

(2013) 04 RAJ CK 0036

In the Rajasthan High Court

Case No : Habeas Corpus Writ Petition No. 177 of 2012

Vishal Chaudhory

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Citation : (2013) CriLJ 4068

Hon'ble Judges : Nisha Gupta, J; Mohammad Rafiq, J

Bench : Division Bench

Advocate : Anurag Sharma and Neeraj Sharma, for the Appellant; Dinesh Yadav, A.A.G., Amit Ojha and Vikram Singh, for the Respondent

Judgement

Mohammad Mohammad Rafiq, J.—This habeas corpus petition has been filed by Vishal Chaudhory assailing the order dated 15-5-2012 (Ann. 1) passed by the Commissioner of Police, Jaipur directing his detention under sub-section (1) of Section 3 of the Rajasthan Prevention of Anti-Social Activities Act, 2006 (for short, the "Act of 2006") for a period of one year and also the order dated 20-4-2012 (Ann. 5) passed by the State Government whereby, State Government has authorised Commissioner of Police, Jaipur to exercise its powers conferred by sub-section (2) of Section 3 of the said Act. The Commissioner of Police has supplied to the petitioner grounds on which he was detained vide letter dated 17-8-2012 according to which, as many as forty-five criminal cases of different nature such as causing damage to the public property, lurking house trespass, house breaking, outraging modesty of the woman, theft, extortion, voluntarily causing hurt by dangerous weapon, voluntarily causing grievous hurts by terror, wrongful restrain, voluntarily causing hurts to extort property, mischief, attempt to commit culpable homicide, attempt to murder etc. etc. were registered, starting from 30-8-1998 lastly till 4-4-2012. His matter was laid before the Advisory Board, which was satisfied as to the sufficiency of reasons for detention of the petitioner. The State Government thereupon confirmed the order of detention of petitioner for a period of one year from 15-5-2012 to

15-5-2013.

2. Shri Anurag Sharma, learned counsel for the petitioner has argued that the order of detention was passed in a hurried manner on 15-5-2012 and the subsequent order dated 17-5-2012 has been passed only in order to justify the said order. The so-called subjective satisfaction of the Commissioner of Police was vitiated for the reason that he did not deem it necessary to satisfy himself as to how many cases were pending trial against petitioner and in how many of them he was acquitted. Mere number of cases by itself does not justify detention of the petitioner because they were all spread over for a period of fifteen years. No reason was assigned in the detention order as to why till 2012, petitioner was not dealt with either under the provisions of Section 110 of the Code of Criminal Procedure or Habitual Offenders Act or Gunda Act or the like.

3. Shri Anurag Sharma, learned counsel for the petitioner argued that the detaining authority did not at all consider in the case given at item Nos. 3, 5 to 12, 14 to 16, 19, 22, 23, 27, 28 & 29 with grounds supplied, in which petitioner was already acquitted by the Courts, which fact has not been taken note of by the detaining authority. Order of detention thus stood vitiated by non-consideration of relevant facts. Learned counsel referring to the detention argued that the detaining authority has taken extraneous material into consideration by repeatedly observing in the grounds of detention in regard to cases in which the petitioner was acquitted that petitioner has taken benefit of technicalities of law or that the witnesses were intimidated/influenced by him therefore became hostile and were forced to compromise the matter, which entitled the petitioner to benefit of doubt. In this connection, reference is made to ground Nos. 14, 15, 16, 19, 22, 27, 28, 29, 31, 24 & 38. Learned counsel for the petitioner argued that there was absolutely no material whatsoever with the detaining authority to raise such presumption as no complainant in any of these cases has come forward with any such allegation and therefore subjective satisfaction of the detaining authority was based on conjectures and surmises. The detaining authority has taken extraneous consideration into mind in arriving at the subjective satisfaction, which was therefore vitiated. It was argued that petitioner has been trying to live a normal life for last two years and there has been no criminal case against him showing his active participation in crime during this period. Police authorities in a hurried manner falsely implicated the petitioner for offence u/s 3 /25 of the Arms Act and Section 399 /402, IPC for preparation of dacoity in first three months of 2012. There is no continuity and live link with the activities of petitioner and the subjective satisfaction of the detaining authority that if he is allowed to be remain writ large, it would be a threat to the public peace and tranquility and that his detention was necessary for the purpose of maintaining public order. Except one case for offence u/s 307, IPC, all other criminal cases registered against the petitioner are of petty nature. Petitioner submitted representation to His Excellency, the President of India on 28-5-2012 but till date, such representation has not been decided nor any response to such representation has been received by the petitioner. Learned

