

Sunil Paswan Vs. State of U.P. and Others

Sunil Paswan Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/470386

Court : Allahabad

Decided On : Feb-25-1999

Reported in : 1999(2)AWC1160; 1999CriLJ2340

Judge : R.R.K. Trivedi and;Lakshmi Bihari, JJ.

Acts : [National Security Act, 1980](#) - Sections 3(2), (3) and (4), 10 and 12; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 147, 148, 302, 307 and 427; [Arms Act, 1959](#); Public Properties (Prevention of Damages) Act; Explosive Substances Act; [Constitution of India](#) - Article 22(4)

Appeal No. : Habeas Corpus Writ Petition No. 34155 of 1998

Appellant : Sunil Paswan

Respondent : State of U.P. and Others

Advocate for Def. : A.G.A. and ;Uma Kant, Adv.

Advocate for Pet/Ap. : Sunil Kumar, Adv.

Judgement :

R.R.K. Trivedi, J.

1. In this petition, petitioner has prayed for a writ of habeas corpus commanding the respondents to release the petitioner and for quashing of the order dated

12.6.1998 (Annexure-1 to the writ petition) passed by respondent No. 2, District Magistrate. Gorakhpur. under Section 3(2) of the National Security Act (hereinafter referred to as the Act) under which he has been detained.

2. Along with the order of detention, petitioner was also served with the grounds of detention on the basis of which respondent No. 2 formed his subjective satisfaction. In the grounds, it is stated that on 24.11.1997. near the Char Phatak. at a little distance from the railway track, at about 4.30 p.m. when the police van No. U. P. 53/F-3210 was escorting the under-trials for admission in the Jail, after they had been produced in Court, it was attacked by hand-grenades. The culprits were shouting that Rakesh and Brahma are in the van. At the site of the scene near the road Palri, a Tata Mobile of red colour which bore plate bearing words 'Chandresh Paswan' was sighted. Near the Char Phatak, the culprits were standing on both sides of the road with bags in their hands. The police constables escorting the under-trials. fired ten rounds in defence which caused injuries to one of the miscreants, namely, Shahabuddin alias Shakil, who fell wounded on the ground after receiving injuries. Injured Shahabuddin was holding a grenade in his hand which exploded badly injuring him. The miscreants took up and put him in the Tata Mobile and ran away. In this attack, the police van was badly . damaged and the constables and under-trials sitting in the van were injured by splinters of the bomb. The miscreants also left a revolver at the site and a live H.E. 36 service hand-grenade which was defused on the same day by disposal squad.

3. Report of the aforesaid occurrence was lodged at 7.30 p.m. at Police Station, Shahpur against unknown persons. A case was registered as case Crime No. 1076 of 1997, under Section 147/148/302/307/427/120B, I.P.C., 7 Criminal Law Amendment Act. 3/25 Arms Act. 3/4 of the Public Properties (Prevention of Damages) Act and 3/5 of Explosive Substances Act. Subsequently, the Tata Mobile was recovered from the house of Chandresh Paswan. The wounded culprit Shahabuddin was also found there. He was lying on a cot wrapped in a blood-stained Kathari. Wounded Shahabuddin was admitted in hospital for treatment where he died on 3.12.1997. During Investigation, involvement of petitioner along with Chandresh Paswan, Ram Briksh Yadav, Ram Nagina, alias Naglna, Subhash Pasi. Prakash Pasi, Raja Ram, Arun Kumar and Shahabuddin came to light. After

investigation, charge-sheet has been submitted in Court. It is stated that on account of the aforesaid incident, the public order in the locality was disturbed. The road and rail traffic came to halt and the residents of the town were under great fear and terror and feeling of Insecurity prevailed. On account of the aforesaid occurrence, the under-trials were feeling insecure while being produced in Court, The petitioner was in Jail in connection with the above case. However, he had applied for bail and there was strong possibility of his being released on bail and there was serious apprehension from him that he will again indulge in similar activities which shall be prejudicial to the maintenance of public order. For the aforesaid reasons the order of preventive detention dated 12.6.1998 was passed.

