
(2003) 11 AHC CK 0220
In the Allahabad High Court
Case No : Writ Petition No. 498 (H/C) of 2003

Anish (In detention)	Vs	APPELLANT
District Magistrate and Others		RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(2)

Citation : (2004) 2 ACR 1456

Hon'ble Judges : Vishnu Sahai, J; Kamal Kishore, J

Bench : Division Bench

Advocate : P.K. Punhani, Kalpana Pathak and Rakesh Bahadur, for the Appellant;
S.K. Singh and B.B. Saxena, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this writ petition, preferred under Article 226 of the Constitution of India, the Petitioner-detenu Anish has impugned the order dated 7.2.2003 passed by Mr. R. S. Verma, District Magistrate, Barabanki (opposite party No. 1), detaining him u/s 3(2) of the National Security Act.

The detention order along with the grounds of detention which are also dated 7.2.2003, was served on the Petitioner-detenu on 8.2.2003 and their true copies have been annexed as Annexures-1 and 2 respectively to this writ petition.

2. The prejudicial activities of the Petitioner-detenu impelling the first opposite party to issue the impugned order against him are contained in the grounds of detention. Since, in our view, a reference to them is not necessary for the adjudication of the pleadings contained in paragraph 9 of the petition and ground (c) of paragraph 19 thereof, on which alone this writ petition deserves to succeed, we are not adverting to them.

3. We have heard learned Counsel for the parties. The averment in paragraph 9 of the petition is that the representations preferred by the Petitioner have not

been disposed of expeditiously as they are required to be done under law and that in ground (c) of paragraph 19 thereof is that the representation preferred by the Petitioner to the Central and State Governments have not been disposed of expeditiously.

Mr. P. K. Punhani, learned Counsel for the Petitioner-detenu, strenuously contended that there was an inordinate delay on the part of the detaining authority in disposing of the representations preferred by the Petitioner-detenu to the Union of India and the State Government. To substantiate his submission, he invited our attention to para 7 of the return of Mr. R. S. Verma (the detaining authority) Mr. Punhani pointed out that in the aforesaid paragraph the detaining authority has admitted that the Petitioner-detenu preferred a representation on 22.2.2003, addressed to the Union of India and the State Government, which was handed over to him (the detaining authority) on 22.2.2003 itself. He further pointed out that a perusal of the said paragraph makes it manifest that the detaining authority called for report from the Superintendent of Police, District Barabanki on the said representation and when the said report was not received by 3.3.2003, on 3.3.2003 he sent a reminder to the Superintendent of Police and again sent a reminder to him on 6.3.2003. Mr. Punhani pointed out that on 11.3.2003 the report of the Station Officer of Police Station, Ram Sanahi Ghat, District Barabanki with a covering letter of Superintendent of Police, Barabanki, was received by the detaining authority and thereafter on the same day the detaining authority prepared the parwise comments and sent them to the State Government and Union of India.

Mr. Punhani pointed out that para 3 of the return of Mr. R. C. Uttam, Under Secretary, Home and Confidential Department, U. P. Civil Secretariat, Lucknow, shows that the representation of the Petitioner-detenu dated 22.2.2003, along with the report of the detaining authority dated 11.3.2003, was received in the concerned section on 12.3.2003 and on 15.3.2003 the representation was rejected by the Secretary of the State Government who had been authorised to consider it.

Mr. Punhani also invited our attention to paragraphs 5, 6, 7 and 8 of the return of Mr. P. K. Jain, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi. He pointed out that the said paragraphs show that the Petitioner-detenu's representation dated 22.2.2003 was received in the concerned desk of Ministry of Home Affairs, Government of India, New Delhi, on 28.3.2003 (Mr. B. B. Saxena, learned Counsel for the Union of India, points out that on account of a typing mistake 28.3.2003 has been mentioned and the said date should be read as 18.3.2003), on 20.3.2003 it was put up before the Under Secretary, Ministry of Home Affairs, who considered and forwarded it to the Director, Ministry of Home Affairs ; on 21.2.2003 the Director considered and forwarded it to the Joint Secretary, Home, who on that very date forwarded it to the Union Home Secretary, who rejected it on 24.3.2003 and on 28.3.2003 communicated to the Petitioner the factum of its rejection.

4. The contention of Mr. P. K. Punhani is that there was an inordinate delay at the level of opposite party No. 1 (the detaining authority) in forwarding the representation of the Petitioner-detenu dated 22.2.2003 to the Union of India and the State Government. Mr. Punhani pointed out that when on 22.2.2003 the detaining authority on the said representations called for comments from the Superintendent of Police, Barabanki, he should not have waited to send a reminder for full ten days, i.e., upto 3.3.2003 and should have sent it much earlier. He also contended that when on 6.3.2003 the detaining authority sent the second reminder and did not get its reply within one or two days, he should have sent another reminder and not waited for the comments till 11.3.2003.

5. Mr. S. K. Singh, learned Counsel for opposite parties No. 1, 2 and 4, urged that it cannot be said that the detaining authority did not act with diligence and he cannot be faulted if there was delay on the part of the Superintendent of Police, Barabanki, in sending the comments.

6. We have reflected over the rival submissions and find merit in Mr. Punhani's submission. In our judgment, the detaining authority should have sent the first reminder to the Superintendent of Police, Barabanki, within two to three days and when even after it he did not receive the comments he should have again sent a second reminder very promptly.

7. In our view, the delay on the part of the detaining authority in sending the said reminders shows his callousness and utter insensitivity to the promptitude with which representations in a preventive detention matter should be dealt with. We make bones in observing that the laxity of the detaining authority is going to cost the State and Union Governments dear.

In this connection, we would like to advert to the ratio laid down by the Supreme Court in the oft-quoted case of *Harish Pahwa v. State of U. P. and Ors.* 1981 ACR 281 (SC): 1981 SCC 589, wherein in paragraph 5 the Supreme Court has held that a representation in a preventive detention matter should be dealt with continuously till a final decision is taken (unless it is absolutely necessary to wait for some assistance in connection with it). In our judgment, the said ratio has been flouted in the instant case and the representation of the Petitioner-detenu dated 22.2.2003, has not been continuously dealt with.

8. For the aforesaid reasons, in our judgment the continued detention of the Petitioner-detenu in furtherance of the impugned detention order has been rendered bad in law.

9. In the circumstances, we allow this writ petition and direct that the Petitioner-detenu Anish be released forthwith unless wanted in some other case.