

CASE NO.:  
Special Leave Petition (crl.) 4528 of 2000

PETITIONER:  
THE DISTRICT COLLECTOR & ORS.

Vs.

RESPONDENT:  
SMT. SHAIK HASMATH BEEBI

DATE OF JUDGMENT: 23/04/2001

BENCH:  
G.B. Pattanaik & U.C. Banerjee

JUDGMENT:

PATTANAIAK, J.

Leave Granted.

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This appeal by special leave is directed against a Judgment of the Division Bench of the Andhra Pradesh High Court. By the impugned judgment, the High Court has quashed an order of detention issued under Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Decoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, inter alia on the ground that the representation of the detenu filed for temporary release under Section 15 of the Act was not disposed of within a reasonable period and thereby the constitutional right guaranteed to the detenu under Article 22(5) was infringed. The question for consideration, therefore, is whether the request of the detenu for being temporarily released, invoking the power of the Government under Section 15 of the Act, if not disposed of early, can it be said that there has been an infraction of Article 22(5) of the Constitution?

The Act in question is undoubtedly an Act providing for preventive detention of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers, for preventing their dangerous activities, which are prejudicial to the maintenance of Public Order. It was enacted to deal with the situation arising out of the activities of a category of persons, which adversely affected public order and it was difficult for the State to deal with such persons on account of their resources and influence. Section 3 of the Act enables the State Government to issue an order of detention, on being satisfied that the activities of the detenu are such that it is necessary to prevent him from acting in any manner, prejudicial to maintenance of public order. Section 3(3) makes it obligatory to report the fact of detention to the State Government together with the grounds on which the order has been made, when an order of detention is made by an officer other than the State Government under sub-section(2) of Section 3. Section 8 provides for

communication of the grounds of detention to the detenu within a maximum period of five days from the date of detention. Section 9 is the provision for constituting an Advisory Board and Section 10 is the provision under which the Government is duty bound to make the reference to the Advisory Board within three weeks from the date of detention. Section 11 is the procedure to be followed by the Advisory Board and Section 12 is the power of the Government to confirm an order of detention on receipt of the opinion of the Advisory Board that sufficient cause for detention exists. Under Section 13, maximum period of detention that can be passed under the Act is twelve months from the date of detention. Section 14 is the power of revocation of an order of detention by the State Government. Section 15, which is relevant for our purpose, in the case in hand is the power of the State Government to grant temporary release of the person detained. Therefore, the said Section is quoted herein-below in extenso:

Section 15: Temporary release of persons detained :-

(1) The Government may, at any time direct that any person detained in pursuance of a detention order may be released for any specified period, either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time cancel his release.

(2) In directing the release of any person under sub-section (1), the Government may require him to enter into a bond, with or without sureties, for the due observance of the conditions specified in the direction.

3) Any person released under sub-section (1) shall surrender himself at the time and place and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall, on conviction, be punished with imprisonment for a term which may extend to two years or with fine, or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or to the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

In the case in hand, the order of detention was passed by the District Collector, East Godavari District, in exercise of power under sub-section(2) of Section 3 on 3.2.2000 and the order was served on the detenu on 5.2.2000. The grounds of detention were communicated to the detenu on 7.2.2000 and the order of detention was approved by the State Government on 11.2.2000. A petition for habeas corpus was filed on 16.2.2000. The Advisory Board considered the materials and by its report dated 10.3.2000, opined that there is sufficient cause for the detention of the detenu. The order of detention, thereafter was confirmed by the State Government on 18.3.2000 in exercise of power under Section 12 of the Act. The habeas corpus petition, filed in the Andhra Pradesh High Court stood dismissed on the conclusion that the detaining authority exercised the power of detention for proper preservation of Forest wealth and for protecting it from illegal activities. The detenu

thereafter made an application, seeking temporary release, invoking the power of the Government under Section 15 of the Act on 27.4.2000, which was received by the State Government on 2.5.2000 and rejected by the State Government, after getting reports from the District Collector on 19.6.2000. A fresh writ petition was filed in the High Court, alleging infraction of the constitutional right under Article 22(5) for delay in disposal of the prayer for temporary release. The High Court by the impugned judgment dated 19.7.2000, was persuaded to accept the said contention and quashed the order of detention and hence the present appeal.

Mr. Guntur Prabhakar, appearing for the State of Andhra Pradesh contended before us that delay in disposal of an application for temporary release, invoking the power under Section 15 of the Act would not tantamount to infringement of the constitutional right guaranteed under Article 22(5) and, therefore, the High Court committed serious error in setting aside the order of detention on that ground. He further urged that in the facts and circumstances of the case, in fact there has been no delay inasmuch as before considering the application for temporary release, the State was duty bound to call for the report from the detaining authority, and, therefore, it cannot be said that there has been an unexplainable delay in the matter.

