

(1999) 02 AHC CK 0013

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 25941 of 1998

Mahboob

APPELLANT

Vs

Superintendent, District Jail and Others

RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Arms Act, 1959 — Section 25, 27

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 25

National Security Act, 1980 — Section 3(2)

Penal Code, 1860 (IPC) — Section 112B, 120B, 121, 121A, 122

Citation : (1999) CriLJ 2782

Hon'ble Judges : R.R.K. Trivedi, J;Lakshmi Bihari, J

Bench : Division Bench

Advocate : Daya Shankar Mishra, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Petitioner Mahboob has filed this writ petition for grant of writ of habeas corpus directing respondents to release him from detention and to quash the order of detention dated 15-6-1998,Annexure 1 to the writ petition, passed by respondent No. 2, u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act).

2. Along with the order of detention petitioner was also served the grounds of detention on which the petitioner has been detained under the Act. The grounds are as under :

1. That on 17-2-1996, at 5.00 p.m., Shri Suresh, Inspector in-charge of police station Lodhi Colony, New Delhi who is member of operation cell, Lodhi Colony, with the help of other members, arrested Kris Teef Jelvazor, a citizen of Switzerland, and Mohd. Hassan Poddar alias Azis Batloni alias Sheikh Majeed alias Hassan Aroli, son of Mohd. Husain, resident of Lahore (Pakistan) from Lodhi Colony, New Delhi and recovered from their possession 361 pistols of different make, 367 empty magazines with 3788 cartridges for which a criminal case was

registered at Police Station, Lodhi Colony as case Crime No. 64 of 1996, under Sections 112B/121/121A/122/124 I.P.C. and 25/54/59 of the Arms Act.

During investigation it was revealed that petitioner was one of the associates of the two foreigners arrested. Consequently, a charge sheet was filed on 29-4-1996 for trial of the petitioner and his two associate culprits. It has been alleged that this activity of the petitioner and his associates culprits was anti-national and it was done with the design to help spread disintegration and terrorist activities in the country and to dethrone the Government of India which amounts to waging war against the country for which charge sheet has been submitted and is under consideration of the Court.

2. That on 21-2-1998, Sub-Inspector Baljit Singh of Police Station Mangolpuri, New Delhi, a member of the operation Cell, Lodhi Colony, arrested petitioner's companions Ashok Kumar Chhabra and Islam at 5.10 p.m. from two kilometres in the north of Yuva Shakti Model School, Sector III, Rohini, Delhi, Police Station Mangolpuri and recovered a huge quantity of illegal firearms and cartridges which were manufactured in Pakistan. The aforesaid arrested persons in order to save themselves and for killing police personnel's, fired at them. Police, however, arrested them with the firearm and a criminal case, Crime No. 171 of 1998, u/s 307/186/120B/353/121/121A/122/123 I.P.C. and Sections 25/27/54/59 of the Arms Act was registered at Police Station Mangolpuri. During investigation, petitioner along with the arrested persons was found involved in illegal smuggling of fire-arm in the country which were aimed at dethroning the Government of India and they were active members of the ISI of Pakistan and indulged in ante-national activities. After investigation a charge sheet was filed against the petitioner and his companions which is under consideration of the Court.

3. That on 22-10-1997, Senior Sub-Inspector Atar Singh of Police Station Kairana arrested the petitioner with one Kg. of Doda post and powder in respect of which a case was registered as case crime No. 276 of 1997, under Sections 18/25 of N.D.P.S. Act at Police Station Kairana. After investigation charge sheet No. 181 of 1997 was filed on 17-12-1997 which is under consideration of the Court.

4. That Inspector-in-charge of Local Intelligence Unit Bagpat arrested the petitioner on 19-5-1998, at 10.30 a.m. in Kasba Baghpat with forged and manufactured visas for sending persons to Pakistan. During investigation a case was found against the petitioner for preparing forged Visas in respect of which charge sheet No. 211 of 10-6-1998 was filed against him and a case was registered at Police Station, Baghpat as case crime No. 198 of 1998, under Sections 20/467/ 468/471/472 I.P.C. In this case the petitioner is under detention in District Jail, Meerut from 19-5-1998. The petitioner has filed a bail application in the Court in which 15-6-1998 has been fixed for hearing in the Court of District and Sessions Judge, Meerut. There is strong possibility of the petitioner being released on bail and there is apprehension that after release from jail, the petitioner will, again indulge in serious anti-national activities and heinous crimes, which shall be against the maintenance of the public order.

