

(1982) 11 AHC CK 0029
In the Allahabad High Court

Mohammad Salim (in Jail)

APPELLANT

Vs

Adhikshak, Janpad Karagar Pauri and Others

RESPONDENT

Date of Decision : 04-11-1982

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 22
General Clauses Act, 1897 — Section 14, 21, 3, 8
Maintenance Orders Enforcement Act, 1921 — Section 3
National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 147, 148, 322, 323, 427

Citation : (1983) CriLJ 548

Hon'ble Judges : B.N. Katju, J;A. Srivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is a petition for the issue of a writ of habeas corpus.
2. The petitioner is detained in District Jail, Pauri (Garhwal) under the order of the District Magistrate, Moradabad dated 2-7-1982 u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act).
3. The order of detention was served on the petitioner in the jail at Pauri on 3-7-1982 and the grounds of detention were served on him on 5-7-1982. The petitioner made his representation against the order of detention on 9-7-1982 to the Home Secretary to the Government of Uttar Pradesh through the Superintendent, District Jail, Pauri. A second representation was sent by the father of the petitioner on 12-7-1982. The detention of the petitioner was approved by the State of detention and other particulars to the Central Government on the same day (12-7-1982). Both the representations of the petitioner were received by the-State Govt. on 13-7-82 and were sent to the District Magistrate. Moradabad on 14-7-1982 for his comments. The comments of the District Magistrate were received by the State Government on 20-7-1982

and both the representations were rejected by the State Government on 24-7-1982. The case of the petitioner was referred to the Advisory Board on 19-7-1982 and the representations of the petitioner were sent to the Advisory Board on 21-7-1982. The Advisory Board considered the case of the petitioner on 2-8-1982 and 10-8-1982 and submitted its opinion to the State Government on 16-8-1982 that there was sufficient cause for detaining the petitioner. The detention of the petitioner was confirmed by the State Government on 21-8-1982.

4. A third representation on behalf of the petitioner was submitted by Sri D.S. Misra, learned Counsel for the petitioner, on 12-7-1982, which does not appear to have been considered by the State Government till now.

5. The order of detention of the petitioner is based on four grounds, which are as follows:

(1). On 5-3-1982 at about 6 P.M. you and your companion Gulfam armed with knives surrounded Dr. B. N. Gupta resident of Mohalla Faizganj and Krishna Avtar Mehrotra in front of Ansar Inter College on Prince Road, P.S. Mughalpura in the city of Moradabad and you told, Dr. Gupta that even though he obtains the support of the Police or court of law, you would take possession of his land in Guinya Bagh at the point of knife. As he (Dr. Gupta) was the only Hindu resident of Faizganj he could not dare remain in possession of his land in Guinya Bagh with the support of Mehrotra : Your companion Gulfam told, Dr. Gupta that he should quietly leave Moradabad otherwise he would tear his stomach with Ms knife and give the incident a communal colour and the Holi of the current year would be played with blood. The aforesaid incident created a sensation and people of both the communities began to collect. Report No. 31 regarding the aforesaid incident was lodged by Onkar Saran Agrawal son of Ram Prasad Agrawal, who was an eyewitness, at P.S. Mughalpura on 5-3-82.

(2) Case Crime No. 761/81 u/s 147/323 I.P.C., P.S. Kotwali was pending against you in the Court of 9th Additional Munsif Magistrate, Moradabad. On 23-6-1982 you threatened Sri Laxmi Narain Sharma Assistant Public Prosecutor, who was conducting the prosecution, in the verandah of the court while he was preparing the case and said that if he took much interest in the case you would kill him and the consequences would be serious. A report regarding the incident was immediately submitted by the Assistant Public Prosecutor before the Court concerned. As a result of the aforesaid incident no evidence could be produced against you in court and the case was adjourned. Your audacious and criminal behaviour resulted in obstruction in State work and infused fear in the minds of the public prosecutors.

