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**(2003) 05 AHC CK 0030**  
**In the Allahabad High Court**  
**Case No : H.C. Writ Petition No. 841 of 2003**

Pradeep

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

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**Date of Decision :** 22-05-2003

**Acts Referred:**

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

**Citation :** (2003) 3 ACR 2354

**Hon'ble Judges :** U.S. Tripathi, J;D.P. Gupta, J

**Bench :** Division Bench

**Advocate :** J.S. Sengar and Ajit Kumar Singh Solanki, for the Appellant; A.G.A. and B.N. Singh, S.C., for the Respondent

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## Judgement

U.S. Tripathi, J.—This writ petition has been filed by the Petitioner for quashing his detention order dated 10.8.2002, passed by District Magistrate, Bulandshahr, Respondent No. 1 u/s 3(2) of National Security Act.

2. Though the detention order was challenged on various grounds, but the learned Counsel for the Petitioner has confined his argument only on two points. (1) The representation of the Petitioner was not decided by the Central Government, which infringed his fundamental right guaranteed under Article 22(5) of the Constitution of India, and (2) the statements of prosecution witnesses were recorded subsequently and the witnesses turned hostile and did not support the case of prosecution and it shows that detaining authority has not applied his mind.

3. Since for decision of above two points, the detailed facts of the case, on the basis of which detention order is passed is not essential, therefore, we are not advertng to the facts of the case in detail.

4. We have heard Sri J. S. Sengar assisted by Sri Ajit Kumar Singh Solanki, learned Counsel for the Petitioner, learned A.G.A. and learned standing counsel

and have gone through the record.

5. Regarding non-decision of representation of the Petitioner by the Central Government, it was alleged in para 27 of the petition that against the detention order, the Petitioner submitted representation through Jail Superintendent on 23.8.2002 to the detaining authority, State Government, Advisory Board and Union of India. In para 29 it was alleged that the Petitioner was informed through letter dated 20.9.2002 by Sri V. K. Gupta, Additional Secretary, Union of India that the Union Government has rejected the representation dated 23.8.2002 of the Petitioner, but it has not stated that as to when the representation of the Petitioner was rejected by the Union Government. In para 30 it was alleged that there is considerable delay in deciding the representation of the Petitioner dated 23.8.2002 on the part of Union of India.

6. In para 6 of his counter-affidavit Sri C. P. Tripathi, Deputy, Jailor, District Jail, Bulandshahr disclosed that the Petitioner has submitted his representation to the Jail Authorities in eight copies on 23.8.2002 and on same day the said representation was sent to District Magistrate, Bulandshahr for further action in the matter. Second time, the Petitioner has submitted another representation in eight copies of the Jail Authorities on 29.8.2002, which was sent to District Magistrate, Bulandshahr, on same day for further action.

7. The counter-affidavit of Sri Sudhir Garg, District Magistrate, Bulandshahr, disclosed that the Petitioner submitted his representation through Jail Authorities on 23.8.2002 on which police report was called for on the same day. Thereafter, after receiving the police report parawise comments were prepared. An application for correction was given on behalf of the Petitioner regarding correctness in the representation on 29.8.2002 and the representation was sent to the State Government and Central Government by special messenger on 29.8.2002.

8. The counter-affidavit of Sri C. P. Singh, Deputy Secretary, Home and Confidential Department, U.P. Civil Secretariat, Lucknow, disclosed that the Petitioner's representation dated 23.8.2002 along with parawise comments thereon, forwarded by the District Magistrate, Bulandshahr, vide his letter dated 29.8.2002, was received in the concerned section of State Government on 31.8.2002. The State Government sent copies of the representation and parawise comments thereon to Central Government by letter dated 2.9.2002.

9. In the counter-affidavit of Sri Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, it was disclosed in paras 6, 7 and 8 as below:

The allegations made in the paras 27, 29, 30 and grounds 7 and 10 of para 30 of the petition are denied being incorrect. It is stated that a representation dated 23.8.2002 from the detenu along with parawise comments of the detaining authority was received by the Central Government in the Ministry of Home Affairs on 2.9.2002 and in the concerned Desk of Ministry of Home Affairs on 3.9.2002

through District Magistrate, Bulandshahr on behalf of State Government of Uttar Pradesh vide letter No. 1527/J.A. dated 29.8.2002.

This representation was immediately processed for consideration and the case of the detenu was put up before the Director, Ministry of Home Affairs on 6.9.2002. The Director carefully considered the same and with his comments put up the same before the Joint Secretary, Ministry of Home Affairs on 9.9.2002 (7.9.2002 and 8.9.2002 being holidays). The Joint Secretary considered the case and forwarded the same before the Union Home Secretary on 9.9.2002. The Union Home Secretary (who has been delegated powers by the Union Home Minister to decide such cases) considered the cases of the detenu and rejected the representation of the detenu on 10.9.2002.

That the representation from the detenu along with the parawise comments of the detaining authority was received by the Central Government in the Ministry of Home Affairs on 2.9.2002 and in the concerned desk of Ministry of Home Affairs for consideration only on 3.9.2002. That a final decision to reject the said representation was taken by the Central Government in the Ministry of Home Affairs within 7 (seven) days (excluding 7th and 8th September, 2002 being holidays) of its effectively becoming available for consideration. There was delay in taking the decision on the representation of the detenu.

10. From the above counter-affidavit it is clear that representation of the Petitioner was received by Central Government on 2.9.2002 and it was finally decided on 10.9.2002, 7.9.2002 and 8.9.2002 were holidays and there is explanation for the time taken in deciding the representation. Thus, there is no delay in deciding the representation of the Petitioner by the Central Government.

11. The next contention of the learned Counsel for the Petitioner was that the statements of the prosecution witnesses were recorded subsequently, but they did not support the case and therefore, the detaining authority was not justified in passing the order, as it was passed without applying mind. No such specific plea was taken in the petition and therefore, the Respondent, the detaining authority could not give any explanation regarding this fact. It is true that law of pleading is not strictly applicable to the habeas corpus petitions, but the fact and the ground on which the detention order is challenged must be specifically pleaded so that the Respondents may be in a position to give its proper reply. The alleged statements of the witnesses are also not on record. It appears that those statements came into existence after passing of the detention order and therefore, were not relevant materials for passing the detention order.

12. In view of our above discussions and observations we find no force in the above petition. The petition is, accordingly, dismissed.