3. On the aforesaid facts the detaining authority recorded his subjective satisfaction that there is a strong possibility that petitioner will act in a manner which shall be prejudicial to the maintenance of the public order and for preventing the petitioner from indulging in any such activity which may be prejudicial to the maintenance of the public order, it is necessary to detain him.

4. Petitioner was also informed that he has right to represent before the State Government, Advisory Board and the Central Government against his detention. The representation to the State Government may be addressed to the Home Secretary, State of U.P., Lucknow. The representation to the Advisory Board may be addressed to the Chairman, Advisory Board (Detentions). Representation for the Central Government may be addressed to the secretary (Home), Union of India (internal Security) North Block, New Delhi. The aforesaid representations may be sent through and may be handed over to Superintendent of the District Jail where the petitioner is detained. Petitioner was also informed that the representation for the Advisory Board may be submitted within three weeks and if it is filed late, then the Advisory Board may not consider the same. Petitioner was also informed that he is entitled for a personal hearing before the Advisory Board. If the petitioner so desires, he may mention the fact in this representation addressed to the Advisory Board.

5. The District Magistrate, Baghpat, forwarded the detention order dated 15-6-1998 along with the grounds and other connected papers to the State Government same day which were received on 16-6-1998. The State Government approved the detention order u/s 3(4) of the Act on 18-6-1996. The order of detention along with the grounds and other relevant papers were also sent to the Central Government u/s 3(5) of the Act which were received by the Secretary, Ministry of Home Affairs, New Delhi on 21-6-1998.

6. The case of the petitioner was referred to the Advisory Board on 20-6-1998. The Advisory Board heard the petitioner on 8-7-1998, who appeared in person. The Advisory Board gave opinion that there was sufficient cause to detain the petitioner. The opinion of the Advisory Board was received by the State Government on 23-7 1998. The State Government confirmed the order of detention for 12 months vide order dated 29-7-1998. The petitioner filed an undated representation which was forwarded by the District Magistrate along with She comments on 7-7-1998. Same was received by the State Government on 9-7-1998. A copy of the aforesaid representation with para wise comments was sent to the Secretary, Ministry of Home Affairs, New Delhi by the District Magistrate on 7-7-1998. The State Government after examination and consideration rejected the representation of the petitioner on 14-7-1998 which was communicated to the petitioner on 18-7-1998. The representation of the petitioner was received by the Central Government, on 9-7-1998. On this representation certain vital information (i.e. para-wise comments and opinion of the Advisory Board) was required from the State Government on 13-7-1998. The required information was received by the Central Government on 28-7-1998

through wireless message dated 24-7-1998. After receiving the information the representation of the petitioner was considered by the Under Secretary, Minister of Home Affairs on 3-8-1998 who submitted the same with comments before the Joint Secretary on 4-8-1998. Joint Secretary considered the case and with comments put up the same before the Home Minister, Government of India on 5-8-1993. The Home Minister after consideration rejected the representation of the

7. Counter affidavit, in this petition, has been filed by Shri S. K. Bhatia, Dy. Jailor, District Jail, Meerut on behalf of respondent No. 1 Kuldeep Seth, District Magistrate, Baghpat has filed counter affidavit as respondent No. 2 Shri R. S. Agarwal, Joint Secretary, Government of U.P. (Home and Confidential Department) U.P. Civil Secretariat, Lucknow has filed counter affidavit on behalf of respondent No. 3 State of U.P. and Bina Prasad, Under-Secretary, Ministry of Home Affairs, Government of India, has filed counter affidavit for respondent No. 4.

8. We have heard Shri. D. S. Mishra, learned counsel for the petitioner, Shri A. K. Tripathi, learned Additional Govt. Advocate, for respondents Nos. 1 to 3 and Shri Harish Chandra Dubey, Additional Standing Counsel for Union of India.

9. Challenging the impugned order of detention dated 15-6-1998 and continued detention of petitioner, the learned counsel for the petitioner has made the following submissions:

1. It is submitted that the grounds alleged for passing the order of preventive detention against the petitioner, were such which relate to the alleged activities prejudicial to the Defense of India or the security of India which were covered by Section 3(I) of the Act and respondent No. 2 District Magistrate Baghpat had no authority to pass the impugned order.

2. Learned counsel has next submitted that in the impugned order dated 15-6-1998 for detaining the petitioner both maintenance of security of State and public order have been mentioned, while in the grounds there is no mention of security of State. It shows that the detaining authority passed the order mechanically without applying mind.