Mr. M.N. Rao, the learned senior counsel appearing for the detenu did not seriously contest the legal position, but submitted that the Court may lay down the law and it is not necessary to direct further detention of the detenu as the period of detention is already over since 5th of February, 2001, the detention order having been passed on 5.2.2000 and the order confirming the same for a period of one year, the period of detention is over by 5th February, 2001. But in view of the impugned judgment of the High Court, which has taken an incorrect view of the constitutional right guaranteed to a detenu under Article 22(5), we are called upon to examine the legality of the said order of the High Court. Clause (1) and (2) of Article 22 of the Constitution lay down the procedure to be followed when a person is arrested. It confers a protection against arrest which are effected otherwise than under a warrant issued by a Court, on the allegation or accusation that the arrested person has or is suspected to have committed an act of criminal or quasi criminal nature. But clause (3)(b) of Article 22 carves out an exception when a person is arrested under a law of preventive detention and such a detenu has no right to be produced before a Magistrate within 24 hours or to be defended by a lawyer. Preventive Detention means the detention of a person without trial in such circumstances that the evidence in possession of the authority is not sufficient to make a legal charge or to secure the conviction of the detenu by legal proof, but may still be sufficient to justify his detention. The object of preventive detention is to prevent the detenu from doing something or to prevent an individual from achieving the particular object. The satisfaction of the concerned authority is a subjective satisfaction. The object of the framers of the Constitution in giving a constitutional status to preventive detention was to prevent anti-social and subversive elements from imperilling the welfare of the republic. Having recognised the necessity of laws for preventive detention, the constitution also has provided some safeguards to mitigate the hardships and clause (5) of Article 22 is one such safeguard, available to a detenu, who

has been detained under a preventive law. Article 22(5) of the Constitution is extracted herein-below in extenso:

Article 22(5): When any person is detained in pursuance of an order made under 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 a representation against the order.

Article 22(5) gives the detenu the right to make a representation against an order of detention and such right must be afforded as expeditiously as possible. In other words, the detenu must be afforded the earliest opportunity of making a representation against the order of detention. Article 22(5) in itself does not say, to whom a representation could be made or who will consider the representation but a representation filed by a detenu is required to be considered and disposed of by the Government as soon as it is received. Because of the language of Article 22(5) and because of the fact that an order of detention affects the liberty of a citizen, without laying down any hard and fast rule as to the measure of time taken by the appropriate authority for considering of a representation, it has been held by the Courts that it should be considered as soon as it is received and it is in this connection, it has been further held that an unexplainable delay in disposing of the representation, infringes the right of the detenu under Article 22(5) and makes the detention bad. In other words, the Courts have held that the right of the detenu to have his representation to be considered at the earliest opportunity is a constitutional right and that constitutional right cannot be infringed by the executive Government by delaying the consideration of a representation. But all that has been said is in relation to a representation against an order of detention or when the detenu approaches the authority for revoking an order of detention. The Constitutional right emanating from Article 22(5) is in relation to an order of detention and an opportunity required to be afforded to the detenu is to enable him to make a representation against the order of detention. But invocation of the power of the Government under Section 15 of the Act praying for temporary release of the person detained cannot be construed to be a representation against the order of detention or a prayer for revocation of the order of detention within the meaning of the constitutional right guaranteed to a detenu under Article 22(5) of the Constitution. The power under Section 15 is the power of the Government to release a detenu for any specified period with such conditions to be specified in the order of release and such a prayer by no stretch of imagination can be held to be representation against the order of detention within the meaning of Article 22(5) of the Constitution. That being the position, question of infraction of Article 22(5) does not arise if the prayer of the detenu for being temporarily released, is not disposed of immediately and there is some delay in the disposal of the said prayer. Of course such a prayer for being temporarily released, should be disposed of within a reasonable time but delay on the part of the authority in considering the prayer for temporary release under Section 15 of the Act cannot be held to be an infraction of the constitutional right guaranteed to a detenu under Article 22(5). In this view of the matter, we have no hesitation to

come to the conclusion that the High Court committed serious error in setting aside the order of detention, merely because there had been delay in disposing of the application for temporary release, filed by the detenu under Section 15 of the Act. We, therefore, set aside the impugned Judgment of the High Court and allow the appeal accordingly. It is placed on record that the period of detention being over since 5th February, 2001, the detenu will not be required to be detained again under the self-same detention order.

JUDIS