(3) On the evening of 28-6-1982 at the tea shop of Maqsood Hussain in Mohalla Barwalan P.S. Mughalpura in the city of Moradabad you while talking to 8 or 10 young Mohammedans said that it is a matter of shame for Muslims to bear the playing of loudspeakers at the Hindu temples during the month of Ramzan. You

also told Maqsood Hussain that if Policemen came to his shop and told him not to play the loudspeaker, everyone should collect and give a severe beating to the Policemen and inform you so that you may give them a beating which they would remember for the whole of their lives. You also told the people present at the tea shop that there was no need to be afraid of the Police dogs but to confront them if necessary. This incident has been mentioned in Confidential No. L. I. U. (MDC)-I/82 dated 30-6-1982. Your aforesaid conduct caused widespread fear in the vicinity.

(4) On 1-7-1982 at about 9 A. M. you along with others armed with pistol, knife, Lathi and Dandas entered the house of Mahmood Hussain on Prince Road in Guinya Bagh and indulged in acts of Marpit and destruction and forcibly dragged him from his house on to the road and assaulted him and, told him that although he was a Muslim he was siding with Dr. B. N. Gupta and you would not let him live till the Id festival and that you would only rest after killing and ruining him and his associates and their families. You also proclaimed that you would create great disorder, and massacre would take place in the city similar to one which were engineered by you in 1980 and it would be seen how far the Government and the courts could support him. Thousands of Hindus and Muslims would be killed in the city, Mahmood Husain, Abdul Ghaffar son of Abdul Rahman, Autar and others witnessed the aforesaid incident and Mahmood Husain lodged a report which was registered as case crime No. 173 u/s 147/148/452/427/323/504, I.P.C. at P.S. Mughalpura, which is under investigation. Your aforesaid conduct caused wide spread fear in the vicinity.

6. It was mentioned in the document containing the grounds of detention that the petitioner may make his representation to the Home Secretary through the Jail authorities and the petitioner made such a representation, which was considered and rejected by the State Government as mentioned above.

7. It was contended by the learned Counsel for the petitioner that Article 22(5) of the Constitution requires that the authority making the order of detention must afford an opportunity to the detenu to make his representation to it and to consider it. As in the present case the District Magistrate, who passed the order of detention against the petitioner, neither afforded an opportunity to the petitioner to make a representation to him against the order of detention nor did he consider the representation of the petitioner, there was violation of Article 22(5) of the Constitution. The detention of the petitioner is thus illegal.

8. Article 22(5) of the Constitution is as follows:

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

9. It is true that Article 22(5) of the Constitution does not specifically mention to

whom the representation is to be made and by whom it is to be considered but by necessary implication the representation is to be made to the authority that made the order of detention and the representation is to be considered by that authority. We are fortified in our view by the decision of the Supreme Court in *Pankaj Kumar Chakrabarty and Others Vs. The State of West Bengal*, in which it was observed (at p. 100):

It is true that Clause (5) does not in positive language provide as to whom the representation is to be made and by whom, when made, it is to be considered. But the expressions "as soon as may be" and "earliest opportunity" in that clause clearly indicate that the grounds are to be served and the opportunity to make a representation are provided for to enable the detenu to show that his detention is unwarranted and since no other authority who should consider such representation is mentioned it can only be the detaining authority to whom it is to be made which has to consider it. Though Clause (5) does not in express terms say so it follows from its provisions that it is the detaining authority which has to give to the detenu the earliest opportunity to make a representation and to consider it when so made whether its order is wrongful or contrary to the law enabling it to detain him.