4. In the grounds, petitioner was also Informed that he has right to make a representation to the State Government against the order of detention and if he desires to file a representation, he may send it through the Superintendent of District Jail. Gorakhpur. and it may be addressed to the Secretary of Home Department of the State. He was also Informed that he may also file representation before the Advisory Board under Section 10 of the Act and he is also entitled for a personal hearing before the Advisory Board for which he may also indicate in the representation.

5. The order of detention dated 12.6.1998 was approved by the State Government on 19.6.1998, under Section 3(4) of the Act. The case of the petitioner was referred to the Advisory Board by the State Government on 23.6.1998 under Section 10 of the Act. The Advisory Board heard the petitioner personally on 13.7.1998 and gave its opinion on 28.7.1998 that there was sufficient cause to detain the petitioner under the Act. On receipt of the opinion of the Advisory Board the State Government confirmed the order of detention under Section 12 of the Act by order dated 10.8.1998 for a period of 12 months.

6. Petitioner filed his representation on 6.7.1998. The District Magistrate forwarded the representation on 8.7.1998 which was received by the State Government on 9.7.1998. Thereafter the representation was examined by the Under Secretary in the Home and Confidential Department and the Joint Secretary on 16.7.1998. The matter was put up before the Home Secretary who examined it on 17.7.1998 and

finally it was rejected by the State Government on 22.7.1998.

7. The representation of the petitioner dated 6.7.1998 was received by the Central Government on 28.7.1998 through the State Government. This representation was considered and it was found that certain vital information required for its further consideration was needed. The information was sought from the State Government through crash wireless message dated 30.7.1998. However, the required information was received by the Central Government on 30.7.1998 vide wireless message dated 28.7.1998 of the State Government. On receiving the said information the case of the detenu was put up before the Under Secretary, Ministry of Home Affairs on 3.8.1998 who considered the same and with her comments put up the same before the Joint Secretary, Ministry of Home Affairs on 3.8.1998. The Joint Secretary considered the case and put up the same before the Home Minister, Government of India, on 5.8.1998. The Home Minister considered the representation rejected on 12.8.1998.

8. In this petition, counter-affidavit has been filed by Shri Rafiq Ahmad Khan, Under Secretary in Home and Confidential Department, Government of U. P. Civil Secretariate, Lucknow. for respondent No. 1. Shri Ashok Kumar Rai, Superintendent, District Jail, Gorakhpur, has filed counter-affidavit as respondent No. 3, Bina Prasad, Under Secretary, Ministry of Home Affairs, Government of India, has filed counter-affidavit on behalf of respondent No. 4.

9. We have heard Shri Sunil Kumar, learned counsel for the petitioner, and Shri A. K. Tripathi, learned Additional Government Advocate, and perused the record. After hearing counsel for the parties at some length, we passed the order dated 9.2.1999 directing the learned A.G.A. and Shri Uma Kant, learned Additional Standing Counsel to produce the original record and the case was fixed for further hearing on 16.2.1999. However, on 16.2.1999, hearing of the case was adjourned on the request of learned A.G.A. On 17.2.1999, learned A.G.A. produced the original record of respondent No. 1 pertaining to detention of the petitioner. However, the record relating to this case was not placed before us by the learned counsel for respondent No. 4.

10. Learned counsel for the petitioner has challenged the continued detention of the petitioner on the ground of delay in deciding the representation of the petitioner by the Central Government. Learned counsel has submitted that the representation was filed by the petitioner on 6.7.1998 before the Superintendent, District Jail, Gorakhpur. However, it was received by the Central Government on 28.7.1998. It is submitted that there is no explanation for this long delay in sending the representation to the Central Government. It has been further submitted that the representation of the petitioner was placed before the Home Minister on 5.8.1998 which was rejected on 12.8.1998. I.e., after seven days. Learned counsel has submitted that the representation of the petitioner could be decided by the Home Minister within a day. However, there is no explanation why seven days were taken for deciding the representation. It is further submitted that the explanation given in para 8 of the counter-affidavit of Bina Prasad, is only for two days, i.e., 8th and 9th August, 1998. Even if these two days are excluded, there is no explanation for the remaining five days' delay. It is submitted that on account of the aforesaid inordinate and unexplained delay at two stages, the continued detention of the petitioner has been rendered illegal.

