

(2009) 03 AHC CK 0198

In the Allahabad High Court

Case No : C.M.H.C.W.P. No"s. 1152, 1375, 1624 of 2009

Avanish Kumar Bhadauriya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 489G, 489K

Citation : (2009) 2 ACR 1185

Hon'ble Judges : R.N. Misra, J;R.K. Rastogi, J

Bench : Division Bench

Advocate : Sunil Kumar, for the Appellant; Pramod Kumar Singh and Addl. S.G.I., for the Respondent

Final Decision : Disposed Of

Judgement

R.K. Rastogi, J.—All these three habeas corpus petitions have been filed by the above named three Petitioners challenging the orders of their detention passed under the National Security Act and for their release from detention.

2. The facts relevant for disposal of these habeas corpus petitions are that on 16.9.2008 on the basis of a F.I.R. lodged under Sections 489Kha and 489Ga, I.P.C. Case Crime No. 219 of 2008 was registered at Police Station Visungarh, district Kannauj against the Petitioners and one Shishupal Singh with these allegations that on the aforesaid date 100 counterfeit currency notes of Rs. 500 each were recovered from possession of the Petitioner, Viresh Kumar, 30 counterfeit currency notes of Rs. 500 each were recovered from possession of the Petitioner, Pankaj Kumar Bhadauriya, 30 counterfeit currency notes of Rs. 500 each were recovered from possession of Petitioner, Avanish Kumar Bhadauriya and 30 counterfeit currency notes of Rs. 500 each were recovered from possession of co-accused, Shishupal. On the basis of above recovery of counterfeit currency notes worth Rs. 95,000, the S.O. of P. S. Visungarh

submitted proposals before the District Magistrate, Kannauj against the Petitioners for their detention under the National Security Act through proper channel and the District Magistrate, on the basis of that report, passed separate orders against all these Petitioners on 27.9.2008 for their detention under the National Security Act. Against the above order, the Petitioners submitted their representations on 16.10.2008 but those representations were rejected by the concerned authorities. Then they filed these writ petitions.

3. Counter-affidavits have been filed in all these writ petitions by the Respondents. We have gone through all of them and have also heard the learned Counsel for the Petitioners as well learned A.G.A. for Respondents No. 1 to 3 and Mr. Pramod Kumar Singh, learned Counsel appearing on behalf of Union of India.

4. Learned Counsel for the Petitioners made only one submission before us that there has been unreasonable delay in disposal of the representations of the Petitioners dated 16.10.2008 on the part of the Union of India, the Respondent No. 4. In this connection he referred to the counter-affidavit filed by Smt. L. P. Srivastava on behalf of Union of India in Habeas Corpus Writ Petition No. 1624 of 2009, in para 5 of which it has been stated that the representation of the Petitioner was received by the Under Secretary, Ministry of Home Affairs on 23.10.2008, who carefully considered the case, and) with her comments, put up the same before the Director (Security), Ministry of Home Affairs on 23.10.2008. The Director Security considered the same and put up it before the Joint Secretary Ministry of Home Affairs on the same date. The Joint Secretary considered the same and forwarded it to the Union Home Secretary on 23.10.2008 who considered the case of the detenu and rejected the representation of the detenu on 3.11.2008. The file was received back in the concerned section in the evening of 7.11.2008 and then a crash wireless message dated 10.11.2008 was sent through the Home Secretary Government of U. P. and the Superintendent of Jail, Fatehpur giving intimation to the Petitioner that his representation has been rejected. The same thing has been stated in paras 5 and 7 of the counter-affidavit of Respondent No. 4 filed in Habeas Corpus Writ Petition No. 1375 of 2009. In Habeas Corpus Writ Petition No. 1152 of 2009, a very brief counter-affidavit has been filed by the Respondent No. 4. It may be mentioned that in paragraph 45 of the petition, it has been asserted that representation of the Petitioner was rejected by the Union of India on 3.11.2008 and its intimation was given to the Petitioner on 10.11.2008. In para 4 of the counter-affidavit only this fact has been stated that the file was submitted to the Director (s) Ministry of Home Affairs on 23.10.2008 and thereafter what happened to the representation has not been stated in this counter-affidavit. Any how when the assertions made in para 45 of the writ petition have not been replied in the counter-affidavit, there is no reason to disbelieve the assertions made in para 45 of the petition that the order rejecting the representation was passed on 3.11.2008 and its intimation was sent on 10.11.2008.

5. Learned Counsel for the Petitioners submitted that in these cases the files

were received by the Home Secretary, Union of India on 23.10.2008 but he did not pass any order on the representations of the Petitioners at the earliest and he passed the order rejecting the representations on 3.11.2008, i.e., after expiry of 11 days from the date of receipt of files of the Petitioners. It was further pointed out that even after rejection of the representations of the Petitioners there was delay of 7 days in communication of the order and so this order is vitiated. In support of this contention he cited before us a ruling of Hon''ble Apex Court in the case of *Harish Pahwa v. State of U. P. and Ors.* 1981 SCC 589: 1981 ACR 281 (SC), in which it has been held that the representation of the detenu must be decided as soon as possible and unnecessary delay in its disposal amounts to violation of the safeguards enshrined under Article 22(5) of the Constitution and renders the detention unconstitutional. The same view was reiterated by the Hon''ble Supreme Court in the case of *Rajammal v. State of Tamil Nadu and Anr.* 1999 SCC 93: 1999 (1) ACR 392 (SC). In this case there was delay of 5 days in disposal of the representation by the Minister because he was outstation on tour. This explanation was not found to be satisfactory by the Hon''ble Apex Court and the further detention was found to be illegal. In *Jaggu alias Jagvinder Singh v. State of U. P. and Ors.* 2008 (3) JIC 1 (All): 2008 (3) ACR 3433, a Division Bench of this Court found the delay of 15 days in deciding the representation unreasonable as no explanation was offered for the same, and so the further detention was found to be bad in law. In *Prem Chand alias Pintu v. State of U. P. and Ors.* 2008 (3) JIC 46 (All): 2008 (3) ACR 3367, the same Division Bench held that the delay of 5 days in deciding the representation when it was unexplained, rendered the detention illegal.

