

(2009) 07 AHC CK 0352
In the Allahabad High Court
Case No : H.C.W.P. No. 65185 of 2008

Ravindra Singh alias Rinku Singh alias Randiya	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2), 3(4)
Penal Code, 1860 (IPC) — Section 307

Citation : (2010) 1 ACR 227

Hon'ble Judges : D.R. Azad, J; Amar Saran, J

Bench : Division Bench

Advocate : Gautam, for the Appellant; Keshav Kumar Dwivedi, Addl. S.G.I., Sudhir Mehrotra, A.G.A. and D.R. Chaudhary, A.G.A., for the Respondent

Judgement

Amar Saran and D.R. Azad, JJ.—Heard Sri. Gautam, learned Counsel for the Petitioner and Sri Sudhir Mehrotra, learned A.G.A. for the State parties and Sri. K.K. Dwivedi for the Union of India.

2. By means of this writ petition the Petitioner is challenging an order of detention dated 6.8.2008 passed by the District Magistrate, Basti, who has been pleased to detain him u/s 3(2) of the National Security Act (hereinafter referred to as the N. S. A.).

3. The grounds of detention dated 6.8.2009 were served on the Petitioner in District Jail, Basti. The allegations therein were that at 10.15 p.m. on 19.7.2008, when Arjun Dubey, the salesman alongwith his companion Yogendra Dubey were selling petrol to customers, at the B.P. Chandra Petrol Pump, two young men arrived on a motor-cycle, got petrol worth Rs. 200 filled, and started going away without making any payment. When Yogendra Dubey asked for money, the Petitioner fired on Yogendra Dubey, who died in the hospital. They also threatened the salesman for having dared to ask for the money and cried out that if anyone came forward, he would be done to death. As a result of this

heinous offence, the persons who were present in the nearby houses and shops closed their shops out of fear and ran away and an atmosphere of terror was generated in the area.

4. The Petitioner also has other criminal history. At 9 p.m. on 4.12.2004 he had shot at and murdered Udai Singh at the roadways tiraha in Basti district. In this crime, his name had surfaced. At about 10 p.m. on 20.5.2006 he tried to fire on the informant Satya Prakash Verma, but his mother Smt. Subhawati Devi intervened and she received a firearm injury and a case u/s 307, I.P.C. was registered against the Petitioner and others. At about 1 p.m. on 20.2.2004, the Petitioner along with his companions armed with country made pistols and knife assaulted Shyamendra Singh and kept firing with their country made pistols in the presence of many persons. By all these activities the maintenance of public order was said to have been disturbed.

5. The Petitioner submitted copies of his representation on 14.8.2008 against his detention to the District Magistrate, Basti, and other authorities, which were handed over to the jailer for communication to them. On 18.8.2008 the District Magistrate rejected the representation. On 27.8.2008 the State Government rejected his representation. On 2.9.2008 the Central Government also rejected his representation. After the report of the advisory board, the State Government confirmed the detention order on 1.10.2008.

6. Three submissions have been made by the learned Counsel for the Petitioner. One, that contradictory positions have been taken by the jailer and the Superintendent of District Jail, Basti, inasmuch as according to the counter-affidavit filed by the jailer the representation was rejected on 28.8.2008, and communicated to the jail on 28.8.2008, whereas according to the State Government the representation was rejected on 27.8.2008 and communicated to the district authorities on 28.8.2008. Learned A.G.A. rightly pointed out in this connection that there seems to be some confusion and misinterpretation about the facts by the jailer who has considered the date of communication of the representation, viz., 28.8.2008 to be the date of rejection of the same by the State Government, whereas the representation was actually rejected on 27.8.2008. In any case nothing will turn on this minor discrepancy. Therefore, there is no force in this contention of the learned Counsel for the Petitioner.

7. The second submission raised by the Petitioner was that there is a discrepancy between the date when the approval of the detention order by the State Government was communicated to the jail. According to the jailer, the radiogram was received on 26.8.2008, whereas, according to the State Government the radiogram was sent on 14.8.2008. It is contended by the learned A.G.A. that the jailer may have been a little careless and failed to see the radiogram dated 14.8.2008. Further, it is contended by the learned A.G.A. that the requirement u/s 3(4) of the N.S.A. that the State Government should approve the detention order within 12 days, has been satisfied in this case. Here it may be noted that the detention order was dated 6.8.2008 and it was approved by the State

Government on 13.8.2008, i.e., all this has been done within 7 days which meets the requirement of Section 3(4) of the N.S.A. Therefore, the requirement of the said Sub-section has been met. There is thus no force in this submission of the learned Counsel for the Petitioner.

