

Prabhakar Shankar Dhuri

Vs

Sh. S. G. Pradhan and Others

Writ Petition No. 514 of 1970

(Shah, C. J.)

18.12.1970

JUDGMENT

SHAH, C. J. -

1. We have heard detailed arguments on the questions whether the Maharashtra Preventive Detention Act No. 18 of 1970 infringes the guarantee of the fundamental freedom under Articles 19, 21 and 22 of the Constitution. We have also heard arguments as to the nature of the jurisdiction exercised by the Advisory Board and by the State Government in dealing with the representation made by the detenu detained under the Act. We do not however think it necessary to express any opinion on those questions.

2. Certain facts disclosed by the record clearly indicate that the petitioner is entitled to be released.

3. By order of the Commissioner of Police, dated April 24, 1970, the petitioner was detained and he was taken into custody on the very day. He prepared a representation to be submitted to the Government of Maharashtra on May 1, 1970. The representation was despatched on May 8, 1970. It was received on May 9, 1970 by the Government of Maharashtra. Under Section 11 of the Act it was obligatory upon the Government to refer the case to the Advisory Board within 30 days of the date of detention under the Order. By Section 8 of the Act it is provided that when a person is detained in pursuance of a detention order the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the State Government. The representation having been made, it was the duty of the Government to dispose of that representation without undue delay. There is no clear evidence on the record as to when representation was disposed of. But a communication was sent on June 9, 1970, rejecting the representation. This was more than 12 days after the date on which the Government was required to refer the case to the Advisory Board. This Court has taken the view in *Durga Show and Others v. The State of West Bengal*, (1970 (3) SCC 696.) that a delay of 16 days in disposing of a representation submitted by a detenu of the Government is a long delay where a person is detained without a trial under a special law relating to Preventive Detention, and unless there is satisfactory explanation forthcoming explaining the delay, that by itself would be a sufficient ground for releasing the detenu. In this case the State of Maharashtra sent an intimation rejecting the representation one month 12 days after the petitioner was taken in custody, and 27 days after the representation was received. Again the representation was rejected after the expiry of the period for making a reference to the Advisory Board. Following the judgment in *Durga Show's case* (supra) referred to above we direct that the detenu be released forthwith.

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