

**(2001) 05 AHC CK 0011**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 49 (H/C) of 2001**

Mohd. Kaleem Akhtar

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 03-05-2001

**Acts Referred:**

Constitution of India, 1950 — Article 22(5)  
Criminal Procedure Code, 1973 (CrPC) — Section 161  
Explosive Substances Act, 1908 — Section 3, 4, 5  
National Security Act, 1980 — Section 3(2)  
Penal Code, 1860 (IPC) — Section 121, 121A, 122, 123, 124

**Citation :** (2001) 2 ACR 1701

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

**Bench :** Division Bench

**Advocate :** A.R. Siddiqui, for the Appellant; C.S.C., S.C.G. and S.C., for the Respondent

**Final Decision :** Dismissed

## Judgement

S.H.A. Raza and R.D. Shukla, JJ.—The National Security Act, 1980, was enacted considering the prevailing situation of communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues, it was considered necessary that the law and order situation in the country is tackled in a most determined and effective way. The anti-social and anti-national elements including secessionist, communal and pro-caste elements and also other elements who adversely influence and affect the services essential to the community pose a grave challenge to the lawful authority and sometimes even hold the society to ransom.

2. Considering the complexity and nature of the problems, particularly in respect of defence, security, public order and services essential to the community, it was felt that the administration would be greatly handicapped in dealing effectively with the same, in the absence of powers of preventive detention. The National

Security Ordinance, 1980, was, therefore, promulgated by the President on September 22, 1980:

Thereafter the Ordinance was replaced by a bill, which was passed by the Parliament.

3. The Petitioner by means of the order passed by the District Magistrate, Lucknow dated 17.11.2000, was detained u/s 3 (2) of the National Security Act. He has assailed the order passed by the District Magistrate by filing the present writ petition.

4. The grounds of detention disclosed in short, are that on 15.8.2000 when the entire country was celebrating the Indian Independence Day, a bomb was exploded near Sahkarita Bhawan which is situate on Mahatma Gandhi Marg, Lucknow, few paces away from the Secretariat of the State.

5. Similar incident had occurred at two other different places: one in Agra on 9.8.2000, whereby three persons who were alleged to have been carrying bomb, died due to explosion and secondly, a bomb was exploded in Sabarmati Express at Rauza Railway Station, district Faizabad on 14.8.2000, as a result of which the entire compartment was blown off in which about 10 persons died and 40 injured. The police undoubtedly became active and investigation was started about the series of the explosions, which shook the State in the second week of August, 2000.

6. Two persons Syed Abdul Mubin alias Abdul Mubin and Maroof Ahmad were arrested at Agra. They made statements that the explosion on Independence Day was carried on by the Petitioner. They further stated that aforesaid Syed Abdul Mubin alias Abdul Mubin and Maroof Ahmad belong to a Students Islamic Movement of India (S.I.M.I.) Organization which has links with an Organisation of Hizbul Mujahiddin which is banned in Kashmir which has strong connections with I.S.I. which is an Intelligence Agency of Pakistan.

7. The Petitioner was accordingly arrested and a criminal case under Sections 121/121A/122/ 123/124/124A, I.P.C. and Section 3 of Explosive Substances Act, was registered against him. The District Magistrate, Lucknow, after being satisfied that the Petitioner's activities which were carried on by him, had jeopardised the national security and integrity of the nation and was a threat to the communal harmony. As the Petitioner has preferred an application for release on bail which was being pursued by the other pairokars and there existed possibility of his being released on bail. Hence after the release, there is a likelihood of Petitioner's being indulging into the same activity.

8. The scope of judicial review where the provisions of Section 3 (2) of the National Security Act is involved, is only to the extent that as to whether the subjective satisfaction arrived at by the District Magistrate in passing the detention order, is based on relevant material or not. The Court cannot substitute its own opinion about the subjective satisfaction arrived at by the District

Magistrate. With this prelude, we have to examine the case of the Petitioner.

9. To assail the order of detention passed against him, the learned Counsel for the Petitioner has raised the following pleas:

Firstly, taking a cue from the statement of the S.S.P. Sponsoring Authority as well as the police inspector, it was urged that the police inspector in his report has stated that the Petitioner is a notorious terrorist who is a member of a student organization known as Student Islamic Movement of India (S.I.M.I.), which has its connections with Hizbul Mujahiddin, a banned Organization in Kashmir which has strong connections with the Intelligence Agency of Pakistan known as I.S.I. The S.S.P. who is sponsoring authority, stated that the Petitioner is a man of the criminal nature. He has connections with terrorist organisation like Hizbul Mujahiddin, which is a banned organisation in Kashmir and under the behest of one terrorist, the Petitioner indulged into such activities. Neither the said material was produced before the District Magistrate nor the copy of such material regarding the antecedents of the Petitioner or his activities carried on, by him and the members of the said Organisation were placed before the District Magistrate nor copies of such material was given to the Petitioner to make an effective representation. Thus, the Petitioner was denied his right to make an effective representation as contained in Article 22(5) of the Constitution of India.

