

(2002) 05 AHC CK 0007
In the Allahabad High Court
Case No : Writ Petition No. 131 (HC) of 2002

Imaranul Haq alias Pappoo	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

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

Citation : (2002) 3 ACR 2158

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

Bench : Division Bench

Advocate : Abdul Rafey Siddiqui, for the Appellant; B.B. Saxena and S.K. Singh, 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 has impugned the order dated 14.1.2002 passed by the second Respondent, Mr. R. P. Shukla, the District Magistrate, Ambedkarnagar detaining him under Sub-section (2) of Section 3 of the National Security Act.

The detention order along with the grounds of detention, which are also dated 14.1.2002 was served on the Petitioner-detenu on 14.1.2002 itself and their true copies are annexed as Annexures-1 and 2 respectively to this petition.

2. The prejudicial activities of the Petitioner-detenu prompting the second Respondent to issue the impugned detention order against the detenu are contained in the grounds of detention (Annexure-2). Since, in our judgment, a reference to them is not necessary to adjudicate upon the pleadings contained in paragraph 16 of the petition and ground 20 (G) pleaded in the petition, on which this petition deserves to succeed, we are not adverting to them.

3. We have heard the learned Counsel for the parties. The averments contained

in paragraph 16 of the writ petition and those pleaded in the ground 20 (G) of the petition, in substance, are that the Petitioner preferred a representation to Respondent Nos. 1 and 3, namely, the Union of India and the State of U. P. respectively and the said representations have not been disposed of as yet.

4. The pleadings contained in paragraph 16 of the petition and ground 20 (G) of the petition have been replied to in paragraph 14 of the return of the second Respondent and paragraph 3 of that of Mr. C. P. Singh, Deputy Secretary, Home, Confidential Department, U. P. Civil Secretariat, Lucknow.

In paragraph 14, the detaining authority (Respondent No. 2-District Magistrate, Ambedkarnagar) has stated that the representation of the Petitioner dated 21.1.2002 has already been decided by the State Government and the detenu has already been informed.

In paragraph 3 of his return Mr. C. P. Singh, has stated as under:

The Petitioner's representation dated 21.1.2002 along with parawise comments thereon was forwarded by the District Magistrate, Ambedkarnagar vide his letter dated 11.2.2002. It was received by the State Government on 14.2.2002 ; the concerned section of the State Government examined the representation and submitted a detailed note on 16.2.2002 ; on 16.2.2002, the deponent (Mr. C. P. Singh) examined it and forwarded it to the Special Secretary ; on 16.2.2002, the Special Secretary examined it and forwarded to the Secretary Home and Confidential Department who also examined it on the said date and submitted it to the State Government ; on 20.2.2002, the State Government rejected the representation ; and on 22.2.2002, the State Government communicated to the Petitioner-detenu that his representation was rejected.

5. A perusal of paragraph 3 of the returns of both the detaining authority (District Magistrate, Ambedkarnagar-Respondent No. 2) and Mr. C. P. Singh would show that the detaining authority received the Petitioner's representation dated 21.1.2002 and forwarded it to the State Government. A perusal of paragraph 3 of the return of Mr. C. P. Singh would show that the detaining authority had forwarded the Petitioner-detenu's representation vide his letter dated 11.2.2002. Both the detaining authority, in paragraph 14 of his return and Mr. C. P. Singh in Para 16 of his return have not stated the date on which former received the Petitioner-detenu's representation dated 21.1.2002.

We make no bones in observing that the detaining authority should have disclosed in his return the date on which he received Petitioner-detenu's representation and his failure to do so would enure to the advantage of the Petitioner-detenu. It should be borne in mind that preventive detention matters are decided on the averments contained in the returns of rival parties and where the averments are vague and casual, as is manifest from those contained in paragraph 14 of the return of the detaining authority, the detaining authority has to accept the consequences. Since the Petitioner-detenu was in District Jail, Faizabad and district Ambedkarnagar is only situated 56 kilometres away, it can

be safely presumed that the detaining authority must have received the representation of the Petitioner-detenu within 3 or 4 days. That being so, bearing in mind the fact that the file was with the detaining authority (the District Magistrate, Ambedkar-nagar), we see no earthly justification on his part in forwarding the Petitioner-detenu's representation as late as 11.2.2002. We are afraid that this has occurred because the detaining authority was oblivious to the promptitude with which a representation in preventive detention matter had to be disposed of. We are constrained to observe that the detaining authority has taken his own sweet time in disposing of the Petitioner's representation. The result would be that the continued detention of the Petitioner would be rendered illegal and he would go back to his own sweet home. It should be remembered that eternal vigilance is the price which the law expects from the detaining authority, if he wants his preventive detention order to be sustained by this Court in its jurisdiction under Article 226 of the Constitution of India. In his laxity lies the liberty of the detenu. And lax indeed the detaining authority has been in this case, leaving us with no option but to hold that the continued detention of the Petitioner is vitiated in law.

6. In the result, we allow this writ petition ; hold that the continued detention of the Petitioner is bad in law ; and direct that the Petitioner-detenu shall be released forthwith unless wanted in some other case.