

(2003) 05 AHC CK 0288

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 4839 of 2003

Sachin alias Banti (in Jail)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

Arms Act, 1959 — Section 25

National Security Act, 1980 — Section 3, 3(2)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(1)

Citation : (2003) 3 ACR 2120

Hon'ble Judges : U.S. Tripathi, J;D.P. Gupta, J

Bench : Division Bench

Advocate : Swetashwa Agrawal and Rishi Chaddha, for the Appellant;

Judgement

U.S. Tripathi, J.—The above five writ petitions have been filed separately by each of the Petitioner for quashing their detention order dated 16.12.2002, passed by District Magistrate, Rampur, Respondent No. 2 u/s 3(2) of National Security Act.

2. Each of the Petitioner was separately served with the grounds of detention, along with order of detention, which stated that on 16.11.2002 at about 5 p.m. one Darshan Lal resident of Balmiki Basti, Radha Road, P. S. Civil Lines, district Rampur lodged a report at the police station Civil Lines against the Petitioners alleging that on 15.11.2002 a quarrel had taken place between his son Sumit and the Petitioners Vinod and Subhash on playing cricket, which was pacified by the people of the mohalla. But the Petitioners were not happy. On account of above incident, all the Petitioners armed with country made pistols, in order to create terror in the "biradari" raided the house of Sumit and fired on him with intent to kill him. When hearing sound of fire, his neighbours came to his rescue, the Petitioners again attacked on them, due to which Rahul, Vijay, Ram Prasad, Pappoo, Deepak and Ankush aged about 4 years were badly injured. The Petitioners had also cut the telephone wire, so that information of the incident

could not be sent to the authorities concerned.

3. On the basis of above report a case at Crime No. 157 of 2002 under Sections 147, 148, 149 and 307, I.P.C. was registered at police station, Civil Lines, Rampur. On account of above incident, public order was badly affected and in order to maintain public order, police of neighbouring police stations was called. Investigation of the case was done by Sri Mahabir Singh, Sub-Inspector, who had reached the spot at 4.30 p.m. on receiving telephone information. During investigation injured Sumit, Deepak, Pappu, Rahul, Ankush and Vijay were interrogated on 16.11.2002. They confirmed the incident in their statements and also told that on account of incident a sense of terror and insecurity was created on the spot. Persons present on the road started running helter skelter and chaos was created. People closed their doors. The people of the locality felt insecure and could not dare to come out of their houses. Normal flow of life was stopped. The traffic on the road also stopped on account of incident.

4. The news of incident was published in daily news papers "Dainik Jagaran" and "Amar Ujala" with photographs, which again created a sense of insecurity and terror in the mind of public. The Local Intelligence Unit also submitted a report on 17.11.2002 that Petitioners had created terror in their "birdadari" and committed atrocities on persons on petty matters. The incident was committed in the month of Ramjan when the people were busy in purchasing articles for "roja aftar". On account of the incident in the month of Ramjan public order of the society was adversely affected. The people of Muslim community also became sensitive.

5. On 21.11.2002, Petitioner Subhash was arrested at 1.30 p.m. in Mohalla Power House, Panwaria along with country made pistol and cartridge regarding which a case at Crime No. 1579 of 2002, u/s 25 Arms Act was registered. On 23.11.2002 Petitioner Vinod and Nauratan were arrested at 4.10 p.m. on Government Press Road and each of them were found in possession of a country made pistol and cartridges, regarding which cases at Crime Nos. 1584 of 2002 and 1585 of 2002 u/s 25 Arms Act were registered. Petitioners Rajesh alias Boby and Sachin alias Banti were taken into police custody and on their pointing out country made pistols used in the incident were recovered on 27.11.2002 at 2.05 p.m., regarding which cases at Crime Nos. 1607 of 2002 and 1608 of 2002 were registered. The Petitioners committed dare devil incident dated 16.11.2002 to show that nobody could dare to raise voice against them.

