
(2009) 05 RAJ CK 0057
In the Rajasthan High Court

Vishal Chaudhory

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2009) 3 WLN 321

Hon'ble Judges : K.S. Rathore, J;Bhanwaroo Khan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.S. Rathore, J.—The present habeas corpus petition is directed against the order impugned dated 07.08.2008 (Annexure-1) passed by the District Collector, Jaipur, by which the accused-petitioner has been detained u/s 3(2) of the National Security Act, 1980 (for short "the Act of 1980") for a period of one years. The said order dated 07.08.2008 has been approved by the State Government vide order impugned dated 20.08.2008.

2. Being aggrieved and dissatisfied with the order impugned dated 07.08.2008 passed by the District Collector, Jaipur as well as the order impugned dated 20.08.2008 whereby the detention order has been approved by the State Government, the present habeas corpus petition has been preferred by the accused-petitioner on the ground that the detention order has been passed by the respondent No. 2 in mechanical manner without applying mind and before framing grounds, no enquiry was conducted.

3. The impugned orders are further challenged on the ground that as per the provisions of Article 21 of the Constitution of India, a person cannot be wrongfully detained and his liberty cannot be curtailed without giving him opportunity to defend himself.

4. It is also stated by the learned Counsel appearing for the accused-petitioner that the representation given by the accused-petitioner has not been decided till

filing of the present petition and have not communicated the petitioner of any decision on the representation so submitted by him till date. Thus, the action of the respondents is violative of Section 14 of the Act of 1980 as well as Article 22(5) of the Constitution of India.

5. In support of his submission that inordinate delay in deciding the representation of the petitioner has not been explained by the authority concerned, the learned Counsel for the accused-petitioner has placed reliance on the judgment delivered by the Division Bench of this Court in the case of Anurag Singh v. State of Rajasthan and Ors. reported in Nov. 1995 RCC 584, wherein the Division Bench was of the view that since there is no explanation for the delay in deciding the representation of the detainee, the detention is illegal.

6. Similar view has been taken by the Division bench of this Court in the case of Rajesh Kumar v. State of Rajasthan and Ors. reported in May-June 1995 RCC 315.

7. In the aforesaid case of Rajesh Kumar (supra), the mother of the detainee directly submitted a representation to the President of India and it was further stated by the State Government that after receiving a copy of the said representation the detaining authority replied the same through letter dated 14.10.94 to the Secretary, Home Department, Government of India, New Delhi and a copy of the same was sent to the Principal Home Secretary, Government of Rajasthan on the same day. It was further observed that there is nothing on the record to show as to whether the representation was ultimately disposed of or not by the Central Government and, if so, when?

8. The Division Bench of this Court has further held that making of representation for revocation to the Central Government u/s 14 of the NSA is a part of the constitutional right of a citizen which is available against his detention. Section 14 is an additional safeguard provided to a detainee against his (sic) arbitrary and executive action. The non-consideration of petitioner's representation expeditiously by the Central Government has resulted in rendering his continued detention illegal and constitutionally impermissible.

9. We have given our thoughtful consideration to the submissions made on behalf of the respective parties and carefully gone through the averments made in the petition as also the relevant material available on the record.

10. We have also minutely scanned the original record produced by the respondents and considered the judgments referred before us.

11. To decide the present controversy, it is necessary to discuss the following provisions of the National Security Act, 1980 as well as the provisions of the Constitution of India.

12. Section 3 of the National Security Act, 1980 provides power to make orders detaining certain persons, which reads as follows:

3. Power to make orders detaining certain persons.- (1) The central Government or the State Government may,-

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

13. Further Section 14 of the National Security Act, 1980 gives power for revocation of detention orders and the same reads as under:

14. Revocation of detention orders.- (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified,-

(a) notwithstanding that the order has been made by an officer mentioned in Sub-section (3) of Section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

[(2) The expiry or revocation of a detention order (hereafter in this Sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984] bar the making of another detention order (hereafter in this Sub-section referred to as the subsequent detention order) u/s 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.]

14. Article 22 of the Constitution of India provides protection against arrest and detention in certain cases and as per sub-Article (5) of Article 22, when any

person is detained in pursuance of an order made under any law providing for preventing detention, the authority making the order, shall as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

15. It is submitted on behalf of the respondent State that detainee Vishal Chaudhary has been detained under the National Security Act by the District Magistrate, Jaipur vide order impugned dated 07.08.2008 and the same has been approved by the State Government vide order dated 20.08.2008. Thereafter, it was placed before the Advisory Board for consideration and approval u/s 10 of the National Security Act and the Advisory Board vide its order dated 11.09.2008, approved/confirmed the detention order after hearing the petitioner and the petitioner was communicated about the order passed by the Advisory Board.

16. As stated on behalf of the respondents, the accused-petitioner has not challenged the order of the Advisory Board dated 11.09.2008 and since he has not challenged the order of the Advisory Board, the present habeas corpus petition is not maintainable, as held by the Division Bench of this Court in the case of Adil v. The State of Rajasthan and Ors. (D.B. Habeas Corpus Writ Petition No. 43/2005) vide order dated 12.07.2005.

