
(1987) 10 AHC CK 0026
In the Allahabad High Court
Case No : Habeas Corpus W. P. No. 4595 of 1987

Haseeb

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 19-10-1987

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1987) 10 AHC CK 0026

Hon'ble Judges : K.Nath, J and S.I.Jafri, J

Final Decision : Allowed

Judgement

Kamleshwar Nath, J.—The petition under Article 226 of the Constitution of India, is for issue of a writ of habeas corpus to set the petitioner at liberty by declaring his detention, under order dated 1231987, contained in Annexure1 to the writ petition, under Section j (2) of the National Security Act, to be illegal.

2. The detention order dated 1231987, Annexure1, along with the grounds, contained in Annexure2, was served upon the petitioner on 1331987. The order was approved by the State Government on 1931987, which also made a reference to the Central Government on 2031987. On 3131987 the petitioner made a representation to the State Government through the Superintendent of Jail concerned ; the comments of the District Magistrate thereon were received by the State Government on 841987. The representation was rejected by Government on 14 41987. The order was ultimately confirmed by the State Government on 2841987.

3. Subsequently, the petitioner's father Habibullah made a representation to the Central Government, which was received in the Dak Section of the Home Ministry Government of India, on 2961987. The representation was received in the concerned State (Internal Security) of the Home Ministry on 871987. A radiogram message was issued by the Central Government on 1071987 to the State Government for comments in respect of the representation. The radiogram message was received in Confidential Section 5 of the State Government on

1671987. The State Government, however, noticed that the radiogram message treated Habibullah himself to be detenu and, therefore, informed the Central Government on 1871987 that there was no detenu of the name of Habibullah, nor any representation dated 2561987 from Habibullah has been received by the State Government. Subsequently on 2771987 when the post copy of the representation of Habibullah, made to the Central Government, was received in the concerned Section of the State Government, the State Government sent its comments on 2971987 through its special messenger to the Central Government. The Central Government was informed that the petitioner's representation dated 31J19J7 and Habibulla's represntatioa dated 261987, were almost the same, hence the comments in respect of the representation dated 3131987, which were available with the State Govenment were placed before the Central Government in connection with the matter.

4. On receipt of the comments of the State Government on 2971987 by the Central Government, the latter rejected the representation on 108 1987, the rejection was conveyed to the petitioner on 1181987.

5. The above statement of dates is admitted to both the parties.

6. The main question for consideration in the case, raised by the learned counsel for the petitioner, is that there was delay in dealing with the representation of Habibullah by the Central Government between 2961987 and 871987 and again between 2971987 and 1071987. This delay, according to the learned counsel, has not been explained and, therefore, the continued, detention of tfje petitioner js illegal,

7. Learned counsel for the Central Government, Sri Rakesh Sharma, has placed reliance on the contents of the counter affidavit dated 8101987, Sri S. K. Jain Desk Officer Ministry of Home Affairs, Government of India, filed today, Sri Rakesh Sharma says that he also received a statement of the same facts by means of a wireless messsge received on 16"0198 .

8. The statement contained in the aforesaid counter affidavit is that the representation dated 2561987 of Hibibullah, father of the present petitioner detenu, was received "by the Central Government in the Ministry of Home Affairs on 961987 and by the concerned quarter on 871987." The affidavit goes on to say that the representation was immediately processed for consideration and it was found that certain vital information for its further consideration needed to be obtained from the State Governmment through a wireless message dated 1071987 and that information was received by the Central Government on 3071987. The important feature in this respect is that the processing of the representation for its consideration is not indicated to have been done during the period between 861987 to 871987, it is indicated to have been done between 971987 and 1071987 during the period from 2961986 to 871987, all that happened that the representation of Habibullah, received in the Dak Section of the Ministry of Home Affairs, was furnished to "the concerned quarter on

871987". Thus, during the period between 2961987 and 871987 the only manner in which the representation was dealt with was to transmit it from one section to another section. It is also noticeable that the question of the necessity of certain vital information could be considered only in the "concerned quarter", and not in the Dak Section, the upshot is that between 2961987 and 871987 the representation remained unconsidered.

9. Sri Rakesh Sharma says that the time between 2961987 and 871987 is a bare ten days period which included two holidays, namely, Saturday 471987 and Sunday 571987. and therefore, the period should be considered to be very small. We do not agree that the period was small. Since the only function which was to be discharged on the receipt of representation on 2961987 in the Dak Section of the Home Ministry was to send it to the "concerned quarter", it is difficult to agree that it could fairly take ten days time for movement from one section to another in the same Miaistry. Further the number of days spent in dealing with a particular matter by itself is not material, except to indicate whether or not there is an "apparent" delay ; the law expects a representation to be dealt with expeditiously and in continuity whatever may be the length of time for that purpose. Where the delay is apparent and to our mind ten days time in the movement of the paper from the Dak Section to the concerned Section of the same Ministry indicates an apparent delay there must be an explanation of the delay. Moreover, such explanation has to be reasonable. In this case there is no explanation, muchless a reasonable explanation, for the consumption of the time between 2961987 and 871987. It should have baen indicated in the counter affidavit as to how the representation moved from place to place and in what manner it was dealt with at different places between 961987 and 871987. In the present case that delay has no explanation. This violates the constitutional guarantee under Article 22 (5) of the Constitution of India and is sufficient to quash the further detention of the petitioner.

10. In respect of the period from 2971987 to 1081987 the counter affidavit of Sri S. K. Jain contains adequate and acceptable material ; but there is another angle to the case in that respect on which we, however, refrain from expressing any opinion in the present case. When the Central Government made a radiogram communication to the State Government on 1071987 requiring the State Government to furnish its comments, it considered the maker of the representation, namely Habibullah to be the detenu. The State Government informed the Central Government on 1871987 that neither Habibullah was a detenu, nor any representation dated 2561987 had been received from Habibullah It was only when, post copy of the radiogram, along with the representation of Habibullab, was received from the Central Government by the State Government that it examined the case in the light of the representation relating to the present petitioner and submitted its comments to the Central Government on 2971987. It could be a pertinent question whether in the original query by the Central Government, made on 1071987, to the State Government there was some sort of a lack of application of mind to the representation of

Habibullah, so that the time which expired between 1071987 and 2771987 could be considered to have been wasted by neglect. As already stated, we do not express any opinion on this question.

11. However, in view of what we have held earlier, this petition should succeed.

12. The petition is allowed. The petitioner, Haseeb is directed to be set at liberty forthwith, he shall be released from custody unless wanted in some other case.

13. Copy of this judgment be given to the learned counsel for the parties within three days on payment of usual charges.