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**(2010) 01 AHC CK 0296**

**In the Allahabad High Court**

**Case No :** Criminal M. Habeas Corpus W.P. No. 28862 of 2009

Shashi Kumar Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 12-01-2010

**Acts Referred:**

Constitution of India, 1950 — Article 21  
National Security Act, 1980 — Section 3(2)

**Citation :** (2010) 1 ACR 332 : (2011) 6 RCR(Criminal) 1134

**Hon'ble Judges :** Subhash Chandra Agrawal, J; R.K. Agrawal, J

**Bench :** Division Bench

**Advocate :** Ramanuj Yadav, for the Appellant; Sudhir Mehrotra, G.A. and V.K. Nagaich, A.S.G.I., for the Respondent

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## **Judgement**

R.K. Agrawal and Subhash Chandra Agrawal, JJ.—This habeas corpus petition has been filed for setting aside the order of detention passed against the Petitioner Shashi Kumar Yadav u/s 3(2) of the National Security Act, dated 21.3.2009 by District Magistrate, Chandauli.

2. The detention order was passed on the grounds that the Petitioner was involved in supplying explosives to the nexalite organisations. On 31.1.2009 at 1 p.m., a police party under leadership of Sri R. K. Ram, Inspector, P. S. Chandauli, checked bus No. U.P. 65-R-9305. On search, 275 explosives detonators were recovered from the possession of the Petitioner, whereas 275 detonators were recovered from the possession of the co-accused Manjoor Rajdhar and 250 detonators were recovered from the possession of Sikandar Ram. The Petitioner had no licence to possess the above detonators. These detonators were to be sold to nexalite organisations who were involved in violent activities against public and the security forces, creating a feeling of fear and panic in the public mind and affecting the public order. District Magistrate apprehended that the Petitioner was trying to obtain bail from the Court and if the Petitioner was granted bail, there was apprehension that he would again involve himself in the

aforesaid anti-national activities affecting the public order and peace, hence, it was thought necessary to preventively detain the Petitioner.

3. We have heard Sri Ramanuj Yadav, learned Counsel for the Petitioner, Sri Sudhir Mehrotra, learned Counsel for the Respondent Nos. 2 to 7 and Sri V.K. Nagaich, learned Counsel for Respondent No. 1 Union of India.

4. The learned Counsel for the Petitioner has confined himself to one submission that the representation of the Petitioner dated 1.4.2009 which was submitted to various authorities including the Central Government through Jailor, was considered with inordinate delay by the Central Government.

5. It was pointed out that the District Magistrate forwarded the Petitioner's representation with his comments on 14.4.2009, to the State Government after obtaining the comments from the S.P., Chandauli. It was submitted that the State Government received the representation on 15.4.2009 and even rejected the same on 21.4.2009. This shows that the State Government disposed of the representation of the Petitioner with utter promptness.

6. In the two counter-affidavits filed on behalf of Union of India by the Under Secretary, Ministry of Home and Internal Affairs, Government of India, it was submitted that though there has been some delay in consideration of the representation by the Central Government, but there has not been any casualness in the matter. The administrative delay is due to huge voluminous bulk of such cases received from the State of U.P. The ministry had taken some time in clearing the back-log and the work has now been streamlined to avoid such lapses and delay. The two affidavits filed on behalf of Respondent No. 1 are dated 16.7.2009 and 15.12.2009. Both the affidavits are highly unsatisfactory. No particulars have been given in the affidavits to show as to when the representation of the Petitioner was received by the Central Government from the State Government and when it was processed and on which date, the same was rejected. We are shocked to see such casual approach on behalf of the Central Government in dealing with the grave matters like preventive detention.

7. The affidavit filed on behalf of the State of U.P. reveals that the representation of the Petitioner was sent to the Central Government on 17.4.2009 by speed post. It must have reached the Central Government within 3 days, i.e., latest by 20.4.2009.

8. The representation was rejected by the Central Government on 18.5.2009 after a lapse of 4 weeks. No satisfactory explanation for this delay has been furnished by the Respondent No. 1. The ground that during the relevant period, a large number of representations were received from the State of U.P. cannot be said to be a sufficient ground for not taking action for a period of about 4 weeks.

9. In Rajammal Vs. State of Tamil Nadu and Another, where consideration of the representation had been delayed merely because the Minister was on tour, it was held to be an unjustified ground for permitting violation of the fundamental

rights of liberty of a citizen guaranteed under Article 21 of the Constitution, as the said file could easily have been forwarded to the Minister. The said decision mentions that "absence of Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached to the Minister with utmost promptitude in a case involving the vital fundamental right of the citizen."

10. The absence of dealing clerk of N.S.A. Desk in February, 2009 due to long leave and delay in consideration of N.S.A. matters was very seriously viewed by another Bench of this Court in *Pranshu Dutt Dwivedi v. Superintendent, District Jail, Fatehgarh, Farrukhabad and Ors.* (LXVII)2009 ACC 83.

11. We find that this inordinate delay of 4 weeks in disposal of the representation of the Petitioner by the Central Government has not been adequately and reasonably explained by the Central Government. We are conscious of the fact that the allegations against the Petitioner are of a very serious nature but when it is decided to preventively detain a person by depriving him of his right of personal freedom, the due process of law has to be observed. The manner in which the representation of the Petitioner remained pending before the Central Government for a long period of about 4 weeks, is shocking to the conscience of the Court. In these circumstances, we have no option but to quash the continued detention of the Petitioner.

12. The writ petition is allowed. The Petitioner shall be released forthwith unless wanted in connection with any other case.