

Ajit Kayal and Other

Vs

State of W. B.

Writ Petition No. 32 of 1972

(H. R. Khanna JJ)

06.06.1972

JUDGMENT

KHANNA, J. -

1. On July 10, 1971, the District Magistrate, Howrah passed an order under Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 29 of 1970), for the detention of Ajit Kayal and Other. In pursuance of that order Ajit Kayal was arrested on July 13, 1971. He has filed this petition under Article 32 of the Constitution through jail to challenge his detention.

2. I have heard Mr. Lakshminarasu 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 petition should be accepted on the short ground that there has been inordinate and unexplained delay on the part of the Government of West Bengal in considering the representation which was made by the petitioner against the detention order. The petitioner, as mentioned earlier, was arrested on July 13, 1971. Representation made by the petitioner against the detention order was received by the State Government on August 6, 1971. The said representation was considered by the State Government and was rejected on September 9, 1971. There thus elapsed a period of thirty-four days between the receipt of the representation of the petitioner and its disposal by State Government. In the affidavit which was initially filed on behalf of the Government in opposition to the petition, the above delay had not been explained. When the case came up for hearing before me on May 24, 1972, I adjourned the matter till today to enable the State Government to file affidavit with a view to explain the said delay. Mr. Chatterjee on behalf of the State Government has stated at the hearing today that no affidavit has to be filed on behalf of the State Government to explain the delay. It would thus follow that the delay in the disposal of the representation made by the petitioner against the detention order has remained unexplained. The above delay, in my opinion, introduces an infirmity in the detention of the petitioner and he is entitled to be set at liberty on that ground. In the case of Kanti Lal Bose v. State of W. B. (W. P. No. 8 of 1972, decided on May 5, 1972), this Court referred to the earlier authorities on the point and came to the conclusion that a delay of twenty-eight days between the receipt of the petitioner's representation and its consideration and rejection by the State Government was fatal. In the circumstances, I accept the petition and direct that the petitioner be set at liberty.

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