3. It is further submitted that the alleged activities dated 17-2-1996 in ground No. 1 and of 22-10-1997 in ground No. 3 were stale and has no proximity with the object sought to be achieved by passing the order of detention. It cannot be said that the live link was still present for passing the impugned order of detention against, the petitioner.

4. It is further submitted that involvement of the petitioner was disclosed on 21-2-1998 but no action was taken up to 19-5-1998 when the petitioner was arrested in case Crime No. 198 of 1998. The impugned order was passed on 15-6-1998, i.e. after about months. It is submitted that the impugned order stood vitiated on the ground of delay.

5. Learned counsel has next submitted that in case crime No. 65 of 1996, Charge sheet was filed on 29-4-1996, petitioner was discharged from this case on 14-10-1997 in respect of the offences under Sections 120B/121/121A/122/ 124 I.P.C. There is no explanation for delay in passing the impugned order after such a long time. The papers relating to the discharge of petitioner were not placed before the detaining authority or the Appropriate Government or the Central Government. The impugned order of detention passed against the petitioner is wholly arbitrary and illegal.

6. It has been further submitted that in case Crime No. 171 of 1998, mentioned in ground No. 2, a final report was submitted but the report was not placed before the detaining authority or the Appropriate Government and Central Government. It was a vital fact. The detention is vitiated.

7. Lastly, it has been submitted that the representation of the petitioner was received by the Central Government on 9-7-1998 which was rejected on 12-8-1998, i.e. after 34 days. There is no legal and cogent explanation for the delay between 13-7-1998 to 28-7-1998 and 5-8-1998 to 12-8-1998 and on account of the unexplained delay at the stages falling between the aforesaid dates, the continued detention of the petitioner has been rendered illegal.

10. Learned counsel for the petitioner has placed reliance on certain judgments of the Apex Court and of this Court which shall be discussed at the relevant places.

11. Shri A. K. Tripathi, learned A. G. A., on the other hand submitted that though the activities of the petitioner were anti-national, but the state being part of the country was also affected. The activities stated in the grounds were such which not only affected security of the State but also public order as the potential and reach of the activities was such that it could disturb the tranquility and even tempo of life of the community. A preventive action was necessary in the facts and circumstances of the case. It is further submitted that the criminal cases mentioned in grounds Nos. 1 and 3 were in respect of State of Delhi and whatever information was given to the detaining authority by the officers of that State, was mentioned in the grounds. It has been further submitted that the allegations in grounds Nos. 1 and 3 could not be ignored on the ground of stale as from the said cases background of the petitioner and his repetitive tendency to indulge in similar activities could be ascertained. For passing an order of preventive detention the detaining authority has also to form a subjective satisfaction that there is a tendency in the petitioner to commit such crimes and likelihood is that he may commit such offences in future also which may disturb public order. It is not correct to say that the grounds Nos. 1 and 3 were stale and non-existent. It has also been submitted that in any view of the matter the legality of the impugned order of detention will not be affected in view of the provisions contained in Section 5-A of the Act which provides that the impugned order of detention shall be deemed to have been passed separately on the basis of each ground mentioned in the order. The impugned order can be sustained

even on grounds Nos. 2 and 4 and looking the serious allegations mentioned therein preventive action was necessary.

12. Learned A.G.A. has further submitted that satisfaction in respect of security of the State has been earlier recorded in ground No. 4 and it is not correct to say that the impugned order has been passed without there being any subjective satisfaction in respect of the security of the State.

13. So far as the delay in deciding the representation by the Central Government is concerned, learned counsel for respondents has submitted that the continued detention of the petitioner can be held to be illegal when the delay is unreasonable and has not been explained. Learned counsel has submitted that before the Central Government remedy is supervisory and statutory. The Central Government is entitled to gather all information and to collect all material before deciding the representation and if time is taken in gathering information, it cannot be said that delay has been caused in deciding the representation or the delay is unexplained. Learned counsel has placed reliance on the following cases :

1. Smt. Kamla Bai v. Commissioner of Police, Nagpur JT 1993 (3) SC 666 : 1993 AIR SCW 2305.

2. M. Mohd. Sulthan v. Joint Secretary Government of India AIR 1990 SC 2222.

3. Kamarunnissa and Others Vs. Union of India and another, .

4. Haradhan Saha Vs. The State of West Bengal and Others, .

14. We have thoroughly considered the rival submissions made by the learned counsel for the parties. Considering the nature of the provisions contained in the Act and the object sought to be achieved, it cannot be disputed that the purpose behind passing preventive order of detention is to prevent the detenu from acting in any manner which may be prejudicial to the security of the State or the maintenance of public order or for other similar reasons provided in Section 3 of the Act. The order is passed on the basis of the subjective satisfaction of the detaining authority. The Constitutional Bench of Hon'ble Supreme Court in case of Haradhan Saha Vs. The State of West Bengal and Others, , distinguished the preventive action from the punitive action in the following manner.