8. The third submission made by the learned Counsel for the Petitioner was that the representation was communicated to the Petitioner with delay by the Union of India. The said representation was rejected on 2.9.2008. It was communicated to the detenu only on 11.9.2008 and, thus, there has been an unexplained lapse of 9 days in communicating the same, and this vitiates the continued detention of the Petitioner. In this connection, he has placed reliance on the following decisions: *Tribhuwan Singh v. State of U.P. and Ors.* (XLIV)2009 ACC 889 : 2009 (1) ACR 1023 ; *Harish Pahwa Vs. State of U. P. and Others*, *Dhanushdhari Mishra v. State of U.P. and Ors.* (XLV)2009 ACC 888 : 2009 (1) ACR 1025 and *Avnish Kumar Bhadoria v. State of U.P. and Ors.* (XLV)2009 ACC 413 : 2009 (2) ACR 1185.

9. It may be noted that the case of *Dhanushdhari Mishra* (supra) is the only case where there was no allegation of delay in disposal of the representation, but only in view of the fact that the rejection of the representation has been communicated with a delay of six days, the petition had been allowed even though there was no delay in disposal of the representation. We are constrained to think that this judgment does not appear to be in consonance with the provisions of Article 22(5) of the Constitution of India and the decisions of the Apex Court and this Court on this issue. In our opinion, merely because information about the rejection of the representation is communicated to the detenu with a few days' delay, it cannot result in quashing the continued detention of the Petitioner.

10. Article 22(5) of the Constitution reads as follows:

22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

11. From the perusal of this constitutional provision it is apparent that what has been provided in Article 22(5) of the Constitution is that a duty has been cast on the State to expeditiously communicate the grounds of detention to the detenu, and also to afford him a right to make a representation against the order of detention at the earliest. Implicit in this right is the right to have the representation considered at the earliest. Under Article 22(5), the representation of a detenu is required to be considered very expeditiously without any unreasonable or unexplained delay. We think that the right of the detenu to have information that his representation has been rejected cannot be put on the same pedestal as the right for consideration of his representation at the earliest. After

rejection of his representation, the detenu can of course prefer another representation against his continuing detention, but in a catena of decisions of the Apex Court and this Court it has been emphasized that the same expedition that is required for consideration and disposal of the first representation is not so essential for consideration of the second and subsequent representations. If delays are effected in disposal of such representations the continued detention of a detenu is not ipso facto vitiated. [Vide Sant Lal Bharti Vs. State of Punjab, State of U.P. v. Zavad Zama Khan (1984) SCC 505]. In the decision of the Apex Court in the aforesaid case of Harish Pahwa Vs. State of U. P. and Others, the detention order was set aside because there was both undue delay in disposal of the representation as there was unnecessary calling for the comments from other departments and seeking opinions of one secretary after another, and also because the rejection of the representation was conveyed with delay. It was not a case where the only fault was the delayed communication of the rejection of the representation to the detenu. Thus, the aforesaid authority of the Apex Court has laid down:

...We would emphasize that it is the duty of the State to proceed to determine representations of the character above mentioned 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....

12. In the other cases which have been cited by the Petitioner, Tribhuwan Singh v. State of U.P. (supra), Avanish Kumar Bhadoria v. State of U.P. (supra), the continued detention of the Petitioner was vitiated because there was both delay in disposal of the representation and some delay in communicating the rejection of the representation to the detenu.

13. In the present case, there is no contention that there was any delay in disposal of the representation. The only delay that was alleged was with regard to the delayed communication of the rejection of the representation to the detenu. In D. Anuradha Vs. Jt. Secretary and Another, the observations in Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, which in turn are based on a passage from Frances Coralie Mullin Vs. W.C. Khambra and Others, have been specifically approved which emphasize that whereas there is an obligation on the State to adequately explain each day's delay but the time imperative can never be absolute or obsessive. In this context, the following passage from paragraph 7 in Ummu Saleema's case (supra) has been quoted with approval in paragraph 20 of D. Anuradha's case (supra):

Another submission of the learned Counsel was that there was considerable delay in the disposal of the representation by the detaining authority and this was sufficient to vitiate the detention. The learned Counsel submitted that the detaining authority was under an obligation to adequately explain each day's delay and our attention was invited to the decisions in Pritam Nath Hoon v. Union

of India and in *Shanker Raju Shetty v. Union of India*. We do not doubt that the representation made by the detenu has to be considered by the detaining authority with the utmost expedition but as observed by one of us in *Francis Coralie Mullin v. W.C. Khambra* "the time imperative can never be absolute or obsessive". The occasional observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae.

14. For all these reasons, we find no good ground for allowing this habeas corpus petition and quashing the continued detention of the Petitioner.

This habeas corpus petition is dismissed.