
(2002) 10 AHC CK 0124
In the Allahabad High Court
Case No : Writ Petition No. 392 (H/C) of 2002

Mohd. Yusuf alias Munday	Vs	APPELLANT
Union of India & Ors.		RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2002) 10 AHC CK 0124

Hon'ble Judges : Khem Karan, J and R.C.Pandey, J

Final Decision : Disposed Of

Judgement

1. Heard Sri Krishna Kumar Singh learned Counsel for the petitioner, Sri S.K. Singh learned Counsel for the State and its authorities and Sri B.B. Saxena, learned Counsel for the Union of India.

2. This habeas corpus petition is directed against the detention order dated 2652002 passed by District Magistrate Gonda, under Section 3(2) of National Security Act, 1980 and also against the continued detention on the basis thereof.

3. In the grounds of detention, incident dated 2632002 giving rise to Crime No. 69 of 2002, under Section 420 of IPC and under Sections 3, 5/8 Cow Slaughter Act and under Section 3(1) of U.P. Gangster Act has been made the sole basis for detaining the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. It has been stated that on 2632002 the petitioner was found slaughtering cows and was also found in possession of 10 Kgs. of beef, while his application for bail was pending before the competent Court the sponsoring authority namely, the police mooted the proposed dated 952002/2152002 to the District Magistrate, for detaining the petitioner under the Act of 1980 as it apprehended that if released on bail, the petitioner would further indulge activities prejudicial to the maintenance of public order. The detention order was approved by the State Government and after the opinion of the Advisory Board the State Government passed an order on 472002, under Section 12 (1) for detaining the detenu for the period of 12 months.

4. Learned Counsel for the petitioner has contended that the continued detention of the petitioner is bad in law for want of informing him of his right to make a representation to the State Government through the detaining authority namely District Magistrate. He says that in the grounds, it has been said that if the detenu wants to make any representation to the detaining authority, he can do so. His contention is this information is not the sufficient compliance of law in absence of information to him that he has right to make such representation to the detaining authorities. Learned Counsel argues that to tell the detenu that he may make representation to the detaining authority, cannot be said to be information to him that he has such a right to make representation. In support of his contention he has referred to a Division Bench case of this Court to Mohd. Shakeel v. State of U.P. and others, 2002(2) JIC 412 (All) (LB). Learned Counsel for the State as well as the learned Counsel for the Union of India have not been able to show any law contrary to the Division Bench decision in the aforesaid case. We have perused the grounds of detention. It is true that the simple information to the detenu was that he could make representation to the detaining authority, before the detention was approved by the State Government. In these grounds, the detenu has not been informed that he has a right to make such representation to the detaining authority before the detention order was approved by the State Government. So, we are of the view that the continued detention of the petitioner is vitiated for the aforesaid reasons.

5. His second contention is that the representation dated 66 2002 given to the State Government against the detention order and against the continued detention was not disposed of with all possible promptitude and there was unexplained delay in disposal of the representation. According to him, the representation dated 662002 reached the District Magistrate on the same date, but he unnecessarily wasted time upto 1062002 by call upon the report from the sponsoring authority namely, the police. His submission is that calling for the comments or report from the sponsoring authority was not required as all the material was before the detaining authority. He says that time consumed by the District Magistrate in calling for the comments of the sponsoring authority on the representation dated 662002 cannot be excluded. He has cited Sant Singh v. Distt. Magistrate, Varanasi and others, 2000 (1) JIC 438 (All). In Sant Singh's case this Court has taken a view that calling for report from the sponsoring authority is a lame excuse and the same cannot be permitted to waste the time in processing of the disposal of the representation.

6. We are of the view that the District Magistrate unnecessarily wasted time from 662002 to 1062002 by calling for the report and awaiting the comments from the sponsoring authority. Thus, there was an unexplained delay in processing of the representation of the petitioner given to the State Government and this also vitiated continued detention.

7. Though the learned Counsel for the petitioner has tried to say that there was also delay on the part of the Union of India in disposing of the representation of

the detenu but, we do find that it cannot be said that there was unexplained delay at that stage. In counteraffidavit filed by the Union of India, the period right from the receipt of the representation up to the date of the disposal of the representation has properly been explained.

8. In view of the conclusion drawn above, the writ petition deserves to be allowed. So the writ petition is allowed and continued detention of the petitioner pursuant to the detention order dated 2652002 is held to be in law. It is directed that the petitioner shall be released forthwith if not wanted in any other case.

9. No order as to costs.