

(1999) 05 AHC CK 0004
In the Allahabad High Court
Case No : Writ Petition No. 2 (H/C) of 1999

Lallan	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 20-05-1999

Acts Referred:

Arms Act, 1959 — Section 25, 3
National Security Act, 1980 — Section 3, 3(2), 3(3), 3(4), 3(5)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1999) 3 ACR 2730

Hon'ble Judges : S.H.A. Raza, J; R.D. Shukla, J

Bench : Division Bench

Advocate : Rajendra Kumar Dwivedi, for the Appellant; J. Mishra and A. Mateen, A.G.As. for State and G.K. Pandey, A.C.S.C. for Centre, for the Respondent

Judgement

S.H.A. Raza and R.D. Shukla, JJ.—This writ petition relates to a writ of certiorari for quashing the order dated 28.5.1998, passed by the District Magistrate, Sultanpur under Sub-section (3) of Section 3 of National Security Act, 1980, contained in Annexure-1 of the writ petition. Another prayer is in the nature of a writ of habeas corpus for immediate release of the Petitioner declaring his detention as illegal.

2. Factual narration as a background for this writ petition is that the Petitioner was detained on 28.5.1998 in the District Jail, Sultanpur, under the orders of the District Magistrate, Sultanpur, contained in Annexure-1 of this writ petition, passed u/s 3 of the National Security Act, 1980. This order dated 28.5.1998 was (sic) to the detenu Petitioner along with the grounds of detention and copies of the documents by the Superintendent of Police, district Sultanpur on 28.5.1998. The Petitioner was challaned by the police of P.S. Kamrouli, district Sultanpur on 1.3.1998 in Crime No. 43 of 1998, u/s 3/25 of the Arms Act and in Crime No. 31 of 1998, under Sections 147, 148, 149, 307, 302. I.P.C. of the same police station and since then the Petitioner had been in judicial custody. The detention order, according to the contention, was passed without applying mind by the

District Magistrate, Sultanpur. The ground for detention was that the Petitioner had moved bail application in the Sessions Court, district Sultanpur, whereas the Petitioner had not moved any such bail application in the said Court. The detaining authority had no material before it for consideration of the detention under National Security Act. The grounds of detention showed that there were three criminal cases and one such case related to the year 1994 and no one was named as accused and the Petitioner was granted bail from the Sessions Court. The other two cases were instituted by the police being complainant and there were no independent witnesses in support of the allegations. The detaining authority considered these three cases as criminal history of the applicant for detaining in jail but no papers relating to Case Crime No. 95 of 1994 were supplied to the Petitioner to prepare an effective representation. The Petitioner's representation dated 9.6.1998 has not been decided at an early date by the Union of India as well as State of U.P. and there was no proper explanation for the delay. Thus, the detention of the Petitioner was illegal as there was no compliance of Section 3 (4) and (5) of the National Security Act. Therefore, the writ petition was moved with the aforesaid prayer for quashing the detention order.

3. The District Magistrate, Sultanpur, is opposite party No. 3 in this writ petition and the counter-affidavit filed by that authority showed that in exercise of powers u/s 3(3) read with Section 3(2) of the National Security Act, 1980, the detention order against the Petitioner was passed. The detention order was passed after applying the mind of the District Magistrate, Sultanpur. There was likelihood of the Petitioner being released on bail and accordingly detention order was passed against the Petitioner in order to prevent the Petitioner in indulging into activities prejudicial to the maintenance of public order in the event of his release. The Petitioner was supplied with the copy of the F.I.R. in Case Crime No. 95 of 1994 of P.S. Jamo, district Sultanpur. The Petitioner preferred a representation dated 9.6.1998 addressed to the Home Secretary, Uttar Pradesh Shasan, Lucknow and the said representation was forwarded by the Superintendent, District Jail Sultanpur on 9.6.1998 to the district Magistrate, Sultanpur. A copy of it was also forwarded to the Registrar, Advisory Board, High Court, Lucknow. On 11.6.1998 District Magistrate, Sultanpur, sent representation of the Petitioner to the State Government and the copy of the same was forwarded to the Home Secretary, Union of India, Internal Security Department, North Block, New Delhi, along with a copy of the petition with the endorsement that parawise comments shall be sent separately without delay. On 17.6.1998 parawise comments were sent to Home Secretary, U.P. Shasan and a copy of the same was also sent by registered post to the Home Secretary, Government of India, Internal Security Department, North Block, New Delhi. The Petitioner's representation dated 9.6.1998 was rejected by the State Government vide radiogram message dated 27.6.1998. The Petitioner was informed about rejection of his representation by the Superintendent, District Jail, Sultanpur, on 3.7.1998. Thus, the Petitioner's representation dated 9.6.1998 was rejected by

the State Government on 27.6.1998.