The order of detention against the petitioner was made by the District Magistrate Moradabad and the District Magistrate, directed the petitioner to submit his representation to the Home Secretary State Government and the State Government considered the representation of the petitioner and rejected it as mentioned earlier. The District Magistrate thus neither afforded an opportunity to the petitioner to make his representation to him nor did he consider the same. The question that, however, remains for determination is whether the order of detention passed by the District Magistrate against the petitioner can be deemed to be an order of the State Government. If the order of detention of the District Magistrate can be deemed to have been made by the State Government then the petitioner was afforded an opportunity to make his representation before the detaining authority and the detaining authority considered and rejected the representation of the petitioner as required, by Article 22(5) of the Constitution. But if the order of detention passed by the District Magistrate cannot be deemed to be the order of detention made by the State Government it would follow that the detaining authority neither afforded an opportunity to the petitioner to make his representation to it nor did it consider the representation of the petitioner as required by Article 22(5) of the Constitution. To determine this question the undermentioned sections of the Act are relevant:

2. Definitions. - In this Act, unless the context otherwise requires,

(a) "appropriate Government" means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects to a person detained under such order, the State Government.

3 (2). The Central Government or the State Government may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained,

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (2), exercise the powers conferred by the said sub-section:

(4) When any order is made under this section by an officer mentioned in Sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

(8) Grounds of order of detention to be disclosed to persons affected by the order. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

14. Revocation of detention orders. - (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked or modified -

(a) notwithstanding that the order has been made by an officer mentioned in Sub-section (3) of Section 3, by the State Government to which that officer is subordinate or by the Central Government;

10. u/s 3(2) of the Act power is conferred on the State Government to pass an order of detention to prevent any person from acting in a manner prejudicial to the maintenance of public order. u/s 3(3) of the Act the State Government may by order in writing direct the District Magistrate also to exercise this power if having regard to the circumstances prevailing or likely to prevail in any area within the local limits of his jurisdiction he is satisfied that it is necessary so to do. u/s 3(4) of the Act the District Magistrate when he passes the order of detention is required to report it forthwith to the State Government together with

the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter and the order of the District Magistrate cannot remain in force for more than 12 days unless in the meantime it has been approved by the State Government. u/s 8 of the Act the District Magistrate when he passes the order of detention is required to communicate to the detenu the grounds on which the order of detention has been made and to afford him the earliest opportunity of making a representation against the order to the appropriate Government which means the State Government. u/s 14(1)(a) of the Act the State Government may at any time revoke or modify the order of the District Magistrate. The scheme of the Act, therefore, clearly indicates that there is only a partial and not absolute delegation of power to the District Magistrate by the State Government to detain a person under the Act. In these circumstances, even though the order of detention is passed by the District Magistrate it must be deemed to be the order of the State Government. It may be mentioned that u/s 21 of the General Clauses Act the District Magistrate may revoke the order of detention passed by him, but from this it cannot be inferred that the order of detention passed by him cannot be deemed to be an order of detention made by the State Government.

11. The provisions of the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971 are similar to the provisions of the Act. Sections 2 (c), 3 (1) (a)(ii), 3 (2), 3 (3), 7 (1) and 13 (1)(a) of the Preventive Detention Act, 1950 and Sections 2 (a), 3(1) (a) (ii), 3 (2), 3. (3), 8 (1), and 14 (1) (a) of the Maintenance of Internal Security Act, 1971 are similar to Sections 2 (a), 3 (2), 3 (3), 3 (4), 8 and 14 (1) (a) of the Act.

12. In *Sk. Abdul Karim and Others Vs. State of West Bengal*, the petitioner *Sk. Abdul Karim* was detained by the order of the District Magistrate Hooghly u/s 3 (2) of the Preventive Detention Act, 1950. It was observed:

Apart from these enabling and disabling provisions certain procedural rights have been expressly safeguarded by Clause (5) of Article 22. A person detained under a law of preventive detention has a right to obtain information as to the grounds of detention and has also the right to make a representation protesting against an order of preventive detention. Article 22(5) does not expressly say to whom the representation is to be made and how the detaining authority is to deal with the representation. But it is necessarily implicit in the language of Article 22(5) that the State Government to whom the representation is made should properly consider the representation as expeditiously as possible.

In the present case, *Sk. Abdul Karim* has alleged that his representation was not considered by the State Government before it was forwarded to the Advisory Board. This allegation is not controverted in the counter-affidavit filed On behalf of the respondent.