6. The Petitioners were detained in jail in District Jail Rampur in connection with case Crime No. 1571 of 2002. They had also moved bail applications in the Court on 28.11.2002. There was real possibility of Petitioners being released on bail and after release on bail, their indulging in similar activities prejudicial to maintenance of public order.

7. On the basis of above materials the detaining authority was satisfied that detention of Petitioners u/s 3(2) of National Security Act was essential.

8. The detention order was approved by the State Government on 18.12.2002 for a period of one year.

9. All the five writ petitions were connected with each other and detention orders were passed on account of the same incident. Common questions of facts and law are involved in all the writ petitions and therefore, all the writ petitions are being disposed of by a common order with the consent of learned Counsel for the parties.

10. We have heard learned Counsel for the Petitioner, learned A.G.A. and learned standing counsel for the Respondents and have perused the record.

11. Learned Counsel for the Petitioners raised following grounds for challenging the detention order of the Petitioners:

(1) The detaining authority had not mentioned the period of detention in the detention order and non-mention of the period of detention makes the order invalid.

(2) The detaining authority had not supplied the power of delegation under which he was authorised to pass detention order and non-supply of the above authority rendered detention order invalid.

(3) (a) The detention order was passed on a solitary incident, which was only matter of law and order and it had no effect or impact on public order.

(b) At the time of passing of detention order, the Petitioners were detained in jail and there was no cogent material or compelling necessity before the detaining authority to record his satisfaction that the Petitioners on release on bail would indulge in similar activities prejudicial to maintenance of public order.

(4) There was delay in deciding representation of the Petitioners.

Point No. 1:

12. Learned Counsel for the Petitioners contended that since the impugned detention order did not specify the period for which each of the Petitioner was required to be detained and therefore, the order was illegal. He further contended that in the instant case the order of detention was passed by the District Magistrate, who was having delegated power u/s 3(2) of National Security Act, which says that the State Government may direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (2), exercise the powers conferred by the said Sub-section. Therefore, the detaining authority was under obligation to specify the period for which the order of detention was passed.

13. Section 3 of National Security Act reads as under:

Power to make orders detaining certain persons.-(1) The Central Government or the State Government may:

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or (b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.-For the purposes of this Sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in Explanation to Sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (2), exercise the powers conferred by the said Sub-section:

Provided that the period specified in an order made by the State Government under this Sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in Sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where u/s 8 of the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this Sub-section shall apply subject to the modification that for the

words "twelve days" the words "fifteen days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

14. Section 3(2) empowers the State Government to delegate its power as conferred on it under Sub-section (1) to the District Magistrate or Commissioner of Police, if he is satisfied that the circumstances prevailing or likely to prevail in an area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, makes it necessary to delegate the power to them. It further provides that the order of delegation shall be in writing and it shall also specify the period during which the District Magistrate or the Commissioner of Police, is authorised to exercise the power of the State Government under Sub-section (1) of Section 3. Proviso to Sub-section (2) lays down that the delegation should not be for an unlimited period. It should not be for a period of more than three months. Once the State Government's power u/s 3(1) is delegated to the District Magistrate or a Commissioner of Police, they are authorised to exercise that power on the ground specified in Section 3(1) of the Act.

15. In the case of *Ashok Kumar Vs. Delhi Administration and Others*, , it was held in para 11 as below:

It is plain from a reading of Section 3 of the National Security Act that there is an obvious fallacy underlying the submission that the detaining authority had the duty to specify the period of detention. It will be noticed that Sub-section (1) of Section 3 stops with the words "make an order directing that such person be detained", and does not go further and prescribe that the detaining authority shall also specify the period of detention. Otherwise, there should have been the following words added at the end of this Sub-section "and shall specify the period of such detention". What is true of Sub-section (1) of Section 3 is also true of Sub-section (2) thereof. It is not permissible for the Courts, by a process of judicial construction, to alter or vary the terms of a section. Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case, i.e., the nature of the prejudicial activity complained of. It is not that the period of detention must in all circumstances extend to the maximum period of 12 months as laid down in Section 13 of the Act.

