

Rama Dhondu Borade,

Vs

V. K. Saraf, Commissioner of Police and Others

Writ Petition (Cri) No. 86 of 1989

(B. C. Ray, S. R. Pandian JJ)

05.05.1989

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. Rule nisi in the writ petition and leave granted in the special leave petition.

2. Both this writ petition and the criminal appeal are preferred by one Rama Dhondu Borade - the detenu herein - challenging the legality and validity of the order of detention passed by the Commissioner of Police, Greater Bombay in exercise of the powers conferred by sub-section (2) of Section 3 of National Security Act, 1980 (Central Act 56 of 1980) (hereinafter referred as the 'Act') read with clause 4 of the National Security (Conditions of Detention) (Maharashtra) Order, 1980 with a view to preventing the detenu from indulging in activities that are prejudicial to the maintenance of public order in Greater Bombay.

3. In pursuance of the impugned order, the detenu is detained in the Central Prison, Nasik from August 31, 1988. He has been furnished with the copies of which the detaining authority drew his subjective satisfaction. In the grounds of detention the detenu is stated to have been involved in three incidents; they being :

(1) On April 9, 1988 at about 11.30 p.m. the detenu and his associate Sunil attacked one Laxman Devsingh Gurkha, during the course of which Sunil slapped on his face while the detenu caused an injury with a sword on the neck of Laxman. In respect of this incident a case as CR No. 269 of 1988 for offences under Sections 324 and 114 Indian Penal Code has been registered by Dadar Police;

(2) On April 10, 1988 the detenu along with his associates went to a pharmaceutical company at Worli and demanded a sum of Rs. 3000 at the point of choppers from one Banwarilal Bhagirath and on subsequent dates from one Babulal Mistry. Relating to this incident, Babulal lodged before Worli Police Station a complaint which was registered as CR No. 183 of 1988 for offences under Sections 384 and 114 of the Indian Penal Code. On April 14, 1988 the Police attempted to arrest the detenu and his associates, but they all managed to escape. However, the police arrested one of his associated Suresh p. Shelar who on search was found to be in possession of a chopper. Subsequently the detenu was arrested on August 9, 1988. But later on he was released on bail;

(3) On August 1, 1988 the detenu was arrested near the gate of Century Bazar and on

search he was found to be in possession of a Rampuri knife. In this connection, a case vide LAC No. 2912 of 1988 was registered in Dadar Police Station under the Bombay Police Act, 1951. On August 2, 1988 the detenu was released on bail.

4. In view of the above alleged violent activities of the detenu creating a sense of insecurity in Greater Bombay, the detaining authority on being satisfied on the materials placed before him that the activities of the detenu were prejudicial to the maintenance of public order in Greater Bombay, passed in impugned detention order. Challenging the correctness of this detention order, the detenu filed Writ Petition No. 1044 of 1988 before the High Court of Bombay which for the reasons mentioned in the judgment dismissed the same. This criminal appeal is preferred against that judgment. In addition to that, he has filed Writ Petition No. 86 of 1989 before this Court.

5. The learned counsel appearing on behalf of the appellant/ petitioner raised several contentions assailing the legality of the order one of which being that there is an inordinate and unexplained delay caused by the third respondent (Union of India) in considering and disposing of the representation of the detenu dated September 26, 1988 and as such the continued detention of the appellant is unconstitutional and illegal being violative of the mandatory provisions of Article 22(5) of the Constitution of India.

6. As we are inclined to dispose of this appeal and the writ petition on this ground alone we do not propose to traverse on other grounds canvassed before us.

7. With regard to the right of making the representation the detenu has been informed in the grounds of detention as follows :

You are further informed that you have a right to make a representation to the Central Government, the State Government and the undersigned against the order of detention and that you shall be afforded the earliest opportunity to make such a representation.

8. It is not in dispute that the detenu made his representation both to the State Government as well as the Central Government on September 26, 1988. But respondent 3 which has already completed the examination of the report dated September 6, 1988 sent by respondent 2 (the State Government) under Section 3(5) of the Act even on September 13, 1988, however, felt that certain information of the representation and, therefore, respondent 3 sent a wireless message on October 3, 1988 to the State Government asking for further informations.

9. The required information was received by respondent 3 only on October 17, 1988. Thereafter the representation was considered and the final decision to reject it was taken on October 27, 1988 and the decision of the Central Government rejecting the representation was communicated to the appellant through crash wireless message on October 31, 1988.

10. In attempting to explain the delay from October 17, 1988 to October 27, 1988 it is stated in the counter-affidavit filed on behalf of respondent 3 that October 18, 20, 22 and 23, 1988 were the closed holidays; But no explanation is given as to why the representation was not attended to and disposed of on October 17, 19, 21, 24, to 26. In explaining the delay in communicating the decision taken on October 27, 1988 it is stated that October 29 and 30 were holidays but the affidavit is silent as to why that decision had not been communicated to the detenu either on October 27 or 28, 1988.

11. With regard to the delay of 14 days in passing the information required by respondent 3,

respondent 2 (the State Government) in its affidavit states that it received the parawise comments of the detaining authority on the representation of the detenu on October 12, 1988 and thereafter it forwarded the same to respondent 3. Respondent 1 (the detaining authority) has filed a separate affidavit stating that since the officer of the Dadar Police Station was attending the meeting of the Advisory Board on October 7 and 11, 1988, a delay of 7 days had occurred in forwarding his parawise comments to respondent 2. These explanations given by both respondents 1 and 2 are not at all satisfactory and we are left with an impression that respondents 1 and 2 had not diligently collected the informations required by respondent 3 and thereby caused a considerable delay which had further delayed the consideration and disposal of the representation of the detenu by respondent 3.

