

MANTOO MAJUMDAR & BASDEV SINGH

v.

STATE OF BIHAR

February 27, 1980

[V. R. KRISHNA IYER, A. C. GUPTA AND R. S. PATHAK, JJ.]

Code of Criminal Procedure 1974—Section 167(2)—Accused persons detained in prison for over six years without investigation or framing of charges—Legality of.

The two petitioners have been imprisoned for seven years in various prisons on the basis that they were implicated in several cases of 1971 and 1972. In their habeas corpus petition they impugned their continued detention in prison without trial.

Allowing the petition,

HELD : The petitioners should be released forthwith. [1109E]

(1) Section 167(2) of the Code of Criminal Procedure empowers the magistrate to authorise the detention of an accused in such custody as he thinks fit for a term not exceeding 15 days in the whole. The section also provides that no magistrate shall authorise the detention of the accused person exceeding 90 days in grave cases and 60 days in lesser cases, and that on the expiry of the said period the accused shall be released on bail if he is prepared to and does furnish bail. [1108H]

(2) Apart from mentioning the sections in the Penal Code by way of a passport into the prison house, there is no mention of any investigation of the cases, nor was a charge sheet laid before the court against either accused. Even the magistracy have bidden farewell to their primary obligation. [1108E]

(3) Although in these cases many years have passed the magistrates have been mechanically authorising repeated detentions unconscious of the provisions of law. [1109B]

ORIGINAL JURISDICTION : Writ Petition No. 1149 of 1979.

(Under Article 32 of the Constitution.)

V. N. Ganpule for the Petitioners.

U. P. Singh for the Respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—No Constitution nor Code nor Court can interdict illegal incarceration where conscientized agencies of the law at the grass-roots level are absent. Such is the only explanation for the lawless lot of the two prisoners who are petitioners before us. These two humans sojourning for long years in some jail or other in Bihar since 1972 found their personal liberty subverted by the police, prison officials and the magistracy that they wrote letters to the Hon. Chief Justice in desperation. The above *habeas corpus* petition is a legal

A incarnation of those letters. Sensitized by the *prima facie* hideous facts disclosed the court directed a rule to issue. Somehow, despite several adjournments the State did not even furnish the basic facts about the imprisonment of the petitioners, the offences for which they were kept in judicial custody, for how long and at what stage were the proceedings and the like. This gross indifference of the Bihar State in regard to citizens deprived of their liberty for indefinite and prolonged spells is an unconscionable aspect of that State's unconcern for human rights. Indeed, counsel for the State did his level best to get relevant information. Being at the end of our patience and finding a helpless counsel, we had to pass an order in the following terms :

C It is noticed that an order dated 17-12-1979 directed jail authorities and District Magistrates under whose jurisdiction the petitioners are kept in confinement to explain before 14-1-80 the nature of the charges against the petitioners, the stage of trial of each of these cases and the reason for the delay in proceeding with the trial. It is surprising that despite communication having been made to them through the State, counsel for the State represents that telex message to the concerned District Magistrate and jail authorities had been sent, but no information has yet been furnished in compliance with this Court's order. We are constrained therefore to issue notice to the jail authorities and the District Magistrates to show cause why action for violation of this Court's direction should not be taken against them. The Court will issue notice to be personally served on these authorities with a direction that they shall appear in Court in person on 25-2-1980. Counsel for the State undertakes to furnish the names of the District Magistrate concerned and jail authorities by 12-2-1980. Post the matter on 13-2-1980 with office report whether the counsel has submitted names and addresses of the authorities concerned as directed above.

G When the directive of the court went beyond mere censorious observations into hint at action against the defaulting officers, the scene began to change and at the hearing on February 25, 1980, the Superintendent of the Jail and the District Magistrate who were in a sense vicariously responsible for the custodial condition of the petitioners

H appeared in person and prayed to be excused for the default or delay in furnishing vital information about these unfree individuals. Fuller facts have been furnished by the Superintendent, Central Jail, suffi-

cient to enable us to discover the incontestable illegality of the detention and to direct the release on bail of the petitioners. **A**

Law is what law does and not what law writes in the books beyond the reach of those behind bars. In this perspective, Art. 21 of the Constitution and s. 167(2) of the Criminal Procedure Code, are dead letter for each petitioner. Article 21 guarantees personal liberty in these terms :— **B**