10. Secondly, the Petitioner sent a representation through the Jail Authority to the District Magistrate on 4.12.2000, which was received in the office of the District Magistrate, Lucknow on 5.12.2000, but it was sent to the State Government on 11.12.2000. The delay of 5 or 6 days in between 5th December, 2000 to 11th December, 2000, has not been properly explained. Hence the delay in disposal of the representation of the Petitioner has vitiated the detention order, in view of the provisions contained in Article 22(5) of the Constitution of India.

11. Thirdly, taking a cue from the statement of the S.H.O., police station, Kaiserbagh, Lucknow dated 10.11.2000, wherein, he pointed out that the Petitioner has been trying to be released on bail in the High Court particularly when the notice of the bail application was given only on 13.11.2000, the District Magistrate had no material except the report submitted by the S.H.O. police station, Kaiserbagh, Lucknow, that there existed the possibility of the Petitioner's being released on bail. Hence the District Magistrate could not have passed the order of detention on 17.11.2000. There existed no other material before the District Magistrate, Lucknow, except the report of the S.H.O. police station, Kaiserbagh, Lucknow. Hence the subjective satisfaction arrived at, by him, in passing the order of detention that the Petitioner might be released on bail and again indulge into anti-social activities, was based on extraneous consideration, which is not germane to the provisions of the Act.

12. Fourthly, it was pointed out that the relevant material was the confessional statement of Syed Abdul Mubin alias Abdul Mubin and Maroof Ahmad, which they made after their arrest at Agra that the explosion which took place at Sahkarita

Bhawan, Lucknow, was the handiwork of the Petitioner, was neither placed before the District Magistrate, Lucknow, nor a copy of that statement was furnished to the Petitioner. From the aforesaid fact, the learned Counsel for the Petitioner submitted that the subjective satisfaction of the District Magistrate, Lucknow, was not based on relevant material and while passing of the order of detention, the District Magistrate, Lucknow, based his satisfaction on extraneous material and consideration and that absence of any such material if he passed the order of detention on the basis of confessional statement of Syed Abdul Mubin alias Abdul Mubin and Maroof Ahmad, then the Petitioner ought to have been furnished the copy of their confessional statement to make an effective representation. As the said relevant material was not furnished, the Petitioner could not make an effective representation to the State Government or the Central Government.

13. As far as the first contention of the learned Counsel for the Petitioner is concerned, the learned Counsel for the Petitioner placed upon several decision of the High Court as well as the Hon''ble Supreme Court. We need not deal with the decision of the High Court, because all those decisions are based on the observations of the Hon''ble Supreme Court.

14. In *Vashishth Narain Karwaria v. State of U.P. and Anr.* 1999 SCC 372, wherein the station officer in his letter to the S.S.P. alleged that the Petitioner was a hardened criminal and had a gang which committed heinous crimes by which an atmosphere of terror and fear prevailed in the public. It was further indicated that the Karwaria had committed heinous crimes and many other crimes, which were registered against him at various police stations. As no material was supplied to the District Magistrate regarding the antecedents of Karwaria, that he was a hardened criminal and was involved in several criminal activities, Hon''ble the Supreme Court observed that, such an irrelevant material might have swayed the mind of the District Magistrate while passing the order of detention.

15. As far as the case of the Petitioner is concerned, neither the S.H.O. police station, Kaiserbagh, Lucknow, nor the S.S.P. stated about the antecedants of the criminal activities carried on by the Petitioner. What they actually reported to the District Magistrate was that the Petitioner belongs to Student Islamic Movement of India (S.I.M.I.) which has close connections with Hizbul Mujahiddin, a banned terrorist organisation operating in Kashmir and at the behest of one Gulzar Kashmiri, the Petitioner carried on such prejudicial activities. They have only indicated the criminal nature of the Petitioner without referring to his criminal antecedants. If from the material which was produced before the District Magistrate, Lucknow, he was satisfied that such student organisation having connections with a banned terrorist organisation which has a nexus with Intelligence Agency of Pakistan, then it cannot be said that the subjective satisfaction arrived at by the District Magistrate was based on irrelevant or extraneous consideration.

16. If there would have been a rivalry between two groups of persons and one

person belonging to another group, would have thrown a bomb as a result of which some person of the other group, would have died, then the Court might have taken a view that such incident which had occurred, pertained to law and order problem, having no nexus with public order.

17. The perception of this Court in dealing with such cases differs from one case to another. Actually, the incident of the bomb explosion took place on Independence Day, at Sahkarita Bhawan, few paces away from the Secretariat which is also very near the Governor House where the Flag Hoisting Ceremony and other festivities take place in the morning hours. The explosion of a bomb, at such a place was intended to create a feeling of fear and terror among the people at large and dignitaries who were participating in the Independence Day celebration.

18. It was contended as to why the date 15th August , 2000, was chosen for explosion of bomb on Mahatma Gandhi Road, near the Secretariat. The intention was obvious that in such a high protected security zone particularly when flag hoisting ceremonies and other ceremonies/ festivities were going on, was to create an atmosphere that even in such an area, such terrorist activities could be carried on. The intention was to give a message in this country and abroad, that even on such a day, such an incident could take place which may encourage the other terrorists or groups of terrorists into indulging the cessational activities. The decision of Hon''ble Supreme Court in Karwaria (supra) stands on different footings. The contention of the learned Counsel for the Petitioner is misconceived.

19. As far as the next contention that the confessional statement of Syed Abdul Mubin alias Abdul Mubin and Maroof Ahmad which according to the Petitioner, is most material document, was neither placed before the detaining authority nor the copies were furnished to the Petitioner is concerned, we have to examine as to whether material which were available before the District Magistrate, was sufficient to arrive at subjective satisfaction that the Petitioner was indulging into such secessionist and anti-social prejudicial activities.

20. If the subjective satisfaction of confessional statement made by Syed Abdul Mubin alias Abdul Mubin and Maroof Ahmad was placed before the District Magistrate, then it has to be considered as to whether that was not a sufficient material upon which the District Magistrate could arrive at his subjective satisfaction to detain the Petitioner.

21. One Har Prasad Singh, son of Raja Ram, resident of 674/6, police station Sadar Bazar, district Agra, in his statement u/s 161, Cr. P.C. in Case Crime No. 988 of 2000 u/s 4/5 Explosive Substances Act, stated that he was present when Syed Abdul Mubin alias Abdul Mubin made a statement that he was a member of the said student organisation and that he was instrumental in giving bomb to Mohd. Kaleem Akhtar the Petitioner, who exploded the bomb near Sahkarita Bhawan. The S.H.O. of police station, Kaiserbagh, Lucknow, Sri Naurang Singh in his statement recorded u/s 161, Cr. P.C., stated that when Syed Abdul Mubin

alias Abdul Mubin and Maroof Ahmad were interrogated, then they disclosed the names and addresses of the active members of the Student Islamic Movement of India (S.I.M.I.) Organisation. Regarding the bomb explosion in Lucknow, Abdul Mubin disclosed to him that Kaleem Akhtar the Petitioner, was assigned the responsibility of exploding the bomb. Thus, it is evident that the confessional statements made by Syed Abdul Mubin alias Abdul Mubin and Maroof Ahmad was available with the detaining authority and on the basis of the material before him, the copies of such statements were admittedly given to the Petitioner, was sufficient material for the District Magistrate to arrive at a subjective satisfaction that such a prejudicial activity was carried on by the Petitioner, at the behest of Gulzar Ahmad, who is a terrorist, and a member of a banned organisation in Kashmir, having a nexus with the Intelligence Agency of Pakistan. Hence, it cannot be said that there existed no material or insufficient material before the District Magistrate to pass the order of detention.

22. It also cannot be said that while arriving at the subjective satisfaction to detain the Petitioner, the District Magistrate has taken into account certain extraneous material on record. As the copies of the statement of Har Prasad, Inspector Incharge of Sadar Bazar, Agra in which substance of the confessional statement of Syed Abdul Mubin alias Abdul Mubin and Marrof Ahmad were indicated, were given to the Petitioner, it cannot be said that the Petitioner, in anyway, was prejudiced, in not making an effective representation, either to the State Government or to the Central Government and that he was denied an opportunity as contained in Article 22(5) of the Constitution of India.

23. No doubt the delay in disposal of a representation preferred by a person detained under the National Security Act vitiates the order of detention, which is the only opportunity available to a person who is detained without trial. If the delay has not been properly explained then, the detention order may be declared to be vitiated.

24. In the instant case, admittedly, the Petitioner sent his representation through the District Jail Authorities to the District Magistrate on 4.12.2000 which was received in the office of the District Magistrate on 5.12.2000 and it was forwarded by the District Magistrate to the State Government on 11.12.2000, and, on 15.12.2000, the office of the District Magistrate sent the representation to the Central Government. The State Government on receipt of the representation rejected the same on 13.12.2000, while the Central Government rejected the same on 19.12.2000.

25. It was contended by the learned Counsel for the Petitioner that when the District Magistrate received the representation, admittedly on 5.12.2000, he could have forwarded the same to the State Government either on the same day or on the next day, but it was sent to the State Government after lapse of five days. He also asserted that there existed no justification for the District Magistrate to have waited till 12.12.2000, in forwarding the representation of the Petitioner to the Central Government, meaning, thereby; that there was a delay

of 6 or 7 days in forwarding the representation of the Petitioner by the District Magistrate, through the Central Government.

26. It has been the consistent view of this Court as well as the Hon"ble Supreme Court in various pronouncements, that delay in the disposal of the representation is not always fettered if the same is properly explained. Often the delay of 4 or 5 days in disposal of the representation when no sufficient explanation for such delay is made out, the Court may order for the release of the detenu, but in certain cases where there was delay in disposal of the representation even for a month or so, if has been properly and satisfactorily explained, then that delay was not considered to be fatal for deciding as to whether for that reason, the detention order may be said to be vitiated.

27. It is not the case of the Petitioner, that on receipt of the representation either the State Government or the Central Government did not act expeditiously and caused delay in disposal of the representation. The grievance of the Petitioner is limited only to the extent that the representation of the Petitioner dusted on the desk of the District Magistrate for 4-7 days.

28. In the counter-affidavit, the District Magistrate explained that his office received the representation of the Petitioner, which was addressed to the State Government as well as the Central Government on 5.12.2000. In the said representation, the Petitioner had taken a ground, that on the day when the explosion took place, near Sahkarita Bhawan, he was in Kargil and not in Lucknow. It was contented by the learned Government advocate that on account of the plea, which was taken by the Petitioner, the District Magistrate was bound to make certain inquiries before referring the representation to the State Government and to the Central Government. As soon as the necessary information were collected, he on 8.12.2000, obtained comments of the sponsoring authority. The comments were received on 8.12.2000 and as 10.12.2000 was holiday, the representation of the Petitioner was sent to the State Government along with the comments of the sponsoring authority on 11.12.2000.

29. In the aforesaid situation, we are definitely of the view that there was no delay in the disposal of the representation. This plea of the learned Counsel for the Petitioner in that regard has no merit.

30. As far as the last argument of the learned Counsel for the Petitioner is concerned, is that on 10.12.2000, the Inspector Incharge of Police Station Kaiserbagh, Lucknow, sent a report that the Petitioner was making efforts to be released on bail, even the bail application was not preferred. Hence, there was no material before the District Magistrate to arrive at a subjective satisfaction that the Petitioner was likely to be released on bail and hence the District Magistrate on the basis of that extraneous material, which was placed before him, i.e., the report of the Inspector of Police Station Kaiserbagh, Lucknow, passed the detention order.

31. Actually the notice of the writ petition to the Government advocate in the High Court was given on 13.11.2000. The District Magistrate in the para 4 (ii) of his counter-affidavit stated that he was satisfied on the material placed before him that there was likelihood of the Petitioner to come out from the jail on bail, when his bail application in substantive offence in Case Crime No. 213 of 2000, police station Kaiserbagh, Lucknow after being rejected by the Sessions Court, was intended to be filed in the High Court, through his counsel, Javed Murtaza advocate by giving notice to the Government advocate on 13.11.2000. The copy of the bail application given to the Government advocate was placed before him and, therefore, he was satisfied that effective efforts were being made by the Petitioner to be released on bail. It was also averred by the District Magistrate that, instead of giving supplementary report by Sri O. P. Tripathi, S.H.O. police station Kaiserbagh, Lucknow, who mentioned the fact of giving notice of the bail application to the Government advocate and then he was satisfied on the day of passing the order of detention i.e., 17.11.2000, that there was likelihood of the Petitioner to be released on bail. It is thus, evident that there was sufficient material before the District Magistrate to arrive at a conclusion that the Petitioner was making efforts to be released on bail and after his release, he may indulge into such prejudicial activities again.

32. In view of the aforesaid reasons, it cannot be said that there existed no sufficient material before the District Magistrate that there was any likelihood of the Petitioner being released on bail and the Petitioner will repeat such prejudicial activities in future after his release on bail.

33. In view of what, we have indicated hereinabove, we find no merits in the writ petition.

34. It is accordingly dismissed.