Supreme Court of India
State Of Uttar Pradesh vs Abdul Samad & Another on 16 March, 1962
Equivalent citations: 1962 AIR 1506, 1962 SCR Supl. (3) 915
Author: N R Ayyangar
Bench: Sinha, Bhuvneshwar P.(Cj), Subbarao, K., Ayyangar, N. Rajagopala, Mudholkar, J.R., Aiyyar, T.L. Venkatarama

PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
ABDUL SAMAD & ANOTHER.

DATE OF JUDGMENT:
16/03/1962

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
AIYYAR, T.L. VENKATARAMA
SINHA, BHUVNESHWAR P.(CJ)
SUBBARAO, K.
MUDHOLKAR, J.R.

CITATION:
1962 AIR 1506 1962 SCR Supl. (3) 915
CITATOR INFO :
MV 1966 SC1910 (20)
RF 1971 SC 337 (7)

ACT:
Habeas Corpus-Arrest and detention for deportation-Petition for habeas corpus-Police holding detenues for production before High Court--Non-production before Magistrate-Production before High Court and grant of bail-Detention, if illegal-Constitution of India Art. 22(2).

HEADNOTE:
In, pursuance of an order for their deportation the respondents were arrested on July 21, and sent to Amritsar. The next day a habeas corpus application was filed on their behalf before the High Court at Lucknow and they were ordered to be produced on July 25, but on the High Court being informed that the respondents were beyond its jurisdiction it directed the application to be consigned to the records. On spurious information being received at Amritsar that the respondents had to be produced before the

High Court the respondents were sent back to Lucknow which they reached at 1 P.M. on July 25. They were produced before the Deputy Registrar at 3 P. M. and he directed them to be produced at 10. 15 A.M. on the next day. In the mean time a second habeas corpus application was filed on behalf of the respondents, inter alia, on the ground that the detention of the respondents was in violation of Art.22 of the Constitution as they had not been produced before any Magistrate. The respondents were produced before the High Court at 10.30 A.M. on July 26, when the High Court adjourned the case till 2 P.M. on July 27. and directed the production of the respondents at the time of hearing. On July 27, the High Court ordered the release of the respondents on bail and adjourned the case till July 28. On July 28, the High Court allowed the application and directed the respondents to be released on the ground of a contravention of Art. 22(2). It did not consider the legality of the detention in the first stage, i.e. from July 21 to 1 p.m. on July 25, but held that the detention in the second stage was illegal as the respondents were not produced before a Magistrate within 24 hours of 1 P.M. of July 25.

Held, (per Sinha, C.J., Ayyangar, Mudholkar and Aiyar, J.J., Subba Rao, J., dissenting), that the detention of the
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respondents was legal and the High Court was wrong in ordering their release. The respondents were produced before the High Court on July 26, within 24 hours of their arrival at Lucknow and the High Court by ordering their production the next day permitted the respondents to remain in police custody. They were again produced before the High Court within the next 24. hours on July 27, when they were ordered to be released on bail. Thus at no time during the second stage could the respondents be said to have been illegally detained for more than 24 hours without production before a judicial authority in violation of Art. 22(2).

Per Subba Rao, J. The detention of the respondents was illegal. The detention could not be dissected into two stages; it was a continuous one. Arrest: and detention for purposes of deportation was subject to the provisions of Art.22(2) and the respondents not having been produced before a Magistrate within 24 hours of their arrest the detention wag illegal.

Collector of Malabar v. Ebrahim Hajee, (1957) S.C.R. 970 and State of punjab. v. Ajaib Singh , (1953) S.C.R. 254$ distinguished .

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 48 of 1961.