16. The above question was again considered by the Apex Court in the case of *T. Devaki v. Government of Tamil Nadu and Ors.* 1990 SCC (Cr) 348.

After discussing the decisions of the Apex Court in the cases of *Gurbux Anandram Bhiryani*, 1988 SCC (Cr) 914 ; *Ujagar Singh Vs. The State of The Punjab*, ; *Suna Ullah Butt v. State of J. and K.*, 1973 SCC (Cr) 138 ; *Suresh Bhojraj Chelani v. State of Maharashtra*, 1983 SCC (Cr) 202 and *A.K. Roy v. Union of India*, 1982 SCC (Cr) 152, the Apex Court held as below:

It is thus clear that the view taken in Gurbux Bhiryani's case (supra) on the interpretation of Section 3 of the Maharashtra Act is incorrect. This Court has while considering the question of the validity of the detention order made under different Acts, consistently taken the view that it is not necessary for the detaining authority or the State Government to specify the period of detention in the order. In the absence of any period being specified in the order the detenu is required to be under detention for the maximum period prescribed under the Act, but it is always open to the State Government to modify or revoke the order even before the completion of the maximum period of detention. We are, therefore, of the opinion that the impugned order of detention is not rendered illegal on account of the detaining authority's failure to specify period of detention in the order.

17. In view of above decisions, the detaining authority is not under obligation to specify the period of detention and the detention order is not rendered illegal on account of detaining authority's failure to specify period of detention in the order. It is also clear that the words "during such period as may be specified in the order" occurring in Section 3(2) of the Act relate to the delegation/authorisation to the District Magistrate or the Commissioner of Police and not to the period of detention of a detenu. Therefore, we find no force in the above detention and hold that the detention is not invalid on account of non-mentioning of period of detention of the detenu.

Point No. 2:

18. The grounds of detention though does not indicate by which Government order the detaining authority was authorised to pass order of detention. But his authority has nowhere been challenged in any paragraph of the writ petition. Therefore, the detaining authority did not disclose his authorization in his counter-affidavit. The learned A.G.A. has pointed out that by Notification No. 111-1-1-80 C x 7 dated September 13, 2002, published in U.P. Extraordinary Gazette dated September 13, 2002 (Chapter 4 Part (B)) in exercise of power conferred on him by Sub-section (3) of Section 3 of National Security Act, 1980, the Governor of U.P. was pleased to empower all the District Magistrate of the State to exercise the powers conferred by Sub-section (2) of Section 3 for a further period of three months with effect from September 17, 2002. Fax copy of above notification was also shown.

19. The impugned detention order was passed on 16.12.2002 and therefore on the date of passing the detention order the District Magistrate was authorized to exercise power conferred by Section 3(2) of National Security Act. Therefore, the order of detaining authority was not without jurisdiction and non-mentioning his above authority does not invalidate the detention order.

Point Nos. 3 (a) and 3 (b):

20. Learned Counsel for the Petitioners contended that incident in question related to simply law and order problem, as it was a solitary incident and has no

effect or impact on public order. Therefore, detention order on the basis of above incident is invalid. He further contended that a solitary incident was not sufficient without any other material on record to record satisfaction of the detaining authority that on release on bail, each of the Petitioner would indulge in similar activities prejudicial to the maintenance of public order. He has placed reliance on the decision of Apex Court and of this Court in *Ayya alias Ayub v. State of U. P.* 1989 (1) AWC 90 ; *Vashishtha Narain Karwaria v. State of U. P.* 1991 AWC 558 ; *Seshdhar Mishra v. Superintendent, Central Jail, Naini and Ors.* 1985 (Suppl) ACC 304 ; *Shashi Aggarwal v. State of U.P. and Ors.* 1988 ACrR 226 (SC): 1988 SCC (Cr) 178 ; *Rajeev Bharati v. District Magistrate*, 1995 AWC 120 ; *Surya Prakash Sharma v. State of U.P. and Ors.* 1995 ACrR 315 (SC): 1994 SCC (Cr) 1691 ; *Dharmendra Suganchand Chelawat and another Vs. Union of India and others*, and *Gulab Mehra v. State*, 1987 SCC (Cr) 721.

