

SUPREME COURT.

MA KYIN HNIN (APPLICANT)

v.

THE COMMISSIONER OF POLICE, RANGOON
AND ONE (RESPONDENTS).*† S.C.
1948

Oct. 13.

Order in the nature of writ of habeas corpus—Detention under s. 5A (i) (b) of the Public Order (Preservation) Act, 1947.

Held: If a man is suspected of habitually committing or abetting the commission of dacoity or protecting or harbouring dacoits he cannot be detained under Public Order (Preservation) Act, 1947. Chapter VIII of the Criminal Procedure Code provided ample machinery for dealing with such a person. It is an abuse of the Public Order Preservation Act, 1947, to employ its summary provisions where action under Chapter VIII of the Criminal Procedure Code should be taken.

Ba Than for the applicant.

Chan Tun Aung (Assistant Attorney-General) for the respondents.

The judgment of the Court was delivered by

E MAUNG, J.—On the 22nd September 1948, we directed the release of Maung Maung, the applicant's husband, and stated that we would give our reasons later. We now proceed to do so.

The applicant's husband Maung Maung was detained under the orders of the Commissioner of Police, Rangoon, on the 10th July 1948, in purported exercise of the powers under section 5A (i) (b) of the Public Order (Preservation) Act, 1947. It is sought to justify the detention of Maung Maung on the ground that he was acting in a manner prejudicial to the public safety and maintenance of public order.

* Criminal Misc. Application No. 28 of 1948.

† Present: SIR BA U, Chief Justice of the Union of Burma, E MAUNG, J., and KYAW MYINT, J., of the Supreme Court.

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E MAUNG, J.

It appears that on the 10th July 1948, Maung Maung was arrested by the Pabeidan Police on suspicion in connection with an offence under section 395 of the Penal Code. No prosecution, however, in regard to that offence has been launched, apparently because the police had not been able to obtain sufficient materials on which to base a criminal prosecution.

From the affidavits of the applicant and that of U Tin Maung, the Inspector of Police who initiated the proceedings resulting in Maung Maung being directed to be detained by the Commissioner of Police under the Public Order (Preservation) Act, it appears that on the 24th July 1948, Maung Maung was formally released in relation to the charge under section 395 of the Penal Code and re-arrested under section 5 (ii) of the Public Order (Preservation) Act by U Tin Maung.

From the affidavit of U Tin Maung read together with the affidavit of the Commissioner of Police, we are satisfied that no good ground exists for action being taken against Maung Maung under section 5 or section 5A of the Public Order (Preservation) Act. It is said in justification of the detention of Maung Maung that whilst a village headman in Myaungmya District he actively associated with some known criminals and that he left his village without the permission of the Deputy Commissioner, Myaungmya. It is also said that having come to Rangoon he has been organizing a dacoit gang and that he was suspected to be the brain behind the dacoity in Pabeidan Police jurisdiction involving the loss of gold and jewellery to the value of Rs. 50,000. It was also claimed that an accused person arrested by the Lanmadaw Police admitted to the police that the pistol used by him was supplied by Maung Maung.

The Criminal Procedure Code in Chapter VIII has provided ample machinery for dealing with a person who habitually commits or abets the commission of

dacoity or protects or harbours dacoits. It is, in our opinion, an abuse of the Public Order (Preservation) Act to employ its summary provisions in cases where the Code of Criminal Procedure has already made ample provision with due safeguards both for the police and the person against whom action is to be taken.

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