Appeal by special leave from the judgment and order dated July 28, 1960, of the Allahabad High Court (Lucknow Bench) at Lucknow in Cr. Misc. case No: 186 of 1960. G. C. Mathur and C. P. Lal, for the appellant. S. P. Sinha and M. I. Khwaja, for the respondents. 1962. March 16. The Judgment of Sinha, C. J., Ayyangar, Mudholkar and Aiyar, JJ., was delivered by Ayyangar, J., Subba Rao, J., delivered separate Judgment. AYYANGAR, J.- This is an appeal by special leave against the judgment and order of the High Court of Allahabad by which it allowed a petition under s. 491 of the Criminal Procedure Code filed on behalf of the respondents.

We shall now narrate the facts which are not in dispute. The two respondents, who are husband, and wife, were in Pakistan in March 1955. While there, they obtained a Pakistani passport on September 6, 1955, and obtained from the Deputy Indian High Commissioner on September 17,1955, a visa to enter India which they did on September 22, 1955. The visa granted to them was of the C' category s.e., for temporary stay, which permitted them to remain in India till December 16, 1955. By repeated applications they had the term of the visa extended and continued to stay in India. On August 10, 1957, they applied for their registration as Indian citizens but the application was rejected on October 18, 1957. Thereupon they moved the High Court by a petition under Art. 226 of the Constitution to have this order of the rejection of their application set aside but the petition was dismissed in April, 1959. Thereafter orders were issued by the State Government and served on them asking them to leave India but they repeatedly applied for and were granted extensions of time for so doing. The last extension applied for was on December 22, 1959, but this was rejected and the government passed an order on July 7, 1960, requiring them to leave India within 24 hours after its service upon them. .This order was served on them on July 20, 1960 , at about 10 a.m. but they made no efforts to comply with it. The order not having been complied with the police took the two respondents into custody on the evening of July 21, 1960, at about 6 p.m. and sent them on by train to Amritsar for being deported to Pakistan. The respondents with their escort reached Amritsar in the early hours of July 23, 1960. The Head Constable who had the custody of the respondents produced them before the Reader of the District Magistrate, Amritsar as directed by the Senior Superintendent of Police, Kanpur and the Reader took them by about 10 a.m. to a Magistrate who ordered that they be kept in the Civil Lines Thana till further orders.

Meanwhile, after the departure of the respondents from Lucknow, proceedings were started on their behalf under s. 491 of the Criminal Procedure Code before the Lucknow Bench of the Allahadad High Court. This application was filed on July 22, 1960. The learned Judge before whom the application was placed directed notice to the State of Uttar Pradesh and required the State to take all possible steps to detain these two persons and produce them before the Court. It may be mentioned that the ground upon which the detention was challenged as illegal in this petition was that the respondents were "British subjects," within the meaning of the Foreigners Act and hence ',their arrest was illegal as they were citizens of India." In other words, what was challenged was the validity of the deportation order. On the same day, i.e., on July 22, 1960 the petition was placed before the Bench dealing with the matter which fixed the date' for the hearing of the petition as 10. 15 A.M. on July 25, 1960, at which hour the respondents were, directed to be produced before the Court. On July 23, 1960, a counter-affidavit was filed on behalf of the State, which was affirmed by a Sub-Inspector of Police who, after denying that there was anything illegal in the order of deportation, stated that the respondents had been taken into custody on July 21, 1960, and were

immediately thereafter sent to Amritsar and were therefore no more in Uttar Pradesh within the jurisdiction of the Court. The petition under s. 491, of the Criminal Procedure Code was taken up for hearing by the Court on July 25, 1960, as originally fixed, and after perusing the counter-affidavit filed on behalf of the State., the learned Judges in their order stated that the two respondents had been sent away to Amritsar and were no longer within the territorial jurisdiction of the Court, and recorded :

> "We find that we have no jurisdiction in the matter"

