

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND**

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No.22510 of 2019

Date: 22.10.2019

Between:

Dheeksha Reddy

... Petitioner

and

Union of India,
Rep. by its Defence Secretary,
Ministry of Defence, South Block,
Cabinet Secretariat, Raisina Hill,
New Delhi, and others.

...Respondents

Counsel for the petitioner:

Mr. Kailash Nath P.S.S.

Counsel for the respondents:

Smt. Anjali Agarwal

The Court made the following:

ORDER: *(per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)*

Ms. Dheeksha Reddy, the petitioner, has filed this Habeas Corpus Petition ostensibly on the ground that her mother, Smt. S.D. Padma, has been arrested on 07.10.2019 at 3:30 a.m. when she landed from Canada at the Rajiv Gandhi International Airport, Hyderabad.

According to the petitioner, when her step-father, her mother, and she landed at the Rajiv Gandhi International Airport, while her step-father and she were cleared from the immigration, the General Officer Commanding, the respondent No.8, detained her mother for a long time. Her mother was asked by the respondent No.8 to step aside while she was detained by him. No reason whatsoever was given to her mother for her detention. It is only when they enquired with regard to the detention of her mother that they were informed that her name was "red flagged" in the system. Moreover, according to the petitioner, her mother was detained for twelve hours on 07.10.2019 without providing any reasons for detention. Subsequently, her mother was handed over to two Army Officers, and three armed guards. She was transferred to the Military Hospital, Golconda, nearly after twelve hours of her detention. Both her passport and her mobile phone were seized by the Commanding Officer, Military Hospital, Golconda, the respondent No.2. After much persuasion, the cell phone was returned to her mother, through which her mother contacted her and her step-father

on 09.10.2019. Furthermore, according to the petitioner, despite the lapse of eight days, her mother continues to be in the custody of the respondent No.2. Hence, the present petition before this Court.

Mr. Kailash Nath P.S.S, the learned counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, since the petitioner's mother, the *detenue*, happens to be a person, who is covered by Article 21 of the Constitution of India, at the moment of her arrest/detention, she is entitled to be informed about the grounds of her arrest/detention. However, the *detenue* has not been informed of the reasons for her detention. Thus, the detention is clearly in violation of Article 21 of the Constitution of India. Hence, it is an illegal detention.

Secondly, according to Regulation 401 (a) of the Defence Service Regulations ('the Regulations' for short), it is the duty of the Officer, who commits any person into military custody to deliver within forty-eight hours after the arrest/detention of such person, an account in writing signed by himself of the offence with which the person so committed is charged. Moreover, according to Regulation 401(d) of the Regulations, a copy of the charge report has to be given to the person so detained or arrested as soon as it is received by the Army Officer. However, in the present case, despite the lapse of fifteen days, no such charge report has been given to the

detenue. Therefore, Regulations 401 (a) and (d) of the Regulations have been violated by the respondent No.2.

Thirdly, according to Section 103 of the Army Act, 1950 ('the Act' for short), in case a person is in custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by the Commanding Officer in the manner prescribed, and such similar report shall be forwarded at intervals of every eight days until a court-martial is assembled or such person is released from the custody. However, according to the learned counsel, despite the lapse of fifteen days, no such special report, giving reasons, has been forwarded by the Commanding Officer to the superior officer. Therefore, the detention of the *detenue* continues to be an illegal one.

On the other hand, the learned counsel for the respondent No.2 has raised the following contentions:-

Firstly, at the time of arrest of the *detenue*, on 07.10.2019, the *detenue* was verbally informed by Col. Debasis Benerjee about the reasons for her arrest. This is obvious from the detailed report dated 10.10.2019.

Secondly, considering the fact that the *detenue* was detained on 07.10.2019, on 14.10.2019, a special report was sent under Section 103 of the Act. A copy of the special report has also been filed before this Court.

Thirdly, after detaining the *detenue*, the “close arrest” was called off and the *detenue* has been attached with the Military Hospital, Golconda. In order to buttress this plea, the learned counsel has relied on a letter, dated 11.10.2019, addressed by Col. Parvinder Singh to the Head Quarters, Dakshin Bharat Area (DV). Therefore, the *detenue* is no longer in illegal custody. Hence, the question of custody being an illegal one does not arise in the present case.

In rejoinder, Mr. Kailash Nath P.S.S, the learned counsel for the petitioner, submits that even according to the letter dated 11.10.2019, the *detenue* will continue to be under the supervision of the Principal Matron. Therefore, the *detenue* does not have the freedom to leave the army area. Thus, even if the “close arrest” has been called off, nonetheless, the *detenue* continues to be in the custody of the respondent No.2. Since the procedure established by law has not been followed by the respondent No.2, the custody of the *detenue* continues to be an illegal one.

Heard the learned counsel for the parties and perused the records submitted by both the parties.

Undoubtedly, Article 21 of the Constitution of India covers both a citizen and any other person. Therefore, the personal liberty of a person can be denied only in accordance with the procedure established by law. In case, the procedure established by law is violated, the denial of personal liberty becomes an illegal one.

Regulation 401 of the Regulations is as under:

401. Delivery of Charges –

(a) Attention is directed to Section 50(b) of the Army Act, under which it is the duty of a person subject to the Army Act, who commits any person into military custody to deliver at the time or as soon as practicable and always within forty-eight hours thereafter to the officer or other person into whose custody the offender is committed, an account in writing signed by himself of the offence with which the person so committed is charged.

