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**(2016) 07 AHC CK 0140**

**In the Allahabad High Court**

**Case No :** Habeas Corpus Writ Petition No. 4878 of 2016

Raju @ Abid

APPELLANT

Vs

Union of India and 5 others

RESPONDENT

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**Date of Decision :** 06-07-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226  
National Security Act, 1980 — Section 3(2)

**Citation :** (2016) 96 ACrC 5 : (2016) 7 ADJ 216 : (2016) 5 AILLJ 359

**Hon'ble Judges :** Bala Krishna Narayana and Shashi Kant, JJ.

**Bench :** Division Bench

**Advocate :** Tapan Kumar Mishra, Advocate, for the Appellant; G.A., A.S.G.I. and N.D. Rai, Advocates, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. This writ petition has been filed by the petitioner with a prayer to issue a writ, order or direction in the nature of Habeas Corpus quashing the detention order dated 28.8.2015 passed by the respondent no. 3 and the order dated 7.9.2015 passed by the respondent no. 2 approving the detention order (collectively filed as annexure-2 to the writ petition). A further prayer has been made for issuing a writ, order or direction in the nature of Habeas Corpus directing the respondent no. 5 to release the petitioner forthwith.

2. The relevant facts giving rise to this writ petition as narrated in the grounds of detention are that on the basis of the F.I.R. lodged by the SHO Echotech-3, district-Gautam Budh Nagar at Police Station-Echotech-3, district-Gautam Budh Nagar, Case Crime no. 240 of 2015, under Sections 489B and 489C I.P.C. was registered against the petitioner and his two other accomplices on the allegation that counterfeit currency notes of Rs. 2,94,000/- (Rs. Two lacs ninety four thousand) were recovered from the petitioner and his two other accomplices on 16.7.2015 when they were intercepted, searched and arrested by the SHO police station-Echotech-3, district-Gautam Budh Nagar and his two companions on the

Haldwani Road, Gautam Budh Nagar, while they were going on a motorcycle and a scooty along with counterfeit currency notes. Apart from the aforesaid incident, the counterfeit currency notes of Rs. 2, 50,000/- (Rs. Two lacs fifty thousand) were recovered from one Neeraj and his other accomplices on 13.10.2012 and on the basis of the aforesaid recovery, Case Crime no. 592 of 2012, under Sections 489B and 489C I.P.C. was registered against the petitioner and his other accomplices at police station-Echotech-3, district-Gautam Budh Nagar, in which after completion of investigation charge sheet was submitted against the petitioner and the other co-accused. The aforesaid activities of the petitioner had not only disturbed the public order but had also adversely effected the circulation and supply of Indian currency which is essential for the community. While the petitioner was in District Jail, Gautam Budh Nagar on account of his being accused in Case Crime no. 240 of 2015 was served with the impugned order of detention passed by the respondent no. 3 in the exercise of his power under Section 3(2) of the National Security Act (hereinafter referred to as the "NSA") along with the grounds of detention on 28.8.2015. The petitioner made a representation against the impugned detention order before the respondent no. 1 through respondent no. 5 on 12.9.2015 (annexure-6). The petitioner's representation was rejected by the respondent no. 1 on 27.10.2015. The order dated 23.10.2015 was communicated to the petitioner on 27.10.2015. The representation dated 12.9.2015 moved by the petitioner before the State Government was rejected by the State Government on 22.2.2016. Information whereof was communicated to the petitioner through district authority by the State Government on 23.2.2016. The U.P. Advisory Board, Lucknow approved the detention order on 30.9.2015. The State Government took a decision to confirm the detention order and to keep the petitioner under detention for a period of twelve months from the date of his actual detention, i.e. 28.8.2015.

3. The only ground on which the petitioner's counsel has assailed the detention of the petitioner under the N.S.A. is that there was an inordinate and unexplained delay on the part of the respondent no. 3 in forwarding the representation made by the petitioner on 12.9.2015 (annexure-6) to the State Government against the impugned detention order dated 28.8.2015 to the State Government and also on the part of the State Government in deciding the same which has totally vitiated the impugned detention order as the same infringed the fundamental right guaranteed to the petitioner under Section 22(5) of the Constitution of India.

4. Per contra, Sri J.K. Upadhyay appearing on behalf of the State and Sri N.D. Rai, learned counsel for the respondent no. 1 made their submissions in support of the impugned detention order. Sri J.K. Upadhyay vehemently submitted that the delay, if any, in the disposal of the petitioner's representation has been satisfactorily explained in the counter affidavit filed by the respondent no. 2 in this case and the impugned order is not liable to be set aside merely on the ground of some delay on the part of the State Government in deciding the petitioner's representation.

5. We have heard the learned counsel for the parties and perused the impugned order of detention as well as the grounds of detention and the pleadings of the parties. The only question which requires consideration in this writ petition is that whether there was any undue and unexplained delay on the part of the respondent no. 3 in forwarding the petitioner's representation to the respondent no. 2 and on the part of respondent no. 2 in deciding the petitioner's representation dated 12.9.2015 made by him before the respondent no. 2 against the impugned order of detention, through the respondent no. 3.