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Section 167(2) of the Criminal Procedure Code contains the following mandate : **C**

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction : **D**

Provided that— **E**

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding— **F**

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, **G**

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter; **H**

A (b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

B

In *Maneka Gandhi's case*⁽¹⁾ and a crop of cases thereafter this Court has emphasised the need for fair procedure to justify detention of persons. To put a man in prison and forget his personhood thereafter, to deprive a man of his personal liberty for an arbitrary period without monitoring by the law, to keep a man in continued custody unmindful of just, fair and reasonable procedure—these shake the faith in the rule of law and militate against the mandates of Part III of the Constitution. And yet, that is precisely what has happened in the present case.

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D The frightful facts frankly furnished in the return filed are that the two petitioners have been enduring incarceration for over seven years in various prisons in Bihar on the basis that they are implicated in several cases of 1971 and 1972. A long list has been annexed to the counter-affidavit. But what scandalises us is that apart from mentioning the sections in the Penal Code by way of a passport into the prison house, there is no mention of any investigation of the case, nor a single charge-sheet laid before the court against either accused. What flabbergasts us is that even the magistracy have bidden farewell to their primary obligation, perhaps, fatigued by over-work and uninterested in the freedom of others. If we see the chart produced by the Superintendent of the Jail we find that a large number of dates are given on which the prisoners have been produced before the magistrates concerned from 1973 to 1980 without so much as the court checking up whether the investigations have been completed, charge-sheets have been laid and there is justification for keeping the petitioners in custody.

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Section 167(2) which we have extracted above, empowers the magistrate to authorise the detention of an accused in such custody as he thinks fit for a term not exceeding 15 days in the whole. More importantly, there is a precious interdict protective of personal freedom which states that no magistrate shall authorise the detention of the accused person exceeding 90 days in grave cases and 60 days in

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(1) *Maneka Gandhi v. Union of India* [1978] 1 S.C.C. 248.
=[1978] 2 S.C.R. 621.

lesser cases. "On the expiry of the said period . . . the accused person shall be released on bail if he is prepared to and does furnish bail . . ." Not 60 days but six years have passed in the present case; not 90 days but 1900 days or more have passed; and yet, the magistrates concerned have been mechanically authorising repeated detentions unconscious of the provisions which obligated them to monitor the proceedings which warrant such detention. In short, the police have abdicated their function of prompt investigation. The prison staff have not bothered to know how long these internees should be continued in their custody and, most grievous of all, the judicial officers concerned have routinely signed away orders of detention for years by periodically appending their incarceratory authorisations. We know not how many others are languishing in prison like the petitioners before us. 'If the salt hath lost its savour, wherewith shall it be salted?' If the law officers charged with the obligation to protect the liberty of persons are mindless of constitutional mandates and the code's dictates, how can freedom survive for the ordinary citizen?

We must record our deep appreciation of Shri Ganpule who has appeared *amicus curiae* and proceed further to register our profound satisfaction at the fair and frank statement made by Shri U. P. Singh for the State who rightly pointed out that the continued detentions in the face of s. 167(2) were indefensible.

We direct the release forthwith of the two petitioners on their own bond without sureties. This Court has held in earlier cases that bail does not involve a necessary component of sureties. We, therefore, direct that on taking the personal recognizance from the petitioners, both of them will be set free subject to such other legal proceedings that the State may take if so warranted.

We have stated earlier that in the population of prisoners there may be many other whose legal illiteracy and pecuniary indigence may have forbidden their moving this Court or the High Court by way of *habeas corpus* petition. It is a bad state of affairs when we see the Bihar State being oblivious or callous to the prisoners whom it is warehousing. For what purpose, one knows not. It may be an act of penitence on the part of the authorities of the state and also of cleansing of conscience if only a special officer with judicial experience or other law officer familiar with criminal justice were appointed to make an extensive survey and study all the cases of prisoners to find out whether illegal custody has become a large scale phenomenon. After

A all, the State is also the guardian of the people's freedom and must, activist fashion set in motion measures to enlarge those prisoners who are held in custody without the warrant of fair procedure.

With these directions we direct the release of the petitioners on their own bonds in a sum of Rs. 1,000/- each.

B

P.B.R.

Petition allowed.