counsel submitted that representation of the petitioner was sent vide registered post on 8-6-2012, receipts whereof is on record at (Ann. 6) proving that representation was addressed not only to the President of India but also Governor of the State, Commissioner of Police, Jaipur, Home Minister of the State of Rajasthan and Chief Secretary of the State of Rajasthan.

4. Shri Anurag Sharma, learned counsel for the petitioner argued that Articles 21 & 22(5) of the Constitution of India confer a valuable right upon the detenu to make representation including the right to seek expeditious disposal of the representation. However representation of the petitioner was rejected much belatedly in a casual and routine manner by a non-speaking order passed by the State Government on 29-6-2012. Even if this period is counted from 8-6-2012, the date on which representation through registered post was dispatched, it must be presumed that representations must have been received by the Government on 9-6-2012. The representation has been dismissed on 29-6-2012 and there is thus delay of 21 days of in deciding representation, which delay has prejudiced petitioner defeating his rights to have speedy disposal of representation.

5. Shri Anurag Sharma, learned counsel for the petitioner in support of his arguments, has placed reliance on the judgment of Supreme Court in Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others, and argued that in that case, the Supreme Court while dealing with similar controversy has held that Article 22(5) of the Constitution mandates in preventive detention matters, detenu should be afforded earliest possible opportunity to make representation against the order. Court should scrutinize the material with the detaining authority to arrive at subjective satisfaction. In this case, Supreme Court held delay of even seven days to be fatal by observing that it may not be inordinate but there was no explanation for this delay by the State Government. They have not clarified the delay, which remained unexplained. This would be a sufficient ground to quash the order of detention. It was argued that in the present case also, there is no explanation whatsoever by the respondents in their counter-affidavit for the delay of 21 days in deciding the representation. Earlier also, an order of preventive detention u/s 3(2) of the National Security Act, 1980 was passed against the petitioner. This Court in the judgment delivered in habeas corpus petition in Vishal Chaudhory Vs. State of Rajasthan and Others, quashed the order of preventive detention on the ground of inordinate delay of 6 1/2 months in disposing of representation of the petitioner as there was no explanation for the delay.

6. Shri Anurag Sharma, learned counsel for the petitioner has also placed reliance on the judgment of Supreme Court in V.C. Mohan Vs. Union of India and Others, and argued that the Supreme Court in the said case held the detention order illegal due to non-placement of the relevant material before detaining authority by sponsoring authority. It was held that Government authorities should be fair, reasonable and alive to like situation. Learned counsel for petitioner has further placed reliance upon the judgment of Supreme Court in

Rajammal Vs. State of Tamil Nadu and Another, : Rajammal Vs. State of Tamil Nadu and Another, to argue that the Supreme Court in the said case held that explanation for the delay and not the duration or range of delay, is material to determine whether the provisions contained in Article 22(5) of the Constitution were infringed or not. The words "as soon as may be" in Article 22(5) conveys the message that the representation should be considered and disposed of at the earliest. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. It is for the authorities concerned to explain the delay. It is not enough to say that delay was very short.

7. Shri Anurag Sharma, learned counsel for the petitioner has submitted that the sponsoring authority did not place complete material before the detaining authority. It is submitted that petitioner has been acquitted in the criminal case arising out of FIR No. 120/2003 registered at Police Station, Jalupura for offence u/ss. 341, 342, 323 and 506, IPC. In Ground No. 19, it is mentioned that petitioner was convicted in criminal case arising out of FIR No. 288/2004 registered with Police Station, Mansarovar for offence u/s. 4/25 of the Arms Act, whereas the fact is that petitioner in that case was subsequently acquitted, by the appellate Court in Appeal No. 69/2010 vide judgment dated 17-4-2012. Neither the fact of filing appeal has been mentioned in the grounds of detention nor even copy of the order of acquittal was placed before the detaining authority, which tantamounts to non-consideration of relevant material. This vitiated the order of detention. Similarly, in Ground No. 28, it is mentioned that petitioner was convicted for offence u/ss. 279, 336 and 338, IPC and Section 3 /25 of the Arms Act in criminal case arising out of FIR No. 109/2007 lodged with Police Station Malviya Nagar and he was sentenced to simple imprisonment for two years, which sentence has been suspended in criminal appeal filed by the petitioner, which appeal was later on allowed vide judgment dated 2-2-2012 by the appellate Court. Certified copy of the said order is placed on record. The detaining authority was also not apprised this fact. Thus, the subjective satisfaction of the detaining authority was vitiated.