21. On the other hand, the learned A.G.A. contended that the incident in question taken as a whole, in the background in which it was committed, the previous antecedents of the Petitioners, which are clear from the material available on record clearly indicated that incident in question related to public order and there were sufficient materials before the detaining authority to record his satisfaction that on release on bail, the Petitioners would indulge in similar activities prejudicial to the maintenance of public order.

22. The term "public order" and "law and order" have been considered by the Apex Court and this Court in several cases.

23. In *Gulab Mehra v. State of U.P. and Ors.* (supra), it was held by the Apex Court that an act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted to particular individuals or a group of individuals, it breaches the law and order problem but if the effect and reach and potentiality of the act is so deep as to affect the community at large and or the even tempo of the community then it becomes a breach of public order.

24. In *Smt. Angoori Devi for Ram Ratan v. Union of India*, 1989 (26) ACC 1 (SC), the Apex Court observed as below:

The impact on "public order" and "law and order" depends upon the nature of the act, the place where it is committed and motive force behind it. If the act is confined to an individual without directly or indirectly affecting the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquillity, it may fall within the orbit of the public order. This is precisely the distinguishing feature between two concepts.

25. In *T. Devakai v. Government of Tamil Nadu and Ors.* (supra) it was held that any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of

public order. There is basic difference between "law and order" and "public order". The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society. A solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so much as to bring the case within the purview of the Act providing for preventive detention. Such a solitary incident can only raise a law and order problem and no more.

26. In the case of Sheshdhar Mishra v. Superintendent, Central Jail, Naini and Ors. (supra) a Full Bench of this Court considered the question of distinction between law and order and public order u/s 3 of the Act and held:

Where in a detention order the detenu was alleged to have committed murder of an advocate at a public place as a result of which local residents closed the doors of their houses and shops and it was further alleged to have threatened the prosecution witnesses to desist from tendering evidence in the murder case pending against him, the two grounds being intimately connected with incident of murder committed on account of personal animosity and there being no material on record to suggest that the detenu would have indulged into similar activities of murder, in future, it could not be said that the single act of murder had its impact on the society to such an extent as to disturb the normal life of the community, thereby rudely shocking the ordinary tempo of the normal life of the public. Merely because the local residents closed the doors of their houses and shops did not mean that the balanced tempo of the life of the general public was disturbed as a result of which the members of the public not carry on normal avocation of their life.

27. In the case of Arun Ghosh Vs. State of West Bengal, , the Apex Court held as below:

This Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was aid to enhance more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order.

It means therefore, that the question whether a man has only committed breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of reach of the act upon the society.