We may proceed on the assumption that the Act which is for preventive detention may be tested with regard to its reasonableness with reference to Article 19. Section 3 of the Act is to be interpreted in the light of various existing statutes which deal with the various acts mentioned in Section 3. Acts sought to be prevented are found in various legislations like the Essential Commodities Act, Essential Services Act. It is not necessary that the person to be detained should have actually committed a crime or a forbidden act. In Some cases the person who has not already committed a crime is likely to commit an act to prevent which Section 3 provides for detention of such a person. Some times, it may be possible that an act which is not forbidden by law may fall within the ambit of Section 3. Such cases may be dealing with relations of India with foreign powers

or maintenance of public order.

15. In the above case Hon"ble Supreme Court was considering Section 3 of Maintenance of Internal Security Act, 1971, which is *pari materia* with Section 3 of the Act. From the aforesaid observation of Hon"ble Supreme Court it is clear that the detaining authority has to take into account the past, present and likely future conduct of the detenu before arriving at the conclusion that an order is essential for preventing detenu from acting in any manner prejudicial to the security of the State or the public order. If the facts of the present case are tested on the touch stone of the principle enunciated by Hon"ble Supreme Court in the above case, it cannot be said that the activities mentioned in grounds Nos. 1 and 3 were stale and had no proximity with the object sought to be achieved by passing the impugned order of detention. The allegations made therein are clearly indicative of frequent participation of the petitioner in acts which could endanger the security of the State and the maintenance of the public order. Even if the activities could not be used for passing the order, they could be used for limited purpose of ascertaining the repetitive tendency of the detenu to indulge in similar activities. Thus, in our opinion, the submission of the learned counsel for the petitioner cannot be accepted that the impugned order suffered from any illegality on account of using the activities of the petitioner dated 17-2-1996 shown in ground No. 1 and of 22-10-1997 mentioned in ground No. 3 for passing the impugned order. The past conduct of petitioner was relevant for passing the order.

16. The next submission of the learned counsel for the petitioner is that the allegations against the petitioner in grounds Nos. 1 and 2 are such which could pose danger or could be prejudicial to the defence of India or the security of India and the order of preventive detention for preventing such activities could be passed only by the Central Government or the State Government and not by the detaining authority in exercise of the delegated power u/s 3 of the Act. However, we do not find any substance in this submission. From the allegations contained in grounds Nos. 1 and 2 it is clear that the detaining authority has clearly mentioned in the grounds that the actions of petitioner and his associates mentioned in the charge sheet are such which come within the area of spreading terrorist activities in the country, to dethrone the Government of India and waging war against the country. The charge sheet in the above case was submitted, under Sections 121/121A/122/124, which fall under Chapter VI of the Indian Penal Code which contain provisions relating to offences against the State. The detaining authority has only mentioned about the gravity and seriousness of the activities of the petitioner. In fact, the activities mentioned therein could also pose threat to the security of the State and the public order as mentioned in sub-section (2) of Sec. 3 of the Act. A Constitutional bench of Hon. Supreme Court while discussing the concept of public order in case of *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, held as under :

But in India under Article 19(2) this wide concept of "Public Order" is split up

under different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. All the grounds mentioned therein can be brought under the general head "public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is therefore something which is demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postulated that "public order" is synonymous with public peace, safety and tranquility.

17. From the above view expressed by Hon. Apex Court, it is clear that the word "public order" is a wide concept and it is synonymous with public peace, safety and tranquility. In some cases it may take into its sweep even the security of the State. Coming to the facts of the present case the allegations against the petitioner is that he was associated in bringing within the country large quantity of firearms and ammunition which could be used for disturbing the public order as well as it could pose a threat to the security of the State. It cannot be said that the detaining authority could not invoke the provisions of Section 3(2) of the Act for preventing petitioner from acting in any manner prejudicial to the security of the State and from acting in any manner prejudicial to the maintenance of public order. Under both the heads, public peace, safety and tranquility could be disturbed. In our opinion, respondent No. 2 was well within the limits of his authority in passing the impugned order of detention against the petitioner.

