

Sambhu Kar

Vs

State of W. B.

Writ Petition No. 41 of 1972

(H. R. Khanna JJ)

06.06.1972

JUDGMENT

KHANNA, J. -

1. This is a petition through jail by Sambhu Kar, who has been ordered by the District Magistrate, Burdwan to be detained under Section 3 of the Maintenance of Internal Security Act, 1971 (26 of 1971).
2. The order for detention was made by the District Magistrate on November 23, 1971. In pursuance of that order, the petitioner was arrested on December 13, 1971. Since then the petitioner has been in detention.
3. I have heard Mr. Sobhagmal Jain who argued the case amicus curiae on behalf of the petitioner, and Mr. Chatterjee on behalf of the State of West Bengal and am of the opinion that the detention of the petitioner is liable to be quashed on the short ground that there has been inordinate and unexplained delay on the part of the West Bengal Government in dealing with the representation made by the petitioner against his detention. The affidavit of Mr. Nironnoy Chakrabarty, which was filed in opposition to the petition on behalf of the State of West Bengal, shows, that on December 29, 1971, the State Government received a representation from the petitioner. The said representation was considered by the State Government and was rejected on February 2, 1972. There thus elapsed a period of thirty-five days between receipt of the petitioner's representation and its disposal by the State Government. As the above delay had not been explained in the affidavit initially filed on behalf of the petitioner's representation and its disposal by the State Government. As the above delay had not been explained in the affidavit initially filed on behalf of the State Government, this case was adjourned on May 24, 1972, till today to enable the State Government to explain the delay. Mr. Chatterjee on behalf of the Government has stated today that no further affidavit has to be filed on behalf of the Government. It would thus follow that the delay on the part of the State Government in dealing with the representation made by the petitioner has remained unexplained. This delay, in my opinion, vitiates the detention of the petitioner. The matter has been considered in a number of cases and it has been held by reference to Clause 5 of Article 22 of the Constitution that the delay in considering the representation of the petitioner would invalidate the detention. One of these cases was Kanti Lala Bose v. State of W. B. (W. P. No. 8 of 1972, decided on May 5, 1972). It was held in that case after referring to the earlier authorities that a delay of twenty-eight days in considering the representation of the petitioner would invalidate his detention. I, therefore, accept the petition and direct that the petitioner be set at liberty.

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