8. Per contra, Shri Dinesh Yadav, learned Additional Advocate General has opposed the writ petition and argued that petitioner is a habitual offender in the meaning of Section 2(g) of the Act of 2006, which inter alia defines word "habitual" to mean that acts or omissions committed repeatedly, persistently and frequently having a threat of continuity stringing together similar repetitive acts or omission but shall not include isolated, individual and dissimilar acts or omissions. Petitioner has been regularly indulging himself in such nefarious acts since 1998. There are as many as forty five criminal cases registered against him and many of which are of serious nature. There are allegations against him of causing damage to the public property, lurking house trespass, house breaking, outraging modesty of the woman, theft, extortion, voluntarily causing hurt by dangerous weapon, voluntarily causing grievous hurts by terror, wrongful restrain, voluntarily causing hurts to extort property, mischief, attempt to commit

culpable homicide and attempt to murder. It was therefore very necessary in order to maintain public order that Section 3(1) of the Act of 2006 was invoked against petitioner. It is denied that there was no live link between the activities of the petitioner and the subjective satisfaction of the detaining authority because five criminal cases were registered against petitioner in the year 2011 and order of detention was passed on 15-5-2012 but within this 4 1/2 months of 2012 itself, two more criminal cases were registered against him. In many of those, petitioner has been convicted. Merely because his sentence has been suspended and he has been granted bail in certain cases, does not debar the competent authority from invoking provisions of Section 3(1) of the Act of 2006. Though, it is admitted that petitioner has been acquitted in as many as seven criminal cases but his acquittal has been brought about by reason of either by compromise with the complainant-party or witnesses having turned hostile on account of fear of the petitioner. Petitioner has wrongly stated that he has been acquitted in the criminal case arising out of FIR No. 120/2003 registered at Police Station, Jalupura for offence u/ss. 341, 342, 323 and 506, IPC. Fact is that the said case is still pending.

9. Shri Dinesh Yadav, learned Additional Advocate General argued that even in one or two matters, if the fact about subsequent acquittal of the petitioner by the appellate Court is omitted to be considered by the detaining authority, pendency of large number of other criminal cases against petitioner would still fully justify the subjective satisfaction of the detaining authority. Learned Additional Advocate General submitted that the delay of 21 days in deciding the representation actually was not the delay of 21 days. Representation in fact was sent by the petitioner through registered post on 8-6-2012, which was received by the office of Chief Secretary to the Government of Rajasthan (Home) on 11-6-2012 and in the office of Commissioner of Police on 12-6-2012, which forwarded the same to the Government on 13-6-2012 and the same was proceeded but in between there were the Government Holidays. Thereafter, the comments of the Commissioner of Police, Jaipur were called for on 13-6-2012, the Commissioner of Police, Jaipur forwarded his comments to the Government vide his communication dated 22-6-2012 recommending for rejection of the same. Decision to reject the representation was taken by the Government on 22-6-2012, which was received by the Commissioner of Police on 22-6-2012 and its communication was sent to the petitioner on 2-6-2012. It was argued that the delay if any is not explained in reply to the writ petition, can be explained even by producing the record. In support of his argument, learned additional advocate General has relied on two Division Bench judgments of this Court in Kamal alias Kamal Deep Meena Vs. State and Others, and Ramjani Sheikh v. State of Rajasthan : D.B. Habeas Corpus Petition No. 74/2012 dismissed 17-7-2012 and Supreme Court judgment in G. Reddeiah Vs. The Government of Andhra Pradesh and Another, It is therefore prayed that writ petition be dismissed.

