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**(1976) 05 AHC CK 0052**  
**In the Allahabad High Court**

Satya Prakash Malviya

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 04-05-1976

**Acts Referred:**

Constitution of India, 1950 — Article 190, 21

**Citation :** (1977) CriLJ 115

**Hon'ble Judges :** T.S. Misra, J; Hari Swarup, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Hari Swarup, J.—This petition has been moved for a writ in the nature of mandamus to direct the State Government to release the petitioner on parole. The petitioner is under detention under the Maintenance of Internal Security Act, hereinafter called the "Act". He made an application to the State Government u/s 15 of the Act and prayed that he may be released on parole so that he might participate in the proceedings of the Vidhan Sabha of which he is a Member. His application was rejected by the State Government by its order dated 29-4-1976.

2. The petitioner has contended that unless he is permitted to attend the Assembly Session, he might lose his seat by reason of Clause (4) of Article 190 of the Constitution read with Rule 280(6) of Uttar Pradesh Vidhan Sabha Ki Prakriya Tatha Rarya Sanchalan Niyanrn-wali, 1958 which provided for a seat being declared vacant by the Vidhan Sabha on a Member's being absent for a particular period of time. The petitioner contends that unless he is permitted to attend the Vidhan Sabha he will incur the liability for the reason whereof his seat may be declared vacant. This might be a ground on which the State Government may have considered the petitioner's application for temporary release on parole u/s 15 of the Act but cannot entitle the petitioner to get a mandamus. The State Government had jurisdiction to decide the application for release moved by the petitioner and the State Government has passed an order rejecting the prayer.

3. The petitioner contends that there is no application of mind by the State Government in respect of his prayer for release on probation, We are unable to accept this contention as the order passed by the State Government, in fact, shows that there was an application of mind by it. The petitioner pointed out that there is an error of dates in the said order and that indicates that there has been no application of mind by the State Government. His application was dated 13-3-1976. The order says that the prayer in application dated 13-3-76 sent along with the letter of the Superintendent of Jail dated 12-3-1976 is rejected. The contention of the petitioner is that the State Government could not consider a letter of an earlier date than of 13-3-76. The learned Standing Counsel has produced the record and it shows that the Superintendent of Jail had by mistake dated his forwarding letter as 12-3-1976. The mistake, therefore, is not of the State Government, and hence from this it cannot be possible to infer that the State Government had not applied its mind.

4. So far as the petitioner's plea for the issue of a writ in the nature of mandamus to direct the State Government to release the petitioner on parole is concerned, we think it is not maintainable. Article 21 of the Constitution stands suspended and the petitioner accordingly has no locus standi to approach this Court for a writ to enforce the suspended right of liberty. The petitioner contends that the petition is maintainable as he is not asking for the quashing of the order of the State Govt. under the Act and setting him at liberty, but he is asking for being released on parole only u/s 15 of the Act. Relevant portion of Section 15 of Maintenance of Internal Security Act provides:

15. (1) The appropriate Government may, at any time direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may at any time cancel his release.

Section 15 thus contemplates the release of the detenu. Whether the release is to be for a limited period or for an unlimited period, it will have the ultimate effect of releasing him from detention and setting him at liberty. Whether the petitioner seeks a limited release, or release for an unlimited period he can do so only in exercise of the right to liberty contained in Article 21 of the Constitution. But as Article 21 stands suspended, he cannot approach this Court for a writ of mandamus to set him at liberty, though temporarily.

5. The petition accordingly fails and is dismissed. Let a copy of this order be communicated to the petitioner in jail at an early date.