28. The incident in instant case, if tested on the guidelines laid down in above

decisions, we find that an altercation had taken place on 15.11.2002 at about 5 p.m. between Petitioner Subhas and Sumit S/o Darshan Lal on playing cricket. On account of above incident, all the Petitioners, to show their high-handedness and to create terror in their biradari, armed with country made pistols raided the house of Sumit, S/o Darshan Lal and fired by country made pistols in order to kill Sumit. When the neighbouring persons heard the sound of fire, came to the spot, all the Petitioners fired on them, due to which Rahul , Vijay, Ram Prasad, Pappu, Deepak and Ankush aged about 4 years were badly injured. Not only this, the Petitioners before committing the above incident has cut telephone wire, so that the information of the incident could not be sent to Higher Authorities. The above incident was committed in the months of Ramjan when the people of Muslim community were busy in purchasing articles for roza aftar. The material on record further shows that the locality in which the incident took place had mixed population of Hindus and Muslims and the manner in which the dare devil incident was committed by the Petitioners created a sense of insecurity, chaos and panic amongst the people of the locality. The report of Local Intelligence Unit dated 17.11.2002, placed before the detaining authority also indicated that the Petitioners were persons of criminal mentality and on the occasion of "Holi", they had also attacked on Sikh community, but due to their terror, nobody could dare to lodge report against them. On one side of the locality in which the incident in question took place, there lived people of Muslim community and on other side, people of Sikh community were residing and they became fear stricken and sensitive on account of dare devil incident committed at public place in broadday light. The injury report and the statement of injured persons also indicated that on account of incident, even tempo of life was badly disturbed and every person of the locality was having sense of fear and insecurity in coming out of his house. Therefore, the incident in question coupled with the circumstances and the manner in which it was committed in order to show high-handedness of the Petitioners and to create tension among the persons of different community clearly indicated that it affected public order and it was not simply a question of law and order problem.

29. It is not disputed that the detention order can be passed against a person, who is detained in jail provided the detaining authority record his satisfaction that there is real possibility of being the detenu released on bail and on release on bail he would indulge in similar activities prejudicial to the maintenance of public order.

30. In the case of Shashi Aggarwal v. State of U.P. and Ors. 1988 ACrR 226 (SC): 1988 SCC (Cr) 178, it was held by the Apex Court that every citizen has right to move the Court for bail when he is arrested under the ordinary law of the land and he cannot be interdicted from moving the Court for bail clamping an order of detention. The possibility of the Court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be a credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the

interest of public order.

31. In the case of Dharmendra Suganchand Chelawat and Anr. v. Union of India and Ors. (supra) the Apex Court held as below:

The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention ; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedents activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

32. In the case of Surya Prakash Sharma v. State of U.P. and Ors. (supra) relying on the principles laid down in Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, and Dharmendra Suganchand Chelawat and another Vs. Union of India and others, , the Apex Court held as below:

The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention ; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention.

33. In the case of Kamarunnissa and Others Vs. Union of India and another, , the Apex Court held as below:

From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed.-(1) if the authority passing the order is aware of the fact that he is actually in custody, (2) if he has reason to believe on the basis of reliable material placed before him, (a) that there is a real possibility of his being released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing, if the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher court.

34. In the light of above decisions, we would consider whether the detaining authority was justified in passing the detention order while the Petitioners were in jail.

35. The detaining authority has recorded his satisfaction in the grounds of detention as below:

At present you along with your associates are detained in District Jail, Rampur in connection with Case Crime No. 1571 of 2002 under Sections 147, 148, 149, 307, I.P.C. and 25 Arms Act. The bail application was moved by you in the Court on 28.11.2002 and there is possibility of allowing it. In case you are released on bail in the above crime, you would indulge in similar criminal activities and would affect the public order of the locality.

36. Therefore, the District Magistrate had recorded satisfaction that detenu at the time of passing of order was detained in jail and had moved bail application on 28.11.2002 and there was real possibility of being him released on bail. The question which remains for determination is whether there was cogent material and compelling necessity for recording satisfaction by the detaining authority that on release on bail, the Petitioners would indulge in similar activities prejudicial to maintenance of public order.

37. As mentioned above, the incident in question was not the sole incident, which was committed by the Petitioners. According to report of Local Intelligence Unit and other materials on record, the Petitioners were of criminal mentality and on the occasion of Holi, they also attacked on Sikh community. On account of their terror, nobody could dare to lodge report against them and they were in habit of committing crimes affecting the maintenance of public order. No doubt, the incident, which took place on Holi had no live link and nexus with the detention order, but it shows the tendency of the Petitioners in indulging the acts prejudicial to the maintenance of public order. Therefore, there were sufficient materials before the detaining authority to record his satisfaction that Petitioners, if released on bail, would indulge in similar activities prejudicial to the maintenance of public order. Therefore, the detention order is not invalid on this count.