Their further direction was "The proceedings are consigned to records Certain matters, however, transpired on July 23, 1960, to which it is necessary immediately to refer. After the remand by the Magistrate at Amritsar on July 23, 1960, and when the respondents were being kept in Civil Line Thana, a telegram was received by the police at Amritsar and also a call by trunk telephone, purporting to be from Saxena, Under Secretary, Home Department, U.P. informing them that the High Court had issued orders that the respondents should be brought back to Lucknow to attend their case on July 25, 1960. It is now almost common ground that the telephone call as well as the telegram were spurious and did not emanate from the authorities at Lucknow. The Amritsar police however acted on these messages and immediately made arrangements for transporting the respondents back to Lucknow where they arrived at about 1 P.M. on July 25, 1960, by which time it would be noticed the petition filed on July 22, 1960, had been disposed of by the High Court by being consigned to records. Immediately on their arrival a supplementary application was filed for reviving the petition which had been disposed of earlier in the morning founded upon the ground that the respondents were then at Lucknow within the jurisdiction of the Court and praying for a direction that the respondents be released on bail. One other fact requires mention. The police at Amritsar having been informed that, the High Court had directed the two respondents to he produced before it, the police constables who escorted the respondents from Amritsar immediately on arrival produced them before the Deputy Registrar of the' High Court and this officer passed an order in these terms:

> "The detenues who were brought from Amritsar today at about 3 P.M. to this Court ..... are sent back under the same custody with the direction that the Head Constable...should produce them before this Court at 10.15 A.M. tomorrow, the 26th July.- 1960 positively."

and the Head Constable made an endorsement on the order undertaking to produce as directed.

Not content with what was termed the supplementary application filed on the 25th afternoon, a fresh petition udder s. 491 of the Criminal Procedure Code was filed on the 26th for the production of the respondents and for their being set at liberty and it is this application that was allowed by the learned Judges. In the petition, besides repeating the allegations already made in the petition filed on July 22. 1960, challenging the validity of the deportation order, a fresh one was added which ran:

> "Since July 21, 1960 the applicants are in custody without being produced before any Magistrate and hence the provisions of Art. 22 of the Constitution have been

violated"

Which, as would be seen from the above. narration, was deliberately false, and it ended with the prayer that the State be restrained from effecting the deportation of the respondents to Pakistan. Both the "supplementary applications dated July 25, 1960 to revive the petition dated July 22, 1960, as well as the fresh substantive petition dated July 26,1960, came up for orders before the Bench on July 26, 1960, and the learned Judges, after disposing of the "supplementary application" by directing that no orders were necessary thereon because of the other petition, passed an order on the petition dated July 26, 1960, that it would be taken up for hearing the next day (i.e., 27th at 2 P.M. and, also directed that the respondents should be produced in Court at the time of the hearing.

The petition was taken up on July 27, 1960, as directed the previous day when the learned Government Advocate prayed for an adjournment of one day, i.e., till July 28, 1960, to enable him to file proper affidavits particularly as regards the bogus communication received by the police at Amritsar which was responsible for the respondents being brought back to Lucknow. The adjournment asked for was granted but in doing so the Judges made this observation :

> "As it is not denied that the two applicants have been in police custody since 21st July, 1930, it appears to us that their non-prodtuc- tion before a Magistrate within 24 hours of their being taken in custody is open to objection under the Constitution of 'India. We. therefore', without coming to any decision, direct that the two applicant shall forthwith be released on bail on each of them furnishing a personal bond in. the, sum of Rs. 1,000/- (one thousand) and two sureties in the like amount to appear before this Court tomorrow at 10.15 A. M. sharp and on, all dates to which the hearing of the case may be adjourned..... It) case of default the two applicants will be to jail custody."

The respondents took advantage of this order for their release on bail and they were accordingly released the same day. The State filed a counter affidavit on July. 28, 1960 in the course of which they pointed out that the respondents bad been produced before a Magistrte at Amritsar and recounted the other facts which we have already narrated. The matter came on for final orders on July 28, 1960, when the learned Judges held that the respondents bad been detained in violation of the provisions of Art. 22(2) of the Constitution and therefore directed their being set at liberty. It is the correctness of this order that is challenged by the State in this appeal.

