

(2009) 04 AHC CK 0003

In the Allahabad High Court

Case No : C.M. Habeas Corpus W.P. No. 7870 of 2009

Sarju Prasad Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(3)

Citation : (2009) 3 ACR 2687

Hon'ble Judges : Y.C. Gupta, J; Vinod Prasad, J

Bench : Division Bench

Advocate : D.S. Mishra, Satyendra Narayan Singh and Jagdish Prasad Mishra, for the Appellant; S.P. Singh and Ashok Kumar Rai and Sudhir Mehrotra, A.G.A. and Addl. S.G.I., for the Respondent

Judgement

Vinod Prasad and Y.C. Gupta, JJ.—Sri D. S. Mishra, learned Counsel for the Petitioner made a request that he be permitted to delete Respondent No. 4, Senior Superintendent of Police, Basti, from the array of Respondents in this habeas corpus petition as Respondent No. 4 is not the relevant authority against whom any relief has been sought in this writ petition. The prayer is allowed. Learned Counsel for the Petitioner is directed to delete Respondent No. 4 Superintendent of Police, Basti, from array of parties and renumber Respondent No. 5 as Respondent No. 4 during the course of the day.

2. Sarju Prasad Shukla, the detenu Petitioner, has invoked our extraordinary jurisdiction, under Article 226 of the Constitution of India, with the prayer to issue an appropriate writ in the nature of habeas corpus directing the Respondents to produce the corpus before this Court and release him forthwith by quashing the impugned detention order dated 5.12.2008, passed by District Magistrate, Basti, which order has been approved by Secretary (Home), Confidential, U. P. Government, Lucknow (Annexures-1 and 3A to this habeas corpus petition).

3. Shorn of unnecessary details, it is recorded here that the Petitioner has been detained by District Magistrate, Basti, Respondent No. 3 by exercising his power u/s 3(3) of National Security Act vide Annexure-1 to this habeas corpus petition, vide his order dated 5.12.2008. Grounds of detention are contained in Annexure-1A to this petition. Detenu Petitioner questioned legality of his said detention order by filing a representation vide Annexure-2. Since the State Government and Central Government approved and countenanced the detention of the Petitioner, the Petitioner was left with no option but to file this habeas corpus petition to get himself freed from detention.

4. We have heard Sri D. S. Mishra, learned Counsel for the Petitioner as well as Sri A. K. Rai, learned Counsel for Respondent No. 2 and Sri Sudhir Mehrotra, learned A.G.A. for the State in opposition.

5. The contention of Sri D. S. Mishra lies in a very narrow compass, therefore, without venturing into detailed narration of facts, we record the submission of the learned Counsel for the Petitioner.

6. Learned Counsel for the Petitioner contended that looking to the counter-affidavit filed by Smt. L. P. Srivastava, on behalf of the Union of India, especially paragraphs 5 and 6 thereof it is well perceptible that there is absolutely no explanation for the delay occasioned in considering the representation of the detenu by the Union of India. To shorten the contention, we reproduce paragraphs 5 and 6 of the counter-affidavit filed by Union of India below:

5. The allegations made in paras No. 5, 7, 23, 30, 33 and ground G of para 37 of the petition are denied as being incorrect. It is stated that a representation dated 10.12.2008 from the detenu alongwith the parawise comments of the detaining authority was received by the Central Government in the concerned Desk of Ministry of Home Affairs on 30.12.2008 through State Government of Uttar Pradesh vide letter No. 84/2/188/08-CX-5, dated 16.12.2008.

6. This representation was processed for consideration, and the case of the detenu was put up before the Deputy Secretary (Legal), Ministry of Home Affairs on 2.1.2009. The Deputy Secretary (Legal) carefully considered the same and put up the same before the Joint Secretary, Ministry of Home Affairs on 2.1.2009. The Joint Secretary considered the case and forwarded the same before Union Home Secretary on 6.1.2009. The Union Home Secretary considered the case of the detenu and rejected the representation of the detenu on 16.1.2009 and the file received back in the Section on 19.1.2009.

7. On the strength of averments made in above two paragraphs, learned Counsel for the Petitioner contended that the Union of India has not made any endeavour whatsoever to explain the delay occasioned in considering the representation of the detenu from 6.1.2009 to 16.1.2009 and hence the detention order of the Petitioner deserves to be quashed.

8. Refuting the raised contention, counsel for Union of India submitted that there

were holidays and hence there is no delay on the part of Union in disposal of the representation of the Petitioner.

9. Albeit, learned Counsel for the Union of India did canvass before us that since there were holidays therefore, there is no unnecessary delay in disposal of the representation of the detenu Petitioner but we are not impressed by the said offered explanation by Union of India firstly for the reason that no such ground and/or plea has been pleaded by the Union of India in its counter-affidavit nor there were holidays during such periods. Ipse dixit of Union of India without any factual pleading being raised in the counter-affidavit cannot be allowed to be canvassed before us nor we are prepared to accept such a plea which is purely factual and therefore must be pleaded specifically. We are of the opinion that Union of India acted with laxity and not with alacrity in disposal of representation made by the detenu from 6.1.2009 to 16.1.2009. Referred paragraphs of counter-affidavit filed by Union of India, in fact, has not at all explained the delay occasioned and hence makes the detention order vulnerable, resultantly, on this short ground this habeas corpus petition deserves to be allowed.

10. Concludingly, this habeas corpus petition stands allowed. Impugned detention order dated 5.12.2008, passed by District Magistrate, Basti and order of it's approval dated 15.12.2008 issued by Secretary (Home), Confidential, U. P. Government, Lucknow Annexures-1 and 3A respectively to this petition are quashed. Petitioner is directed to be set at liberty forthwith from jail, where he is incarcerated, unless he is in legal custody by order of any other Court or authority in any other matter.