Point No. 4:

38. For determining delay we have to consider each case separately:

(1) Habeas Corpus Writ Petition No. 4839 of 2003, Sachin alias Banti v. State of U.P. and Ors. In this petition, according to the counter-affidavit of Sri Amar Pal, Deputy Jailor, District Jail, Rampur, the Petitioner Banti submitted his representation on 26.12.2002, which was sent to District Magistrate, Rampur on same day. The District Magistrate rejected it on same day, information regarding, it was received in the jail on 28.12.2002 and the detenu was communicated about rejection on same day, i.e., 28.12.2002.

The counter-affidavit of Sri S. K. Verma, District Magistrate, Rampur, shows that the representation of the Petitioner dated 26.12.2002 was received by him on same day and was rejected on same day. The other copies of the representation were sent to State Government as well as Central Government through special

messenger well within time.

Counter-affidavit of Sri C. P. Singh, Deputy Secretary, Home and Confidential, Department, U.P. Civil Secretariat shows that the representation of the Petitioner dated 26.12.2002 was received in the concerned section of the State Government on 28.12.2002. The State Government sent the copies of the representation and parawise comments thereon to U.P. Advisory Board, vide its letter dated 30.12.2002 and to Central Government by letter dated 30.12.2002. Thereafter, the concerned section of the State Government examined the representation and submitted a detailed note on 30.12.2002 and Deputy Secretary examined it on 30.12.2002 and Special Secretary examined it on 30.12.2002 and thereafter, it was submitted to Secretary, who examined it and rejected on 31.12.2002.

The counter-affidavit of Sri Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India stated that the representation of the Petitioner dated 26.12.2002 was received by the Central Government on 6.1.2003 and on concerned desk of Ministry of Home Affairs on 7.1.2003. The representation was immediately processed for consideration and case of detenu was put up before the Under Secretary on 14.1.2003. The Under Secretary considered it on 14.1.2003 and submitted before Director, Ministry of Home Affairs on 14.1.2003. The Director considered the same and sent to Joint Secretary, Ministry of Home Affairs on 14.1.2003. The Union Home Minister considered on 14.1.2003 and finally rejected on 17.1.2003. It also disclosed that 11 and 12 January, 2003 were holidays. This shows that there was no delay in deciding the representation of detenu by District Magistrate, State Government and Central Government.

(2) Habeas Corpus Writ Petition No. 4840 of 2003, Vinod v. State of U.P. and Ors.

Counter-affidavit of Sri Amar Pal, Deputy Jailor shows that the Petitioner submitted his representation on 4.1.2003 and the same was submitted to District Magistrate on same day, i.e., 4.1.2003. The District Magistrate decided the representation on same day and communicated to the jail authorities on 6.1.2003 and detenu was accordingly informed on 6.1.2003.

Counter-affidavit of Sri Surendra Kumar Verma, District Magistrate, Rampur, shows that representation of the Petitioner dated 4.1.2003 was considered by him on same day and was rejected by him on same day. The remaining copies of representation along with parawise comments were sent to State Government through special messenger on same day, i.e., 4.1.2002.

Counter-affidavit of Sri C. P. Singh Deputy Secretary, Home and Confidential Department, U.P. Civil Secretariat, Lucknow, disclosed that representation of the Petitioner dated 4.1.2003 was received in the concerned section of State Government on 6.1.2003. The State Government sent copies of the representation and parawise comments thereon to the U.P. Advisory Board, vide letter dated 7.1.2003 and to the Central Government, vide letter dated 7.1.2003. He examined the representation on 8.1.2003, the Special Secretary examined it

on 8.1.2003 and thereafter submitted to the Secretary, who examined it on 8.1.2003 and submitted to the Higher Authorities for final order of the State Government. After due consideration, the said representation was finally rejected by State Government on 9.1.2003.

