
(2001) 11 AHC CK 0078
In the Allahabad High Court
Case No : Writ Petition No. 88 (H/C) of 2001

Mohammad Wasim @ Suggi

APPELLANT

Vs

District Magistrate, Sultanpur & Ors.

RESPONDENT

Date of Decision : 22-11-2001

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2001) 11 AHC CK 0078

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

Final Decision : Allowed

Judgement

1. Although, the learned Counsel for the petitioner raised several points to assail the detention order, dated 30122000 under Section 3 (2) of National Security Act, passed by the District Magistrate, Sultanpur, against the petitioner, but the main point which was hampered before us, is that while the petitioner was in detention, the detention order dated 30122000 was served upon him in Jail on the same jail.

2. The petitioner submitted his representation according to the averments contained in the counteraffidavit, on 1212001 which was received in the office of the District Magistrate to the same day but the representation dusted on the Desk of District Magistrate Sultanpur and was forwarded to the State Government as well as the Union Government only on 2112001 and after more than one month, the representation was rejected by the Union Government on 2422001. The representation of the petitioner was sent to the Advisory Board after 31 days.

3. There is no explanation in the counteraffidavit as to why the District Magistrate Sultanpur could not forward the representation of the petitioner to the State Government as well as to the Union Government as soon as he received the same and allowed it to be dusted at his Desk. Furthermore, there is a delay of more than one month in the disposal of the said representation. Besides the above, the representation was sent to the Advisory Board after expiry of 31 days.

4. The only redress which the detenu can seek from the detaining authority as well as the State Government and the Union Government is to prefer a representation under Article 22 (5) of the Constitution of India. The provisions of the Act say that it should be considered and disposed of as soon as possible.

5. We find that the District Magistrate did not forward the representation to the State Government as well as the Union Government after 9 days for which no explanation has been given either from the District Magistrate or the State Government as to why the said delay was caused. Furthermore, the Union Government took more than one month in detaining the representation of the petitioner. It is really surprising that the State Government forwarded the representation of the petitioner to the Advisory Board after 31 days. Such a delay has not been properly explained in the counteraffidavit. Thus, the only guarantee, which the detenu has under Article 22 (5) of the Constitution of India, has not been provided to him as early as possible, which amounted to denial of an opportunity under Article 22 (5) of the Constitution. The detention order is thus, vitiated and cannot be sustained.

6. In view of what has been stated above, the writ petition succeeds. The petitioner shall be released forthwith if not wanted in any other case.