4. Affidavit on behalf of the State of U.P. was filed by Under Secretary, Home and Confidential Department, U.P. Civil Secretariat, Lucknow in which it has been stated that the Petitioner's representation dated 9.6.1998 was forwarded by District Magistrate, Sultanpur, on 11.6.1998 and the same was received by the State Government on 12.6.1998. It was placed before the Advisor)" Board on 11.6.1998. A copy of the representation along with the comments were also sent to the Secretary, Ministry of Home Affairs, New Delhi on 10.6.1998. District Magistrate, Sultanpur, sent comments of the said representation to the State Government on 17.6.1998 which were received by the State Government on 18.6.1998. State Government placed these comments before the Advisory Board on 20.6.1998 and copy of the same was also sent to the Secretary, Ministry of Home Affairs, New Delhi. State Government examined above representation and detailed note was put by the section concerned on 22.6.1998. Joint Secretary and Secretary, Home, State Government examined the representation on 22.6.1998 and 23.6.1998 respectively. Finally it was rejected by the State Government on 23.6.1998. It was communicated to the Petitioner through district authorities by the State Government on 27.6.1998. The report of the Advisory Board was received by the State Government on 9.7.1998. Thereafter on 13.7.1998 the State Government informed Secretary, Ministry of Home Affairs, New Delhi, that the Advisory Board found sufficient cause for the detention of the Petitioner. Ministry of Home Affairs, New Delhi, vide letter dated 14.8.1998 intimated to the Petitioner through the Superintendent, District Jail, Sultanpur, as well as to the State Government that the above representation was rejected by the Central Government. The detention order dated 28.5.1998 was received by the State Government on 29.5.1998 and it was approved within 12 days from the date of the detention, as required u/s 3(4) of the National Security Act and within 7 days the detention order was received by the Secretary, Ministry of Home Affairs, New Delhi, on 7.6.1998, as provided u/s 3(5) of the National Security Act. Thus, the State Government complied with the provisions of Section 3 (4) and (5) of the said Act.

5. The facts noted above in the petition and the affidavits filed on behalf of the Respondent Nos. 2 and 3, showed that the Petitioner moved the representation on 9.6.1998 relating to his detention order dated 28.5.1998. It was rejected by the State Government on 27.6.1998 and by the Central Government on 14.8.1998. The District Magistrate, Sultanpur, forwarded the representation dated 9.6.1998 to the State Government on 11.6.1998 and sent parawise comments on 17.6.1998. Parawise comments were sent after 8 days of presentation of the representation to the District Magistrate, Sultanpur. The State Government received representation of the Petitioner on 12.6.1998 but it was rejected on 27.6.1998. The Central Government rejected this representation on 14.8.1998. Obviously at both Governments" level there had been delay of more than 7 days to dispose of the representation of the Petitioner.

6. In *K.M. Abdulla Kunhi and Anr. v. Union of India and Ors.* 1991 SCC 613 : 1991 JIC 267 (SC), Hon''ble Supreme Court held that the constitutional right to make representation under Clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. Government has to consider the representation of its own without being influenced by any view of the Advisory Board. The obligation of the Government to consider the representation is different from the obligation of the Board to consider representation at the time of hearing the reference. The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible.

7. In *Sir v. State of U.P.* 1999 (1) JIC 586, a Division Bench of this Court held that representation decided after 8 days of its receipt and the delay of 4 days not explained the detention was found illegal.

8. In *Laiq Abbas v. District Magistrate, Lucknow and Ors.* 1999 (1) JIC 589, a Division Bench of this Court found 11 days'' delay in consideration of the representation having not properly been explained resulting in the detention having been held illegal.

9. In *Sarmister v. Superintendent, District Jail, Muzaffarnagar and Ors.* 1999 (1) JIC 631, a Division Bench of this Court found that the representation of the Petitioner not disposed of with promptitude and, therefore, the detention order was quashed.

10. In *Wali Mohammad v. Superintendent, District Jail, Bulandshahr and Ors.* 1999 UPCR 56 : 1999 (1) JIC 335 (All), a Division Bench of this Court held that no explanation as to why the representation was kept pending for 15 days before it was sent to Central Government, the detention thus was set aside.

11. In *Rqjammal v. State of Tamil Nadu and Anr.* 1999 UPCR 158 : 1999 (1) JIC 524 (SC), the representation sent on 13.1.1998 was rejected on 14.2.1998. It was held that the delay is the interval between the aforesaid two dates and there was no valid justification for it. Detention thus was treated as vitiated. It was further held that inspite of law laid down repeatedly over the past three decades, the State Government and its officers continue to behave in their old lethargic fashion and like all other files rusting in the Secretariat for various reasons including red tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion.

12. In *Pappu alias Ausan Singh v. Adhikshak, Janpad Karagar, Mainpuri* 1999 LCR 23 : 1999 (1) JIC 234 (All), it was found that there was no need for the Government to wait for the report of Advisory Board and delay on that account was not just.

13. Aforesaid decisions clearly demonstrate that neither the State Government nor the Central Government could delay disposal of the representation of the detenu on any ground which could not be termed just and proper. The present case showed that the State Government decided the representation dated 9.6.1998 on 27.6.1998 though District Magistrate had already submitted parawise comments to the State Government on 17.6.1998. There was unreasonable delay between 17.6.1998 and 27.6.1998 in disposal of the representation at State Government's level. Similarly, Central Government took time upto 14.8.1998 in the decision of this representation. There is no valid justification for this delay of more than 15 days at Central Government's level and about 10 days' delay at State Government's level. Similarly, the District Magistrate can have no proper justification to forward parawise comments on 17.6.1998 relating to representation dated 9.6.1998. There is delay in this process also. So the representation of the Petitioner was not dealt with expeditiously as required under law and it all vitiated detention of the Petitioner rendering it illegal and, therefore, he is entitled for the relief.

14. The writ petition is accordingly allowed. The Respondents are directed to set free the Petitioner if he is not wanted in any other case.