THE STATE OF BIHAR

v.

RAMBALAK SINGH AND OTHERS

January 17, 1966

[P.B. GAJENDRAGADKAR, C. J., J. C. SHAH, S. M. SIKRI, V. RAMASWAMI AND P. SATYANARAYANA RAJU, JJ.]

Constitution of India, Art. 226,—Habeas Corpus *proceedings—whether High Court has jurisdiction to grant interim bail where detention is under R.* 30, *Defence of India Rules,* 1962.

The respondent, who was ordered to be detained under Rule 30 of the Defence of India Rules, 1962, filed a petition in the High Court for a writ of *habeas corpus.* The High Court passed an order releasing the respondent on interim bail.

In the appeal to this Court against the said order, it was contended, *inter alia,* on behalf of the appellant state that although ordinarily the High Court may have jurisdiction to grant interim bail in *habeas corpus* proceedings, this was not so in cases where a detenu is detained under R. 30; the policy underlying the enactment of the Defence of India Act and the Rules and the object intended to be achieved by the detention which is authorised under R. 30, clearly indicated that there were other valid considerations of paramount importance which distinguished the detention made under R. 30 and that altered the character of the proceedings initiated by or on behalf of the detenu under Art. 226; that in such proceedings the Court could not ignore the fact that the detention is purported to have been made in order to safeguard the Defence of India and Civil Defence, Public Safety, etc.; that the very object of making an order of detention against a citizen is to put an end to his prejudicial activities which are likely to affect one or the other of the matters of grave public importance specified by R. 30 and it would therefore be illogical to hold that even before the Court comes to any decision as to the merits of the grounds on which the order of detention is challenged, it would be open to the Court to pass an interim order of bail; that furthermore any order of bail passed in such proceedings would not be interim but would be final and this also distinguished cases of this character from other *habeas corpus* proceedings.

HELD : In dealing with *habeas corpus* petitions under Art. 226 where orders of detention passed under R. 30 are challenged the High Court has jurisdiction to grant bail, but the exercise of the said jurisdiction is inevitably circumscribed by the considerations which are special to such proceedings and which have relevance to the object which is intended to be served by orders of detention properly and validly passed under the said Rules. [351 D]

Special Reference No. 1 *of* 1964 [1965] 1 S.C.R. 413; *State of Orissa* v. *Madan Gopal Rungta and others,* [1952] S.C.R. 28; referred to.

If on proof of certain conditions or grounds it is open to the High Court to set aside the order of detention made under R. 30 and direct the release of the detenu, then it cannot be held that in a proper case the High Court has no jurisdiction to make an interim order giving the detenu the relief which the High Court would be entitled to give him at the end of the proceedings. [348 C]

A It cannot also be said that the jurisdiction of the High Court to pass interim auxiliary orders under Art. 226 is taken away by necessary implication when the High Court is dealing with *habeas corpus* petitions in relation to orders of detention passed under R. 30. [348 G]

It is only when the High Court is satisfied that *prima facie* there is something patently illegal in the order of detention that an order for bail would be passed. The jurisdiction of the High Court to pass an interim B order does not depend upon the nature of the order but its authority to give interim relief to a party which is auxiliary to the main relief to which the party would be entitled if he succeeds in his petition. [349 E]

The jurisdiction of the High Court to grant relief to the detenu in such proceedings is very narrow and very limited and that being so, if the Court takes the view that *prima facie* the allegations in a petition disC close a serious defect in the order of detention which would justify the release of the detenu, the wiser and the more sensible and reasonable course to adopt would invariably be to expedite the hearing of the writ petition and deal with the merits without any delay. [350 A-B]

If an order of bail is made by the High Court without a full trial of the issues involved merely on *prima facie* opinion formed by it, the said order would be open to the challenge that is the result of improper exercise of jurisdiction. It is essential to bear in mind the distinction between the D existence of jurisdiction and its proper exercise. Improper exercise of jurisdiction in such matters must necessarily be avoided by the courts in dealing with applications of this character. [351 C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 200 of 1965.

Appeal by special leave from the judgment and order dated E November 24, 1965 of the Patna High Court in Criminal W.J.C. No. 126 of 1965.

Lal Narain Sinha, Advocate-General, Bihar, Bajarang Sahai, and *S. P. Varma,* for the appellant.

D. Goburdhan and *G. N. Sinha,* for respondent No. 1.

F *C. K. Daphtary, Attorney-General,* and *B. R. G. K. Achar* for intervener.