The counter-affidavit of Sri Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India disclosed that representation of the Petitioner dated 4.1.2003 was received by the Central Government on 9.1.2003. It was processed for consideration and was put up before Under Secretary on 13.1.2003 as 11 and 12.1.2003 were holidays. The Under Secretary considered it on 14.1.2003. The Director considered it on 14.1.2003, the Joint Secretary considered it on 14.1.2003 and Union Home Secretary on 17.1.2003 and finally rejected it on 17.1.2003.

It indicates that there was no delay in deciding representation by District Magistrate, State Government and Central Government. Thus, there was no delay in deciding the representation of the Petitioner.

(3) Habeas Corpus Writ Petition No. 4842 of 2003, Rajesh v. State of U.P. and Ors.

Counter-affidavit of Sri Amar Pal, Deputy Jailor, Rampur shows that the Petitioner submitted his representation on 4.1.2003, which was sent to District Magistrate on same day. The District Magistrate rejected it on same day and communicated on 6.1.2003. The detenu was informed about this rejection by District Magistrate on 6.1.2003.

Counter-affidavit of Sri. S. K. Verma, District Magistrate, Rampur, shows that representation of the Petitioner dated 4.1.2003 was received by him on same day and he rejected it on same day. Thereafter, aforesaid representation was sent through special messenger to the State Government as well as the Central Government on 5.1.2003.

Counter-affidavit of Sri C. P. Singh, Under Secretary, Home and Confidential Department, U.P. Civil Secretariat, Lucknow, shows that representation of the Petitioner dated 4.1.2003 was received in the concerned section of the State Government on 6.1.2003. The State Government sent copies of representation and parawise comments thereon to U.P. Advisory Board, vide letter dated 7.1.2003 and to the State Government, vide letter dated 7.1.2003. Thereafter, the concerned section of the State Government examined the representation and submitted detailed note on 7.1.2003. The deponent examined it on 8.1.2003 and the Special Secretary examined it on 8.1.2003 and thereafter, submitted to the Secretary. The Secretary examined it on 8.1.2003 and submitted to the higher authorities for final orders of the State Government. After due consideration, the said representation was finally rejected by State Government on 9.1.2003.

There is no counter-affidavit on behalf of Union of India The counter-affidavit of Sri Amar Pal, Deputy Jailor no doubt shows that the information regarding

rejection of representation of detenu dated 4.1.2003 was received from Central Government on 23.1.2003, vide radiogram dated 21.1.2003. But it is not clear as to when the representation of the detenu was received by Central Government and when it was decided. Therefore, the delay in deciding the representation of the detenu by the Central Government unexplained.

(4) Habeas Corpus Writ Petition No. 4845 of 2003, Nauratan v. State of U.P. and Ors.

Counter-affidavit of Sri Amar Pal, Deputy Jailor, District Jail, Rampur shows that the Petitioner submitted his representation on 4.1.2003 in six copies and the same were sent through the District Magistrate, Rampur by his letter dated 4.1.2003. The representation of the Petitioner was rejected by the detaining authority on same day and information was received on 6.1.2003, which was communicated to the detenu on 6.1.2003.

Counter-affidavit of Sri S. K. Verma, District Magistrate, Rampur shows that representation of the Petitioner dated 4.1.2003 was received by the Jail Authorities on 4.1.2003, which was considered and rejected by him on same day. Thereafter, the aforesaid representation was sent through special messenger to the State Government and Central Government on 5.1.2003.

Counter-affidavit of Sri C. P. Singh, Under Secretary Home and Confidential Department, U.P. Civil Secretariat, Lucknow disclosed that Petitioner's representation dated 4.1.2003 along with parawise comments thereon forwarded by the District Magistrate, Rampur, vide his letter dated 4.1.2003 was received in the concerned section on 6.1.2003. The State Government sent copies of representation and parawise comments thereon to U.P. Advisory Board, vide letter dated 7.1.2003 and to the Central Government, vide letter dated 7.1.2003. The concerned section of State Government examined representation and submitted detailed note on 7.1.2003. Under Secretary examined it on 8.1.2003. Special Secretary examined on 8.1.2003 and Secretary examined on 8.1.2003. The above representation was finally rejected by the State Government on 9.1.2003.

