

(2009) 07 AHC CK 0038

In the Allahabad High Court

Case No : Criminal Miscellaneous (Habeas Corpus) Writ Petition No. 16231 of 2009

Satish Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

National Security Act, 1980 — Section 3(3), 3(4), 3(5), 8
Penal Code, 1860 (IPC) — Section 41, 411, 418, 420, 467

Citation : (2009) 3 ACR 2533

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

Bench : Division Bench

Advocate : Rajul Bhargava and Rajiv Joshi, for the Appellant; A.K. Malviya and Sudhir Mehrotra, Addl. S.G.I. and A.G.A., for the Respondent

Judgement

Vinod Prasad, J.—The detenu Petitioner Satish Sharma has challenged his detention u/s 3(3) of the National Security Act passed by District Magistrate, Allahabad vide his order dated 9.1.12009 (Annexure-1) to this habeas corpus writ petition.

2. Vide Annexure-2, which are the grounds of detention, as was supplied to the Petitioner u/s 8 of the National Security Act, in short, the grounds are that the Petitioner was indulging in counterfeiting, floating and circulating fake currency notes. On 20.9.2008, S.O. Kareli had caught the Petitioner in the house of Liyakat Khan where the Petitioner alongwith his associates, namely, Ateequr Rahman alias Ateeq Kirana, Shamsul Haq, Shams-A-Tabraj alias Sameer were preparing fake currency notes. Alongwith fake currency, the apparatus computers, printer etc. were also recovered. Further grounds are that prepared said fake currency notes were being floated in the market with the help of Firoz Ansari alias Gullu and Jaanu. Further it is mentioned that the cars, which were being utilized by the Petitioner and his associates were also stolen ones. It was further revealed that the motorcycles of two other socio criminises, namely, Firoz Ansari alias Gullu and Jaanu were also stolen. All the motorcycles having

registration number U.P. 70 AJ-8268, U.P. 70 AE-1333 and U.P. 70 AM-3579 were seized by the police. At the pointing out of the Petitioner and his associates, police had come to Munna Colony, Gaus Nagar where the raiding police force had arrested other co-accused Firoz Ansari alias Gullu and Jaanu. From their possession also fake currency notes were recovered alongwith the above mentioned motorcycles. In respect of the illegal activities and crime committed by the Petitioner, Case Crime No. 156 of 2008, under Sections 418, 420, 467, 468, 472, 489B, 489C, 489D and 489E, I.P.C., Crime No. Nil of 2008, under Sections 41 and 411, I.P.C. were registered. The Petitioner was arrested and was lodged in Central Jail, Naini. Recovered fake currency notes were got examined from Reserve Bank of India, Kanpur Nagar, which established the fact that the recovered currency notes were counterfeited. Charge-sheet, therefore, was laid against the Petitioner and other accused persons for committing the aforesaid crimes.

3. District Magistrate, Allahabad, Respondent No. 3 was of the opinion that the activities of the detenu Petitioner were detrimental for the economic growth of the country as well as of the society and it was necessary to desist the Petitioner from acting in any manner prejudicial to the maintenance of the essential supplies and services essential to the community. Grounds further mentioned that by indulging into a racket of dealing in fake currency notes the Petitioner had flouted Ordinance No. 11-15011/1/82 ISDO-11 dated 8.2.1982. It further mentioned that preparation and floating of the fake currency notes pervaded a sense of insecurity in the minds of the public at large. Petitioner had moved a bail application in the aforesaid crime number, which was rejected by Sessions Judge, Allahabad and therefore, he had approached the High Court for being released on bail in the concerned crime.

4. Since the District Magistrate, Allahabad was of the opinion that after being released on bail, detenu Petitioner will re-indulge in the illegal activities of racket dealing in the fake currency notes that he ordered for Petitioners detention under the National Security Act, exercising power u/s 3(3) of the said Act vide his order dated 9.1.2009, Annexure -1, which detention order has been challenged by the Petitioner in the instant writ petition.

5. The detention order alongwith the grounds thereof were served on the Petitioner on the same day in Central Jail, Naini where he was incarcerated. State Government approved the detention order u/s 3(4) of the National Security Act, on 16.1.2009.

6. After being served with the grounds of detention and other relevant documents, Petitioner through Jail Superintendent, Central Jail, Naini, moved a representation on 17.1.2009 to the various authorities including the District Magistrate. The District Magistrate, Allahabad, Respondent No. 3, rejected the said representation on 21.1.2009. State Government at its end sent the representation alongwith its comments, grounds of detention and other relevant documents to the Central Government on 19.1.2009 in consonance with Section

3(5) of the National Security Act. District Magistrate, Allahabad forwarded the representation of the detenu Petitioner alongwith his comments to the Central Government and State Government on 21.1.2009. The detenu's representation alongwith the comments of the District Magistrate and other relevant papers was received by the State Government on 23.1.2009. State Government forwarded detenu's representation to the Central Government on 27.1.2009. At it's end the State Government rejected detenu's representation on 1.2.2009. The Central Government, however, rejected the said representation on 9.3.2009 and the fax of the said rejection, through radiogram message dated 11.3.2009, was communicated to the detenu Petitioner on the same day.

