

Durg Singh Vs. the State

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Court : Rajasthan

Decided On : Nov-26-1952

Reported in : AIR1953Raj177

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : [Constitution of India](#) - Article 22(5); [Preventive Detention Act, 1950](#) - Sections 3

Appeal No. : Civil Misc. No. 23 of 1952

Appellant : Durg Singh

Respondent : The State

Advocate for Def. : Kan Singh, Assit. Govt. Adv.

Disposition : Application allowed

Judgement :

Wanchoo, C.J.

1. This is an application under Article 226 of the [Constitution of India](#) by Durg Singh who has been detained under Section 3, Preventive Detention Act (No. 4) of 1950. His main contention is that the grounds supplied to him were so vague that he could not make a representation against the order. He therefore contends that he has been deprived of his personal liberty against the provisions of Article 21 of

the [Constitution of India](#), as he has not been afforded the earliest opportunity of making a representation against the order of detention, granted to him under Article 22(5) of the Constitution.

2. The grounds, that have been supplied to the applicant, are these-

(1) that it has been established that when some dacoits visited his village, he took his meals with them in village which naturally shows that he knew the dacoits and they had come in the village at his instance,

2. that, he instigated the dacoits to enquire from one Bhera Darji about the gold 'gho-khru' 'ear-rings' that he used to wear, but was not wearing at the time when the dacoits visited the village,

3. that, it was at his instigation that the dacoits told the villagers to deliver the 'hasil' to the jagirdars and not to in any way work against the jagirdars, (4) that he did not inform the Police of the fact that the dacoits visited Patui, which he was duty bound as Thikana 'Kamdar' of that village,

5. that, it has also been brought to the notice of the Police that on more than one occasion he had helped the dacoits directly or indirectly.

3. Learned Assistant Government Advocate submits that the grounds are not vague, and that it was possible for the applicant to make a representation, as provided under Article 22(5) of the Constitution, on the basis of these grounds. He relies on a Single Judge decision of this Court

-- 'Devisingh v. The State of Rajasthan', AIR 1952 Raj 171 (A). In that case also it was urged that the grounds supplied were vague. The learned Judge relied on -- 'the State of Bombay v. Atma Ram', AIR 1951 SC 157 (B) and held that

'it is open to a detenu to ask the detaining authority for further particulars, if he thinks that he is not in a position to make an effective representation on the grounds supplied to him, or the Government itself may, at a later date furnish such particulars: but it is not incumbent upon the detaining authority to furnish all sorts of particulars in its possession, besides the grounds having a bearing on the

objects which satisfied the detaining authority that the detenu should be detained.'

4. We must say with all respect to the learned Judge that there has been some misapprehension of the effect of 'Atma Ram's case (B)'. There was a difference of opinion in that case, and the majority judgment was delivered by Kania C. J. on behalf of himself, and Fazl Ali J., Mukherjea J. and Chandrasekhara Aiyar J. Patanjali Sastri J. and Das J. gave separate judgments differing on the question whether vagueness in the grounds could be a reason for release of a detenu. The majority judgment is, however, clear on the point that vagueness in the grounds, under certain circumstances, would entitle the Court to release a detenu.

There is no doubt that there is a difference between the various State Acts (which were in force formerly) and the Preventive Detention Act (No. 4) of 1950. In most of the State Acts the word 'particulars' also appears along with the word 'grounds' in connection with the material to be supplied to a detenu. But, in Article 22(5) of the Constitution, the word 'grounds' only appears, and the word 'particulars' does not appear. So now the detenu has a right under Article 22(5) to be supplied with grounds, and Section 7 of the Act also mentions the word 'grounds', and does not mention the word 'particulars'.

