

(2004) 08 AHC CK 0040
In the Allahabad High Court
Case No : Writ Petition No. 211 (H.C.) of 2004

Vishal alias Panda (in Jail)	Vs	APPELLANT
District Magistrate and Others		RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 14, 3(2)

Citation : (2005) 1 ACR 136

Hon'ble Judges : Vishnu Sahai, J;G.K. Gupta, J

Bench : Division Bench

Advocate : Vivek Shrotria, for the Appellant; Janardan Singh, Assistant Public Prosecutor and Dipak Seth and Q.H. Rizvi, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this writ petition which has been preferred under Article 226 of the Constitution of India the Petitioner-detenu Vishal alias Panda has impugned the order dated 21.12.2003 passed by Mr. S. N. Pandey, District Magistrate, Mainpuri (Respondent No. 1), detaining him u/s 3(2) of the National Security Act.

2. The detention order along with the grounds of detention, which are also dated 21.12.2003 was served on the Petitioner-detenu on 21.12.2003 itself and their true copies have been annexed as Annexures-1 and 2 respectively to the writ petition.

3. The prejudicial activities of the Petitioner-detenu impelling the first Respondent to clamp the impugned detention order against him are contained in the grounds of detention. Since in our view a reference to them is not necessary for the adjudication of the pleadings contained in paragraphs 25, 26 and 27 of the writ petition and ground (i) of paragraph 30 thereof, on which alone this writ petition deserves to succeed we are not adverting to them.

4. We have heard learned Counsel for the parties.

5. The substance of the averments contained in paragraphs 25, 26 and 27 of the writ petition and ground (i) of paragraph 30 thereof is that the Petitioner made representations to the District Magistrate, Mainpuri, the State Government and the Union of India on 31.12.2003 and the said representations have been disposed of belatedly and the result of their disposal has also been communicated to the Petitioner-detenu belatedly.

6. During the course of his submission Mr. Vivek Shrotria, learned Counsel for the Petitioner-detenu, however, restricted his challenge to the delay by the Union of India in the disposal of the representation of the Petitioner-detenu. Mr Shrotria urged that a perusal of paragraph 5 of the return of Smt. Reeta Dogra, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, shows that the representation of the Petitioner-detenu dated 31.12.2003 was received by Respondent No. 4 (Union of India) on 13.1.2004 and was considered by the competent authority in the Central Government u/s 14 of the National Security Act and rejected on 19.1.2004 and the factum of rejection was communicated to the Petitioner-detenu on 20.1.2004. Mr Shrotria contended that neither in paragraph 5 of her return nor in any other paragraph thereof has Smt. Reeta Dogra stated as to how the representation of the Petitioner-detenu was dealt with between 13.1.2004 and 19.1.2004. He contended that the dates on which various functionaries dealt with the representation of the Petitioner-detenu have not been mentioned in her return. He contended that the explanation furnished by Smt. Reeta Dogra in paragraph 5 of her return is too sweeping and too general to merit our acceptance.

7. Mr. Shrotria invited our attention to the decision of the Apex Court, rendered in the case of Harish Pahwa Vs. State of U. P. and Others, , wherein while dealing with a representation in a preventive detention matter the Apex Court in paragraph 3 observed thus:

We would emphasise that it is duty of the State to proceed to determine representations of the character abovementioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu.

8. Mr. Shrotria urged that a perusal of the aforesaid passage, extracted from Harish Pahwa's case (supra), would make it manifest that a representation in a preventive detention matter has to be dealt with continuously unless it is absolutely necessary to wait for some assistance in connection with it until a final decision is taken and communicated to the detenu. Mr Shrotria urged that regrettably neither paragraph 5 of the return of the Smt. Reeta Dogra nor any other paragraph thereof shows that Petitioner-detenu's representation has been dealt with continuously. He contended that in the aforesaid circumstances the

continued detention of the Petitioner-detenu is vitiated in view of the ratio laid down in Harish Pahwa's case (supra).

9. Mr. Q. H. Rizvi, learned Counsel for Respondent No. 4 contended that the delay of six days by Union of India, which includes a Saturday and Sunday, which are holidays cannot be castigated as being excessive. We are afraid that we cannot accede to this submission for the two reasons ; firstly and primarily because neither paragraph 5 of the return of Smt. Reeta Dogra nor any other paragraph thereof shows that the representation of the Petitioner-detenu has been dealt with continuously and secondly because neither in paragraph 5 of her return nor in any other paragraph thereof has Smt. Reeta Dogra averred that Saturday and Sundays were closed holidays.

10. It is well-settled that habeas corpus petitions are decided on the basis of averments contained in the rival returns. In our judgment since in the return of Smt. Reeta Dogra it has not been spelt out that a delay of 2 days occurred on account of Saturday and Sunday, which were holidays, the submission of the learned Counsel for Respondent No. 4 to the said effect cannot be accepted. It should be borne in mind that explanation for delay should come from the appropriate authority in the return and an explanation not contained in the return cannot be accepted.

11. For the aforesaid reasons, in our judgment the delay of six days on the part of Union of India in disposing of the representation of the Petitioner-detenu has vitiated the continued detention of the Petitioner-detenu.

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