

(2004) 03 AHC CK 0229

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 198 of 2004

Vikki alias Vikrant Tyagi

APPELLANT

Vs

Adhikshak District Jail and Others

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (2004) CriLJ 4539 : (2005) 1 RCR(Criminal) 611

Hon'ble Judges : M.C. Jain, J;K.K. Misra, J

Bench : Division Bench

Advocate : D.S. Misra and C.K. Misra, for the Appellant; J. Lal, S.S.C. and B.N. Singh, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

K.K. Misra, J.—By means of this Habeas Corpus writ petition filed under Article 226 of the Constitution of India, the petitioner has sought quashing of the detention order dated 1-10-2003, Annexure 1 to the petition passed by the District Magistrate, Muzaffarnagar u/s 3(2) of the National Security Act, 1980 (briefly, the Act).

2. In the grounds of detention, it is alleged that the petitioner is a branded criminal and offences of serious nature have been committed by him in the district. The petitioner is involved in several offences of murder, kidnapping, extortion and land grabbing. The people in the area have become terror stricken and panicky due to the activities of the petitioner. The criminal history of the petitioner and specific instances of his involvement in several offences have also been narrated in the grounds of detention. It is further alleged that the petitioner is making every effort to be released on bail and there is strong possibility of his being released on bail by the High Court. In the above circumstances, the District Magistrate, Muzaffarnagar was satisfied that the activities of the petitioner were prejudicial to the maintenance of public order in the area and it was necessary to pass the impugned detention order.

3. Counter and rejoinder-affidavits have been exchanged between the parties.
4. We have heard Sri Daya Shankar Misra, learned counsel for the petitioner and learned A.G.A.
5. The short point canvassed by the learned counsel for the petitioner is that the second representation of the petitioner has not been disposed of by the Union of India and this makes the impugned detention order unsustainable in law which is liable to be quashed on this ground alone. In support of this contention, Sri Daya Shankar Misra, learned counsel for the petitioner placed reliance on a decision of this Court in the case of *Badre Alam Vs. State of U.P. and Another*, dealing with an analogous provision u/s 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (briefly, the COFEPOSA Act). On the basis of the above judgment, it is argued by the learned counsel for the petitioner that consideration of a request u/s 11 of the COFEPOSA Act made by a detenu to the detaining authority or its superior authority for revocation of a detention order is a constitutional imperative flowing from Article 22(5) of the Constitution and such representation is to be dealt with exactly in the same manner in which the representation contemplated by the article is expected to be dealt with. It was further argued that u/s 11 of the Act, the nature of obligation of the State Government, in a case where the detention order has been passed by itself is exactly the same as that of the Central Government. Accordingly, the defect of non-consideration of the second representation of the petitioner by the Central Government would render the detention order illegal.
6. We have perused the counter-affidavit filed by Smt. Rita Dogra, Under Secretary, Minister of Home Affairs, Govt. of India, New Delhi. With regard to the second representation made by the petitioner, it has been so averred in para 6 of the counter-affidavit "This representation was considered and it was decided to re-iterate our earlier decision." This virtually amounts to non-application of mind as no order was passed on the second representation. It is the duty of the authority deciding the representation to decide the second representation by a speaking order. This short-cut method does not meet the requirement of law and cannot be approved. In fact, the second representation has not at all been decided by the Central Government.
7. Consequently, the continued detention of the petitioner is rendered illegal. We, therefore, allow the writ petition and direct the respondents to set the petitioner at liberty if his detention is not required in any other connection.