked in such a situation. In other words a case under the Code of Criminal Procedure whether punitive or preventive depends on the proof of objective facts which have already taken place whereas a case under the Act providing for preventive detention depends on the subjective satisfaction of the authorities concerned of the likelihood of the person to be detained to act in future in a manner similar to the one seen from his past acts. The authorities mentioned in s. 3(2) which include the District Magistrate are, in our view, best suited to decide whether it is necessary to proceed under the Act which decision rests on their subjective satisfaction. The grounds of detention relate

A to the past acts on which the opinion as to the likelihood of the repetition of such or similar acts is based and those grounds are furnished to the detenu to inform him as to how and why the subjective satisfaction has been arrived at so as to enable him to represent against them. The fact, therefore, that a prosecution under the Code could also have been launched is not
B a valid ground for saying that it precludes the authority from acting under the Act. This contention is thus devoid of merit. We have discussed this aspect somewhat elaborately so as to eliminate any misunderstanding of the true import of our decision and to exclude the possibility of any impression that the Act vests in the authority arbitrary power to select one or the
C other course dealing with the same or exactly similarly situation.

The learned counsel then referred us to the petitioner's denial in his representation of the truth of the allegations contained in the two grounds. According to him on the date on which the incident mentioned in ground no. 1 is alleged to have occurred he was present on duty in the mill and, there-
D fore, he could not have participated in that occurrence. That ground must, therefore, be considered to be false, contended Shri Jain. In so far as the second ground is concerned, according to the petitioner, at the time of the alleged incident, *i.e.*, at 11.45 a.m. on August 6, 1971, he was at the dispensary of the doctor appointed by the Employees' State Insurance for
E Gogalbhai Jute Mills where he had gone with the object of taking medical leave for a couple of days because he was sick and was running temperature. In other words the petitioner pleads *alibi* with respect to both the grounds. On the basis of these contentions, according to Shri Jain, the impugned order should be held to be based on allegations which are not true
F The impugned order of detention is accordingly contended to be insupportable being based on non-existing facts.

We are unable to agree with this submission. The District Magistrate who made the impugned order has, in the counter-affidavit, sworn "that the detenu-petitioner is one of the notorious rowdies and anti-social elements of P.S. Pudubalia,
G District Howrah". He has further added that after receiving reliable information relating to the alleged anti-social and prejudicial activities of the detenu-petitioner relating to the maintenance of public order he passed the order of detention under the Act. In para 7 of the counter-affidavit he affirmed both the grounds in express language. We do not find any cogent ground
H for not accepting the facts affirmed in the counter-affidavit. The District Magistrate is expected to know the situation prevailing in the district and to take suitable action for the maintenance of public order. His assessment of facts and his opinion on the

propriety of making a detention order must be given due consideration and respect by this Court. The petitioner's representation was also duly considered by the State Government and rejected. The Advisory Board, after hearing the detenu-petitioner in person also expressed the opinion that there was sufficient cause for his detention. In these circumstances, it is not possible for us in *habeas corpus* proceedings to hold an independent enquiry into the question whether or not the grounds on which the impugned order of detention is passed are false or non-existent. Nor can the impugned order be held to be *mala fide* as suggested by Shri Jain. There being no legal infirmity in the order of the petitioner's detention and, the facts affirmed by the District Magistrate, which must be accepted on the facts and circumstances of this case to be true, being relevant to the object of detention, this petition must fail and is dismissed.

G.C. *Petition dismissed*