
(1981) 09 AHC CK 0010

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 10153 of 1981

Mumtaz Khan

APPELLANT

Vs

Distt. Magistrate and Another

RESPONDENT

Date of Decision : 21-09-1981

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5), 226
National Security Act, 1980 — Section 3, 8, 8(1)

Citation : (1981) ACR 459

Hon'ble Judges : M. Wahajuddin, J;H.N. Seth, J

Bench : Division Bench

Advocate : Murli Dhar, for the Appellant;

Judgement

H.N. Seth, J.—By means of this writ petition Under Article 226 of the Constitution, Petitioner Mumtaz Khan Challenges the validity of his detention authorized by the District Magistrate, Moradabad, vide his order dated 6th July, 1981 passed under the provisions of Section 3 of the National Security Act. In pursuance of the impugned order the Petitioner was arrested on 7th July, 1981. He filed the present writ petition challenging the validity of his detention on a number of grounds. While contesting the petition, the District Magistrate, Moradabad, filed a counter-affidavit, in paragraph 8 whereof he mentioned that the grounds for Petitioner's detention were served upon him on 16th July, 1981. Taking a case from the aforesaid averments made in the counter-affidavit of the District Magistrate, the learned Counsel appearing for the Petitioner questioned the validity of his detention also on the ground that there has been a contravention of Section 8 of the National Security Act rendering the Petitioner's continued detention invalid.

Section 8(1) of the Act reads thus:

When a person is detained in pursuance of detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later

than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

2. Section clearly envisaged that the grounds on which a person has been detained have to be served upon him within a period of five days and is only in exceptional circumstances and for reasons to be recorded in writing that the period within which grounds for detention are to be served could be extended up to 10 days. It is clear that when the detaining authority delays in furnishing grounds of detention of a detent, it denies him of an opportunity of making the representation against the detention at the earliest as contemplated by Article 22 of the Constitution. We find that in this case while filing the counter-affidavit the District Magistrate apart from saying that in the very special circumstances that prevailed in the District, the grounds of detention could be served on the Petitioner only on 9th day after his detention, did not either specify the reasons which prevented him from serving the grounds within a period of five days as contemplated by Section 8 of the Act. He also did not clearly state that there exists any order in writing mentioning the reasons why the grounds could not be so served upon the detent within the period of five days. Although the file of the District Magistrate was available with the learned Additional Government Advocate representing the Respondents, he was not able to bring to our notice any order in writing mentioning the reasons why the District Magistrate was prevented from serving the grounds of Petitioner's detention within a period of five days. Thus there has been a contravention of the provision of Section 8 of the National Security Act leading to the violation of the provisions contained in Article 22(5) of the Constitution.

3. The continued detention of the Petitioner in pursuance of the District Magistrate's order dated 6th July 1981, therefore, cannot be countenanced. In this view of the matter it is not necessary for us to consider the other objections regarding the validity of the Petitioner's detention raised in the writ petition.

4. The writ petition, therefore, succeeds and is allowed. The continued detention of the Petitioner, in pursuance of the District Magistrate's order dated 6th July, 1981 is held to be illegal. The Respondents are accordingly directed to set the Petitioner at liberty forthwith unless his detention is otherwise in connection with some other case.