18. Learned counsel for the petitioner also questioned the legality of the order on the ground of delay. It has been stated that involvement of the petitioner was disclosed on.21 -2-1998 in case crime No. 171 of 1998, but no action was taken up to 19-5-1998 when the petitioner was arrested in case crime No. 198 of 1998. It is contended that there was delay of four months in passing the impugned order which vitiated it. The contention does not appear to be correct. The petitioner was arrested on 19-5-1998 in town Baghpat by Inspector-in-charge Local Intelligence Unit. The case was registered against him as case crime No. 198 of 1998, under Sections 420/467/468/471/472 I.P.C. The allegation against the petitioner was that he was involved in preparing forged visas for visiting Pakistan. The detaining authority at Baghpat cannot be expected to be acquainted with the case pending against the petitioner in New Delhi. The impugned order was passed on 15-6-1998, i.e. after about a month of his arrest. The detaining authority in his counter affidavit has specifically stated that the police of Baghpat placed before him the information about the petitioner which was received from the Delhi police. It appears that after arrest of petitioner the information about his involvement in smuggling illegal firearms and ammunition into the country was received from the Delhi police. In any case, in the nature of the present case the delay of four months could not render the impugned order illegal.

19. The learned counsel has next submitted that he was discharged from case crime No. 64 of 1996 on 14-10-1997 in respect of offences under Sections 120B/121A/122/124, I.P.C. but the papers relating to discharge of petitioner were not placed before the detaining authority. In our opinion, the discharge of the petitioner from the offences under the Indian Penal Code was not very material. It is not denied that the case for his involvement under Sections 25/54/59 of the Arms Act, in respect of recovery of 161 pistols, 367 empty magazines and 3788 cartridges still pending. The recovery of such a large quantity of firearms and ammunition and suspected involvement of petitioner in bringing them inside the country could form a reasonable basis that if the petitioner is left free, he will again indulge in similar activities. The non-production of the order of discharge dated 14-10-1997 could not, in our opinion, affect the legality of the order. In this connection learned counsel has also submitted that a final report was submitted in case crime No. 171 of 1998 but it was not placed before the detaining authority or the appropriate Government and Central Government. It was submitted that it was a vital fact and non-placing of it before the detaining authority vitiated the order. This fact has been strongly refuted by the detaining authority in para 14 of its counter-affidavit. It has been stated that it is not correct that any final report has been submitted. In fact, name of petitioner has been mentioned in column 2 of the charge-sheet as he was not arrested by the time the charge-sheet was submitted in Court. The Court had already issued warrant of attachment and arrest, against the petitioner. Thus, it is a highly disputed question of fact. We do not find any material on record on which basis we may come to a definite conclusion that a final report was submitted absolving the petitioner from the case. The impugned order of detention cannot be termed to be illegal on this ground.

20. The last submission of the learned counsel is that the continued detention of the petitioner has been rendered illegal in view of the inordinate and unexplained delay in deciding the representation of the petitioner by the Central Government. In support of his submission learned counsel has placed reliance in cases of Rajammal Vs. State of Tamil Nadu and Another, Pappu alias Avasan Singh v. Adhikshak, Janpad Karagar, Mainpuri 1991 (1) JIC 134 (All) unreported judgment dated 29-1-1999 of a Division Bench of this Court in H. C. Writ No. 26144 of 1998 and unreported judgment dated 6-1-1999 in case of Abdul Mallik v. Adhikshak Janpad Karagar, Bareilly, H. C. Petition No. 22713 of 1998.

21. Undisputed facts with regard to this question are that undated representation of petitioner was received by the Central Government in the Ministry of Home Affairs on 9-7-1990. On this representation para-wise comments and the opinion of the Advisory Board was sought from the State Government through wireless message dated 13-7-1998. The requisite information was received on 28-7-1998. The submission of the learned counsel for the petitioner is that the representation of the petitioner ought to have been decided independently and opinion of the Advisory Board and para-wise comments on the representation from the State Government were not necessary. Reliance has been placed in case

of Pappu alias Avasan Singh 1999 (1) JIC 134 (supra). However, the facts in case of Avasan Singh were different. In that case the requisite information was sent after 21 days. The major delay was caused by the State Government in sending the requisite information. In our opinion, the case is not helpful to the petitioner in the present case. In this case the State Government did not cause any delay in sending the requisite information which will be clear from para 5(2) of the counter-affidavit filed by Shri R. S. Agarwal, Joint Secretary, Government of U. P., Home and Confidential Department, which reads as under :