...Accordingly, the order of detention dated 17th February, 1968 made against petitioner No. 2, *Sk. Abdul Karim* and the subsequent order of the Governor of

West Bengal dated, 24th April, 1968, confirming the order of detention must be held to be illegal and ultra vires and petitioner No. 2 Sk. Abdul Karim was entitled to be released.

13. In Pankaj Kumar Chakrabarty and Others Vs. The State of West Bengal, the petitioners were detained by the order of the District Magistrate Howrah, Midnapur and Purulia u/s 3 (1) (a) (ii) and (iii) read, with Section 3 (2) of the Preventive Detention Act IV, 1950 after making the observations quoted earlier it was also observed:

In conformity with clauses (4) and (5) of Article 22, Section 7 of the Act enjoins upon the detaining authority to furnish to the detenu grounds of detention within five days from the date of his detention and to afford to the detenu the earliest opportunity to make his representation to the appropriate Government.

...Consequently, the petitioners had a constitutional right and there was on the State Government a corresponding constitutional obligation to consider their representations irrespective of whether they were made before or after their cases were referred to the Advisory Board and that not having been done the order of detention against them cannot be sustained.

14. In John Martin Vs. State of West Bengal, the petitioner was detained under the order of the District Magistrate Burdwan under Sub-section (1) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 it was observed (at p. 640 of Cri LJ):

Since A. K. Gopalan's case there has been a long catena of decisions of this Court where the view has consistently been taken that the representation of the detenu must be considered by the State Government. Article 22, Clause (5) provides inter alia that the authority making the order of detention shall afford the detenu the earliest opportunity of making a representation against the order of detention. It does not say as to which is the authority to which the representation shall be made or which authority shall consider it. But Section 8, Sub-section (1) of the Act lays down in the clearest terms which admit of no doubt that the opportunity which is to be afforded to the detenu is to make a representation against the order of detention to the appropriate Government. There it is indisputable on a plain reading of Section 8, Sub-section (1) that the representation that may be made by the detenu is to the appropriate Government and it is the appropriate Government which has to consider the representation. This Court, speaking through Ray, J. (as he then was) affirmed this position in Jayanarayan Sukul Vs. State of West Bengal, and pointed out inter alia that "the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board". So also in Haradhan Saha Vs. The State of West Bengal and Others, this Court speaking through Ray, C, J., observed that "there is an obligation on the State to consider the representation.... Section 8 of the Act which casts an obligation on the State to consider the representation

affords the detenu all the rights which are guaranteed by Article 22(5). The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law...the order of the Government rejecting the representation of the detenu must be after proper consideration." It may be pointed out that both the decisions in Jayanarayan Sukul's case and Haradhan Saha's case were decisions rendered by a Bench of five Judges. We must, therefore, hold that u/s 8 (1) of the Act, it is the appropriate Government that is required to consider the representation of the detenu.

15. It may be mentioned that in the case of Jayanarayan Sukul (supra) the petitioner was detained by the order of the District Magistrate 24 Paraganas u/s 3 (2) of Preventive Detention Act, 1950 and in the case of Haradhan Saha (supra) the constitutional validity of the Maintenance of Internal Security Act, 1971 was challenged.

16. The above mentioned decisions of Supreme Court are not in cases under the Act, but in cases under the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971 whose provisions are similar to the provisions of the Act. It is, however, clear from the above mentioned decisions of the Supreme Court, that when the detention order is passed by the District Magistrate under the Preventive Detention Act or the Maintenance of Internal Security Act, the State Government, and not the District Magistrate, is required to consider the representation of the detenu under Article 22(5) of the Constitution. Further Section 8 of the Maintenance of Internal Security Act, which is similar to Section 8 of the Act, afforded the detenu all the rights which were guaranteed under Article 22(5) of the Constitution. It is true that it was not specifically argued in the above mentioned cases that Article 22(5) of the Constitution required the District Magistrate to consider the representation of the detenu when he made the order of detention, but the law laid down by the Supreme Court is quite clear that the State Government is required under Article 22(5) of the Constitution to consider such representations. This supports the view taken by us that the order of detention passed by the District Magistrate under the Act must be deemed to be an order of the State Government.