Pausing here we consider it necessary to mention one matter. We were informed by Mr. Sinha learned Counsel-who appeared for the respondents that subsequent to the order of release now under appeal the respondents had instituted a suit in a Civil Court challenging the validity of the deportation order and had obtained an interlocutory in. junction restraining the State from effecting their deportation pending the disposal of the suit. On this ground he urged that the question of the correctness or propriety of the order of the High Court was no longer a live issue but bad become academic. Having cerefully considered this aspect of the matter we have arrived at the conclusion that the grounds on which the learned Judge have directed the release are such as to require examination at our hands. It would be noticed that the respondents bad been in custody from about

6 P.M. on the 21st July to the evening of the 27th July when on the orders of the High Court they were released on bail. The learned. Judges have divided this into two periods-the dividing line being I P.M. on 25th July 1960, when they were brought to Lucknow in pursuance of the telephonic message purporting to emanate from the Under Secretary to Government for being produced before the High Court.

The Learned Judges of the High Court confined their attention to the second period and holding that during this period there had been a violation of the requirements of Art. 22(2) of the Constitution, in that the respondents had not been produced before a Magistrate within 24 hours of the commencement of the custody, expressed their opinion that the detention was illegal and directed the release of the respondents. It is the correctness of this order of the High Court that arises for consideration in this appeal.

Before proceeding to examine the reasoning of the learned Judges it necessary to state one matter. In view of the very limited question before us we do not feel called upon to deal with the scope of Art. `2(1) or 22(2) or of the two clauses read together in relation to the taking into custody of a person for the purpose of executing a lawful order of deportation which would require to be considered in regard to the detention during what has been stated earlier as the first period. When the question does arise for decision the following circumstances would be among those to be considered before the scope of the constitutional guarantee could be properly determined : (1) An alien has no legal and enforceable right to enter the country and can do so only subject to the permission granted by the executive under our law and when such a person overstays in the country beyond the period for which he is to permitted, the State acting through the executive is entitled to require the alien to, quit the country for the mere reason that the period for which he has been permitted to stay has elapsed. (2) That where an alien is taken into custody in pursuance of a valid order of deportation he is not charged with any offence within the meaning of these words in Collector of Malabar v. Ebrahim Hajee (1) but the State is merely effecting his removal from the country an act which the alien was himself bound by law to have done. (3) When the Constitution makes a provision for production before a Magistrate, the requirement is not to be treated as any (1) [1957] S.C.R. 970.

formality but as purposeful designed to enable the person arrested and detained to be released on bail or other provision made for his proper custody pending the investigation into the offence with which he is charged or pending an enquiry or trial. In the case of a lawful deportation order the Magistrate can obviously pass no order for release on bail or direct any other custody than that of the officers who have to execute the order of deportation. As stated earlier, the learned Judges having confined their scrutiny to the second period we shall not pronounce on the precise scope of Art.22(1) or (2) or the two clauses read together in relation to an arrest and detention for the purpose of executing a lawful order of deportation which arises by reason of the non-production before a magistrate within 24 hours after the respondents were taken into custody on the evening of the 21st July or. before the nearest Magistrate, but shall restrict ourselves to the very narrow question whether there was any basis for the conclusion of the Learned Judges that there had been a violation of the constitutional guarantee after the respondents were bought to Lucknow at beyond mid-day on 25th July, 1960.

The main judgment in the case was rendered by Nigam, J., who reasoned as follows :

> "I do not propose to give a considered view on the matter of (arrest and detention of a person for the purpose of deporting him out of India not being an arrest and detention within Art. 22 (2)) at this stage for I am of opinion that even if the contention of the learned Counsel is accepted the detention on 27th July, 1960 could not be said to be a detention for the purpose of deportation". This he explained later by stating "After return from Amritsar the two applicants were being detained not for the purpose of deportation for had that been the guiding purpose they would never have been brought back from Amritsar. They were brought back to Lucknow and were being detained in the custody in connection with the writ petition pending before this Court. Thus, I find as a matter of fact that in the present. circumstances the detention was not in connection with the deportation of the petitioners and as such, it being admitted that the petitioners were not produced before, a Magistrate within 24 hours of their arrest and were not being detained in connection with a warrant for jail or police custody signed by a Magistrate or other judicial officer, it cannot be suggested that their detention was legal."