But it has been held by the Supreme Court in 'Atma Ram's case (B)' that the object of supplying the grounds to the detenu is to enable him to make a representation. Where, therefore, the grounds are so vague that the detenu cannot make an effective representation he

'has a right to approach the Court and complain that there has been an infringement of his fundamental right, and even if the infringement of the second part of the right under Article 22(5) is established, he is bound to be released by the Court.' (See p. 164)

5. The following observations of the Supreme Court will bear out the view that we take of 'Atma Ram's case (B)':

'As mentioned above, the object of furnishing grounds for the order of detention is to enable the detenu to make a representation, i.e., to give him an opportunity to

put forth his objections against the order of detention. Moreover, 'the earliest opportunity' has to be given to him to do that. While the grounds of detention are thus the main factors on which the subjective decision of the Government is based, other materials on which the conclusions in the grounds are founded could and should equally be conveyed to the detained person to enable him to make out his objections against the order.

To put it in other words, the detaining authority has made its decision and passed its order. The detained person is then given an opportunity to urge his objections which in case of preventive detention comes always at a later stage. The grounds may have been considered sufficient by the Government to pass its judgment. But to enable the detained person to make his representation against the order, further details may be furnished to him.' (See pages 162-163).

6. Then dealing with Article 22(6) which authorises the State to withhold certain facts if their disclosure would be against the public interest, it is observed as follows at page 163:

'A wide latitude is left to the authorities in the matter of disclosure. They are given a special privilege in respect of facts which are considered not desirable to be disclosed in public interest. As regards the rest, their duty is to disclose facts so as to give the detained person the earliest opportunity to make a representation against the order of detention.'

7. Then the judgment deals with the question whether the Court can go into the matter of vagueness, and the following observations occur at page 163:

'On the other hand, the question whether the vagueness or indefinite nature of the statement furnished to the detained person is such as to give him the earliest opportunity to make a representation to the authority is a matter within the jurisdiction of the Court's inquiry and subject to the Court's decision.....The conferment of the right to make a representation necessarily carries with it the obligation on the part of the detaining authority to furnish the grounds, i.e., materials on which the detention order was made.'

8. Then the judgment goes on to deal with the test to be applied as to the contents of the grounds. There are two purposes for which grounds are given to the detenu connected with the two rights contained in Article 22(5), namely (i) disclosure of the grounds on which the order has been made, and (ii) affording of earliest opportunity to the detenu to make a representation. The following observations then occur at page 163 in this connection:

'As already pointed out, for the first, the test is whether it is sufficient to satisfy the authority. For the second, the test is, whether it is sufficient to enable the detained person to make the representation at the earliest opportunity.'

9. The judgment then deals with the question as to when the grounds can be said to be vague, and the following observations occur at page 164:

'It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If, on reading the ground furnished, it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague.'

The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only answer which he can make is to say that he did not act, as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention.'

10. It is then pointed out that it is open to the authorities to send a second communication to the detenu giving materials in case the grounds first supplied to him were not sufficient. But this must be done within such time that the detenu concerned can make his representation at the earliest opportunity. No hard and

fast rule can be laid down as to the time factor, and whether the grounds were communicated as soon as it may be, and earliest opportunity given to the detenu to make a representation, will depend upon the facts of each case. It is, however, made clear that the second communication cannot add new grounds, but only give particulars of facts relating to the grounds already furnished. At page 165 the following observations occur:

'While the Constitution gives the Government the privilege of not disclosing in public interest facts which it considers undesirable to disclose, by the words used in Article 22(5) there is a clear obligation to convey to the detained person materials (and the disclosure of which is not necessarily to be withheld) which will enable him to make a representation.....

Under these circumstances, it is but right to emphasize that the communication made to the detained person to enable him to make the representation should, consistently with the privilege not to disclose facts which are not desirable to be disclosed in public interest, be as full and adequate as the circumstances permit and should be made as soon as it can be done. Any deviation from this rule is a deviation from the intention underlying Article 22(5) of the Constitution.'

The Judgment further points out that it has been found

'that there has been quite an unnecessary obscurity on the part of the detaining authority in stating the grounds for the order. The result of this attitude of some detaining authorities has been that applying the tests mentioned above, several communications to the detained persons have been found wanting and the orders of detention are pronounced to be invalid.'