Counter-affidavit of Sri Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi disclosed that representation of the Petitioner dated 4.1.2003 was received by Central Government in the Ministry of Home Affairs on 9.1.2003 and in the concerned desk of Ministry of Home Affairs on 10.1.2003. 11.1.2003 and 12.1.2003 were holidays. The representation was immediately processed for consideration on 13.1.2003. Under Secretary considered it on 14.1.2003. Director considered it on 14.1.2003, Joint Secretary considered it on 14.1.2003 and Union Home Secretary considered and finally decided on 17.1.2003.

It also shows that action was taken on the representation immediately by the authorities concerned and it was decided without any delay.

(5) Habeas Corpus Writ Petition No. 4846 of 2003, Subhash v. State of U.P. and Ors.

Counter-affidavit of Sri Amar Pal, Deputy Jailor, District Jail, Rampur shows that Petitioner submitted his representation on 4.1.2003 in six copies and the same has been sent to the District Magistrate on same day, i.e., 4.1.2003. The District Magistrate rejected it on same day and communication received on 6.1.2003. The detenu was communicated on 6.1.2003.

Counter-affidavit of Sri S. K. Verma, District Magistrate, Rampur shows that the representation of the Petitioner dated 4.1.2003 was received by him on same day he considered and rejected it on same day and thereafter aforesaid representation was sent through special messenger to State Government and Central Government on 5.1.2003.

Counter-affidavit of Sri C. P. Singh, Deputy Secretary, Home and Counter-affidavit of Sri C. P. Singh, Deputy Secretary, Home and Confidential Department, U.P. Civil Secretariat, Lucknow shows that representation of the Petitioner dated 4.1.2003 was received in the concerned section on 6.1.2003. The State Government sent copies of the representation and parawise comments thereon to U.P. Advisory Board, vide its letter dated 7.1.2003 and to the Central Government, vide letter dated 7.1.2003. He examined the representation of the Petitioner on 7.1.2003 the Special Secretary examined it on 8.1.2003 and thereafter submitted to the Secretary. The Secretary examined it on 8.1.2003 and submitted it to the higher authorities for final decision by the State Government. After due consideration, the State Government finally rejected on 9.1.2003.

No counter-affidavit has been filed on behalf of Central Government.

Though para 13 of counter-affidavit of Sri Amar Pal, Deputy Jailor, District Jail, Rampur discloses that representation of the Petitioner dated 4.1.2003 has been rejected by the Central Government and information was sent on 7.2.2003 and same was received on 10.2.2003, which was served on the Petitioner. But it is not clear as to when the representation was received by Central Government and when it was finally rejected. Thus, the delay in disposal of representation of the Petitioner by the Central Government has not been explained.

39. In view of our findings on the above points in Writ Petition Nos. 4842 and 4846 of 2003, there was unexplained delay on the part of Central Government in deciding representation of the Petitioner. Therefore, continued detention of Petitioner Rajesh and Subhash have been rendered invalid. We also find that there is no force in the writ petition of other Petitioners Sachin alias Banti, Vinod and Nauratan.

40. Accordingly, Writ Petition Nos. 4839 of 2003, Sachin alias Banti v. State, 4840 of 2003, Vinod v. State and 4845 of 2003, Nauratan v. State, have no force and are, accordingly, dismissed. Writ Petition No. 4842 of 2003, Rajesh v. State

and 4846 of 2003, Subhash v. State, are, accordingly, allowed. Continued detention of above Petitioners is held illegal and Respondents are directed to release them (Rajesh and Subhash) to set at liberty forth with unless wanted to be detained in connection with some other case.