Mulla J., the other learned Judge also divided the case into the same two stages. And this learned Judge also thought that at the second stage a violation of Art. 22(2) had occurred. His reasons were stated thus "I need not dwell upon the first stage but I feel that once the petitioners came back within the jurisdiction of this Court and a writ was filed on their behalf carrier, which was entertained and on which, the State was asked to submit a return, the matter had become sub-judice and the detention or custody of the petitioners ceased to b peurely an administrative custody for the purpose of carrying out an executive order. It is well known that' in writ of habeas corpus the presence of the petitioners before the court is necessary and therefore they be came parties to a judicial proceeding and they can be lawfully kept only in judicial custody ..... The courts of law do not approve of citizens or aliens remaining in the custody or detention of the police for a long time.

The police is certainly carrying out its executive duties and it is in the discharge of these duties that the police has to keep some persons in their custody, but the courts are vigilant that the police does not detain persons in their custody beyond the period which is necessary for the discharge of their duties. In this case it was not necessary for the police to detain the petitioners in their custody for discharging their duties and their duty would start after the, writ petition wits decided. Up to that time the presence of the applicants was needed in the hearing of the writ petition field by them and their detention for this period was primarily to help the court in deciding the Writ Petition." It is not very clear from the learned Judge's judgment as to what according to him was the duty of the police after a petition for a writ of habeas corpus had been filed. It is not possible to make out whether it was the opinion of the learned Judge that on the filing of a petition for habeas corpus the police were bound immediately to have released the detained person or whether the authorities could lawfully detain the person till the Court decided the matter. The learned Judge went on to add :

> " I am, therefore, clearly of the opinion that the petitioners should have been presented either before the High Court itself for a suitable remand order or at any rate before a Magistrate so that a judicial mind should have operated in deciding the question as to their being kept in custody and the conditions tinder which they should be kept in custody. The State failed to do so and detained the petitioners in the custody of the police. This violates the mandatory provision of' clause (2) of Article 22. It cannot be said that the arrest and detention of the petitioners subsequent to their coming back to Lucknow was that type of detention which is not covered by the mandatory provisions of Article 22."

It is very difficult to appreciate what exactly either of the learned Judges had in mind in making these observations holding that the guarantee under Art. 22(2) had been violated.During the ,,second stage" at which the learned Judges held that the detention has been illegal because of violation of Art. 22(2), the facts were these. The respondents had brought back to Lucknow on a message reacquiring their production before the High Court. They reached Lucknow on the 25th at 1 p.m. and were produced at 3 p.m. the same day, i.e., within two hours of reaching Lucknow before the Deputy Registrar. The Deputy Registrar had directed their production the next day and they were accordingly so produced. Even taking it that the Deputy Registrar was not a judicial authority such as the learned Judges had in mind, the respondents had been produced on the 26th morning at 10.15 a.m. before the learned Judge.3 when they were at liberty to make any order regarding the custody which they considered proper and the time when they were produced before the Judges was admittedly not beyond 24 hours from the time the respondents reached Lucknow. On the 26th the learned Judges who took part in the final decision passed an order directing the production of the respondents on July 27, 1960, (at 2 p.m. which obviously permitted the previous custody to be continued till further orders. They were produced accordingly at 2 p.m. on that day and by a further order of July 27, 1960, the' learned Judges bad dir- ected the release of the respondents on])ail and in pursuance of this order the, respondents had been released on July 27, 1960, itself. In these circums-

tances we are at a loss to. understand which is the period during ",the second stage" or "on the 27th" when the respondents could be said to have been illegally detained for more. than. 24 hours without production before a judicial authority as required by Art. 22(2). We would add that even if Art.22(2) were construed to require that a person arrested and detained has to be produced before a Magistrate every 24 hours during his detention, a meaning which it assuredly cannot bear, though it is not clear to us whether the learned Judge did not understand the Article to require this, even such a requirement was satisfied in this case as the respondents were during "the second stage" produced, before the High Court itself "for suitable orders" on the 26th and again on the 27th. We have no desire to comment further on this judgment of the learned Judges except to say that there was no justification whatsoever for the finding on the basis of which the learned Judges directed the release of the respondents.

