
(2009) 10 AHC CK 0036
In the Allahabad High Court

Shiv Shanker Soni

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

National Security Act, 1980 — Section 3(3)
Penal Code, 1860 (IPC) — Section 489A, 489B, 489C, 489D

Citation : (2009) 10 AHC CK 0036

Hon'ble Judges : Yogendra Kumar Sangal, J;Uma Nath Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By way of filing this writ petition, the petitioner has sought the quashment of detention order dated 19-11-2008, passed by District Magistrate, Sultanpur with a prayer for release from illegal custody.

2. From a careful reading of rival pleadings and on due consideration of submissions of learned Counsel for parties, it appears undisputed that the detention order was passed on 19-11-2008 by District Magistrate, Sultanpur (O.P. No. 3) in exercise of his powers u/s 3(3) of National Security Act (for short "the N.S. Act"), and it was served upon the petitioner, while being lodged in jail in connection with offences registered under Sections 489-A, 489-B, 489-C and 489-D of the I.P.C. The detention order was approved/confirmed by State Government on 24-11-2008. A representation to Central Government was made on the same day on 24-11-2008 through District Magistrate concerned, which was forwarded to Central Government on 29-11-2008 after five days. It took 11 days thereafter for being delivered on 10-12-2002 in the concerned Cell of Ministry of Home Affairs, Government of India, which deals with detention matters of U.P. The representation was initially examined by the Under Secretary concerned on 11-12-2008 and then forwarded to Home Secretary of Central Government being the competent authority on 12-12-2008, the next day. However, the Home Secretary took seven days to decide the representation,

which was finally rejected on 19-12-2009. Thereafter, it appears from the record that it took further 11 days in transmitting the rejection order from the office of Home Secretary to the Office of Under Secretary, Home Affairs, Government of India. According to the averments in affidavit on behalf of Central Government, it was communicated to the petitioner on 31-12-2008, but this fact is disputed by learned Counsel for petitioner, who contends that it was never served upon the petitioner for it would be evident from the averments of Jail Superintendent in his counter affidavit, that he has not mentioned the date and time when the order was served upon the detenu-petitioner. It is also evident from the submission that the matter was placed before Advisory Board on 17-12-2008 and its report was submitted on 05-01-2009 which was received by the State Government on 06-01-2009.

3. Learned Counsel for the petitioner contends that it is settled in a catena of decisions rendered by the Apex Court that a delay in disposal of representation can be a ground for quashing the detention order. Some of the Judgments that learned Counsel for petitioner has referred to are as follow:

1. Harish Pahwa v. State of U.P. and Ors. 1981 SCC (Cri.) 589
2. R. Paulsamy v. Union of India and Anr. 1999 SCC (Cri.) 549
3. Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police and Ors. 1989 SCC (Cri.) 520.
4. Solomon Castro v. State of Kerala and Ors. 2001 SCC (Cri.) 650.
5. Rajammal v. State of T.N. and Anr. 1999 SCC (Cri.) 93
6. Usha Agarwal v. Union of India and Ors. (2007) 1 SCC (Cri.) 342

And

7. Harshala Santosh Patil v. State of Maharashtra and Ors. (2007) 1 SCC (Cri.) 680

4. Learned Counsel inter alia also contends that the detaining authority has placed heavy reliance upon the statement of one Police Inspector, Sudhir Kumar(Annexure-4) but a legible copy of the statement was not supplied to the detenu for making an effective representation. However, this is disputed during the course of hearing while contending that the receipt issued by the petitioner towards supply of a copy of statement to him does not indicate such objection that the copy was not legible.

5. On a careful consideration of rival submissions and in view of the settled principle of law in regard to delay in disposal of representation, as there is no sufficient explanation in the counter affidavit for causing delay in disposal of the representation, we find considerable force in the submissions of learned Counsel for petitioner. Para-5 of the affidavit filed by one Smt. L.P. Shrivastava, Under Secretary, Ministry of Home Affairs, Government of India, on reproduction reads

as under:

That in regard to paras 24 and 25 of the petition it is submitted that a representation dated 24-11-2008 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 10-12-2008 through District Magistrate, Sultanpur vide letter No. 1382/JA-NSA dated 29-11-2008. The representation was immediately examined for consideration on 11-12-2008 and the case of the detenu was processed at the levels of Under Secretary, Director and the Joint Secretary who considered the case and place the same before the Union Home Secretary on 12-12-2008. The Union Home Secretary (who has been delegated powers by the Central Government to decide such cases) considered the case of the detenu and after carefully going through the detention order, grounds of detention, representation of the detenu and parawise comments of DM/State Government, rejected the representation of the detenu on 19-12-2008 and was marked to Joint Secretary, the file reached the Under Secretary(NSA) through the aforesaid levels of officers on 30-12-2008. The detenu was informed of the decision of the Central Government through a crash wireless message No. II/15028/658/2008-NSA dated 31-12-2008 which was sent to the Home Secretary, Government of Uttar Pradesh and Superintendent, District Jail, Sultanpur, U.P. informing that the representation of the detenu, Shri Shiv Shankar Soni was considered and rejected by the Central Government on 19-12-2008. These authorities were also requested to inform the detenu that his request for revocation of detention order passed against him has not been acceded to by the Central Government (Annexure C.A. I). The message (dated 31-12-2008) was followed by a formal letter dated 27-01-2009 in Hindi addressed to the detenu informing him that his request for revoking the detention order has not been acceded to by the Central Government. He was also informed that the Home Secretary, Government of Uttar Pradesh and Superintendent, District Jail, Sultanpur, U.P. had also been requested to inform him of the same(Annexure C.A. II). Further it is humbly submitted that the representation dated 30-01-2009 (as stated in the petition) was not received in the Ministry. However, the second representation from the detenu, dated 27-02-2009 (not 28-02-2009 as stated in the petition) was received in the concerned desk of the Ministry of Home Affairs on 05-03-2009 without parawise comments. Parawise comments from the Government of Uttar Pradesh dated 31-02-2009. The same was received in the concerned desk on 23-04-2009 vide letter No. 1889/JA-NSA dated 11-04-2009 from District Magistrate, Sultanpur. The same was put up on 24-04-2009 to consultant (S) through Under Secretary(NSA). After going through the proposal and representation it was found that no new points have been raised in the second representation, and, hence, it was filed.

6. Thus from the contents of affidavit it is clear that there was an inordinate delay in the disposal of representation of petitioner which is not plausibly and sufficiently explained.

7. In view of all the aforesaid, we have no option but to quash the detention order dated 19-11-2008 passed by the District Magistrate, Sultanpur with a direction to set the petitioner at liberty. However, since the petitioner is said to be lodged in jail also in connection with criminal offences, as aforesaid, this order will not interfere with his judicial custody, if any.

8. Thus, this writ petition succeeds to the extent as aforesaid.