The Judgment of the Court was delivered by

Gajendragadkar, C. J. This appeal by special leave is directed G against the order passed by the Patna High Court ordering that the detenu Rambalak Singh be released on bail of Rs. 500 with two sureties of Rs. 250 each to the satisfaction of the Registrar of the High Court. The order further mentions that Mr. Girish Nandan Sinha who appeared for the detenu had given an undertaking to the Court that during the pendency of the proceedings when the H petitioner is on bail, the petitioner will not indulge in any prejudicial activity or commit any prejudicial act. Mr. Lal Narain Sinha, the Advocate-General of Bihar, has urged on behalf of the appellant, the State of Bihar, that the order under appeal is without

jurisdiction, and that raises an important question of law as to whether while entertaining a *habeas corpus* petition under Art. 226 of the Constitution filed on behalf of a detenu who has been detained under Rule 30 of the Defence of India Rules (hereinafter called the "Rules"), the High Court has jurisdiction to release the detenu on bail pending the final disposal of the said *habeas corpus* petition.

The learned Advocate-General stated at the outset that the appellant was not keen on obtaining the reversal of the order of bail which is under appeal; he urgued that the appellant wanted the point of law to be decided, because it is necessary that the true legal position in this matter should not be in doubt. That is why we do not propose to deal with the facts leading to the *habeas corpus* petition on behalf of Rambalak Singh and will not consider the propriety, or the reasonableness of the order under appeal. It is true, as the learned Advocate-General contends, that one rarely comes across a case where the High Court has purported to exercise its jurisdiction under Art. 226 and released a detenu on bail where the order of detention has been passed under R. 30 of the Rules; but that by itself, can afford no assistance in dealing with the question of jurisdiction raised by the present appeal.

The learned Advoate-General has fairly invited our attention to the observations recently made by this Court in *Special Reference* No. 1 of 1964 [1], which are relevant for the purpose of dealing with the present appeal. In that case, the Legislative Assembly of the State of Uttar Pradesh had committed Keshav Singh, who was not one of its members, to prison for its contempt. Keshav Singh had then moved the Allahabad High Court, Lucknow Bench, under Art. 226 of the Constitution and s. 491 of the Code of Criminal Procedure, challenging his committal as being in breach of his fundamental rights. He had also prayed for interim bail. The learned Judges who entertained his petition admitted him to bail; and one of the points which arose for decision before this Court in the *Special Reference* was whether the order passed by the High Court admitting Keshav Singh to bail was without jurisdiction.

Mr. Seervai, who had appeared for the U.P. Assembly, had strenuously contended that the order passed by the High Court admitting Keshav Singh to bail was without jurisdiction, and in support of his contention, he had relied upon the English practice which seems to recognise that in regard to *habeas corpus* proceedings commenced against orders of commitment passed by the House of Commons on the ground of its contempt, bail is not granted by courts. This argument, however, was rejected by this Court, because this Court took the view that "if Art. 226 confers jurisdiction on the Court to deal with the validity of the order of commit-

(1) [1965] 1 S.C.R. 413.

ment even though the commitment has been ordered by the House, how can it be said that the Court has no jurisdiction to make an interim order in such proceedings?" (p. 498). Reference was also made to an earlier decision of this Court in the *State of Orissa* v. *Madan Gopal Rungta and Others*[1], where it was ruled that an interim relief can be granted only in aid of, and as auxiliary to, the main relief which may be available to the party on final determination of his rights in a suit or proceeding. It is clear that this view proceeded on the well-recognised principle that if jurisdiction is conferred by a statute upon a Court, the conferment of jurisdiction implies the conferment of the power of doing all such acts, or employing such means, as are essentially necessary to its execution[2]. Having thus rejected the contention raised by Mr. Seervai, this Court took the precaution of adding that it was not concerned to enquire whether the order admitting Keshav Singh to bail was proper and reasonable or not; all that this court was then concerned to consider was whether the said order was without jurisdiction, and on this point the opinion expressed by this Court was that in passing the order of interim bail, the High Court cannot be said to have exceeded its jurisdiction.

The learned Advocate-General does not dispute the correctness of these observations. He, however, argues that this principle cannot be invoked in cases where a detenu is detained under R. 30 of the Rules. The policy underlying the enactment of the Defence of India Act and the Rules, and the object intended to be achieved by the detention which is authorised under R. 30, clearly indicate that there are other valid considerations of paramount importance which distinguish the detention made under R. 30 and that alters the character of the proceedings initiated by or on behalf of the detenu under Art. 226. It is conceded that even in regard to orders of detention passed under R. 30, it would be competent to the High Court to order release of the detenu if the High Court is satisfied that the impugned order has been passed *mala fide*. There is also no doubt that the order of detention can be set aside if it appears to the High Court that on the face of it, it is invalid, as for instance, when it appears to the High Court that the face of the order shows that it has been passed by an authority not empowered to pass it. But the argument is that in dealing with the question as to whether the High Court can grant interim bail to a detenu in *habeas corpus* proceedings commenced on his behalf under Art. 226, the Court cannot ignore the fact that the detention purports to have been made in order to safeguard the defence of India and civil defence, public safety, maintenance of public order, India's relations with foreign powers, maintenance of peaceful conditions in any part of India, efficient conduct of military operations or the maintenance of

(1) [1952] S.C.R. 28.

