

Rama Dhondu Borade vs V.K. Saraf, Commissioner Of Police & Ors on 5 May, 1989

Equivalent citations: 1989 AIR 1861, 1989 SCR (3) 191, AIR 1989 SUPREME COURT 1861, (1989) 3 BOM CR 400, (1989) 2 CRIMES 653, 1989 SCC (CRI) 520, 1989 APLJ (CRI) 219, (1989) 2 JT 579 (SC), 1989 2 JT 579, (1989) 1 APLJ 84, (1990) 1 MAHLR 15, 1989 ALL CJ 460, 1989 (3) SCC 173

Author: S.R. Pandian

Bench: S.R. Pandian, B.C. Ray

PETITIONER:

RAMA DHONDU BORADE

Vs.

RESPONDENT:

V.K. SARAF, COMMISSIONER OF POLICE & ORS.

DATE OF JUDGMENT 05/05/1989

BENCH:

PANDIAN, S.R. (J)

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PANDIAN, S.R. (J)

RAY, B.C. (J)

CITATION:

1989 AIR 1861 1989 SCR (3) 191

1989 SCC (3) 173 JT 1989 (2) 579

1989 SCALE (1)1581

CITATOR INFO :

F 1990 SC 225 (17)

RF 1990 SC 231 (18)

R 1990 SC1361 (15)

D 1990 SC1446 (11)

F 1990 SC1455 (20)

RF 1991 SC 574 (12)

RF 1992 SC 139 (4)

ACT:

Article 22(5)--Detenu's representation against detention--Necessity for consideration and disposal of representation as expeditiously as possible.

National Security Act, 1980 & National Security (Conditions of detention) (Maharashtra) Order 1980--Section 3 Clause 4---Detention Order--Representation of Detenu--Neces-

sity for disposal with the promptitude and diligence.

HEADNOTE:

With a view to preventing the petitioner-detenu from indulging in activities that were prejudicial to the maintenance of public Order in Greater Bombay, the Commissioner of Police, Greater Bombay, in exercise of the powers conferred on him by Sub-Section (2) of Section 3 of the National Security Act, 1980 read with clause 4 of the National Security (Conditions of detention) (Maharashtra) Order 1980 passed on Order of detention, pursuant whereof the Petitioner-detenu was detained in Central Prison, Nasik. He was furnished with copies of grounds of detention and other material on the basis of which the detaining authority based his subjective satisfaction.

In order to challenge the legality and validity of the detention Order, the detenu filed a Writ Petition before the Bombay High Court which was dismissed. Against the Order of the High Court, the detenu-petitioner has filed criminal appeal after obtaining special leave. He has also filed a separate Writ Petition in this Court challenging his detention. Both were heard together by this, Court.

Counsel for the appellant raised several contentions assailing the legality of the detention order, one of which being that there was inordinate and unexplained delay caused by the Union of India in considering and disposing of his representation dated 26-9-88, as such his continued detention was unconstitutional and illegal being violative of Article 22(5) of the Constitution.

Allowing the appeal as also the Writ Petition this Court
192

HELD: 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. [198H; 199A-B]

(Jayanarayan Sukul v. State of West Bengal, [1970] 1 SCC 219; A bdul Karim & Ors. v. State of West Bengal, [1969] 1 SCC 433; Pankaj Kumar Chakravarty & Ors. v. State of West Bengal, [1969] 3 SCC 400.

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. [199B-C]

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 upon the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. [199D]

Rashik Sk. v. State of West Bengal, [1973] 3 SCC 476.

Smt. Shalini Soni & Ors. v. Union of India & Ors., [1980] 4 SCC 544,

In the instant case, the gap between the receipt and disposal of the representation is 28 days but upon the date of service of the order of rejection on the detenu the delay amounts to 32 days. The only explanation offered by the 3rd respondent is that further information required from the State Government was received by the third respondent on 17-10-88 after a delay of nearly 14 days and then the representation of the detenu was disposed of on 27-10-88 within which period there were certain holidays. There is an inordinate and unreasonable delay and the explanation given by the third respondent is not satisfactory and acceptable. Detenu directed to be set at liberty forthwith. [199F-H; 200A, B]

193

B. Sundar Rao & Ors. v. State of Orissa, [1972] 3 SCC 11; Jnanendra Nath Roy v. The State of West Bengal, [1972] 4 SCC 50; Frances Coralie Muffin v. W.C. Khambra and Others, [1980] 2 SCC 275; Vijay Kumar v. State of Jammu and Kashmir JUDGMENT:

State of Uttar Pradesh and another, [1983] 4 SCC 537 and Mohinuddin alias Moin Master and Ors., v. D.M. Beed, [1987] 4 SCC 58, referred to.

& CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Crl.) No. 86 of 1989. Criminal Appeal No. 376 of 1989. (Under Article 32 of the Constitution of India). R.B. Thakre, Avadhut M. Chimalkar, Deepak and M.N. Nargolkar for the Petitioner/Appellant. T.C. Sharma, Ms. A. Subhashini, A.M. Khanwilkar and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by S. RATNAVEL PANDIAN, J. Rule nisi in the writ petition and leave granted in the special leave petition. 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 the 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. In pursuance of the impugned order, the detenu is detained in the Central Prison, Nasik from 31.8.88.