We have given anxious thought to the question as to the proper order, to pass in the appeal. In the first place, we have to take into account that it is the liberty of the person that is involved and that it is the duty of the Courts to ensure that there is no encroachments on that liberty and particularly of

infringements of the guarantees which the Constitution has conferred on all persons, citizens and others in- that regard. When the highest Court in a State has made an order upholding such a liberty, this Court would naturally be slow to interfere with it unless satisfied that there has been a miscarriage of justice caused by a patently erroneous interpretation of the law, though it need hardly be added that a miscarriage of justice might equally be occasioned by the improper order release of a person whose custody is lawful. We are also conscious of the fact that the appeal before us is by virtue of special leave under Art. 136, and that in such cases, it is not every error that would be corrected, and in a case of the kind now before us, the conscience of the Court should be satisfied that interference is called for before the order of the Court below is interfered with. It is bearing these considerations in mind that we have arrived at the conclusion that the order of the High Court should not be allowed to stand.

The appeal is accordingly allowed and the order of the High Court set aside.

SUBBA RAO, J.- I regret my i inability to agree. The facts are simple. The two respondents, husband and wife, were arrested at Lucknow. by the police on July 21, 1960 at about 6 p.m. Soon thereafter, they were sent by train to Amritsar for being deported to Pakistan.% They reached Amritsar in the early hours on July 23, 1960, and were produced before a Magistrate at Amritsar at 10 a.m. on the same day. They were ordered by the said Magistrate to be. kept in Civil Lines Than& .till further orders. They were brought back to Lucknow in the afternoon on July 25 1960, and, immediately thereafter.. they were produced before the Deputy Registrar, High Court; Lucknow Bench, who directed them to be produced before the Court at 10.15 a.m 'on the next day. At 10.15 a.m. on July 26, 1960, the High Court directed the respon- dents to be produced in court at 2 p.m. on July 27, 1960 to which time the petition for habeas corpus, filed by the respondents, was posted for hearing. The petition was adjourned to July 28, 1960 and the MO Court directed the ',two applicants to be released on bail on. certain terms. On July 28, 1960,the learned Judges allowed the petition for a writ of habeas corpus on the ground that the arrest of the respondents was in violation of the provisions of Art. 22(2) of the Constitution and, therefore, directed them to be set at liberty. The State of Uttar Pradesh has preferred the present appeal against the said order of the High Court.

It has been brought to our notice that subsequent to the filing of the present appeal, the respondents filed a suit and obtained an injunction against the State from deporting them to Pakistan pending the disposal of the suit. In the circumstances they have ceased to have any interest in the present appeal.

The first question is whether it is a fit case for exercising the extraordinary jurisdiction of this Court under Art. 136 of the Constitution. The appeal has become infructuous, for even if the state succeeds it cannot arrest the respondents till the disposal of the suit. Nor has the High Court decided any such important question of law as to cause some irreparable injury to the appellant unless this Court set,% the matter right. The learned Judges expressly left, open the question raised, namely, whether Art. 22 would govern the arrest for the purpose of deportation. I would, therefore, dismiss the appeal on the simple ground that this is not a fit case for interference by this Court.