7. On the above factual matrix we have heard Sri Rajul Bhargava in support of this habeas corpus petition as well as Sri A. K. Malviya, learned Counsel for the Union of India and Sri Sudhir Mehrotra, learned A.G.A. in opposition.

8. Sri Rajul Bhargava, learned Counsel for the Petitioner contended that the Union of India was thrice allowed time on various dates to file counter-affidavit in this habeas corpus petition, which they have not done so far. He pointed out that first of all on 25th March, 2009 Union of India was granted time to file a counter-affidavit. The same period was again extended on 17.4.2009 and then it was re-extended on 5.5.2009. Learned Counsel for the Petitioner further contended that till today (30.6.2009) Union of India has not filed any counter-affidavit and therefore, the averments made in the writ petition against the Union of India be taken to be correct. Learned Counsel for the Petitioner contended that according to the case of the State Government, it had forwarded detenu's representation to the Union of India, Respondent No. 1 on 27.1.2009. Giving latitude of time gap in communication the Union of India must have received communication within a week but it rejected the representation on 9.3.2009 after more than one month and ten days from the date of its communication. Learned Counsel for the Petitioner pointed out from the counter-affidavit filed by Superintendent Central Jail, Naini that the date of rejection of detenu's representation by the Union of India is 9.3.2009 and on 11.3.2009 the same was communicated to the Petitioner. Learned Counsel for the Petitioner contended that in absence of any counter-affidavit being filed by Union of India, it should be concluded by this Court that there is an inordinate detrimental delay in deciding detenu's representation and therefore, this habeas corpus petition be allowed and the impugned detention order of the Petitioner dated 9.1.2009 (Annexure-1) passed by District Magistrate, Allahabad, Respondent No. 3 be quashed and Petitioner be set at liberty forthwith.

9. The second limb of argument raised by learned Counsel for the Petitioner is that the activity of the detenu Petitioner was alleged to have occurred on 20.9.2008 but the detention order, u/s 3(3) of the National Security Act, was passed on 9.1.2009, after a gap of more than three months. It is submitted by learned Counsel for the Petitioner that gap of three months, during which the detenu Petitioner was already incarcerated in Central Jail, Naini, had snapped the

link between the activity and the detention order and therefore, the detention order of the Petitioner was passed on non-existent ground and for the aforesaid reason also, it was submitted that the habeas corpus petition be allowed and the Petitioner be set at liberty.

10. Sri Sudhir Mehrotra, learned A.G.A. refuting the second contention raised by learned Counsel for the Petitioner submitted that albeit the activity is alleged to have occurred on 20th September, 2008 but the District Magistrate, in its wisdom thought it fit to get the fake currency notes checked from Reserve Bank of India, Kanpur Nagar before proceeding further against the Petitioner under N.S.A. After the report from Reserve Bank of India was received by the District Magistrate, Respondent No. 3 and when sufficient cogent material was brought to his knowledge regarding Petitioner's involvement in fake currency racket that the District Magistrate, Allahabad thought it fit to detain him under the National Security Act. Learned A.G.A. further contended that there is no snapping of link between the activity and passing of the detention order and therefore, the argument of detention order being based on non-existent ground is not tenable. Learned A.G.A. contended that on the facts of the present petition, there is no delay on the part of the District Magistrate, State Government and Jail Superintendent, Central Jail, Naini in dealing with the case of the detenu Petitioner and they cannot be faulted with.

11. Sri A. K. Malviya, learned Counsel for the Union of India prayed for some more time for filing a counter-affidavit. He, however, conceded that he was allowed time on 25.3.2009, 17.4.2009, 5.5.2009 to file counter-affidavit but no counter-affidavit has been filed till date. He informed us that he had communicated Union of India repeatedly to file counter-affidavit but since nobody has turned up till today (30.6.2009) he is unable to refute the contention raised by learned Counsel for the Petitioner on the fact that detenu's representation was sent on 27.1.2009 by the State Government to the Union of India, which was rejected by the Union of India on 9.3.2009 after a gap of more than one month and ten days.

12. We have carefully considered the submissions raised by both the sides and have gone through the writ petition, counter-affidavits and rejoinder-affidavits. On the first contention regarding non-existent ground, we find that the contention of learned Counsel for the Petitioner is unworthy of credence. No doubt the activity is alleged to have occurred on 20.9.2008 but in the grounds of detention it is itself mentioned that the seized currency notes were sent to the Reserve Bank of India, Kanpur Nagar and after obtaining its report that the District Magistrate had passed the impugned order of detention. Dealing in fake currency notes is not only a social crime but it also erodes and tarnishes the economic scenario of the country. On such fact it cannot be said that the District Magistrate, Allahabad, Respondent No. 3 acted with lethargy in detaining the Petitioner. No fault can be found with the passing of the detention order by the District Magistrate, Allahabad. In such a view, we are of the opinion that the

criticism of passing of detention order on non-existent material raised by the Petitioner's counsel is wholly untenable and is hereby repelled.