17. In Smt. Pushpa Vs. Union of India (UOI) and Others, the petitioner was detained by the order of the Chief Secretary Delhi Administration u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. It was observed (at p. 1318):

It is not in dispute the Chief Secretary to the Delhi Administration, third respondent herein, was specially empowered for the purposes of Section 3, to make a detention order. In exercise of this power the Chief Secretary made the impugned detention order. Clause (5) of Article 22 casts a duty on the authority making an order of detention to communicate to the detenu the grounds on which the detention is ordered and also afford him the opportunity of making a representation against the order. There is nothing in the scheme of Article 22 or

the provisions of the COFEPOSA which requires that the representation ought always to be considered by the appropriate Government notwithstanding the fact that the order of detention has been made by an officer specially empowered in that behalf. Undoubtedly the power to revoke the detention order u/s 11 is conferred on the State Government and the Central Government whenever an order of detention is made by an officer of the State Government but that does not imply that the initial representation which a detenu has a right to make after the grounds of detention are furnished to him, must of necessity be made and considered by the State Government. In fact, the representation can and ought to be made to the detaining authority because it is he who has to apply his mind to the facts of the case and it is he who has furnished the grounds of detention on which he has acted and it is he who has to be convinced that the action taken by him is unjustified and requires reconsideration. After all the purpose of a representation is to convince the authority to consider its decision which has resulted in the detention of the detenu. The representation is not in the form of an appeal to the higher authority and, therefore, ipso facto it must go to the State Government. Undoubtedly it would be open to the detenu to make a representation u/s 11 requesting either the State Government or the Central Government, as the case may be, to revoke the order of detention. But the initial representation that a detenu has a right to make on receipt of the grounds of detention would ordinarily be addressed to the detaining authority because it is that authority which has taken a decision adverse to the detenu and which has to be persuaded to reconsider the same. Therefore, if the detenu made the representation to the third respondent who had passed the detention order it was open to him to consider the same and after applying his mind to accept or reject the same. The failure to submit the representation addressed to the detaining authority and considered by him to the State Government would not vitiate the detention order.

18. In *Vimalchand Jawantraj Jain Vs. Shri Pradhan and Others*, the petitioner was detained by the order of the Secretary to the Government of Maharashtra, Home Department u/s 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. It was observed (at p. 1132 of Cri LJ):

It will, therefore, be seen that one of the basic requirements of Clause (5) of Article 22 is that the authority making the order of detention must afford the detenu the earliest opportunity of making a representation against the order of detention. Now this requirement would, become illusory unless there is a corresponding obligation on the detaining authority to consider the representation of the detenu as early as possible. It could never have been the intention of the Constitution-makers that the detenu should be given the earliest opportunity of making a representation against the order of detention but the detaining authority should be free not to consider the representation before confirming the order of detention. That would render the safeguard enacted by the Constitution-makers meaningless and futile. There can, therefore, be no doubt that the constitutional imperative enacted in Clause (5) of Article 22

requiring the earliest opportunity to be afforded to the detenu to make a representation carries with it by necessary implication a constitutional obligation on the detaining authority to consider the representation as early as possible before making an order confirming the detention.

...It is, therefore, amply clear from the record that the representation of the petitioner was not considered by the 1st respondent before he confirmed order of detention. The 1st respondent thus failed to comply with the constitutional obligation imposed upon him under Clause (5) of Article 22. The subsequent consideration and rejection of the representation could not cure the invalidity of the order of confirmation. The detention of the petitioner must, therefore, be held to be illegal and void.