10. We have heard learned counsel for the parties and given our anxious consideration to the rival submissions.

11. Petitioner in this habeas corpus petition has challenged delegation of powers to the Commissioner of Police, Jaipur and also order of preventive detention passed in the present case on the ground of non-consideration of relevant material alleging non-application of mind by the detaining authority but the main thrust of argument of the learned counsel for the petitioner is on delay in deciding his representation and, therefore, we wish to deal with this argument first, for if that argument is upheld, necessity of examining other arguments would stand obviated. At this stage, however it may be pertinent to note that petitioner was earlier also detained under the National Security Act, 1980 invoking provisions of Section 3(2) of the said Act vide order dated 7-8-2008. Said detention order was quashed by the Division Bench of this Court vide judgment dated 11-5-2009 reported in Vishal Chaudhory Vs. State of Rajasthan and Others, because this Court found that there was delay of 6 1/2 months in deciding the representation of petitioner, which delay was not at all explained.

12. In para 16(a) of the writ petition, petitioner has asserted that he submitted representation to the President of India on 28-5-2012 through jail authorities and he also sent same representation to the Commissioner of Police, Jaipur, His Excellency the Governor of Rajasthan, Home Minister and the Chief Secretary to the Government of Rajasthan on 8-6-2012 through registered post, receipts of which are on record at (Ann. 6). Petitioner also placed on record copy of representation dated 28-5-2012 at (Ann. 6) and also the order dated 29-6-2012 at (Ann. 7), whereby he was conveyed rejection of his representation by the State Government. The representation has been rejected by a non-speaking order. Same plea has been repeated in ground (M) of writ petition asserting that he submitted representation to the President of India on 28-5-2012 and also to Commissioner of Police, Jaipur. His Excellency the Governor of Rajasthan, Home Minister and the Chief Secretary to the Government of Rajasthan on 8-6-2012 through registered post asserting that same has not been decided so far and it has been asserted that non-decision of the said representation makes the detention order illegal. In ground O(a) of the writ petition, it is averred that detention of the petitioner stands vitiated being violative of Articles 21 & 22(5) of the Constitution of India, which confer a right on the detenu to make a representation. Such right also includes expeditious disposal of representation. Representation of the petitioner has been considered in a casual and routine manner and decided by a non-speaking order by the State Government and that too with inordinate delay.

13. Respondent-State has filed initial reply to the originally submitted writ petition on 6-12-2012 and thereafter filed reply to the amended writ petition again on 30-1-2013. Letter dated 29-6-2012 conveying rejection of representation of petitioner by the State Government to him has been placed on record in the subsequently filed reply to the amended writ petition. However, that reply filed by the State Government is quite scatchy and ambiguous with no averments whatsoever with regard to delay in disposal of the representation. No explanation worth the name about the delay in deciding the representation has

been given in reply to the writ petition filed earlier or subsequent one. All that has been stated in para 2(V) of the reply is that "said representation of the petitioner challenging the detention was rejected by the State Government vide order dated 29-6-2012". In the earlier filed para-wise reply on 6-12-2012 also, no explanation was furnished. Perusal thereof indicates that in reply to para 16 of the originally submitted writ petition dated 6-12-2012, all that has been stated is that "averments of para under reply are matter of record as such no specific reply on behalf of the answering respondents". Ground of challenge made in para 17(M) of the writ petition has also not been specifically replied. All that has been stated in para 17 of the said reply is that contentions raised in Grounds A to R of the writ petition are denied.

14. Shri Dinesh Yadav, learned Additional Advocate General however in the course of arguments produced for our perusal original record including note sheets on which representation of the petitioner was dealt with by the State functionaries. According to the said record, representation of the petitioner was sent to the State Government vide registered post on 8-6-2012, which was received by the State Government on 11-6-2012. Such representation was received by the office of Commissioner of Police on 11-6-2012, who sent the same to the Government and it was again returned to him calling for his comments. Commissioner of Police forwarded his comments to the Government on 22-6-2012, which were received in Home Department of the Government on 22-6-2012 itself. Matter was processed at different level and the representation was dismissed on the file on 22-6-2012 itself. Communication of rejection was sent to the petitioner on 29-6-2012. Even if there was some delay in communication of representation to the petitioner, that would not infringe in any manner rights of the petitioner guaranteed under Articles 21 & 22(5) of the Constitution of India. He has argued that even if no explanation is given in the counter-affidavit, the State Government can satisfy this Court by producing the original record to show that it has attached required amount of expediency to the representation of the petitioner and there was no undue delay in deciding the representation. Learned Additional Advocate General has produced for perusal of this Court the record of the State Government containing relevant note sheet.

