
(1983) 01 AHC CK 0021
In the Allahabad High Court

Rajendra

APPELLANT

Vs

Distt. Supdt., Jail and Others

RESPONDENT

Date of Decision : 06-01-1983

Acts Referred:

Constitution of India, 1950 — Article 22, 226
Criminal Procedure Code, 1973 (CrPC) — Section 161, 173
National Security Act, 1980 — Section 3, 8

Citation : (1983) CriLJ 1235

Hon'ble Judges : R.A. Misra, J;N.N. Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.N. Sharma, J.—This petition under Article 226 of the Constitution of India is directed against detention order Dt/- 16th October, 1982 recorded by Sri B. B. Sinha, District Magistrate, Morada-bad, questioning the validity of the continuous detention of the detenu under the provisions of National Security Act.

2. The detenu surrendered on 20th October, 1982 and is in detention since then.

3. The detention order was served on detenu while he was in jail in connection with Crime No. 459 of 1982.

4. It appears that the validity of the impugned order has mainly been assailed on the grounds laid by the petitioner in paras, Nos. 25, 26 and 27 of his petition. It was laid in paragraph No. 25 of the petition that on 3rd December, 1981 the petitioner demanded 12 papers which were relevant to the preferring of representation by the detenu and were pertinent to the grounds relied upon by the detaining authority. It appears that all those documents were not supplied to the detenu; in para No. 16 of the Counter-Affidavit dated 17-11-1982 filed by Sri B. B. Sinha it was conceded that the papers mentioned at Serial No. 107 and part of the material mentioned in para. No. 9 viz. statements u/s 161 of Cr. P.C. were not supplied to the detenu. The explanation offered for the non-supply of

the said documents was that as charge-sheet has been submitted in the case against co-accused and the petitioner was to ... be put up for identification on 3rd December, 1982 so these documents were withheld. It was further averred that two out of three identifiers correctly identified the petitioner in the Test Identification Parade and so the aforesaid documents were to be supplied to the detenu through court as they shall be submitted along with the charge-sheet u/s 173(5) of the Cr. P.C.

5. Sri D.S. Misra learned Advocate For the petitioner successfully argued before us that withholding of those documents has violated the constitutional safeguard mandated by Article 22(5) of the Constitution as he could not effectively submit his representation against the detention order in the absence of the said documents, He further pointed out that there were other Pappoos in the same locality and had those documents been supplied to him he could have established that it was a clear case of mistaken identity, In this connection reliance was placed on Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another, ; a perusal of Head Note "B" of the said authority shall go to disclose that in that case detenu wanted information about the name of Intelligence Officer and that information was withheld and So the detention order was struck down on that score. It was observed (at p. 466 of Cri. L, J.):

In order to make a representation against the order of detention and thus to exercise fundamental right guaranteed by Article 22(5) of the Constitution, a detenu is entitled to be furnished with all essential particulars forming the basis of the grounds of detention. So it is that where insufficient particulars are mentioned in the grounds, the detenu is entitled to call for better particulars. That is a right which flows from the constitutional right to be afforded a reasonable opportunity to make representation.

A similar point came up for consideration in Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others, in the said case deals with this aspect. It was laid that it was not for the court to have waded through a confidential file of the Government in order to fish out a point against the detenu and hold that the documents sought by him were irrelevant for making an effective representation. In Bhawani Shankar Pandey Vs. State of U.P. and Others, the detenu sought copy of the judgment in which he was acquitted of the murder charge that copy of judgment was not supplied to him by detaining authority despite his demands on the ground that he was well aware about the same. The detention order was invalidated on that score and it was observed that non-supply of such document was a clear breach of the procedural safeguard provided in Section 8 which reflected the fundamental guarantee enshrined under Article 22 of the Constitution of India. We respectfully agree with the said observations equally applicable in this case also.

6. The next ground of attack as incorporated in para. No. 26 of the petition shows that representation submitted by petitioner on 3rd November, 1982 still remained undisposed of. In this connection it is significant to note that petitioner

submitted successive representations in this case. The first representation is dated 25-10-82 which was sent by Jail, authorities to District Magistrate on 26-10-82 and was eventually forwarded to the Government on 3-11-82. Paragraph No. 17 of the Counter-affidavit submitted by the District Magistrate explained the gap in between 25-10-82 and 3-11-82. 27th October, 1982 happened to be holiday and comments had to be obtained in that connection from Police authorities.

7. The representation Dt. 3-11-1982, which is in point was received by District Magistrate on 3-11-1982 but was sent to Government on 8-11-1982. Para. No. 2 of the Counter-Affidavit Dt/-22-12-1982 on behalf of State Government which leaves the matter in lurch does not specifically state that representation Dt/ 3-11-1982 was also rejected by State Government and District Magistrate and detenu were intimated about it.

8. The next contention put forward in paragraph 27 shows that one Lakhan brother of petitioner submitted a representation Dt/- 31-10-1982 in connection with detention of the detenu which was admittedly received by the State Government on 8-11-1982; it was disposed of on 20-12-1982. There is no cogent explanation about this inordinate delay, This representation remained pending with the State Government for one month and 12 days. Such inordinate delay has to be considered as improper and is alone sufficient to vitiate the detention, as was held in *Virendra Kumar Nayak Vs. The Superintendent of Naini Central Jail and Others*, . It appears that in that case two representations were handed over by detenu on 22-7-1981 and 29-7-81. They were forwarded by State Government to Central Government on 3-9-1981 i. e, after about one month it was held that the aforesaid delay was improper and the explanation offered by the State Government was flimsy. In *Devi Lal Mahto Vs. State of Bihar and Another*, time of 21 days taken in examining the representation was considered as inordinate and sufficient to vitiate the order of detention. In this view of the matter we find that in the instant case also the time taken by the State Government in examining the representation preferred by Lakhan was inordinate and was sufficient to vitiate the order.

9. In the result the petition is allowed; the impugned order Dt/- 16-10-1982 u/s 3(2) of National Security Act recorded by District Magistrate Moradabad is quashed. Let the petitioner be set at liberty forthwith unless required in connection with any other process of law.