(b) If this account in writing i.e., the charge report is not delivered at the time, a verbal report giving the nature of the charge will be made. If the charge report is not received within forty-eight hours, the commander of the guard will take steps to procure it. A report that the charge report was not received within forty-eight hours will be made to the officer to whom his guard report is furnished, who, if the charge report or other evidence sufficient to justify the continued arrest is not forthcoming, will at the expiration of seventy-two hours from the time of committal, order the release of the person in custody (without prejudice to his re-arrest)

(c) The number, rank, name and offence of every person received into close arrest, and the rank and name of the person by whom he is charged, will be entered by the commander of the guard in his report, and the original charge report or a copy thereof, will be forwarded to the CO of the person in custody.

(d) The commander of the guard will, on the request of any person received into custody, inform him of the rank and name of the person preferring charges against him or ordering his arrest, and give to him a copy of the charge report as soon as he himself receives it.

A bare perusal of the said provision clearly reveals that within forty-eight hours of the arrest/detention of a person, the Army Officer arresting or committing the person to the custody is required to deliver an account, in writing, signed by himself, of the offences with which the person so committed is charged. Further, the commander of the guard is required to give a copy of the charge report to the *detenue* as soon as he receives it.

Since these provisions touch on the personal liberty of the person so detained or arrested, perforce these provisions are mandatory in nature. Moreover, a person, who is arrested/detained, has a fundamental right to be informed of the grounds of his detention or his illegal arrest.

Regulation 401 of the Regulations has been enacted in order to ensure that the fundamental right of the arrested or the detained person is not violated by the Army personnel.

Interestingly, the learned counsel for the respondent No.2 has not placed any charge report, which has been received by the commander of the guard, or any charge report, which has been furnished by the commander of the guard to the *detenue*. Therefore, despite the lapse of fifteen days, the requirement of Regulation 401 of the Regulations has not been complied with by the respondent No.2.

The learned counsel for the respondent No.2 has pleaded that according to the detailed report, at the time of her arrest, the *detenue* was informed the ground for her

arrest. However, the said fact has been denied vehemently by the learned counsel for the petitioner.

Considering the fact that an arrest/detention can always be challenged by any person, it is rather surprising that the respondent No.2 informed the *detenue* only orally about the grounds for her detention. Therefore, the statement made in the detailed report is rather surprising. For, the respondent No.2 should have informed the *detenue* the reasons for her arrest/detention in writing.

Section 103 of the Act is as under:

“Interval between commital and court- martial. - In every case where any such person as is mentioned in section 101 and as is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed, and a similar report shall be forwarded at intervals of every eight days until a court-martial is assembled or such person is released from custody.”

A bare perusal of the said provision clearly reveals that a special report needs to be sent which would contain the reasons for not calling the assembly of the court-martial within a period of eight days.

Although the learned counsel for the respondent No.2 has relied on the communication dated 14.10.2019, in order to claim that it is the special report under Section 103 of the Act, the said contention is clearly unacceptable. *Firstly*, the said document does not claim to be one sent as a special

report under Section 103 of the Act. *Secondly*, the document clearly says that *'your attention is drawn that the MNS Officer is under custody with no orders of attachment received till date, no investigation of charge/trial commenced vide Army Act 102 and Army Rule 27'*. It further reads that *'request for suitable instructions by written signature providing early disposal of the subject of arrest and on the matter of desertion'*. Therefore, no *'special reasons'* have been assigned for not assembling the court-martial. Hence, the documents do not meet the requirement of Section 103 of the Act. Therefore, again the procedure prescribed by law has been violated by the respondent No.2.

Although the learned counsel for the respondent No.2 claims that "close arrest" has been called off, and the *detenue* has been attached with the Military Hospital, Golconda, this Court has posed a pointed query to her as to whether the *detenue* is free to leave the army area or not ? For, according to the letter dated 11.10.2019, the *detenue* continues to be "under the supervision of the Principal Matron". To this query, the learned counsel has frankly conceded that the *detenue* is not allowed to leave the army area. Moreover, the letter dated 11.10.2019, clearly states that *'it is strongly recommended that the MNS officer be handed over to INHS Kalyani, on priority'*. Naturally, the *detenue* can be handed over to INHS Kalyani only when she continues to be in the custody of the respondent No.2. Therefore, the learned

counsel for the respondent No.2 is unjustified in claiming that with the recalling of the “close arrest”, in fact, the *detenue* has been set at liberty by the respondent No.2.

For the reasons stated above, this Court is of the opinion that the custody of the *detenue* is an illegal one as it is in violation of the provisions of the Act and the provisions of the Regulations.

The Writ Petition is allowed. The respondent No.2 is directed to set the *detenue*, Major S.D. Padma, at liberty forthwith. However, it is clarified that the respondent No.2 is permitted to retain the Canadian Passport belonging to the *detenue*. The respondents are free to take any other legal remedies against the *detenue*, but strictly in accordance with law. The *detenue* is directed to cooperate with the proceedings that may be initiated by the respondents against her. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

Date: 22.10.2019

(A. ABHISHEK REDDY, J)

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