(2) Maxwell on Interpretation of Statutes 11th ed., p. 350.

supplies and services essential to the life of the community. The very object of making an order of detention against a citizen is to put an end to his prejudicial activities which are likely to affect one or the other of the matters of grave public importance specified by R. 30, and so, it would be illogical to hold that even before the Court comes to any decision as to the merits of the grounds on which the order of detention is challenged, it would be open to the Court to pass an interim order of bail; and that, it is urged, distinguishes *habeas corpus* proceedings in relation to orders of detention passed under R. 30 of the Rules.

We are not impressed by this argument. If on proof of certain conditions or grounds it is open to the High Court to set aside the order of detention made under R. 30 of the Rules, and direct the release of the detenu, we do not see how it would be possible to hold that in a proper case, the High Court has no jurisdiction to make an interim order giving the detenu the relief which the High Court would be entitled to give him at the end of the proceedings. The general principle on which the observations of this Court were based in the Special Reference would apply as much to the *habeas corpus* proceedings commenced on behalf of a detenu detained under R. 30 of the Rules as to any other *habeas corpus* proceedings. If the Court has jurisdiction to give the main relief to the detenu at the end of the proceedings, on principle and in theory, it is not easy to understand why the Court cannot give interim relief to the detenu pending the final disposal of his writ petition. The interim relief which can be granted in *habeas corpus* proceedings must no doubt be in aid of, and auxiliary to, the main relief. It cannot be urged that releasing a detenu on bail is not in aid of, or auxiliary to the main relief for which a claim is made on his behalf in the writ petition. It is true that in dealing with the question as to whether interim bail should be granted to the detenu, the Court would naturally take into account the special objects which are intended to be achieved by orders of detention passed under R. 30. But we are dealing with the bare question of jurisdiction and are not concerned with the propriety or the reasonableness of any given order. Considering the question as a bare question of jurisdiction, we are reluctant to hold that the jurisdiction of the High Court to pass interim auxiliary orders under Art. 226 of the Constitution can be said to have been taken away by necessary implication when the High Court is dealing with *habeas corpus* petitions in relation to orders of detention passed under R. 30 of the Rules.

It is, however, urged by the learned Advocate-General that the order of bail in the present proceedings and indeed any order of bail passed in such proceedings would not be interim but would be final; and that, it is pointed out, distinguishes cases of this character from other cases of *habeas corpus* petitions. The argument is that if a person is convicted and he seeks to challenge the legality

A of the conviction by *habeas corpus* proceedings under Art. 226, the interim bail would be interim in the sense that if the proceedings fail, the person concerned will have to return to jail and run out the sentence imposed on him. Reverting to the case of Keshav Singh, it was urged that if the writ petition filed by Keshav Singh had failed, he would have been compelled to return to jail and
B run out the sentence pronounced on him by the U.P. Legislative Assembly.

The cases in regard to detention effected by R. 30, however, stand on a different footing. There is no period imposed by the orders of detention; they can be renewed from time to time as authorised by the respective relevant Rules, and the object of making
C the order is to prevent the commission of prejudicial acts of the detenu. In such a case, if the writ petition ultimately fails, it may be that the detenu returns to jails; but his return to jail under such circumstances is not comparable to the return to jail of the detenu who was convicted and who was allowed interim bail in proceedings by which he challenged the legality of his conviction.

D This argument also is not well-founded. It is obvious that when the High Court releases a detenu on bail pending the final disposal of his *habeas corpus* petition, the High Court will no doubt take all the relevant facts into account and it is only if and when the High Court is satisfied that *prima facie*, there is something patently illegal in the order of detention that an order for bail
E would be passed. The jurisdiction of the High Court to pass an interim order does not depend upon the nature of the order, but upon its authority to give interim relief to a party which is auxiliary to the main relief to which the party would be entitled if it succeeds in its petition. Therefore, considered as a mere proposition of law, we see no reason to accept the argument of the learned Advo-
F cate-General that the principle enunciated by this Court in the *Special Reference* has no application to *habeas corpus* petitions filed under Art. 226 in relation to orders of detention passed under R. 30 of the Rules.