11. These then are the principles which have to be applied in determining whether the grounds supplied in this case are so vague that no representation at the earliest opportunity could be made on their basis. If that is so, there has not been sufficient compliance with the provisions of Article 22(5) of the Constitution, and the applicant will have to be released, in 'Atma Ram's case (B)' the first communication, dated 29-4-1950, was vague. But a second communication containing detailed facts was made to the detenu on 23-3-1950, and, in view of

that communication, the detention order was upheld.

12. The principles laid down in 'Atma Ram's case (B)' were applied by the Supreme Court in -- 'Ujagar Singh v. The State of Punjab', AIR 1952 SC 350 (C). In that case, the original grounds were supplied on 3-4-1950, but these were vague. Additional grounds were furnished in July, 1950. It was held that as the petitioners were given only vague grounds which were not particularised or made specific so as to afford them the earliest opportunity of making representations against their detention orders, and there having been inexcusable delay in acquainting them with particulars of what was alleged, the petitioners had to be released. Thus a delay of three months in the supply of particulars was held to be in contravention of the provision of earliest opportunity for making the representation.

13. Let us look now at the grounds supplied in this case.

14. The first ground is that when dacoits visited the applicant's village, he took his meals with them which showed that he knew the dacoits, and that they had come in the village at his instance. It has not been mentioned who the dacoits were, and when they came to the village. The ground is, therefore, obviously very vague, and it is not possible for the applicant to make an effective representation on account of its vagueness. If the probable date of the visits of the dacoits had been mentioned, the applicant might have been able to show that on that date he was not in the village at all but was somewhere else.

15. The second ground says that the applicant instigated the dacoits to enquire from one Bhera Darji about the gold 'ghokhru' 'ear-rings' that he used to wear, but was not wearing at the time when the dacoits visited the village. It is not known whether the dacoits mentioned in this ground are the same which are mentioned in the first ground, and whether it was on the same visit that this took place or at some other visit. We think, under the circumstances, that this ground is also vague, though the mention of Bhera Darji makes it a little more particular than the first ground.

16. The third ground says that the dacoits told the villagers at the applicant's instigation to deliver the 'hasil' to the jagirdars, and not to work against the jagirdars. Here again it is not clear whether these dacoits were the same which are mentioned in grounds 1 and 2, or were different, and whether this incident took place when the incidents mentioned in grounds 1 and 2 took place, or at some other time. We consider that this ground is also vague.

17. The fourth ground says that the applicant did not inform the police of the fact that the dacoits used to visit his village which he was in duty bound to do as 'Kamdar' of the 'Thikana'. Here again, if it would have been mentioned who the dacoits were and when they visited the village, the applicant might have been able to make some representation about his alleged failure of duty. He might have been able to say that on or about the time when the dacoits were said to have visited the village, he was not in the village at all, and did not know about their visit.

18. The last ground is that on more than one occasion he had helped the dacoits directly or indirectly. This is the vaguest of all. It does not even specify the period during which this help was given, and what was the nature of the help given by the applicant.

19. The grounds, which have been supplied in this case, are all vague, and the only possible answer that the applicant can give to each and every one of them is a simple denial. This appears to us to be that class of cases which are covered by the following words in 'Atma Ram's case (B)':

'In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention.' (p. 164).

It may be mentioned that even up to today, no further particulars have been supplied to the applicant, and the defect of vagueness in the grounds originally supplied has never been made good. We are, therefore, of opinion that the applicant is entitled to be released as there has been an infringement of his fundamental right under the second part of Article 22(5) of the Constitution.

19a. It was pointed out on behalf of the State that the applicant's case has been considered by the Advisory Board, and the Board has confirmed the order of detention. That, in our opinion, makes no difference to the order that we are to pass in the circumstances of this case. We do not know anything about the proceedings before the Advisory Board.

It may also be pointed out that 'Ujagar Singh's case (C)' was of a time after the Preventive Detention Act (No. 4) of 1950 came into force, and there also the matter must have been considered by the Advisory Board, though the judgment does not show it. In spite of that, however, Ujagar Singh was ordered to be released as the grounds supplied were vague and were not particularised or made specific so as to afford him the earliest opportunity of making the representation. In the case before us, the grounds have never been particularised.

20. We, therefore, allow the application, and order that the applicant be released.

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