

(2010) 09 AHC CK 0615
In the Allahabad High Court
Case No : Habeas Corpus W.P. No. 5246 of 2010

Prabhu Nath

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

National Security Act, 1980 — Section 12(1), 3(2)
Penal Code, 1860 (IPC) — Section 489B, 489C

Citation : (2011) 3 ACR 3143

Hon'ble Judges : Yogesh Chandra Gupta, J; Poonam Srivastav, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mrs. Poonam Srivastav and Yogesh Chandra Gupta, JJ.—Heard Sri Bishram Tiwari, counsel for the petitioner, Sri Sudhir Mehrotra, advocate appearing on behalf of respondent Nos. 1, 2, 3 and 5 and Sri N. I. Jafri, advocate on behalf of Union of India respondent No. 4.

2. Counter and rejoinder-affidavits have been exchanged. The habeas corpus petition is taken up for final hearing.

3. The petitioner/detenu has challenged the order of detention dated 11.11.2009, passed by the District Magistrate, Deoria, respondent No. 2 u/s 3(2) of National Security Act, 1980 (hereinafter referred to as N.S.A.) and consequential order dated 4.1.2010 confirming the detention order u/s 12(1) of the N.S.A.

4. The petitioner is involved in Case Crime No. 1407 of 2009. under Sections 489B and 489C, I.P.C. since he was apprehended with three notes of (Rs.) 500 denomination which were counterfeit notes. The detenu was granted bail by this Court vide order dated 23.10.2009 in Criminal Misc. Bail Application No. 27630 of 2009 Prabhu Nath v. State of V. P. Copy of the said order is annexed as Annexure-8 to the writ petition. The District Magistrate while detaining the

petitioner, has invoked the provisions of N.S.A. as a preventive measure to ensure that the counterfeit notes is not in circulation which is detrimental to the economy of the State and also effects essential services. The apprehension of the District Magistrate on the basis of police report forwarded to him was that in case detenu is set at liberty, there are chances of repeating the offence in future. Thus in the interest of public and society and national economy his detention is necessary.

5. The petitioner claims that he gave a representation on 17.11.2009 to the Advisory Board, President of India, Home Secretary, Government of U.P. and Home Minister, Government of U.P. as well as to the District Magistrate, Deoria. The District Magistrate, Deoria has filed detailed counter-affidavit disputing the fact that the representation which the petitioner claims to have given on 17.11.2009, was in fact submitted on 24.11.2009. 17.11.2009 is the date of approval of the detention order dated 11.11.2009. the said representation dated 24.11.2009 was received by the District Magistrate, Deoria through Superintendent, District Jail, Deoria on the same day. Comments were immediately called for from the sponsoring authority and after receiving the same, the District Magistrate prepared his own comments on 26.11.2009. The representation was rejected on the same day by him and the order was communicated to the petitioner through jail authorities.

6. The petitioner's representation dated 24.11.2009 alongwith parawise comments was forwarded by the District Magistrate, Deoria to the State Government vide its letter dated 26.11.2009. It was received in the concerned section of the State Government on 27.11.2009. 28.11.2009 and 29.11.2009 were holidays on account of Saturday and Sunday. The State Government sent copies of the said representation and parawise comments to the U.P. Advisory Board as well as Central Government by two separate letters on 30.11.2009. Subsequently, concerned section of the State Government examined and submitted a detailed note on 1.12.2009. The Under Secretary, Home (Confidential) Department, U.P. Civil Secretariat, Lucknow examined the detailed note on 2.12.2009. The Joint Secretary also checked it on the same day, i.e., 2.12.2009. The Special Secretary examined it on 3.12.2009 and thereafter the Secretary examined the representation on 3.12.2009. The file was then submitted to the higher authorities for final orders and after due consideration. the State Government rejected the representation on 3.12.2009. The order was communicated to the petitioner through the district authorities by the State Government via Radiogram dated 4.12.2009. This specific assertion is detailed in the affidavit filed by Under Secretary, Home, Sri Prem Shanker in paragraph 3 of his counter-affidavit.

7. The Central Government also received the representation on 7.12.2009 and it was rejected within eight days, i.e., on 15.12.2009. 12th and 13th December, 2009 were holidays. In the circumstances, it can very well be said that the representation was decided within three days and there was no delay whatsoever.

8. So far submission of Learned Counsel for the petitioner is that possession of three counterfeit notes does not make him a culprit who deals with counterfeit notes but the District Magistrate was conscious of the fact that fake currency notes have reached the market in abundance and thus the result is that economic order of the State is completely hampered, thereby supplies and services of the State will be adversely affected. Learned Counsel has mainly challenged the detention order on the ground that representation of the petitioner was decided very late and this has considerably prejudiced his right and he should be released forthwith.

9. Sri N.I. Jafri, advocate has also filed counter-affidavit on behalf of Union of India. Smt. L. P. Srivastava, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi has sworn affidavit and annexed the copy of the wireless message dated 16.12.2009, intimating the Superintendent, District Jail, Deoria as well as detenu about rejection of the order. Learned Counsel has placed reliance on a Division Bench decision of this Court in which Hare Krishna Madheshiya was detained in this case crime number and the same was allowed on the ground of delay.

10. We have perused the judgment in the case of Hare Krishna Madheshiya. The Central Government received the representation on 27.11.2009 and nothing was done till 10.12.2009. It was processed on 11.12.2009 and was rejected on 15.12.2009. There was no satisfactory explanation of delay from 27.11.2009 till 10.12.2009 and in view of the decision of the Apex Court in the case of Rajammal Vs. State of Tamil Nadu and Another, , his detention order was revoked. These are not the facts of the present case though they were involved in the same crime number.

11. A judgment passed in the case of Rajesh Singh @ Bablu Singh in Habeas Corpus Writ Petition No. 4562 of 2010. has also been relied upon which was allowed on the question of delay. We have perused the judgment in the said case. The Ministry of Home Affairs had received the representation on 2.12.2009. processed on 11.12.2009 at the level of Under Secretary, Joint Secretary and placed before the Home Secretary on 15.12.2009. It was rejected and also communicated by wireless message on 16.12.2009.

12. In the circumstances, we are of the view that the petitioner gets no help from those two cases cited before us. Save for delay, no other ground has been pressed before us. In the circumstances, we are not inclined to quash the detention order. We are of the opinion that there was no delay in deciding the representation of the detenu and, therefore, habeas corpus writ petition lacks merit and is accordingly dismissed.