ANDHRA PRADESH HIGH COURT

Nallapareddi Chandrasekhara Reddy

Vs.

Government of Andhra Pradesh

Writ Petn. No. 615 of 1973

(Sambasiva Rao and Chennakesav Reddy, JJ.)

09.02.1973

JUDGMENT

Sambasiva Rao, J.

1. This is a petition for the issuance of a writ of Habeas Corpus releasing the detenu by name Nallapareddi Chandrasekhara Reddy.

2. The order of detention was passed under Section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971 on 2.1.1973. The detenu was arrested and detained in the Central Jail, Nellore on 3.1.1973. It may be mentioned here that the order was passed in Nellore itself by the District Magistrate. The grounds for detention were communicated to the detenu on 8.1.1973. It is also stated that the Government approved of the detention under Section 3(3) on 9.1.1973.

3. The detention is assailed on two grounds. The first of them is that the grounds were communicated to the detenu more than 5 days after his detention; secondly, that some grounds are irrelevant or vague.

4. Taking up the first contention first, the detention took place on 3rd January, 1973 and the grounds were actually served on the detenu on 8.1.1973, Section 8(1) of the Maintenance of Internal Security Act, 1971 requires the grounds to be served on the detenu as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention. The learned Public Prosecutor, who appears for the respondents, does not endeavour before us to sustain the communication of the grounds on the basis of exceptional circumstances, in which case the grounds could "be served not later than 15 days from the date of detention. Quite apart from this, there are no reasons recorded in writing for the delay, stated either at the time of the detention or in the counter-affidavit

5. Therefore, the only alternative that is now left is whether the grounds are served on the detenu not later than 5 days from the date of his detention. From the, dates given above, it would be seen that if the date of detention, viz., 3rd January, 1973 is also included in computing the five days, then the service of the grounds on the 8th of January, 1973 was after more than 5 days from the date of detention. If, on the other hand, the date of detention is excluded, then the grounds can be taken to have been served within 5 days. Therefore, the question is whether the date of the detention has to be included or excluded while reckoning the period of 5 days which is prescribed under Section 8(1).

6. Law of preventive detention u permitted by Article 22 of the Constitution of India. At the same time, clause (1) of that Article says that no person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. Then clause (5) provides that when any person is detained in pursuance of an order made by any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making his representation against the order. In this context, Article 21 also must be noticed. It declares in unequivocal terms that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Therefore, the Constitution confers on the citizen a fundamental right to personal liberty and forbids deprivation of that liberty except in accordance with the established procedure on the basis of law. As we have already mentioned, law of preventive detention is permitted by Article 22 of the Constitution. Therefore, if, any interference with personal liberty of a citizen without trial is sought to be made, it should be only in accordance with the law made in this behalf. In this particular case, such interference is said to have been made under the Maintenance of Internal Security Act of 1971 which is a law providing for preventive detention. It logically and naturally follows that when personal liberty of an individual is sought to be interfered with or deprived under the provisions of any law providing for preventive detention, it should be strictly in accordance with the provisions of that law. That law should be construed, if there is any doubt as to the meaning or interpretation of any of its provisions, in the light of Articles 21 and 22 of the Constitution.

7. In both clauses 1 and 5 of Article 22, the detaining authority is t enjoined to inform the person detained of the grounds for such detention or arrest 'as soon as may be.' The words 'as soon as may be' are again repeated and reiterated in Section 8(1) of the Maintenance of Internal Security Act which deals with "grounds of order of detention to be disclosed to persons affected by the order". It is thus manifest that the Act has laid down that the grounds of detention should ordinarily be communicated to the detenu not later than 5 days from the date of detention and thus demonstrates its anxiety to abide by the constitutional safeguard and injunction. Whether permitting 5 days is repugnant to Article 22 of the Constitution or not is not the point in dispute

in the present case. What is argued before us is how the period of 5 day ? has to be reckoned; in other words, whether the date of arrest or detention shall be included or excluded in computing the period of 5 days.

8. In our view, the answer to this question is manifest from the language of Sub-Section (1) itself. What it lays down is that the ground shall be communicated ordinarily not later than 5 days from the date of detention. The words 'from the date of detention are very important. The intention of the legislature that the date of detention should also be taken into account, is indicated by the use of these words. The words 'ordinarily not later than five days' are also significant and meaningful, since they demonstrate the anxiety of the Parliament to insist on an early supply of the grounds of detention to the detenu. The emphasis is that the communication of the grounds should not be later than 5 days. Thus, the language of Sub-Section (1) of Section 8 is itself explicit and makes it clear that the date of detention also should be taken into account while reckoning the period of 5 days. It must also be noted that service of the grounds even on the date of detention is permissible and is even desirable and that is shown by the words 'as soon as may be' which are extracted from Article 22. All this is only to prevent undue delay, if any, in giving an opportunity to the detenu to put forward his representation against his detention to the appropriate Government. Once it is recognised that preventive detention without trial is an exceptional power given to the concerned authority, it should logically follow that the grounds for such action should be furnished to the detained person at the earliest possible moment. That is why the Act has taken care to prescribe a period of not later than 5 days, in order to give "a concrete shape to the words 'as soon as may be' used in Article 22 of the Constitution as well as in Section 8 of the Act. The date of detention means the preceding midnight to the succeeding midnight of the time of detention.

9. If that is so, 3.1.1973, on which detenu in this particular Case has been detained, should be taken into account. The grounds, however, were served on him on 8.1.1973 which was more than 5 days after the arrest. Therefore, the detaining authority has not followed the procedure prescribed by Section 8(1). We are supported in this view by the decision of a Division Bench' of the Allahabad High Court in *Prabhu Narain Singh v. Supdt. Central Jail. Varanasi*[1], This is sufficient for striking down the order of detention.

10. We do not therefore, think it necessary to go into the other question raised by the learned counsel for the petitioner as to the vagueness or irrelevancy of the grounds for detention.

11. It follows, therefore, that the order of detention is bad and is liable to be struck down. The writ petition is accordingly allowed and the detenu is directed to be set free forthwith.
Writ Petition allowed.

[1] ILR (1961) 1 All 427