

(2007) 10 DEL CK 0006

In the Delhi High Court

Case No : Writ Petition (Criminal) 877 of 2007

Meharban

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(4), 22(5)
National Security Act, 1980 — Section 3(2), 3(4)

Citation : (2007) 99 DRJ 400 : (2008) 1 ILR Delhi 1295

Hon'ble Judges : Reva Khetrapal, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : Sangita Bhayana, for the Appellant; Thakur Virender Pratap Singh Charak, Shubra Parashar and Pushpender Singh Charak, for the Respondent

Judgement

Reva Khetrapal, J.—The petitioner, by way of this writ petition, seeks to challenge the order of detention dated 28.09.2006 bearing File No. 347/LA.Judl./2006/760-61 passed by the Commissioner of Police under Sub-section (2) of Section 3 of the National Security Act, 1980 and approved by the Lt. Governor of Delhi by an order dated 6.10.2006 in exercise of his powers under Sub-section (4) of Section 3 of the said Act. It is not in dispute that the detention order is due to expire in the 1st Week of November in any case.

2. The petitioner Meharban, a 28 year old man, is kept under detention on the ground that he is involved in 13 criminal activities during the period 20.01.2001 to 21.08.2006, including riots, dacoity, robbery, kidnapping, extortion, criminal intimidation, attempt to murder and murder, etc. apart from having committed acts punishable under Sections 2/3 of the Gangsters Act and the Arms Act. Three D.D Entries regarding threats for extortion have also been lodged against the petitioner. With a view to prevent him from acting in any manner prejudicial to the public order the petitioner has been kept in detention from 07.11.2006 and continues to be in detention till date. It is not in dispute that the petitioner has been acquitted in four of the aforesaid cases, seven cases are pending trial and

one case is under investigation and in one case his sentence has been suspended by the Hon''ble Allahabad High Court where his appeal against conviction is pending.

3. A representation was forwarded by the petitioner on 18th May, 2007 to the Central Government for revocation of the impugned detention order vide speed post which was received by the Central Govt. in the Ministry of Home Affairs on 19th May, 2007, as is borne out by the Speed Post Reply Note dated 30th July, 2007 given in answer to the application submitted by the counsel for the petitioner to the Post Master of the Delhi High Court Post Office on 25th July, 2007 to intimate to the counsel for the petitioner the date when the letter/representation sent by speed post on 18th May, 2007 was delivered to the Secretary to the Government of India, Ministry of Home Affairs, North Block, New Delhi. Apparently, this course of action was adopted by the learned Counsel for the petitioner in view of the delay caused by the Ministry of Home Affairs in the consideration of the representation of the petitioner from 18th May, 2007 to 13th June, 2007 and the ultimate rejection thereof on 22nd June, 2007.

4. The learned Counsel for the petitioner, though has raised a number of grounds in support of her prayer for issuance of a writ of habeas corpus to quash the detention order in question, ultimately has confined the challenge to the delay in considering the representation submitted on behalf of the petitioner. Learned Counsel submits that the delay is fatal to the order of detention being vocative of Article 22(5) of the Constitution and on this ground alone the impugned detention order is liable to be quashed. Learned Counsel emphasizes that the representation submitted on behalf of the petitioner was dealt with in a casual, callous and cavalier manner and this is more than apparent from the fact that the formal rejection of the petitioner's representation was received by the petitioner on 14th July, 2007, though the representation of the petitioner was received in the Ministry of Home Affairs on 19th May, 2007, the representation having been rejected on 22nd June, 2007.

5. The response of the respondent/Union of India to the unexplained delay in the disposal of the representation submitted on behalf of the petitioner is significant and reads as follows:

4. That it is respectfully submitted that a representation dated 18.05.07 from the counsel for the petitioner, NSA detenu, was diarised in the Central Registry of the Ministry of Home Affairs situated in North Block, New Delhi on 01.06.07. The same was received only on 12.06.07 in the concerned section (NSA Section) of the Ministry of Home Affairs, located in Lok Nayak Bhawan, New Delhi. A copy of the front page of this representation Along with a copy of the formal acknowledgment showing receipt of the representation in the concerned section (NSA) on 12.06.07 is enclosed as ANNEXURE-A-1 for perusal by this Hon''ble Court.