He has been furnished with the copies of the grounds of detention and other materials on the basis 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 9.4.1988 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 10.4.1988 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 Bhagi-

rath 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. 183/88 for offences under Sections 384 and 114 of the Indian Penal Code. On 14.4.88 the police attempted to arrest the detenu and his associates, but they all managed to escape. However, the police arrested one of his associates Suresh P. Shelar who on search was found to be in possession of a chopper. Subsequently the detenu was arrested on 9.8.88. But later on he was released on bail;

(3) On 1.8.88 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. 2912,88 was registered in Dadar Police Station under the Bombay Police Act, 1951. On 2.8.88 the detenu was released on bail.

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 the 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.

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 26.9.88 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. 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. 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."

It is not in dispute that the detenu made his representation both to the State Government as well as the Central Government on 26.9.88. But the 3rd respondent which has already completed the examination of the report dated 6.9.88 sent by the 2nd respondent (the State Government) under Section 3(5) of the Act even on 13.9.88. however, felt that certain informations were required from the State Government for its further consideration of the representation and, therefore, the 3rd respondent sent a wireless message on 3.10. 1988 to the State Government asking for further informations.

The required information was received by the third respondent only on 17.10.88. Thereafter the representation was considered and the final decision to reject it was taken on 27.10.88 and the decision of the Central Government rejecting the representation was communicated to the appellant through crash wireless message on 31.10.88. In attempting to explain the delay from 17.10.88 to 27.10.88 it is stated in the counter-affidavit filed on behalf of the third respondent that 18th, 20th, 22nd and 23rd October 1988 were the closed holidays; but no explanation is given as to why the representation was not attended to and disposed of on 17th, 19th, 21st, 24th to 26th October. In explaining the delay in communicating the decision taken on 27.10.88 it is stated that 29th and 30th October were holidays but the affidavit is silent as to why that decision had not been communicated to the detenu either on 27th or 28th October, 1988.

With regard to the delay of 14 days in passing the information required by the 3rd respondent, the 2nd respondent (the State Government) in its affidavit states that it received the parawise comments of the detaining authority on the representation of the detenu on 12.10.88 and thereafter it forwarded the same to the 3rd respondent. The 1st respondent (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 the 7th and 11th October, 1988, a delay of 7 days had occurred in forwarding his parawise comments to the 2nd respondent. These explanations given by both the 1st and the 2nd respondents are not at all satisfactory and we are left with an impression that the 1st and the 2nd respondents had not diligently collected the informations required by the 3rd respondent and thereby caused a considerable delay which had further delayed the consideration and disposal of the representation of the detenu by the 3rd respondent. 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. There is a line of decisions of this Court dealing with this aspect of law of which we shall make reference to a few.

In *Dayanarayan Sukul v. State of West Bengal*, [1970] 1 SCC 219 the following observation has been made:

"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."

This Court in *Niranjan Singh v. State of Madhya Pradesh*, [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.

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 and Others v. State of West Bengal*, [1969] 1 SCC 433 and *Pankaj Kumar Chakraborty and Others v. State of West Bengal*, [1969] 3 SCC 400 has stated in *Rashik Sk. v. State of West Bengal*, [1973] 3 SCC 476, as follows:

"It is undoubtedly true that neither the Constitution nor the Act expressly provides for consideration of a 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."

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"The use of the words "as soon as may be"

(occurred 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 representa-

tion by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest 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.' XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX "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."

Chinnappa Reddy, J. speaking for the bench in *Smt. Shalini Soni and Others v. Union of India & Ors.*, [1980] 4 SCC 544 has emphasised the constitutional obligation on the part of the authorities concerned in dealing with the representation of a detenu as follows:

"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 procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu."

See also *B. Sundar Rao and Others v. State of Orissa*, [1972] 3 SCC 11; *Jnanendra Nath Roy v. The State of West Bengal*, [1972] 4 SCC 50; *Frances Coralie Mullin v. W.C. Khambra and Others*, [1980] 2 SCC 275; *Vijay Kumar v. State of Jammu and Kashmir & Ors.*, [1982] 2 SCC 43; *Raisuddin alias Babu Tamchi v. State of Uttar Pradesh and another*, [1983] 4 SCC 537 and *Mohinuddin alias Moin Master and Ors. v. D.M. Beed*, [1987] 4 SCC 58.

The propositions deducible from the various reported decisions of this 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. 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.

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 the third respondent.

In the instant case, the gap between the receipt and the disposal of the representation is 28 days but upto the date of service of the order of rejection on the detenu the delay amounts to 32 days. The only explanation offered by the third respondent is that further information required from the State Government was received by the third respondent on 17.10.88 after a delay of nearly 14 days and then the repre-

sentation of the detenu was disposed of on 27.10.88 within which period there were certain holidays. Barring that, there is no other explanation. This delay when scrutinised in the light of the proposition of law adumbrated above, we are of the view, that there is an inordi-

nate and unreasonable delay and the present explanation given by the third respondent is not satisfactory and acceptable.

Hence, for the aforementioned reasons we set aside the impugned order of detention on the ground that there is a breach of constitutional obligation as enshrined under Article 22(5) of the Constitution of India. In the result the appeal as well as the Writ Petition are allowed. The detenu is directed to be set at liberty forthwith.

Y.L.
?201

Petitions Allowed.