15. The note-sheet indicates that Commissioner of Police, Jaipur forwarded the representation of the petitioner to the Deputy Secretary, Department of Home (Group-9) on 13-6-2012 and the dealing clerk in his office put up a note on 13-6-2012 that if approved, comments be called for from the Commissioner of Police, Jaipur. Then, a letter was sent to the Commissioner of Police, Jaipur by the Section Officer of the State Home Department on 13-6-2012 calling for his comments on the representation of the petitioner. It was thereafter that the Deputy Director General of Prisons, Rajasthan, Jaipur also forwarded the representation of the petitioner to the Officer on Special Duty of the State Government in Home Department (Group 9) with his letter dated 15-6-2012. The Section Officer being on leave, a proposal was submitted to the Deputy Secretary on 22-6-2012 by the dealing clerk that since the Commissioner of Police, Jaipur

has recommended for rejection of representation of petitioner and the matter is scheduled to be placed before the Advisory Board on 2-7-2012, if approved, the representation of the petitioner be rejected. Deputy Secretary approved the proposal and recommended for rejection of representation on 22-6-2012, which proposal is shown to have been endorsed by the Additional Chief Secretary (Home) on 22-6-2012 and Minister of State (Home). Though file appears to have been marked thereafter to the Chief Minister, who also holds the Home portfolio but it does not appear to have been submitted to him.

16. The abovesaid facts thus clearly indicate that even when the representation was received by the Commissioner of Police on 11-6-2012 and forwarded to the Government on 13-6-2012, why the Commissioner of Police did not simultaneously send his comments to the Government on 13-6-2012 itself, is not clear. He finally forwarded his comments, belatedly on 22-6-2012. There is no explanation whatsoever on record of the Government file nor such explanation has been placed before us by way of affidavit/counter-affidavit by the respondents as to why all this time of nine days was consumed in obtaining comments. The representation has been rejected by the Government only because Commissioner of Police recommended for its rejection in his comments, which is what has been mentioned in the note-sheet dated 22-6-2012. There is no independent application of mind by the Additional Chief Secretary (Home) Government of Rajasthan except endorsing their approval to the opinion of the Commissioner of Police but the precise point is that when the detaining authority has rejected representation on file on 22-6-2012, why communication thereof was sent to the petitioner as late as 29-6-2012. Thus, it further consumed seven more days in dispatching communication to the petitioner. Though the State has filed two counter-affidavits but in neither of them it has been mentioned specifically as to on what date order of rejection dated 29-6-2012 was served upon the petitioner except the endorsement at Item No. 2 in the said letter to the Superintendent, Central Jail, Jaipur asking him to serve copy thereof on the detenu.

17. Law is well settled that it is constitutional obligation of the Government to consider representation submitted by the detenu without any delay although no period is prescribed by Article 22(5) of the Constitution of India for decision on such representation.

18. In *Rajammal Vs. State of Tamil Nadu and Another*, the Supreme Court held that the words "as soon as may be" in clause (5) of Article 22 of the Constitution convey the message that the representation should be considered and disposed of at the earliest. It has been held by the Supreme Court in para 7 of the judgment, as under:--

7. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey

the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, The following observations of the Bench can profitably be extracted here (SCC p. 484, para 12).

"It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

19. Supreme Court in para 8 of the judgment in Rajammal Vs. State of Tamil Nadu and Another, held as under:--

8. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

20. It is trite that Article 22(5) of the Constitution mandates in preventive detention matters that detenu should be afforded earliest possible opportunity to make representation against the order and for expeditious disposal of such representation. On this aspect, it was held by the Supreme Court in para 6 of the judgment in Union of India (UOI) and Others Vs. Laishram Lincola Singh @ Nicolai, as under:--

6..... There can be no hard and fast rule as to the measure of reasonable time and each case has to be considered from the facts of the case and if there is no negligence or callous inaction or avoidable red-tapism on the facts of a case, the Court would not interfere. It needs no reiteration that it is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the Law

of Preventive Detention is not lost in mechanical routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention becomes vulnerable.