6. It is thus amply clear that there is no denial of the averment in the affidavit of

the Union of India that the representation was served in the office of the Ministry of Home Affairs on 19th May, 2007. However, what is stated is that it was diarised on 1st June, 2007 and was sent to the concerned section (NSA section) of the Ministry of Home Affairs located in Lok Nayak Bhawan, New Delhi on 12th June, 2007. The representation was eventually disposed of on 22nd June, 2007 by rejecting it.

7. In order to buttress her contention that the delay in the disposal of the representation is fatal to the life of the detention order, the learned Counsel for the petitioner has heavily relied upon the judgment of the Hon'ble Supreme Court in Rajammal Vs. State of Tamil Nadu and Another, and in particular has relied upon paragraph-8 of the said judgment, where the position of law is delineated as follows:

8. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation the words "as soon as may be" in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, The following observations of the Bench can profitably be extracted here:

It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. the words "as soon as may be" occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

8. The learned Counsel has urged that in Rajammal's case (supra), even the delay of 5 days, for which the only Explanation which was forthcoming was that there was no inordinate delay as the Minister was on tour from 9.2.98 to 14.2.98, was considered unacceptable and the Hon'ble Supreme Court held that the said unexplained delay had vitiated the further detention of the detenu and directed the appellant/detenu to be set at large forthwith.

9. Rajammal's case (supra) has followed the law as laid down by the Constitution Bench of the Hon'ble Supreme Court in K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, . However, another Constitution Bench in the case of Kamleshkumar Ishwardas Patel v. Union of India and Ors. 1995 (3) S.C. 639 has emphasized the time imperative in disposing of the representations dealing with preventive detention. Interestingly, the contention raised before the Constitution Bench in the said case by the learned Additional Solicitor General was that the representation envisaged by Article 22(5) has to be made to the Advisory Board referred to in Article 22(4) since the only right that has been conferred on the person detained is to have the matter of his detention considered by the Advisory Board. Repelling the aforesaid contention, the Constitution Bench ruled that such construction as was sought to be placed by the learned Additional Solicitor General would result in delay and would render nugatory the right to make the representation conferred on a detenu under Clause-5 of Article 22 and must, Therefore, be eschewed. The right of representation under Article 22 being a valuable constitutional right, it is imperative that there should be no delay in the consideration of the said representation. In construing the constitutional mandate as enshrined under Article 22(5) of the Constitution, the Constitution Bench held that Article 22(5) imposed a dual obligation on the authority making the order of preventive detention (i) to communicate to the person detained as soon as may be the grounds on which the order of detention has been made; and (ii) to afford the person detained an earliest opportunity of making a representation against the order of detention. Both the aforesaid obligations, it has been unequivocally laid down, are with a view to ensure that the right of the person detained to make a representation is a "real right" and he is able to take steps for redressal of a wrong which he thinks has been committed.

10. Ms. Mukta Gupta, learned Standing Counsel for the State, on the other hand, has relied upon the judgment of the two-Judge Bench of the Hon'ble Supreme Court in the case of Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others, to contend that where the delay is not inordinate, interference with the order is not warranted. We are of the view that the reliance placed by the learned Standing Counsel for the State on the aforesaid judgment may not be justified in view of the enunciation of the law laid down by the two Constitution Benches of the Hon'ble Supreme Court referred to above.