6. There is no dispute about the fact that while the petitioner was in District Jail, Gautam Budh Nagar on account of his being accused in Case Crime no. 240 of 2015 he was served with the impugned detention order dated 28.8.2015 along with the grounds of detention. Against the detention order dated 28.8.2015 the petitioner made a representation on 12.9.2015 before the State Government which was rejected by the State Government on 22.9.2015. Thus apparently there has been a delay of about five months and ten days on the part of the State Government in deciding the petitioner's representation. According we proceed to examine whether the delay has been sufficiently accounted for or not.

7. We have very carefully gone through the counter affidavit filed in this case on behalf of the respondent nos. 2 and 3.

8. A perusal of the paragraph nos. 5, 6 and 7 of the counter affidavit of the respondent no. 2 show that the petitioner's representation (annexure-6) was received in the concerned section of the State Government on 16.2.2016 along with the comments of the detaining authority along with his letter dated 15.2.2016. Copy of the petitioner's representation was sent by the State Government along with the para wise comments to the Central Government, New Delhi along with letter dated 17.2.2016. Thereafter the concerned section (Gopan Anubhag-7) of the State Government examined the petitioner's representation on 18.2.2016. The Under Secretary Home Government of Uttar Pradesh, Lucknow and the Special Secretary examined the petitioner's representation on 19.2.2016. Since 20.2.2016 and 21.2.2016 were holidays on account of Saturday and Sunday, the Secretary Government of Uttar Pradesh examined the petitioner's representation on 22.2.2016, where after the necessary record was submitted to the higher authorities for passing final order in this matter and after due consideration the petitioner's representation was rejected by the State Government on 22.2.2016, information whereof was communicated to the petitioner through District Authorities on 23.2.2016. Thus, as far as the State Government is concerned there does not appear to be any undue or deliberate delay on its part in deciding the petitioner's representation but there does appear to be an inordinate delay on the part of the District Magistrate, NOIDA in forwarding the petitioner's representation to the State Government. In order to examine whether the District Magistrate, NOIDA has been able to come up with any plausible explanation for the delay of more than five months on his part in forwarding the petitioner's representation to the State

Government, we consider it appropriate to refer to the counter affidavit filed by the District Magistrate, Gautam Budh Nagar, respondent no. 3 in this case.

9. In paragraph 15 of his counter affidavit the respondent no. 3 has admitted that the representation of the petitioner dated 12.9.2015 was received in his office on 12.9.2013 itself. In paragraph 27 of his counter affidavit the respondent no. 3 has stated that the petitioner's representation dated 12.9.2015 was marked by him to the Addl. District Magistrate (Executive), Gautam Budh Nagar who marked the aforesaid representation of the petitioner to the assistant to the District Magistrate on 14.9.2015 and the Addl. District Magistrate (Administration)/Office Incharge, Gautam Budh Nagar requested the Senior Superintendent of Police, Gautam Budh Nagar to submit his report on the representation of the petitioner. The aforesaid letter was issued by the A.D.M. (Administration)/Office Incharge, Gautam Budh Nagar on 19.9.2015. In paragraph 29 of his counter affidavit the respondent no. 3 has stated on oath that he had forwarded the copy of the representation along with para wise comments/police report to the Govt. of U.P. Lucknow on 15.2.2016.

10. There is absolutely no explanation in the counter affidavit of respondent no. 3 for his failure to forward the petitioner's representation dated 12.9.2015 to the State Government immediately after receiving the para wise comments from the Senior Superintendent of Police, Gautam Budh Nagar. It appears that respondent no. 3 has deliberately suppressed the date on which the para wise comments of Senior Superintendent of Police to the petitioner's representation were received by him. The respondent no. 3 has failed to come up with any explanation as to why he did not dispatch/forward the petitioner's representation to the State Government on 29.9.2015 which is the date on which the petitioner's representation along with the para wise comments of the respondent no. 3 and the police report was forwarded by him to the Government of India.

11. In the case of Jayanarayan Sukul case, AIR 1970 SC 675, Hon'ble A.N. Ray, J., as His Lordship then was, speaking for the Constitution Bench has laid down following four principles which should govern the consideration of representation of detenues.

"First the appropriate authority is bound to give an opportunity to the detainee to make a representation and to consider the representation of the detainee as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detainee by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raised a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detainee's representation

to the Advisory Board. If the appropriate Government will release the detenue the Government will not send the matter to the Advisory Board. If, however, the Government will not release the detenue the Government will send the case along with the detenue's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenue. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenue."

In *Frances Coralie Mullin v. W.C. Khambra*, AIR 1980 SC 849, Chinnappa Reddy, J., while dealing with the time imperative for consideration of the representation has emphasised

"We, however, hasten to add that the time imperative can never be absolute or obsessive. The Court's observations are not to be so understood. There has to be lee-way, depending on the necessities (we refrain from using the word "circumstances") of the case. One may well imagine a case where a detenu does not make representation before the Board makes its report making it impossible for the detaining authority either to consider it or to forward it to the Board in time or a case where a detenu makes a representation to the detaining authority so shortly before the Advisory Board takes up the reference that the detaining authority cannot consider the representation before then but may merely forward it to the Board without himself considering it. Several such situations may arise compelling departure from the time-imperative. But no allowance can be made for lethargic indifference.