17. As per the record, it is no doubt that the petitioner is a history-sheeter and is involved in criminal activities right from the year 1998. As many as 35 criminal cases have been registered against him at different Police Stations. In addition to above, there are as many as 11 cases for the offences under Sections 107, 116(3), 110, 151 of the Code of Criminal Procedure Code and Section 34 of the Police Act have also been registered against the petitioner in the territorial jurisdiction of Police Stations Bajaj Nagar, Malviya Nagar, Vidhyakpuri and Sanganer Sadar.

18. A bare perusal of the record also reveals that the detainee is involved in many criminal activities under Sections 354, 384, 492, 427, 379, 308, 120-B, 365, 279, 352, 457, 325, 307, 392, 402, 399 IPC and under the Arms Act. The preventive measures under Sections 107, 116(3), 109 and 151 Cr.P.C. had also been taken against him from time to time. Further, the report of the Superintendent of Police, Jaipur City (East), Jaipur submitted to the District Magistrate, Jaipur shows that the criminal activities of the detainee are increasing day by day disturbing the public order.

19. As per the record, the petitioner has also filed a representation on 11.09.2008 before the Advisory Board and the same was considered and after considering the entire material and the representation so submitted by the petitioner, the Advisory Board has opined that there is sufficient material available on the record for directing preventive detention of the detainee to maintain public order.

20. As per the reply submitted on behalf of the respondent State and as per the additional affidavit filed on behalf of the Union of India by Smt. L.P. Shrivastava, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, it is clear that the petitioner has not represented before the State and the Central Government, but has directly sent a representation to Her Excellency the President of India, from where the same was forwarded to the State Government and it came to be rejected by the State Government vide order dated 09.04.2009 and the detenu has also been informed about it by supplying a copy of the same.

21. As per the petitioner, he sent the representation on 21.08.2008 in the name of Her Excellency the President of India through the Superintendent of Jail, Jaipur and the same was despatched vide Despatch Nos. 1/08 and 2/08 on the same date.

22. It is also not disputed that the representation so filed by the petitioner was received in the Office of Her Excellency the President of India on 29.08.2008, from where the same was received by the State Government on 27.09.2008 and the State Government after considering the representation so filed by the petitioner, has rejected the same vide order dated 09.04.2009.

23. A close look at the order dated 09.04.2009 (Annexure-R/2) reveals that in the said order it is simply mentioned that the representation so received from the office of Her Excellency the President of India has been considered and after consideration the same has been rejected but no explanation with regard to inordinate delay of about 6-1/2 months in deciding the representation has been given.

24. Admittedly, the representation was made by the accused-petitioner on 21.08.2008 and the same was decided and rejected by the State Government vide order dated 09.04.2009 without explaining the inordinate delay of about 6-1/2 months in deciding the same as the representation was received by the State Government on 27.09.2008

25. In Union of India and Others Vs. Manish Bahal @ Nishu, , Hon"ble the Supreme Court was of the view that the representation before detaining authority/ appropriate Govt. must be disposed of expeditiously.

26. Further with regard to inordinate delay in deciding the representation without explaining delay, Hon"ble the Supreme Court in the case of State of Uttar Pradesh Vs. Mahant Singh, , has observed as under:

Where representation made by detenu within reasonable time, the same must be placed before the Board promptly- Failure to do so fatal to the detention- Where detention order made on August 7 but representation made by detenu on August 16 which reached State Government through jail authorities and District Magistrate on August 25 and received by the Board on August 29 i.e. 22 days after detention, held, detention not vitiated.

27. Similar view has been taken by the Hon''ble Supreme Court in the case of Smt. Prem Lata Sharma Vs. District Magistrate, Mathura and Others, , wherein the Hon''ble Supreme Court has held as under:

The reasons given by the detaining authority for not sending the representation to the detaining authority were not tenable. There is no- nor can there be- a period of limitation regarding exercise of a right of a detinue to make a representation and the corresponding obligation of the Central Government to consider the same for deciding upon the question of revocation of the order of detention, for such right and obligation subsist so long as the detention continues. Further, when the representation was made to the Central Government it was for it- and not for the detaining authority- to decide whether the representation should be rejected on the ground that his earlier representation had already been considered and rejected. To put it differently, when the representation was addressed to the Central Government it was incumbent on the part of the detaining authority to forward the same to the Central Government and not to take a pre-emptive action thereupon of its own.

28. Similar view has also been taken by the Hon''ble Supreme Court in the case of Union of India (UOI) Vs. Yumnam Anand M. @ Bocha @ Kora @ Suraj and Another, .

29. Applying the ratio decided by the Hon''ble Supreme Court in the aforesaid cases to the present case, it is admitted fact that the representation of the petitioner dated 21.08.2008 was received by the State Government on 27.09.2008 from the Office of Her Excellency the President of India and the same was decided by the State Government vide order dated 09.04.2009, but the inordinate delay of about 6-1/2 months in disposing of the representation of the detinue has not been explained and the detinue is having every right of protection against arrest and detention under Article 22 of the Constitution of India.

30. All the above facts make it clear that the representation was made by the petitioner on 21.08.2008 and the said representation was disposed of by the State Government on 09.04.2009. Thus, the representation of the petitioner has been decided by the State Government after an inordinate delay of about 6-1/2 months which makes the continued detention of the accused-petitioner illegal and deserves to be quashed.

31. In the light of the aforesaid observations, the present petition is allowed and the impugned detention order of the petitioner dated 07.08.2008 is hereby set-aside. The petitioner shall be released forthwith, if not required to be detained in any other case.