

**(2004) 08 AHC CK 0085**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 111 (H/C) of 2004**

|                          |    |            |
|--------------------------|----|------------|
| Waseem (in Jail)         | Vs | APPELLANT  |
| State of U.P. and Others |    | RESPONDENT |

**Date of Decision :** 05-08-2004

**Acts Referred:**

Constitution of India, 1950 — Article 226  
National Security Act, 1980 — Section 3(2)  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307  
Uttar Pradesh Prevention of Cow Slaughter Act, 1955 — Section 3, 5, 8

**Citation :** (2005) 1 ACR 64

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

**Bench :** Division Bench

**Advocate :** Rishad Murtaza, for the Appellant; Rafia Farooqi and B.B. Saxena and Janardan Singh, Assistant Public Prosecutor, for the Respondent

## Judgement

Vishnu Sahai, J.—Through this writ petition, preferred under Article 226 of the Constitution of India, the Petitioner-detenu Waseem has impugned the order dated 9.8.2003, passed by Mr. Mohd. Mustafa, District Magistrate, Pratapgarh (Opposite party No. 2), 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 9.8.2003, was served on the Petitioner-detenu on 9.8.2003 itself and their true copies have been annexed as Annexures-1 and 2, respectively to the petition.

3. The prejudicial activities of the Petitioner-detenu prompting the second Respondent to issue the impugned detention order against him are contained in the grounds of detention (Annexure-2). A perusal of Annexure-2 shows that the impugned detention order is founded on three C.Rs. (all pertaining to police station Raniganj, district Pratapgarh), namely, C.R. No. 43 of 2003, u/s 147, 148, 149, 307, I.P.C., C. R. No. 46 of 2003, u/s 3/5/8, Prevention of Cow Slaughter Act and C.R. No. 47 of 2003, u/s 2/3 (1) U. P. Gangsters and Anti-Social Activities (Prevention) Act, 1986. It is pertinent to mention that all the three

C.Rs. were registered against the Petitioner on 21.4.2003.

4. The details pertaining to the said C.Rs. as per the grounds of detention, in brief, are as under:

On 21.4.2003, at 4.00 a.m., the Petitioner-detenu along with his eleven associates was slaughtering cows in Sarai Bharatrai within the limits of police station Raniganj, in district Pratapgarh. On receiving information, the police went to the place of incident and tried to apprehend the Petitioner and Ors. but they managed to run away. The police seized a large quantity of beef from the place of the incident. It also seized therefrom, two taslas, one bucket, one petromax, one scale and a piece of rope.

5. A perusal of the grounds of detention shows that while the police was trying to apprehend the Petitioner and Ors., they fired on it and as a consequence of the prejudicial acts committed by the Petitioner-detenu and his associates even tempo of life of those living in the vicinity was affected.

6. In the grounds of detention, the detaining authority has shown his awareness that the Petitioner-detenu was in custody in the aforesaid C.Rs. and in order to prevent him from committing similar prejudicial acts in future, it was imperative to detain him.

7. We have heard Mr. Rishad Murtaza, for the Petitioner, Mr. Janadan Singh, Additional Public Prosecutor, for Respondent Nos. 1 to 3 and Ms. Rafia Farooqi (learned Counsel for Union of India) for Respondent No. 4.

8. Although in this writ petition, Mr Rishad Murtaza learned Counsel for the Petitioner has made a number of pleadings and pleaded a number of grounds, but since, in our view, this writ petition deserves to succeed on the pleadings contained in paragraph 11 of the writ petition and Ground-XIII of para 21 thereof, we are not adverting to the other pleadings and grounds of challenge set forth in the writ petition.

9. The substance of the averments contained in paragraph 11 of the writ petition and ground XIII of para 21 thereof, is that although the prejudicial acts were committed by the Petitioner-detenu on 21.4.2003, the impugned detention order was issued on 9.8.2003, resulting in the live-link between the prejudicial acts committed by the Petitioner-detenu and the rationale of clamping a detention order on him being snapped, rendering the detention order punitive in law.

10. The averments contained in paragraph 11 of the writ petition have been replied to in paragraph 8 of the return of detaining authority (Respondent No. 2). The said para reads thus :

That in reply to the contents of para 11 of the writ petition, it is stated that the detention order was passed by the deponent against the Petitioner on 9.8.2003 only when the Petitioner started proceeding for getting bail before the Sessions Judge, Pratapgarh and the same was pending at the time of passing the

detention order. It is stated that the bail application was moved by the Petitioner on 30.7.2003 before the Sessions Judge and the next date was fixed for hearing as 11.8.2003 and detention order was passed on 9.8.2003 and there was every likelihood of the Petitioner to be released on bail from jail and indulge into the prejudicial activities as of 21.4.2003.

11. We have perused the averments contained in paragraph 11 of the writ petition, those contained in ground XIII of para 21 thereof and those contained in para 8 of the return of the detaining authority. As we have earlier mentioned this writ petition deserves to succeed.

12. A perusal of paragraph 11 of the writ petition and ground XIII of para 21 thereof would show that the detention order has been impugned therein on the ground of delay in its issuance. As mentioned earlier, the averment contained therein is that although prejudicial acts were committed by the Petitioner-detenu on 21.4.2003 but the detention order was issued belatedly on 9.8.2003.

13. A perusal of para 8 of the return of the detaining authority would show that he has failed to comprehend the ground of challenge contained in paragraph 11 of the writ petition, namely, unexplained delay in the issuance of the impugned detention order. It would further show that in his understanding the detention order has been assailed in paragraph 11 of the writ petition on the ground that the prerequisites enjoined by law in issuing a detention order against a person in custody have been given a go-by. This is the only reason why, in our judgment, in para 8 of the return he has mentioned that since the Petitioner-detenu had preferred a bail application on 30.7.2003 before the Sessions Judge, there was likelihood of his release from custody in near future and consequently, he clamped the detention order on him.

14. We are afraid that this is a classic instance where the detaining authority has confused cheese for chalk.

15. In our view, neither in paragraph 8 nor in any other paragraph of his return, the detaining authority has explained the delay of nearly three and half months in the issuance of the impugned detention order. It is well-settled that unexplained delay in the issuance of a detention order would vitiate it in law because the live-link between the prejudicial activities of the detenu and the rationale of clamping a detention order on him would be snapped (See Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, at page 13).

16. In our judgment, the delay of three and half months in the issuance of the impugned detention order against the Petitioner-detenu has brought about a three-fold result, namely :

(a) the live-link between the prejudicial acts of the Petitioner-detenu and the rationale of clamping a detention order on him, has been snapped ;

(b) the genuineness of the subjective satisfaction of the detaining authority to preventively detain the Petitioner-detenu, vide the impugned detention order,

has been rendered suspect ; and

(c) the impugned detention order has lost its preventive purport, as intended in law and has acquired a punitive character.

17. In the result, we allow this writ petition ; quash and set aside the impugned detention order ; and direct that Petitioner-detenu Waseem be released forthwith unless wanted in some other case.