13. Coming to the second limb of the argument that there has been delay on the part of the Union of India in disposing of detenu Petitioner's representation, we find the said contention well merited. No counter-affidavit has been filed by the Union of India till today to show its bona fide in dealing with the detenu Petitioner's representation. Since 25th March, 2009 for more than three months, Union of India has availed time to file counter-affidavit, which they have not done so far. Learned Counsel for the Petitioner relied upon and invited our attention on an Apex Court judgment in *Rajindra v. Commissioner of Police, Nagpur Division and others* 1994 SCC 1706, in support of his raised contention. Relying upon the said decision learned Counsel for the Petitioner contended that the laxity on the part of the Union of India in filing counter-affidavit cannot be condoned and for this reason alone the habeas corpus petition deserves to be allowed. We have gone through the aforesaid decisions. Without burdening this judgment, we reproduce the relevant portion of the aforesaid judgment hereinbelow:

An effort was made by the learned Additional Solicitor General to persuade us to adjourn the matter to enable the Central Government to produce the file for our perusal. It appears that of late the Central Government does not show that sense of responsibility which is expected of it while dealing with detention cases, namely, of filing a counter in time before the Court dealing with the habeas corpus petition. Needless to say that the Central Government should be alive to the need to act promptly in such detention cases where the liberty of an individual is concerned. The Court is expected to go by the pleadings and the Central Government is expected to place the factual material in connection with the detention order by filing a counter-affidavit so that the Petitioner has an opportunity to meet with that factual information. The indulgence shown by the Courts in pursuing the file seems to have given an impression that the Central Government is under no obligation to file a counter-affidavit to explain the delay. We propose to remove this impression once and for all if it persists and to impress upon the Central Government that it is under obligation to file its counter within the time permitted by the Court failing which the case may go by default. Let it be clearly understood that production of the file is not a substitute for a counter to be filed by the Central Government. The Court peruses the file not to absolve the Central Government of its responsibility to file counter but to satisfy its conscience if it notices ambiguities in the Government's stand. If the Courts have shown indulgence by perusing the file where affidavit is not filed for good reason, let that indulgence not be misused by construing it to be a licence to dispense with the obligation to file a return. In the instant case no counter was filed and the High Court has taken note thereof but, if we may say so with respect, the Court has shown indulgence by observing that the counter is not filed "presumably because there is no specific allegation in this behalf in the petition. Let it be stated that once a representation is made, the detenu is

entitled to the representation being dealt with expeditiously. If there is some ex facie" delay, the obligation is on the State to explain that delay. There is no question of a specific allegation to be made in the petition except pointing out by placing facts that there has been a delay which ex facie calls for an explanation and that obligation has to be discharged by filing a proper counter and explaining the delay. The Courts have not been unduly strict in insisting that each day's delay must be explained but it is obligatory on the part of the Government to show by filing a counter-affidavit that it had acted promptly in dealing with the representation. What is essential is that the Court must be satisfied that the officers dealing with the representation were not indifferent to the urgency of the situation of the detenu being in jail. We are afraid that in the instant case by failing to file a counter-affidavit and by failing to explain the ex facie delay, the Central Government failed in its duty and therefore, we see no alternative but to uphold the contention and quash the detention order.

14. The above quoted passages, leaves no room for doubt, as we are bound by the observations by the Apex Court, that there is a delay on the part of the Central Government, which remains totally unexplained in disposal of the detenu Petitioner's representation and therefore, the detention order is indefensible.

15. However, before finally parting with this judgment we would like to express our serious displeasure and disquite on the conduct of the Union of India/Central Government in not filing counter-affidavit in such matters where the economic structure of the country is in jeopardy. The detenu was indulging in such activity, which has permeated even in the coffers of the recognized National Banks. The activity had got potentiality of tarnishing the economic structure of the country and therefore, the Union of India should have been more vigilant in dealing with such type of cases. The lacklustre attitude and the lethargy with which the Union of India has handled the case of the detenu Petitioner is not to be appreciated. Home Secretary, Union of India, will do well to look into such type of matters and to act with alacrity. The citizen of this country cannot be left at the mercy of malefactors who are bent upon ruining the economic structure of the country. Counterfeiting currency notes and floating them in the market, through a well organized racket is an activity which affects every citizen of this country. We have therefore, endeavored through this judgment to wake up the authorities from their deep slumber in such types of matters. Let our observations be communicated to the Central Government for appropriate remedial measures.

16. For the above, this habeas corpus petition is allowed. The detention order of the detenu Petitioner under National Security Act, dated 9.1.2009, passed by District Magistrate, Allahabad, Respondent No. 3, is hereby set aside. Detenu Petitioner is directed to be released from jail forthwith unless he is in legal custody in any other case. There shall be no order as to cost.