(Emphasis ours)

21. The Supreme Court in para 3 of the judgment in Haji Mohammad Akhlaq v. District Magistrate, Meerut, 1988 Supp SCC 538 also while dealing with the question of delay in forwarding the representation under the National Security Act, held as under:--

There can be no doubt whatever that there was unexplained delay on the part of the State Government in forwarding the representation to the Central Government with the result that the said representation was not considered by the Central Government till October 16, 1987 i.e. for a period of more than two months. Section 14(1) of the Act confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must imply a right in a detenu to make representation to the Central Government against the order of detention. Thus, the failure of the State Government to comply with the request of the detenu for the onward transmission of the representation to the Central Government has deprived the detenu of his valuable right to have his detention revoked by that Government.

22. Contrary judgment cited by the learned Additional Advocate General in Subramanian Vs. State of Tamil Nadu and Another, cannot be of any help to the State in the present case because therein, detention was confirmed by the Government and hence the detaining authority was held to have become functus officio. It was held by the Supreme Court that even if it could not consider detenu's representation, consideration by Government would be sufficient. Another representation simultaneously sent to the Government was considered and rejected by the Government. The representation was received by the Government on 28-7-2011 and rejection thereof was approval on 29-7-2011 and the same was rejected on 12-8-2011. The advisory board also considered and rejected the same on 23-8-2011. In those facts, delay was held to have been explained because explanation was furnished by the State in the counter-affidavit, which is evident from the lost line of para 22 of the said judgment observing that "this is also clear from the information furnished in the counter-affidavit filed on behalf of the respondent State before this Court."

23. In Pebam Ningol Mikoi Devi (supra), the representation was submitted by the detenu on 9-10-2009 to the State Government however the same was forwarded to the Government of India on 16-10-2009 by the State Government. Government of India received it on 28-10-2009 and thereafter rejected the same on 3-11-2009. In those facts, it was held by the Supreme Court in para 36 of the judgment, as under:--

36. In the matter before us, a delay of 7 days has occurred in the forwarding of the representation. This may not be inordinate; however, at no stage has there been an explanation given for this delay. The State Government or Central Government has not clarified the same and thus the delay remains unexplained.

24. In the present case, detainee has asserted that he sent representation to the President of India on 28-5-2012, which is evident from the receipts on record at (Ann. 6), showing that same was sent on 8-6-2012 through registered post, but its decision was never conveyed to the petitioner. There is no explanation whatsoever by the respondents that when the office of Commissioner of Police received the representation on 11-6-2012, why rejection of representation was communicated to the petitioner belatedly on 29-6-2012. The representation was sent by the petitioner through registered post on 8-6-2012 not only to the President of India but also His Excellency the Governor of Rajasthan, Commissioner of Police, Jaipur, Home Minister of the State of Rajasthan and Chief Secretary of the State of Rajasthan. The representation of the petitioner was in fact received in the office of Chief Secretary on 11-6-2012, which is evident from endorsement at page No. 767 of the record and by Commissioner of Police also on 11-6-2012 as is evident from noting made on such representation at page 756 of record. There is no explanation why when the Commissioner of Police forwarded the representation to the Government on 13-6-2012, he did not simultaneously send his comments to the Government and why when he received communication of rejection on 22-6-2012, he communicated the same to the detainee belatedly on 29-6-2012. State Government for itself has also not explained as to why when Government granted approval for rejection of representation on 22-6-2012, it authenticated the order of rejection belatedly on 29-6-2012. It is not clear as to when this order was served on the petitioner except the endorsement at Item No. 2 in the said letter to the Superintendent, Central Jail, Jaipur asking him to serve copy thereof on the detainee. There is no explanation whatsoever on record as to when communication of rejection was actually served upon the petitioner by Superintendent of Jail, Jaipur. None of these facts have been explained by the Government in both the replies/affidavit/counter-affidavit nor does it appear from the record.

25. There is therefore sufficient ground made out in favour of the petitioner for quashment of the detention order. In the result, this habeas corpus petition is allowed and the order of preventive detention passed by the Commissioner of Police, Jaipur dated 15-5-2012 (Ann. 1) is quashed and set aside.