19. In *Tara Chand Vs. State of Rajasthan and Others*, the petitioner was detained under the order of the Commissioner and Administrative Secretary Home Department Rajasthan u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. It was observed (at p. 1484 of Cri LJ):

It is well settled that in case of preventive detention of a citizen, Article 22(5) of the Constitution enjoins that the obligation of the appropriate Government or of the detaining authority to afford the detenu the earliest opportunity to make a representation and to consider that representation speedily is distinct from the Government's obligation to constitute a Board and to communicate the representation, amongst other materials, to the Board to enable it to form its opinion and to obtain such opinion. In the instant case, there has been a breach of these constitutional imperatives.

In all the above mentioned cases of the Supreme Court under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 the order of detention was passed by the officer specially empowered by the State Government u/s 3(1) of that Act to pass such an order and the Supreme Court held that he was required to consider the representation of the detenu under Article 22(5) of the Constitution and not the State Government. There is no provision similar to Section 3(4) and Section 8 of the Act in the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, If the order of detention is passed by an officer specially empowered by the State Government under that Act, he is not required, to report it forthwith to the State Government and the continuance of his order does not require the approval of the State Government. Further, he is not required to afford the detenu the earliest opportunity of making representation against the order to the State Government. On the other hand, it is clear from Section 3(3) of that Act, which refers to Article 22(5) of the Constitution, that he is required to afford an opportunity to the detenu to make a representation to him and to consider the same. The scheme of that Act, therefore, indicates that the delegation of power by the State Government to the officer specially empowered to detain a person under that Act is not partial but absolute. The order of detention passed by such an officer

cannot be deemed to be an order of the State Government. He is, therefore, required under Article 22(5) of the Constitution and Section 3(3) of that Act to afford an opportunity to the detenu to make a representation to him and to consider that representation. The above mentioned decisions of the Supreme Court are thus clearly distinguishable as the provisions of the Act are materially different from those of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.

20. It must, therefore, be held that the consideration of the representation of the petitioner by the State Government not only satisfied the requirement of Article 22(5) of the Constitution but also of Section 8 of the Act. Article 22(5) of the Constitution was thus not violated by the non-consideration of the representation of the petitioner by the District Magistrate and by his not affording the petitioner an opportunity to make a representation to him against the order of detention.

21. It was next contended by the learned Counsel for the petitioner that all the material, on which the grounds of detention were based, was not supplied to the petitioner along with grounds of detention. There was thus a violation of Article 22(5) of the Constitution as well as of Section 8 of the Act, In support of this contention it was pointed out by the learned Counsel for the petitioner that in the document containing the grounds of detention a list of enclosed documents was given, which was as follows:

1. Copy of report No. 31 dated 5-3-82 P.S. Mughalpura.
2. Order sheet dated 23-6-1982 of the Court of 9th Additional Munsif Magistrate, Moradabad in Case Crime No. 761/81 u/s 147/323 I.P.C.. P.S. Kotwali, District Moradabad.
3. Letter of the L. I. U. No. LIU/MD/ C-I/82 dated 30-6-1982,
4. F.I.R. of case crime No. 173 u/s 147/148/452/427/322/504 P.S. Mughalpura dated 1-7-1982.

22. It is true that it is not mentioned in the aforesaid list that a copy of the report of Laxmi Narain Sharma Assistant Public Prosecutor made to the 9th Additional Munsif Magistrate, Moradabad on 23-6-1982 was also supplied to the petitioner along with the grounds of detention, but in the counter-affidavit filed by the District Magistrate, Moradabad it was stated that a copy of the said report was supplied to the petitioner along with the grounds of detention, The record of the District Magistrate relating to the case of the petitioner, which was produced before us, also shows that a copy of the said report was supplied to the petitioner along with the grounds of detention. This is also evident from the fact that the petitioner has made an endorsement on the office copy of the grounds of detention acknowledging the receipt of three documents other than a copy of F.I.R. No. 31 dated 5-3-1982, a copy of the letter of L. I. U. dated 30-6-1982 and a copy of F.I.R. 128 dated 1-7-1982. Two other documents received by the petitioner were obviously a copy of the grounds of detention and a copy of the

