
(2003) 11 AHC CK 0012
In the Allahabad High Court
Case No : Writ Petition No. 536 (H/C) of 2003

Shahabuddin alias Shahu (In Jail)

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(2)

Citation : (2004) 2 ACR 1455

Hon'ble Judges : Vishnu Sahai, J; Kamal Kishore, J

Bench : Division Bench

Advocate : Vivek Shrotria, for the Appellant; S.K. Singh and B.B. Saxena, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this writ petition preferred under Article 226 of the Constitution of India, the Petitioner Shahabuddin alias Shahu has impugned the order dated 28th June, 2003, passed by the District Magistrate, Barabanki (opposite party No. 1) detaining him u/s 3(2) of the National Security Act, 1980.

2. The detention order along with the grounds of detention which are also dated 28.6.2003 was served on the Petitioner-detenu on 29.6.2003 and their true copies have been annexed as Annexures 1 and 2 respectively to this petition.

3. We have heard the learned Counsel for the parties.

4. It is common ground between the counsel for the Petitioner and Mr. B. B. Saxena, Sr. standing counsel, Union of India that the Petitioner preferred a representation dated 15.7.2003 to the Union of India which was received in the concerned desk of Ministry of Home Affairs on 28.7.2003 and after being processed was put up before the Director of Ministry of Home Affairs on 29.8.2003 and ultimately, rejected by the Union Home Secretary on 2.9.2003.

5. In our judgment, the delay of one month and four days at the level of

concerned desk of Ministry of Home Affairs in processing the representation of the Petitioner-detenu and in placing it before the Director of Ministry of Home Affairs was an inordinate delay and smacks of utter insensitivity to the promptitude with which a representation in a preventive detention matter should have been dealt with.

6. It is well-settled that inherent in the Fundamental Right of the detenu to prefer a representation at the earliest opportunity is implicit the obligation on various functionaries, connected with the authority to which the representation is preferred to dispose of the same with corresponding promptitude.

7. Before proceeding to the operative part of the order, we would like to observe that the explanation furnished in the return of Mr. P. K. Jain, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, that the delay between 28.7.2003 and 29.8.2003 was occasioned at the level of the concerned desk of Ministry of Home Affairs, because the representation was being processed is blissfully general and does not merit our acceptance. We make no bones in observing that in his return Mr. P. K. Jain should have furnished details, with regard to the processing of the representation, preferred by the Petitioner. A sweeping explanation such as the one furnished in Mr. P. K. Jain's return would certainly be rejected by this Court.

8. In our judgment, the inordinate delay of one month and four days at the level of concerned desk of Ministry of Home Affairs in dealing with the representation of the Petitioner-detenu has vitiated his continued detention.

9. In the result, we allow this writ petition and direct that the Petitioner-detenu Shahabuddin alias Shahu be released forthwith unless wanted in some other case.