It is further stated that the Secretary, Ministry of Home Affairs, New Delhi vide their telex message dated 13-7-98 asked the para-wise comments on petitioner's representation and opinion of Advisory Board. The State Govt. on 22-7-98 sent a copy of petitioner's representation and comments of detaining authority to Secretary, Ministry of Home Affairs, New Delhi on 22-7-98 and also informed them that the opinion of Advisory Board was not received yet and will be sent as it becomes available. The report of the Advisory Board received by the State Govt. on 23-7-98 and the State Govt. on 24-7-98 informed to the Secretary, Ministry of Home Affairs, New Delhi that the Advisory Board found sufficient cause for the detention of the petitioner. The Ministry of Home Affairs, New Delhi vide their telex message dated 12-8-98 intimated to the petitioner through Superintendent, District Jail, Meerut as well as to the State Govt. that the above representation was rejected by the Central Government. Averments to the contrary are incorrect and as such denied.

22. From the aforesaid facts it is clear that the State Government took prompt action in sending the information required by the Central Government. On receipt of the message dated 13-7-1998, the para-wise comments were obtained from the detaining authority and were sent on 22-7-1998 within a period of nine days. In our opinion, the time taken cannot be said to be unreasonable. The report of the Advisory Board was received on 23-7-1998 and information was sent to the Secretary, Ministry of Home Affairs next day i.e. on 24-7-1998. Thus, it cannot be said that any delay was caused by the State Govt. As clear from the counter-affidavit filed by Bina Prasad, Under Secretary, Ministry of Home Affairs, Government of India, complete information was received by the Central Government on 28-7-1998. The report of Advisory Board was then processed and examined by the Under Secretary on 3-8-1998. It is stated that 1st and 2nd August, 1998 were holidays. Thus, the representation was examined within a reasonable period. The Under Secretary put up the representation with her comments before the Joint Secretary on 4-8-1998. The Joint Secretary considered the representation and with his comments put up the same before the Home Minister on 5-8-1998. The Home Minister duly considered the case and rejected the representation on 12-8-1998, i.e. after six days. In the counter-affidavit of Bina Prasad, it has been stated that 8th and 9th of August, 1998 were holidays. There remain four days. Learned counsel for the petitioner has submitted that four days" delay remained unexplained and the case is squarely covered by the judgment of Hon"ble Supreme Court in Rajammal's case wherein

also delay involved was of four days.

23. We have seriously considered the submission of the learned counsel for the petitioner in this regard and have also perused the judgment of Hon"ble Supreme Court in the case of Rajammal. However, we are of the view that each case has to be considered on the facts of its own. Hon. Supreme Court in case of Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, held in para 82 as under :

Preventive detention unlike punitive detention which is to punish for the wrong done, is to protect the society by preventing wrong being done. Though such powers must be very cautiously exercised not to undermine the fundamental freedoms guaranteed to our people, the procedural safeguards have to be ensured that, yet these must be looked at from pragmatic and common case point of view. The exercise of the power of preventive detention must be strictly within the safeguards provided. We are governed by the Constitution and our Constitution embodies a particular philosophy of Government and a way of life and that necessarily requires understanding between those who exercise powers and the people over whom or in respect of whom such power is exercised. The purpose of exercise of all such power by the Government must be to promote common well-being and must be to subserve the common good. It is necessary to protect, therefore, the individual rights insofar as practicable which are not inconsistent with the security and well being of the society. Grant of power imposes limitation on the use of the power. There are various procedural safeguards and we must construe those in proper light and from pragmatic commonsense point of view. We must remember that observance of written law about the procedural safeguards for the protection of the individual is normally the high duty of public official but in all circumstances not the highest. The law of self-preservation and protection of the country and national security may claim in certain circumstances higher priority.

24. In the present case also the facts are such that four days" time taken in deciding the representation should not be held to render the detention illegal in the larger interest of the society. The allegations against the petitioner are very serious and cannot be ignored. So far as the constitutional safeguards are concerned, they have been fully complied with. We do not think it proper to hold the detention of the petitioner illegal on the ground of four days" delay.

25. Learned AGA submitted that the Home Minister of the Central Government remains very busy and a period of four days taken by him in deciding the representation cannot be held to be inordinate delay.

26. Considering to totality of the facts and circumstances of the case, in our opinion, no prejudice has been caused to the petitioner and we do not find it a fit case for interference under Article 226 of the Constitution.

27. For the reasons stated above, we do not find any merit in the writ petition and it is accordingly dismissed.