order sheet dated 23-6-1982 of the Court of 9th Additional Munsif Magistrate in case No. 761/81 u/s 147/323, I.P.C. The third document received by him must, therefore, have been the copy of the report of the Assistant Public Prosecutor dated 23-6-1982 made to the 9th Additional Munsif Magistrate, as stated by the District Magistrate in his counter-affidavit. In these circumstances, the contention of the petitioner that a copy of the said report of the Assistant Public Prosecutor was not supplied to him along with the grounds of detention cannot be accepted. It is admitted that copies of the report of Laxmi Narain Sharma Assistant Public Prosecutor dated 23-6-1982 made to the Senior Public Prosecutor and of the report of the S. O., P. S. Mughalpura dated 1-7-1982. which were before the District Magistrate when he passed the order of detention, were not supplied to the petitioner along with the grounds of detention but were supplied to him on 13-8-1982, about a month after he had applied for them, but, in our opinion, the non-supply of these two documents did not cause any prejudice to the petitioner as his right to make an effective representation against the grounds of detention was not affected. It was stated in the report of Laxmi Narain Sharma Assistant Public Prosecutor dated 23-6-1982 made to the Court:

The accused party has threatened me to cause harm and I feel that my life is in danger at Moradabad. I shall not conduct this case.

It is therefore requested that the case may kindly be adjourned for some other date.

In the copy of the order-sheet dated 23-6-1982 of the Court of 9th Additional Munsil Magistrate, in case No. 761/81 u/s 147/323, I.P.C. State v. Mohammad Salim and others, it was mentioned that the case was called out. The accused Mohd. Salim and Ashiq Ali were present in person and Mohd. Islam was represented by his counsel. An application was received on behalf of the Assistant Public Prosecutor in which it was stated that he had been threatened by the accused party, that his life was in danger, that he did not wish to conduct the case on behalf of the prosecution and, that the case be adjourned for another date. The application of the Assistant Public Prosecutor was ordered to be placed on the file and the case was adjourned till 23-7-1982. It is not mentioned in the aforesaid two documents that the accused of the aforesaid case had threatened Laxmi Narain Sharma Assistant Public Prosecutor in the verandah of the court when he was preparing the case, which is mentioned in the second ground of detention. In the report of Laxmi Narain Sharma Assistant Public Prosecutor dated 23-6-1982 made to the Senior Public Prosecutor it was mentioned that, the accused had threatened him in the verandah of the court and he reported the matter immediately to the court. In our opinion, this was a matter of detail and the non-supply of the report of the Assistant Public Prosecutor made to the Senior Public Prosecutor did not cause any prejudice to the petitioner in making his representation. In the report of the Assistant Public Prosecutor made to the court and in the order-sheet of the court it was only mentioned that the accused of that case had threatened Sri Laxmi Narain Sharma Assistant Public Prosecutor

whereas in the grounds of detention it was mentioned that the accused had threatened to kill Laxmi Narain Sharma. This was also mentioned in the report of the S.O. dated 1-7-1982. We are, however, of the opinion that this again is a matter of detail and no prejudice was caused to the petitioner in making his representation by the non-supply of the report of the Station Officer, Mughalpura dated 1-7-1982. It is also not mentioned in the report of Laxmi Narain Sharma Assistant Public Prosecutor made to the court and in the order-sheet of the court:

Your audacious and criminal behaviour resulted in obstruction in State Work and infused fear in the minds of the public prosecutors.

