
(2004) 02 AHC CK 0047

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 50616 of 2003

Ram Lalit (in Jail)

APPELLANT

Vs

Adhikshak, District Jail and Others

RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2004) CriLJ 3548

Hon'ble Judges : M.C. Jain, J; Ghanshyam Dass, J

Bench : Division Bench

Advocate : D.S. Misra and C.K. Misra, for the Appellant; M.P. Singh, A.G.A., J. Lal, B.N. Singh, S.S.C. and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—The petitioner has challenged the detention order 29th June, 2003, passed by respondent No. 2-District Magistrate, Sant Kabir Nagar u/s 3(2) of the National Security Act, 1980 and his continued detention thereunder.

2. The grounds of detention are contained in annexure-2 to the writ petition. The detention order was passed on the basis of the F. I. R. relating to crime No. 231 of 2003, P. S. Kotwali, Khalilabad, District Sant Kabir Nagar, inter alia u/s 302, I. P. C. The incident had taken place on 20-4-2003 at about 2 p.m. On the exhortation of the petitioner, his associates variously armed allegedly shot dead one Ram Ashish and caused firearm injuries to his companion Ajit Kumar who had come forward to his rescue. The dead body of Ram Ashish was allegedly dragged on the road upto his (petitioner's) door. This offence was allegedly committed near Vinod Rice Mill Gajpur, Police Station Khalilabad when Ram Ashish and his companions Ram Govind, Ajit Kumar Misra, Kamlesh Singh and Rajesh Chaudhari were going on motorcycles from the side of Tameshwar Nath crossing. The crime so committed disturbed the even tempo of public life and atmosphere of terror was created.

3. Counter and rejoinder affidavits have been exchanged.

4. We have heard Sri D. S. Misra, learned counsel for the petitioner, Sri Mahendra Pratap Singh, learned A. G. A. on behalf respondents No. 1, 2 and 3 and Sri J. Lal learned counsel for respondent No. 4-Union of India.

5. Learned counsel for the petitioner has challenged the detention order on the ground of inordinate delay in consideration of the representation of the petitioner by the Central Government. It is pointed out from paragraph 5 of the counter affidavit filed by Smt. Riya Dogra, Under Secretary, Ministry of Home Affairs, Government of India on behalf of respondent No. 4-Union of India that the representation of the detenu dated 15th July 2003 along with comments of detaining authority was received there on 22-7-2003. As per paragraph 6 of the counter affidavit, it was found that pages of the grounds of detention served on the detenu were not complete. Accordingly, the State Government/District Magistrate, Sant Kabir Nagar were requested to send complete set of the grounds of detention through wireless message dated 28-7-2003 and subsequent reminders dated 8-8-2003 and 25-8-2003. On receipt of complete set of grounds of detention, the case of the detenu was considered and the representation was rejected on 5-9-2003, information of which was communicated to the detenu. We note that it is averred from the side of Union of India in paragraph 4 of the counter-affidavit referred to above that the report as envisaged u/s 3(5) of the National Security Act was made by the State Government to the Central Government and was received there on 11-7-2003 and the concerned Director noted thereon "Position noted". It is also found from paragraph 4 of the counter affidavit filed by Sri Ramesh Chandra Uttam on behalf of State Government that in compliance of Section 3(5) of the National Security Act a copy of the detention order and grounds of detention and all other connected papers received from District Magistrate, Sant Kabir Nagar were sent to the Central Government on 8-7-2003 which were received there on 11-7-2003.

6. Had the grounds of detention not accompanied the copy of the detention order so sent by the State Government to the Central Government on 8-7-2003 received there on 11-7-2003, the concerned Director would not have noted "Position noted" thereon and would have demanded the grounds of detention immediately. It is a pointer that the detention order was accompanied by grounds of detention. In this view of the matter, there was hardly any occasion for the grounds of detention being demanded again through wireless message dated 28-7-2003 and subsequent reminders dated 8-8-2003 and 25-8-2003 by the Central Government. As pointed out above, the representation was rejected by the Central Government on 5-9-2003 allegedly on the receipt of complete set of grounds of detention from the State Government/District Magistrate concerned. The case was put up before the Director, Ministry of Home Affairs on 3-9-2003, who with his comments put up the case before the Joint Secretary the same day. The Joint Secretary, in his turn, considered the case and forwarded it to the Additional Secretary on 3-9-2003 itself. The Additional Secretary after

consideration put up the same before Union Home Secretary on 4-9-2003. The Union Home Secretary Who had been delegated powers to decide such cases ultimately considered the case of the detenu and rejected his representation on 5-9-2003.

7. The facts stated above leave the duration between 22-7-2003 and 3-9-2003 unexplained. This inordinate delay rather manifests the casual approach on the part of the Union of India in expeditiously considering the representation of the detenu. Despite the grounds of detention having been earlier received with the copy of the detention order in compliance of Section 3(5) of National Security Act on 11-7-2003, the futile exercise of asking for the same was undertaken through the wireless message dated 28-7-2003 followed by reminders dated 8-8-2003 and 25-8-2003. Needless to say, it is the constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. True, the authority is not pre-empted from explaining any delay occurring in disposal of the representation. The Court gives concession for the delay which is occasioned due to permissible reasons or unavoidable causes. If delay is caused on account of any indifference or lapse in considering the representation, as is situation here, the same would adversely affect the further detention of the person. We are, therefore, of the view that the representation of the petitioner was not considered and decided by the Central Government with the speed and promptitude required for the disposal of the same.

8. As a result, the continued detention of the petitioner has been rendered illegal. We allow this writ petition and direct the respondents to set the petitioner at liberty at once if his detention is not required in any other connection.