11. Learned A. G. A., on the other hand, submitted that the representation of the petitioner was addressed only to the Home Secretary and it was not addressed to the Home Secretary of the Central Government and in these facts and circumstances, the State Government was not under obligation to send copy of the representation to the Central Government and even if there is delay in sending the representation, the petitioner cannot be entitled for any benefit of the same and it will not render the continued detention of the petitioner illegal.

12. We have considered the submissions of the learned counsel for the parties and also perused the original record produced by the learned A. G. A. On perusal of the record, the relevant facts which we have noticed are that in the note dated 8.7.1998. It was specifically mentioned that the District Magistrate, Gorakhpur, has forwarded the representation of Sunil Paswan with his para-wise comments to the State Government. It is also mentioned that the representations are proposed to be sent to the Central Government and the Advisory Board. In the note dated 11.2.1999. It is mentioned that the representation of the detenu and the comments

of the District Magistrate. Gorakhpur were handed over along with letter dated 9.7.1998 for being sent to the Central Government but it could be received by the Central Government on 26.7.1998. In the same note, it is mentioned that for this delay explanation was sought from the then Section Officer Narendra Singh Saxena and he has already been transferred in the month of October, 1998. Thus, it is clear from the record that the delay of 17 days in sending the representation to the Central Government was on account of mistake of the then Section Officer concerned. In para 3 of the counter-affidavit filed by Rafiq Ahmad Khan. Under Secretary, he stated that the representation of the petitioner and comments were sent to the Secretary. Ministry of Home Affairs, Government of India. New Delhi and the Advisory Board on 9.7.1998. Para 3 of the said counter-affidavit is being reproduced below :

'That in reply to the averments made in para 40 of the petition, it is stated that the District Magistrate. Gorakhpur sent copies of the petitioner's representation dated 6.7.1998 along with his comments on 8.7.1998 which were received in the concerned Section of the State Government on 9.7.1998. The State Government placed the aforesaid representation along with comments of the detaining authority before the advisory Board on 9.7.1998. A copy of the aforesaid representation and comments sent to Secretary, Ministry of Home Affairs. New Delhi on 9.7.1998. Thereafter the section concerned examined the representation and a detailed note was put up on 9.7.1998. The deponent and Joint Secretary examined the above representation on 16.7.1998 and file submitted to the Home Secretary on 16.7.1998, Home Secretary examined the above representation on 17.7.1998 and forwarded it to the higher authority for final order. Finally it was rejected by the State Government on 22.7.1998. The fact about the rejection of the representation was communicated to the petitioner through district authorities by the State Government on 23.7.1998. The report of Advisory Board received by the State Government on 28.7.1998. Thereafter the State Government vide its Radiogram dated 28.7.1998 intimated to the Secretary. Ministry of Home Affairs. New Delhi, that the Advisory Board found sufficient cause for the detention of the petitioner. The Ministry of Home Affairs. New Delhi, vide their telex message dated 12.8.1998 intimated to the petitioner through Superintendent District Jail, Gorakhpur. as well as to the State Government that above representation was rejected by the Central

Government. Averments to the contrary are incorrect and as such denied.'

13. The averments made by Shri Rafiq Ahmad Khan. Under Secretary, in the above paragraph are incorrect so far as it is alleged that the representation of the petitioner was placed before the Advisory Board on 9.7.1998 and also that it was sent to the Central Government on the same day.

14. We have perused the opinion of the Advisory Board wherein it has been clearly mentioned : 'the representation awaits Its consideration by the State Government and it is, however, not before us with the comments of the District administration'. The petitioner was produced before the Advisory Board for personal hearing on 13.7.1998 and the opinion of the Advisory Board dated 28.7.1998 was sent to the State Government same day. It shows that the representation of the petitioner with the comments of the detaining authority was not placed before the Advisory Board. As observed earlier, the representation was not sent to the Central Government though there was a specific direction and a letter in this connection was drafted and handed over for being sent to the Central Government. The delay may have been caused on account of the mistake or negligence of some official in the Section but it was not proper for Shri Rafiq Ahmad Khan to state incorrect facts in the counter-affidavit. In our opinion, it is a serious matter and should be brought to the notice of the Government through the Chief Secretary.

15. