

(2003) 05 AHC CK 0089

In the Allahabad High Court

Case No : Writ Petition (Habeas Corpus) No. 49 of 2003

Mohd. Rafiq (in Jail)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-05-2003

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2)

Citation : (2004) CriLJ 1546

Hon'ble Judges : Vishnu Sahai, J;A. Mateen, J

Bench : Division Bench

Advocate : S.P. Pandey, for the Appellant; S.K. Singh, Assistant Public Prosecutor for Nos. 1 to 3, B.B. Saxena and Union of India, for No. 4, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this writ petition, preferred under Article 226 of the Constitution of India, the petitioner-detenu Mohd. Rafiq has impugned the order dated 16-10-2002 passed by Mr. Onkar Nath Mishra, District Magistrate. Siddharth Nagar, (opposite party No. 2) detaining him u/s 3(2) of the National Security Act.

The detention order, along with the grounds of detention, which are also dated 16-10-2002, was served on the petitioner-detenu on 16-10-2002 itself and their true copies have been annexed as Annexures 1 and 2 respectively to the writ petition.

2. The prejudicial activities of the petitioner-detenu impelling the second opposite party to issue the impugned detention order against him, are contained in the grounds of detention. Since, in our view, a reference to them is not necessary for the adjudication of the pleadings contained in paragraphs 10 and 11 of the petition and ground "N" of paragraph No. 17 thereof, on which, alone this petition deserves to succeed, we are not adverting to them.

3. We have heard learned Counsel for the parties. The substance of the pleadings contained in paragraphs 10 and 11 of the petition and the ground "N" of paragraph 17 thereof, is that although the petitioner made a representation before the authorities i.e. the detaining authority, State Government and Central Government on 29-10-2002, but the same was not decided by them till 30-11-2002 resulting in the impugned detention order being rendered violative of Article 22(5) of the Constitution of India. However, during the course of his submission learned Counsel for the petitioner - detenu restricted this challenge to the delay in disposal of the representation by the Central Government. He also highlighted the inordinate delay on its part in communicating to the petitioner detenu, the result of the disposal of the representation, namely, rejection. He contended that although no pleading has been made in the petition in respect of the delay in communication of rejection to the petitioner-detenu but since this point is manifest from the return filed on behalf of Central Government by Mr. Ramesh Kumar it is open to him to canvass it, in view of the ratio laid down in para 2 of the AIR 1981 SC 1126 : 1981 Cri LJ 750 (Harish Pahwa v. State of U.P.) wherein it has been held that the principle of strict pleadings does not apply to habeas corpus petitions and if the material for adjudication of a ground is available absence of its being pleaded would be no impediment in the way of the Court in considering it.

4. The averments contained in paragraphs 10 and 11 of the petition and the ground N of paragraph 17 thereof, have been replied to in paragraphs 6, 7, 8, 9, and 10 of the return of Mr. Ramesh Kumar, under Secretary, Ministry of Home Affairs, Government of India, New Delhi. A perusal of said paragraphs would make it manifest that the detenu's representation dated 30-10-2002, along with parawise comments of the detaining authority was received by Central Government in the Ministry of Home Affairs, on 5-11-2002 and in the concerned desk of Ministry of Home Affairs on 7-11-2002 through the District Magistrate Sidharth Nagar. On 13-11-2002, it was put up before under Secretary, Ministry of Home Affairs, who on the said date along with his comments forwarded it to the Joint Secretary, Ministry of Home Affairs, who also on the said date forwarded it to Union Home Secretary (who had been delegated powers by the Union Home Minister to decide such cases), who on the following date i.e. on 14-11-2002, rejected it. In paragraph 8 of the affidavit it has been mentioned that thus there was no delay in taking the decision on the representation of the detenu. In paragraph 9 of the return it has been mentioned that the petitioner - detenu was informed of the decision of rejection by the Central Government through a crash wireless message dated 20-11-2002. In paragraph 10 of the return it has been averred that in the circumstances there has been no delay in communicating the result of the disposal to the detenu.

5. We have examined the averments contained in the rival return and are constrained to observe that there has been unexplained delay both in the disposal of the representation and in communication of the result of its rejection to the detenu. We have seen that the representation of the detenu was received

in the concerned desk of Ministry of Home Affairs on 7-11-2002 and it was only on 13-11-2002 that it was put up before the Under Secretary, Ministry Home Affairs. The only explanation furnished is that 9th and 10th November, 2002 were holidays.

Even if, we accept the said explanation there is no explanation as to why the representation was not put up before the under Secretary. Home Affairs, on 8-11-2002, 11-11-2002 and 12-11-2002.

Again, in our view, there is no explanation for delay of six days in communicating to the detenu, the factum of rejection of his representation. We have seen that his representation was rejected on 14-11 -2002 but he was only informed by the Central Government on 20-11-2002. No reason for this inertia of six days on the part of the Central Government in informing the detenu, the result of rejection, has been furnished in the return of Mr. Ramesh Kumar.

6. The Supreme Court in the oft-quoted case of Harish Pahwa Vs. State of U. P. and Others, while dealing with the question of delay in disposal of the representation in a preventive detention u/s 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (52 of 1974), in paragraph 3 has observed thus :

"We would emphasise that it is the duty of the State to proceed to determine representations of the character abovementioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (un-less it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenut."

7. A perusal of the aforesaid paragraph which we have extracted from Harish Pahwa Vs. State of U. P. and Others, would show that the law laid down by the Apex Court is that not only the representation has to be dealt with the utmost expedition I.e. dealt with continuously (unless it is absolutely necessary to wait for assistance in connection with it) until a final decision is taken but the result of its disposal has to be communicated to the detenu with the same expedition.

8. It would become manifest from Harish Pahwa Vs. State of U. P. and Others, that there should be continuity both in relation to the disposal of the representation as also in detenu being conveyed, the result of disposal. The same, in our view, is lacking in the instant case, resulting in the continued detention of the petitioner-detenu being rendered bad and unsustainable in law.

9. In the result, we allow this writ petition; and direct that petitioner-detenu Mohd Rafiq be released forthwith unless wanted in some other case.