6. Learned Counsel for the Petitioners also cited before us a Division Bench ruling of this Court in *Syed Mehtab Alam v. Superintendent of Central Jail, Naini, Allahabad and Ors.* (49) 2004 ACC 745. In this case the unexplained delay of five days in disposal of representation was held to be fatal and so the detention was held to be illegal. He also cited before us two other rulings of the Division Benches of this Court in *Deepak Kumar Singh v. Superintendent of Central Jail, Naini, Allahabad and Ors.* 2007 (2) ESC 283 and in *Pradeep Singh v. Adhikshak Mandal/Janpad Karagar, Gorakhpur* (2007) 2 ADJ 222. Both these rulings were delivered by the same Division Bench consisting of Hon''ble Sushil Harkauli, J. and Hon''ble Pankaj Mithal, J. In the earlier ruling four days delay in placing the representation from one desk to another in the concerned Ministry was held to be fatal.

7. Learned Counsel for the Petitioners also cited before us a ruling of this Court in *Jaggu alias Jagvinder Singh v. State of U. P. and Ors.* (64) 2009 ACC 215: 2008 (3) ACR 3433. This ruling was delivered by Hon''ble V. M. Sahai and Hon''ble S. P. Mehrotra, JJ. and their Lordships relying upon the rulings of Hon''ble Supreme Court in *Rajammal v. State of Tamil Nadu and Anr.* (38) 1999 ACC 312: 1999 (1) ACR 392 (SC) ; *Harish Pahwa Vs. State of U. P. and Others, and Union of India v. Harish Kumar* (58) 2007 ACC 294: 2007 (2) ACR 1617 (SC), held that the unexplained delay of 15 days in disposal of representation of

the detenu was fatal and so the detention of the detenu was held to be illegal. He submitted that in view of these rulings the detention of the Petitioners in the present case also is illegal because there has been undue delay of 11 days on the part of the Home Secretary, Union of India in disposal of the representation of the Petitioners and thereafter there has been delay of seven days in communication of the rejection order.

8. Learned A.G.A. as well as the learned Counsel appearing on behalf of the Union of India cited before us a ruling of Hon''ble Supreme Court in Deonarayan Mondal Vs. The State of West Bengal, . In this case there was delay of twenty seven days in deciding the representation of the detenu under the Maintenance of Internal Security Act. He submitted that in this case the delay was condoned and the order of detention was held to be valid and so in the present case also the order should not be held to be illegal on the ground of delay in disposal of the representations.

9. We have carefully gone through this ruling. In this case the explanation submitted by the Assistant Secretary Home Department (Special) Department, Government of West Bengal was that due to war with Pakistan, the influx of refugees and the unprecedented problems which faced this country in December, 1971, the representation of the detenu could not be decided. This explanation was considered to be sufficient by the Hon''ble Apex Court. It is to be seen that in the present case no explanation of any sort has been offered from the side of the Union of India to explain the delay of 11 days in disposal of representations of the Petitioners by the Home Secretary, Union of India and of seven days delay in communication of the rejection order from the date of rejection of the representation and since there is no explanation for this delay, there is no alternative but to hold that the detention is illegal on account of unexplained delay.

10. It was also submitted by the learned Counsel for the Union of India that the Petitioners were involved in anti social crime of circulation of counterfeit currency notes affecting the economy of the nation, and taking into account the seriousness of the offence, no lenient view should be taken in favour of the Petitioners on the ground of delay in disposal of the representations. We do not agree with this contention. In the case of K. D. Saikh v. District Magistrate Ahmedabad and Ors. (33) 1996 ACC 319, their Lordships of the Hon''ble Apex Court held that detention of the detenu was illegal under the National Security Act on the ground of delay in disposal of the representation. This was a case of black marketing and it was contended on behalf of the State that taking into account the seriousness of the charges levelled against the Petitioner, no relief should be given to him. Repelling this contention their Lordships observed in the concluding portion of the judgment as follows:

"Black-marketing" is a social evil. Persons found guilty of economic offences have to be dealt with a firm hand, but when it comes to fundamental rights under the Constitution, this Court, irrespective of enormity and gravity of allegations made

against the detenu, has to intervene as was indicated in Mahesh Kumar Chauhan alias Banti Vs. Union of India and others, and in an earlier decision in Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, , in which it was observed that the gravity of the evil to the community resulting from anti-social activities cannot furnish sufficient reason for invading the personal liberty of a citizen, except in accordance with the procedure established by law particularly as normal penal laws would still be available for being invoked rather than keeping a person in detention without trial.

11. Taking into consideration the law laid down in the above ruling, the seriousness of the charges cannot be considered to be a ground for refusing to release the Petitioner when there has been violation of the mandate for early disposal of the representation of the detenu as envisaged in Article 22(5) of the Constitution of India.

12. The position, in this way, is that all these habeas corpus petitions deserve to be allowed on the ground of delay in disposal of representations of the Petitioners by the Home Secretary, Union of India. These habeas corpus petitions are, therefore, allowed and the detention of the Petitioners is held to be illegal. The impugned detention orders dated 27.9.2008 passed against the Petitioners by the District Magistrate, Kannauj u/s 3(2) of National Security Act are hereby quashed. Let the Petitioners be set at liberty forthwith if they are not required to be detained in connection with any other case.