Whereas it is mentioned in the report of the Station Officer, Mughalpura dated 1-7-1982, and in the second ground of detention, but, in our opinion, the non-supply of the aforesaid report of the Station Officer, Mughalpura did not cause prejudice to the petitioner in making his representation as this was a matter of inference drawn from the conduct of the accused of that case in threatening Laxmi Narain Sharma Assistant Public Prosecutor and from the adjournment of that case. The report of the Station Officer, Mughalpura dated 1-7-1982 gives a bio-data of the petitioner including his involvement in a number of other cases and also mentions the incidents mentioned in the grounds of detention. It was, however, stated by the District Magistrate in his counter-affidavit that the detention of the petitioner was based only on the grounds which were supplied to the petitioner. We are of the opinion that in the present case the averment of the District Magistrate deserves to be accepted as the other material against the petitioner contained in the report of the Station Officer, Mughalpura is either not proximate to the time of the passing of the detention order or has any nexus with the object of the Act or does not appear to be supported by any evidence. No prejudice was thus caused to the petitioner by the non-supply of the copy of the report of the Station Officer, Mughalpura dated 1-7-1982 and the report of Laxmi Narain Sharma Assistant Public Prosecutor made to the Senior Public Prosecutor dated 23-11-1982 in making his representation. Article 22(5) of the Constitution and Section 8 of the Act were thus not violated.

23. It was next contended by learned Counsel for the petitioner that the second and third grounds of detention do not relate to public order but only relate to law and order. In our opinion, if a prosecuting officer is threatened by the accused and he withdraws from the case resulting in the adjournment of the case, such an incident is bound to infuse fear in the minds of other prosecuting officers resulting in the work of the court being paralysed. Dislocation of the work of the court affects the public at large and thereby disturbs public order. Ground No. 2, therefore, does not relate to law and order, but it relates to public order. It is clear from a plain reading of the third ground that the petitioner was inciting communal hatred, which affects the public at large and disturbs the even tempo of the life of the community. This ground thus clearly relates to public order. There is thus no force in this contention.

24. It was next contended by learned Counsel for the petitioner that ground No.

1 was stale as it related to an incident which took place on 5-3-1982 whereas the order of detention was passed on 2-7-1982. If this was the only ground, on which the detention order was based, it could be stale, but the detention of the petitioner is not based only on this ground, but is based on the activities of the petitioner between 5-3-1982 and 1-7-1982, The detaining authority was fully justified in basing the detention order of the petitioner on his activities during the aforesaid period. In these circumstances, it cannot be held that the first ground of detention is stale.

25. It was next contended by learned Counsel for the petitioner that the report of Laxmi Narain Sharma Assistant Public Prosecutor dated 23-6-82 and the report of the Station Officer, Mughalpura dated 1-7-1982 were mala fide as he had complained about, their conduct earlier. It was open to the petitioner to state this in his representation, which was considered by the State Government as well as by the Advisory Board. The order of detention of the petitioner cannot, however, be held to be illegal on this ground.

26. It was next contended by learned Counsel for the petitioner that the third representation dated 12-7-1982 addressed to the Chief Minister made on behalf of the petitioner by Sri D.S. Misra learned Counsel for the petitioner has not been considered by the State Government till now. The detention of the petitioner is thus illegal. In support of this contention a certificate from the office of the Senior Superintendent Post Offices, Lucknow Division, Lucknow was filed showing that the said representation was delivered to the Chief Minister, U. P., Lucknow on 14-7-1982, It has, however, been stated by Shiv Prasad Awasthi, Section Officer in the Office of the Chief Minister, in his counter-affidavit that this representation was not received in the office of the Chief Minister and was, therefore, not considered by the State Government. It is noteworthy that in the document containing the grounds of detention it was clearly stated that the petitioner may make his representation to the Home Secretary through the Jail Superintendent. If the third representation made on behalf of the petitioner was sent through the Jail Superintendent and was misplaced or did not reach the Home Secretary, the responsibility was of the State Government. In such a case the non-consideration of the representation would make the detention of the petitioner illegal. But if a representation is sent through Post and does not reach the State Government its non-consideration by the State Government, would not make the detention of the petitioner illegal as the State Government cannot be held responsible if such a representation is not delivered to it. In these circumstances, the non-consideration of the third representation of the petitioner by the State Government does not make the detention order of the petitioner illegal.

27. There is thus no merit in this petition. It is accordingly dismissed.