
(2002) 10 AHC CK 0130
In the Allahabad High Court
Case No : Writ Petition No. 393 (H/C) of 2002

Saleem

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2002) 10 AHC CK 0130

Hon'ble Judges : Khem Karan, J and R.C.Pandey, J

Final Decision : Allowed

Judgement

1. Counteraffidavit of Shashi Srivastava, Senior Superintendent of District Jail, Gonda be taken on record.
2. Heard Sri Krishna Kumar Singh, learned Counsel for the petitioner. Sri S.K. Singh and its authorities and Sri B.B. Saxena, learned Counsel for the Union of India.
3. This habeas corpus petition is directed against the order dated 2342002 passed under Section 3 (2) of the National Security Act, 1980 by the District Magistrate Gonda and also against continued detention based thereon.
4. From the perusal of the grounds of detention it transpires that the same has been based on the occurrence that took place on 2632002 in which the petitioner and others are said to have committed offences punishable under Section 3/5/8 of Prevention of Cow Slaughter Act, under Section 429 of I.P.C. and under Section 3(1) of Gangster Act. It was alleged that these person were slaughtering cows and were also found in possession of 10 kgms of beef. The petitioner moved application for bail and while the same was pending before the competent Court, police mooted disposal dated 2142002 to the District Magistrate for detaining the petitioner under the Act of 1980, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The detention was approved by the Government of U.P. and on the opinion of the

Advisory Board, the petitioner was detained for a period of 12 months vide order dated 622002 of the Government passed under Section 12 (1) of the Act of 1980.

5. The main submission from the side of the petitioner is that there was an unexplained delay in disposal of the representation given to the State Government. He says that the detenu, submitted his representation on 1/522002 from jail for being forwarded to the State Government. Learned Counsel says that this representation reached the District Magistrate on the same date, but the District Magistrate instead of forwarding the same to the State Government called for the comments from the sponsoring authority namely the police and these comments came as late as on 652002 and it was thereafter that the representation was forwarded and sent to the State Government which reached the Government on 952002. His submission is that calling for the comments of the sponsoring authority was not necessary and not permissible as the entire material was before the District Magistrate when he passed the detention order. He has referred to *Sant Singh v. District Magistrate, Varanasi and others*, 2000 (1) JIC 438 (All), in support of his arguments, wherein this Court has taken the view that the delay in disposal of the representation cannot be explained by referring to the period consumed by the detaining authority in waiting for the comments from the sponsoring authority.

6. We are of the view that the District Magistrate unnecessarily wasted the time by calling for the comments and awaiting for the same, before forwarding the representation to the Government. So, this delay has vitiated the continued detention of the petitioner.

7. The next submission of the learned Counsel for the petitioner is that there was inordinate and unexplained delay, in intimating the petitioner, about rejection of the representation by the State Government. Learned Counsel says that while the State Government rejected the representation on 1452002, but information was conveyed to the petitioner as late as on 16 2002. He says that the petitioner kept waiting for the result of the representation. He has referred to *Nihal (Nihal Kasai) v. Union of India and others*, 2002 (2) JIC 636 (All) (LB) and to *State of Punjab v. Sukhpal Singh*, 1990(1) JIC 151 (SC) : AIR 1990 Supreme Court 231, in support of his contention that unexplained and inordinate delay in communication also vitiates continued detention. We are of the view that there was unexplained delay on the part of the detaining authority in communicating the rejection of the representation to detenu and this also vitiates continued detention.

8. In view of the conclusions reached above the writ petition against the continued detention deserves to be allowed. It is accordingly allowed and the continued detention of the detenu is held to be bad in law and is quashed and it is directed that he be released forthwith, if not wanted in any other case.