That apart, I am also not satisfied that the conclusion arrived at by the High Court is wrong. On the said facts, the respondents were arrested on July 21, 1960, for the purpose of deportation and they were admittedly not produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. Such persons could. not be detained in custody beyond the said period without the authority of a Magistrate. There is an allegation that the respondents were produced be-fore a Magistrate at Amritsar, but that Magistrate did not satisfy the definition of "'Magistrate" in Art. 22(2) of the Constitution. I find it difficult to dissect the detention into two periods, namely, (i) detention for deportation, and

(i) detention for production before the High Court, The act of detention was a continuous one and it did not cease to be one for the purpose of deportation by the fact that the respondents wore brought back to Lucknow or thereafter to the High Court pursuant to the notice issued. The question, therefore, is whether such an arrest for the purpose of deportation is outside the ken of the constitutional protection given under Art.22(2). Indeed, the State of Uttar Pradesh in its petition for special leave contended that the detention was for the purpose of deportation and, therefore, was not governed by the said provisions. The material portions of the article read:

> "22. (2) Every person who is arrested 'and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the, place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
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> (3) Nothing in clauses (1) and (2) shall apply-
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> (a) to any person who for the time being is an enemy, alien; or
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> (b) to any person who is arrested or detained under any law providing for preventive detention."

It would be seen that under this provision.' there is a constitution injunction that a person arrested and detained in custody shall be produced before a magistrate within the prescribed time. It cannot be gain said that arrest and detention in custody in contravention of this provision is illegal. Clause (3) of the article specifies two exceptions to the said injunction. Admittedly the respondents did not fall under one or other of the two exceptions. The constitutional provision. is couched in clear and unambiguous phraseology and it is not permissible to read into that provision exceptions other than those specially provided, for. When a provision issues an injunction in clear words and provides for two specific exceptions it must be held that it prohibits any other exceptions. In the present case it is not disputed that the respondents were arrested by the police on July 21, 1960, and detained in their custody till they were produced before the High Court, and that their production before the Magistrate at Amritsar was not in compliance with the provisions of Art. 22(2) of the Constitution. But. it is argued that this Court has limited the content of the words "arrested and detained" in State of Punjab v. Ajaib Singh(1) and The Collector of Malabar v. Erimal Ebrahim Hajee(2). The first ease

relates to an abducted person taken into custody for the purpose of being handed over to a rescue-home. But that decision was con- fined only to the facts of that case, namely, a case which dealt with an extraordinary situation of unprecedented exodus and abduction. Das, J., as he then was, observed-

> "It is not, however, our purpose, nor do we consider it desirable, to attempt. a precise and meticulous enunciation of the scope and ambit of this fundamental right or to enume- rate exhaustively the cases that some within its protection. Whatever else may come within the-purview of article 22(1). and (2), suffice it to say for the purposes of this case, that we are satisfied that the physical restraint put upon an abducted person in the process of recovering and taking that person into custody (1) [1953]S.C.R. 254,269.
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> (2) [1957] S.C.R. 970.
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> without any allegation or accusation of any actual or suspected or apprehended commission by that person of any offence of a criminal or quasi-criminal nature or of any act prejudicial to the State or the public interest, and delivery of that person to the custody of the officer in-charge of the nearest camp under section 4 of the impugned Act cannot be regarded as arrest and detention within the meaning of article 22(1) and (2)".

There, this Court was dealing with a case of the police taking into custody an abducted person with the limited object and with the sole view of delivering that person to the custody of an officer incharge of the nearest rescue- home. In the view of this Court, such a person was not doing any act prejudicial to the State or the public interest and, therefore, the act of taking such a person into custody was not arrest within the meaning of the said constitutional provision. But in the present case the respondents, who are alleged to be foreigners, were directed to leave the country; and, as they failed to do so, the police arrested them with a view to deport them out of the country.The respondents were certainly guilty of an act prejudicial to the State or the public interest and, there- fore, their arrest could not be equated with that of' the person in the aforesaid case.This Court in express terms confined that decision to the facts of that ease. The second decision took away the case of arrest of a person in execution of a warrant by a civil court out of constitutional protection. That decision does not bear upon the present case.

For the foregoing reasons, I hold that the arrest of the respondents was illegal and that the High Court rightly ordered their release.

In the result, the appeal fails and is dismissed. BY COURT. In accordance with the opinion of the majority, the appeal is allowed.