No allowance can be made for needless procrastination. But allowance must surely be made for necessary consultation where legal intricacies and factual ramifications are involved. The burden of explaining the necessity for the slightest departure from the time imperative is on the detaining authority.

In *Frances Coralie Mullin's* case AIR 1980 SC 849, the detenu's representation was received by the detaining authority on December 26, 1979. Without any loss of time copy of the representation was sent to the customs authorities for their remarks which was obviously necessary because the information leading to the order of detention was collected by the customs authorities. The fact were undoubtedly complex since allegation against the detenu revealed an involvement with an international gang of dope smugglers. The comments of the customs authorities were received on January 4, 1980. The Advisory Board was meeting on January 4, 1980 and so there could be no question of the detaining authority considering the representation of detenu before the board met, unless it was done in a great and undue haste. After obtaining the comments of the customs authorities, it was found necessary to take legal advice as the representation posed many legal and constitutional question, so, after consultation with the Secretary (Law and Judicial) Delhi Administration, the representation was finally rejected by the Administrator on January 15, 1980. It was held that if there appeared to be any delay it was not due to any want of

care but because the representation required a thorough examination in consultation with investigation agencies and advisers on law."

12. Agreeing with the observations in Frances Coralie Mullin's case, AIR 1980 SC 849, the Apex Court in paragraph 16 of its judgment rendered in K.M. Abdulla Kunhi and B.L. Abdul Khader v. Union of India reported in 1991 AIR (SC) 574 observed as hereunder :-

"(16.) We agree with the observations in Frances Coralie Mullin case. The time imperative for consideration of representation can never be absolute or obsessive. It depends upon the necessities and the time at which the representation is made. The representation may be received before the case is referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board. Nor it could be said that the Government has delayed consideration of the representation, unnecessarily awaiting the report of the Board. It is proper for the Government in such situations to await the report of the Board. If the Board finds no material for detention on the merits and reports accordingly, the Government is bound to revoke the order of detention. Secondly, even if the Board expresses the view that there is sufficient cause for detention, the Government after considering the representation could revoke the detention. The Board has to submit its report within eleven weeks from the date of detention. The Advisory Board may hear the detenu at his request. The Constitution of the Board shows that it consists of eminent persons who are Judges or person qualified to be Judges of The High Court. It is therefore, proper that the Government considers the representation in the aforesaid two situations only after the receipt of the report of the Board. If the representation is received by the Government after the Advisory Board has made its report, there could then of course be no question of sending the representation to the Advisory Board. It will have to be dealt with and disposed of by the Government as early as possible."

13. Thus after going through the numerous authorities on the subject, referred to herein above what follows is that the appropriate authority is bound to give opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible, but however, if it appears that the delay was not due to any want of care but because the representation required a thorough examination in consultation with investigation agencies and advisers on law, such a situation may compel departure from the time-imperative. But no allowance can be made for lethargic indifference or for needless procrastination. An allowance must surely be made for necessary

consultation where legal intricacies and factual ramifications are involved and a burden of explaining the necessity for the slightest departure from the time-imperative is on the detaining authority.

14. However, the facts and circumstances of the present case unequivocally indicate that there was an inordinate and unaccounted delay of about five months on the part of the detaining authority (District Magistrate), respondent no. 3 in forwarding the petitioner's representation dated 12.9.2015 to the State Government. The respondent no. 3 has failed to discharge the burden of the necessity for departing from the time to imperative. He has failed to furnish any reasons for sitting over the petitioner's representation for about five months before forwarding it to the State Government.

15. The Apex Court in paragraph 12 of the case of K.M. Abdulla Kunhi (supra) observed as here under :-

"The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of our Constitution. Clause (5) of Article 22 therefore, casts a legal obligation on the Government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with."

16. Thus, in view of the settled law on the issue and in the background of the facts of the instant case, we do not hesitate in holding that the present case is a glaring example of supine indifference, slackness and callous attitude on the part of the detaining authority, respondent no. 3 in forwarding the petitioner's representation to the State Government after a lapse of five months measurably failed to account for. The inordinate and unexplained delay in this case on the part of the respondent no. 3 in forwarding the petitioner's representation to the State Government, in our opinion, amounts to breach of the constitutional imperative, rendering the continued detention of the petitioner impermissible and illegal.

17. Since there is no explanation on the part of the respondent no. 3 for not having forwarded the petitioner's representation promptly and there being an inordinate and unexplained delay of more than five months on his part in forwarding the petitioner's representation to the State Government, the impugned order can not be sustained.

18. For the aforesaid reasons, writ petition succeeds and is allowed. The

impugned detention order dated 28.8.2015 and the order of approval dated 7.9.2015 are hereby quashed.

19. Let the petitioner, Raju @ Abid be released from jail forthwith, if he is not wanted in any other case.

20. There shall be however, no order as to costs.