
(2001) 04 AHC CK 0037
In the Allahabad High Court
Case No : Writ Petition No. 616 (H.C.) of 2000

Mohd. Aquil

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2001) 04 AHC CK 0037

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

Final Decision : Disposed Of

Judgement

1. By means of the present writ petition, the petitioner has assailed the order of detention dated 14112000, passed by the District Magistrate, Faizabad, under Section 3(2) of the National Security Act, 1980.

2. The grounds of detention, upon which the order of detention was based, narrate a horrible story. According to the grounds of detention, the petitioner, his family and his friends have been indoctrinated and influenced by dogmatic religious preachings as a result of which he alleged to have placed a bomb in Sabarmati Express train. As a result of explosion of the said bomb the bodies of about ten persons were blown over in pieces. Such an incident also occurred in Aligarh University. The person arrested there disclosed that he and the petitioner were involved in explosion of the bomb in Sabarmati Express train. It has been alleged in the grounds of detention that the petitioner accepted his involvement in the said incident in which ten persons were killed and damage was caused to the railways.

3. In dealing with such matters, it was incumbent upon the District Magistrate to have acted with promptness but it is really unfortunate that the District Magistrate in the present case has acted in a most casual and lethargic manner.

4. The National Security Act was enacted for such cases where national security is in danger due to sabotage and violence. A heavy duty is cast upon the

executive authorities when passing such an order of detention, keeping in view the National Security Act and Article 22 (5) of the Constitution and to see that the detenu, who is detained under National Security Act, is given an opportunity to prefer a representation against his detention before the State Government as well as Central Government under Article 22 (5) of the Constitution of India.

5. Such a representation should be decided without any delay because under Article 22(5) of the Constitution, it should be decided "as soon as possible".

6. It is really unfortunate that large number of Habeas Corpus petitions are allowed only for the reason that the representations are not decided promptly but the officers responsible for latches are never put to tasks. It is the bounden duty of the State to inform the officers, who have been given the power to pass such orders, the requirement of law as well as the precedents of High Court and Supreme Court. But representations are often allowed to dust on the desk of the officers and often are decided belatedly.

7. In the present case, the petitioner has averred in para No. 27 of the writ petition that he represented to the State Government on 4122000, while he was detained in District Jail, Barabanki. The District Magistrate in para 9 of the counteraffidavit, in reply to the averments made in para No. 27 of the writ petition, did not bother to reply the above averment. The District Magistrate has not even stated as to whether any representation was received by her or not. The Deputy Jailor, in para No. 9 of his counteraffidavit has stated that the representation was received by the Jailor on 4122000 which was sent to the State Government, Home Ministry, Government of India and U.P. Advisory Board, Lucknow on 4122000 itself. The Under Secretary, in his counteraffidavit, in para No. 3 stated that the petitioner's representation dated 14122000(4122000) had not been received in the concerned Section of the State Government till then. In para No. 7 of the counteraffidavit filed on behalf of the Central Government similar averment has been made.

8. In view of the denial by the State Government as well as Central Government that they did not receive the representation of the petitioner till the date of filing of the counter affidavit, we summoned the original record as well as Jailor of the District Jail, Barabanki. He appeared before this Court today alongwith the record. The representation of the petitioner finds place on the record which shows that on 4122000 Jailor of the District Jail, Barabanki received the reprcsentat1""! .1 and on the same day it was sent to the District Magistrate, Faizabad by registered post. The receipt of the registered letter and the letter enclosed alongwith the representation find place on the record. We have also perused the relevant registers. The entries, made in "Kadiyana Register" as well as "Dispatch Register" mention that the representation, preferred by the petitioner, was sent to the District Magistrate by registered post. Although acknowledgment due does not find place in the register, but the registry receipt, correct address mentioned in the registers, enclosed letter which was sent alongwith the representation raises a presumption under Section 114 of the Evidence Act that such a

registered envelope was sent to the District Magistrate by the authorities of District Jail, Barabanki. If those representations, which were sent, have been lost in the office of the District Magistrate, then the persons who are responsible for such a lapse may be held responsible. It is amply proved from the record produced before us that jail authorities did not delay in sending the representation and on the same day, they received it, sent the same to the District Magistrate.

9. Assuming that such representation was not received by the District Magistrate even after filing of the writ petition it would have been appropriate for the District Magistrate to have contacted the jail authorities to obtain copy of the representation, after looking into the jail record that such a representation was made, could have immediately sent the representation to the State Government and Central Government for its disposal. But the District Magistrate slept over the matter and did not care to find out the fate of the representation. It is for the State Government to look into the matter and take appropriate action for which no direction is necessary.

10. We are definitely of the view that the representation submitted by the petitioner on 4122000 was not attended to by the authorities concerned as soon as possible, as provided under clause (5) of Article 22 of the Constitution of India. Non disposal of the representation is against the mandate of the Constitution of India, contained in Article 22(5) of the Constitution of India. Hence, for that reason the further detention of the petitioner is totally vitiated. As we allow this writ petition only for that reason, we have not delved into the other grounds which have been taken in the writ petition and agitated before us.

11. In view of what has been stated herein above, the writ petition in the nature of Habeas Corpus, filed by the petitioner, is allowed. A writ in the nature of mandamus is issued commanding the respondents to set the petitioner at liberty forth with, unless wanted in any other case.

12. The record of the District Jail, Barabanki, which was summoned earlier, is returned to the Jail authorities.