12. We shall now examine the proposition of law relating to the delayed consideration and disposal of the representation of a detenu with reference to the judicial pronouncements.

13. There is a line of decisions of this Court dealing with this aspect of law in which we shall make reference to a few.

14. In *Jayanarayan Sukul v. State of West Bengal* ((1970) 1 SCC 219 : 1970 SCC (Cri) 92) the following observation has been made : (SCC p. 224, para 18)

It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

15. This Court in *Niranjan Singh v. State of Madhya Pradesh* ((1972) 2 SCC 542 : 1972 SCC (Cri) 880 : (1973) 1 SCR 691) expressed the view that it is incumbent on the State to explain the inordinate delay in considering and rejecting the representation of the detenu and satisfy the court that there was justification in that delay.

16. While dealing with the constitutional requirement of expeditious consideration of the detenu's representation by the government as spelt out from clause (5) of Article 22 of the Constitution this Court, after referring to the decisions in *Abdul Karim v. State of West Bengal* ((1969) 1 SCC 433) and *Pankaj Kumar Chakrabarty v. State of West Bengal* ((1969) 3 SCC 400) has stated in *Rashid Sk. v. State of West Bengal* ((1973) 3 SCC 476 : 1973 SCC (Cri) 376), as follows : (SCC PP. 478-79, paras 4 and 6)

It is undoubtedly true that neither the Constitution nor the Act expressly provides for consideration of detenu's representation by the State Government within any specified period of time. The constitutional requirement of expeditious consideration of the petitioner's representation by the State Government has, however, been spelt out by this Court from clause (5) of Article 22 of the Constitution... The use of the words "as soon as may be" [occurring in Article 22(5) of the Constitution] is important. It reflects the anxiety on the part of the framers of the Constitution to enable the detenu to know the grounds on which the order of his detention has been made so that he can make an effective representation against it at the earliest. The ultimate objective of this

provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious considerations with a sense of urgency for basic purpose of affording earlier opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion...

Now, whether or not the State Government has in a given case considered the representation made by the detenu as soon as possible, in other words, with reasonable dispatch, must necessarily depend on the facts and circumstances of that case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. The court has in each case to consider judicially on the available material if the gap between the receipt of the representation and its consideration by the State Government is so unreasonably long and the explanation for the delay offered by the State Government so unsatisfactory as to render the detention order thereafter illegal.

17. Chinnappa Reddy, J. speaking for the bench in *Smt. Shalini Soni v. Union of India* ((1980) 4 SCC 544 : 1981 SCC (Cri) 38) has emphasised the constitutional obligation on the part of the authorities concerned in dealing with the representation of a detenu as follows : (SCC p. 548, para 4)

Quite obviously, the obligation imposed on the detaining authority, by Article 22 (5) of the Constitution, to afford to the detenu the earliest opportunity of making a representation, carries with it the imperative implication that the representation shall be considered at the earliest opportunity. Since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Article 22(5) read with Article 19, the courts have a duty to rigidly insist that preventive detention procedure be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu.

18. See also *B. Sundar Rao v. State of Orissa* ((1972) 3 SCC 11 : 1972 SCC (Cri) 138), *Jnanendra Nath Roy v. State of West Bengal* ((1972) 4 SCC 50 : 1973 SCC (Cri) 123), *Frances Coralie Mullin v. W. C. Khambra* ((1980) 2 SCC 275 : 1980 SCC (Cri) 419), *Vijay Kumar v. State of Jammu and Kashmir* ((1982) 2 SCC 43 : 1982 SCC (Cri) 348), *Raisuddin alias Babu Tamchi v. State of Uttar Pradesh* ((1983) 4 SCC 537 : 1984 SCC (Cri) 16) and *Mohinuddin alias Moin Master v. D. M. Beed* ((1987) 4 SCC 58 : 1987 SCC (Cri) 674).

19. The propositions deducible from the various reported decisions of the Court can be stated thus :

The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty - the highly cherished right - which is enshrined in Article 21 of the Constitution.

20. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in Article 22(5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory such delay could vitiate the order of detention.

21. Coming to the facts of this case, we shall now examine whether the delay that had occurred in consideration and disposal of the representation of the detenu is so inordinate and unreasonable vitiating the order of detention or whether that delay is satisfactorily explained by respondent 3.

22. In the instant case, the gap between the receipt and the disposal of the representation is 28 days but up to the date of service of the order of rejection on the detenu the delay amounts to 32 days. The only explanation offered by respondent 3 is that further information required from the State Government was received by respondent 3 on October 17, 1988 after a delay of nearly 14 days and then the representation of the detenu was disposed of on October 27, 1988 within which period there were certain holidays. Barring that, there is no other explanation. This delay when scrutinized in the light of the proposition of law adumbrated above, we are of the view, that there is an inordinate and unreasonable delay and the present explanation given by respondent 3 is not satisfactory and acceptable.

23. Hence, for the aforementioned reasons we set aside the impugned order detention on the ground that there is a breach of constitutional obligation as enshrined under Article 22(5) of the Constitution of India.

24. In the result the appeal as well as the writ petition are allowed. The detenu is directed to be set at liberty forthwith.

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