11. Even otherwise, we find that the representation of the petitioner has been treated with disdain and belatedly, which completely sets at naught the constitutional safeguard provided in the Act. This is evident from the two affidavits filed on behalf of the Respondent No. 1/Union of India in response to the affidavit of the petitioner dated 01.10.2007, enclosing the Speed Post Reply Note to show that the representation was received by the Ministry of Home Affairs on 19.05.2007. In the first affidavit which is dated 23.10.2007, there is no denial of the fact that the representation was received on 19.05.2007 and the only Explanation sought to be given is that it was diarised in the Central Registry

of the Ministry of Home Affairs situated in the North Block, New Delhi on 01.06.2007 and was received in the concerned section (NSA section) of the Ministry on 12.06.2007. Thus, it took the Ministry from 19.05.2007 to 01.06.2007 to diarise the representation of a preventive detenu and another 12 days from 01.06.2007 to 12.06.2007 to forward the same to the concerned section i.e. a period of 23 days and yet another month for rejection of the same on 22.6.2007. While the delay from 12.06.2007 onwards may be explainable, the delay caused from 19.05.2007 to 12.06.2007 in dairying and forwarding the representation is wholly inexplicable and shows the utter indifference of the concerned authorities to the sanctity attached by the Constitution to the liberty of the individual as enshrined in Article 21 of the Constitution and the concern reflected by the framers in the words 'as soon as may be' occurring in Clause-5 of Article 22. Certainly, no sense of urgency is reflected nor any desire to curtail avoidable delay.

12. The second affidavit filed on behalf of the respondent No. 1/Union of India which is dated 29.10.2007 again goes to show the supreme indifference with which the representation was treated by the Ministry of Home Affairs. Paragraph-3 reads as under:

3. That is respectfully submitted that the National Security Act, 1980 (65 of 1980) does not specifically contain statutory provision for automatic release of a detenu on the ground of delay in the processing and consideration of the appeal/appeals filed by or on behalf of the detenu under the Act.

13. No doubt, there can be no hard and fast rule in this regard, but unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and would render the continued detention impermissible and illegal See : Jayanarayan Sukul Vs. State of West Bengal, , Frances Coralie Mullin Vs. W.C. Khambra and Others, , Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, and Aslam Ahmed Zahir Ahmed Shaik Vs. Union of India and Others, .

14. In paragraphs-5 and 6 of the affidavit mentioned above, it is stated that the detenu has been reported to be the leader of a gang active in Delhi and U.P. involved in a large number of criminal activities and revocation of his detention is likely to adversely affect the public order and that no case has been made out by the detenu for interference.

15. In our view, the power of revocation must implicitly include the power to refuse the revocation of the detention order, but for this the representation of the detenu must be considered, and that too expeditiously and with a sense of urgency. Preventive detention, it cannot be lost sight of is an inroad into the fundamental right of personal liberty, the most basic of all human rights after the right to life, and breach thereof has serious ramifications for the person concerned as well as the society at large. The present may be a case where having regard to the nature of the activities of the detenu, no interference may

be justified with the orders of detention, but as emphasized by the Constitution Bench in Kamleshkumar's case (supra), though we are not unmindful of the harmful activities of detenues? But while discharging our constitutional obligation to enforce the fundamental rights of the people, more especially the right to personal liberty, we cannot allow ourselves to be influenced by these considerations. It has been said that the history of liberty is the history of procedural safeguards. The framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in Clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be "jealously watched and enforced by the Court." Their rigour cannot be modulated on the basis of the nature of the activities of a particular person.

16. We would, Therefore, be failing in our duty if we ignore the lethargy with which the representation of the petitioner/detenu in the instant case has been dealt with at all stages from the impromptitude derivation to the casual forwarding of the same onwards. It may be that the detenu does not deserve any sympathy in view of the nature of his activities, but at no cost can the precious right to personal freedom which is a constitutionally guaranteed right in a democratic set-up, be allowed to be trifled with. Preventive detention is no trifling matter and the constitutional mandate which has made the courts the custodian of the procedural safeguards to justify the detention must be enforced. The time imperative is one of the procedural safeguards highlighted in Sub-section (5) of Article 22 of Constitution of India and we are constrained to notice that the representation of the petitioner/detenu in the instant case was, to say the least, not dealt with the expedition which has been constitutionally mandated by the Hon'ble Supreme Court.

17. Consequently, the further detention of the petitioner/detenu, in our view, would be illegal. We, accordingly, quash the impugned order dated 28.09.2006 passed against the petitioner and direct the petitioner to be set free forthwith.

18. W.P. (CrI.) No. 877/2007 stands disposed of in the above terms.