Having thus rejected the main argument urged by the learned Advocate-General, we must hasten to emphasise the fact that
G though we have no hesitation in affirming the jurisdiction of the High Court in granting interim relief by way of bail to a detenu who has been detained under R. 30 of the Rules, there are certain inexorable considerations which are relevant to proceedings of this character and which inevitably circumscribe the exercise of the jurisdiction of the High Court to pass interim orders granting bail
H to the detenu. There is not doubt that the facts on which the subjective satisfaction of the detaining authority is based, are not justiciable, and so, it is not open to the High Court to enquire whether the impugned order of detention is justified on facts or

not. The jurisdiction of the High Court to grant relief to the detenu in such proceedings is very narrow and very limited. That being so, if the High Court takes the view that *prima facie*, the allegations made in the writ petition disclose a serious defect in the order of detention which would justify the release of the detenu, the wiser and the more sensible and reasonable course to adopt would invariably be to expedite the hearing of the writ petition and deal with the merits without any delay. Take the case where *mala fides* are alleged in respect of an order of detention. It is difficult, if not impossible, for the Court to come to any conclusion, even *prima facie*, about the *mala fides* alleged, unless a return is filed by the State. Just as it is not unlikely that the High Courts may come across cases where orders of detention are passed *mala fide*, it is also not unlikely that allegations of *mala fides* are made light heartedly or without justification; and so, judicial approach necessarily postulates that no conclusion can be reached, even *prima facie*, as to *mala fides* unless the State is given a chance to file its return and state its case in respect of the said allegations; and this emphasises the fact that even in regard to a challenge to the validity of an order of detention on the ground that it is passed *mala fide*, it would not be safe, sound or reasonable to make an interim order on the *prima facie* provisional conclusion that there may be some substance in the allegations of *mala fides*. What is true about *mala fides* is equally true about other infirmities on which an order of detention may be challenged by the detenu. That is why the limitation on the jurisdiction of the Court to grant relief to the detenus who have been detained under R. 30 of the Rules, inevitably introduce a corresponding limitation on the power of the Court to grant interim bail.

In dealing with writ petitions of this character, the Court has naturally to bear in mind the object which is intended to be served by the orders of detention. It is no doubt true that a detenu is detained without a trial; and so, the courts would inevitably be anxious to protect the individual liberty of the citizen on grounds which are justiciable and within the limits of their jurisdiction. But in upholding the claim for individual liberty within the limits permitted by law, it would be unwise to ignore the object which the orders of detention are intended to serve. An unwise decision granting bail to a party may lead to consequences which are prejudicial to the interests of the community at large; and that is a factor which must be duly weighed by the High Court before it decides to grant bail to a detenu in such proceedings. We are free to confess that we have not come across cases where bail has been granted in *habeas corpus* proceedings directed against orders of detention under R. 30 of the Rules, and we apprehend that the reluctance of the courts to pass orders of bail in such proceedings is obviously based on the fact that they are fully conscious of the

A difficulties—legal and constitutional, and of the other risks involved in making such orders. Attempts are always made by the courts to deal with such applications expeditiously; and in actual practice, it would be very difficult to come across a case where without a full enquiry and trial of the ground on which the order of detention is challenged by the detenu, it would be reasonably possible or per-
B missible to the Court to grant bail on *prima facie* conclusion reached by it at an earlier stage of the proceedings.

If an order of bail is made by the Court without a full trial of the issues involved merely on *prima facie* opinion formed by the High Court, the said order would be open to the challenge that it is the result of improper exercise of jurisdiction. It is essential
C to bear in mind the distinction between the existence of jurisdiction and its proper exercise. Improper exercise of jurisdiction in such matters must necessarily be avoided by the courts in dealing with applications of this character. Therefore, on the point raised by the learned Advocate-General in the present appeal, our conclusion is that in dealing with *habeas corpus* petitions under Art. 226 of the
D Constitution where orders of detention passed under R. 30 of the Rules are challenged, the High Court has jurisdiction to grant bail, but the exercise of the said jurisdiction is inevitably circumscribed by the considerations which are special to such proceedings and which have relevance to the object which is intended to be served by orders of detention properly and validly passed under the said Rules.
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We have already indicated that the learned Advocate-General has fairly stated that the appellant has brought the present appeal to this Court not for the purpose of challenging the correctness, propriety or reasonableness of the order under appeal, but for the purpose of getting a decision from this Court on the important
F question of jurisdiction raised by the said order. We do not, therefore propose to consider the question as to whether the order under appeal is proper, reasonable or valid.

The result is, the appeal fails and is dismissed.

Appeal dismissed.