
(2003) 09 AHC CK 0154
In the Allahabad High Court
Case No : Writ Petition No. 187(H.C.) of 2003

Raju Kannaujia

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 30-09-2003

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2003) 09 AHC CK 0154

Hon'ble Judges : Vishnu Sahai, J and K.S.Rakhra, J

Final Decision : Disposed Of

Judgement

1. Through this writ petition preferred under Article 226 of the Constitution of India, the petitioner detenu, Raju Kannaujia has impugned the order dated 3092002 passed by Mr. Alok Kumar, District Magistrate, Faizabad (opposite party No. 2) detaining him under Section 3 (2) of the National Security Act.

The detention order alongwith grounds of detention, which was also dated 3092002, was served on the petitionerdetenu on 30 92002 itself and their true copies have been annexed as Annexure Nos. 1 and 2 respectively to this writ petition.

2. The prejudicial activities of the petitionerdetenu prompting the opposite party No. 2 to issue the impugned detention order against him are contained in the grounds of detention. Since, in our view, a reference to them is not necessary for the adjudication of the pleadings contained in paragraph 14 of the petition and groundI of paragraph 18 thereof, on which alone this writ petition deserves to succeed, we are not advertting to them.

3. We have heard learned counsel for the parties.

4. The substance of the averments contained in paragraph 14 of the petition and ground I of para 18 thereof is that the representation sent by the petitionerdetenu to opposite party No. 1 (Union of India) and opposite party No. 3 (State of Uttar Pradesh) was not dealt with promptitude and the petitioner was

also not apprised of the fate of his representation. However, during the course of his submission, learned counsel for the petitionerdetenu restricted his challenge to the delay in disposal of the representation preferred by the petitioner to respondent No. 3 i.e. State of Uttar Pradesh.

5. Mr. A.R. Siddiqui, learned counsel for the petitionerdetenu pointed out that the averments contained in paragraph 14 of the petition have been replied to in paragraph 13 of the return of the detaining authority. He urged that a perusal of the said paragraph shows that the petitioner's representation dated 1110 2002 addressed to Home Secretary, State of U.P. was delivered in his office on the said date and on the following day i.e. on 12102002 he alongwith his parawise comments, sent it to Principal Secretary, Home, U.P. Government, which was received by the State Government on that very date (12102002).

Mr. A.R. Siddiqui also invited our attention to paragraph 3 of the return of Mr. C.P. Singh, Deputy Secretary, Home and Confidential Department, U.P., Civil Secretariat, Lucknow. He pointed out that in the said paragraph, it has been averred as under the representation of the petitionerdetenu addressed to the State Government forwarded by the District Magistrate, Faizabad on 12102002, was received in the concerned Section on 17102002. Since 20102002 and 21102002 were public holidays, on account of Sunday and Maharshi Balmiki Jayanti, the concerned section examined it on 22102002. On the said date, the Special Secretary also examined it. On 23102002, it was sent to the Secretary. On 24102002 it was rejected by the State Government and on 26102002, the petitioner was communicated the factum of rejection.

6. Mr. A.R. Siddiqui urged that a perusal of paragraph 13 of the return of the detaining authority and paragraph 3 of the return of Mr. C.P. Singh, make it manifest that from 12102002 to 16 102002 the representation of the petitionerdetenu was lying unattended in the office of Principal Secretary, Home, U.P. Government. He also contended that no explanation is forthcoming in the return of Mr. C.P. Singh as to why the petitionerdetenu's representation was not considered by the concerned section on 18 102002 and 19102002. Mr. Siddiqui urged that the delay between 12102002 and 16102002 as also between 18102002 and 1910 2002, would vitiate the continued detention of the petitioner detenu.

To fortify his submission, Mr. Siddiqui invited our attention to the ratio laid down in paragraph 5 of the oftquoted case of Hari Pahwa v. State of U.P. and others, 1981 Supreme Court Cases Criminal page 589, wherein the Apex Court has observed that representation in a preventive detention matter should be dealt ? with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu?.

7. Mr. S. K. Singh, learned counsel for the respondent Nos. 2 to 6 true to his customary fairness admitted that there is no explanation as to why the representation of the petitionerdetenu addressed to the State Government was not attended to between the period 12102002 to 16102002 and 18102002 to 19102002.

8. In our view, the unexplained delay by the State Government in attending to the representation preferred by the petitioner detenu from 12102002 to 16102002 and 18102002 to 1910 2002, vitiates the continued detention of the petitionerdetenu.

9. In the result, we allow this writ petition and direct that the petitionerdetenu, Raju Kannaujia be released forthwith, unless wanted in some other case.

To ensure that similar laches do not recur, the Registrar of this Court is directed to send a copy of this judgment to the Principal Secretary, Home, Government of Uttar Pradesh within one week from today.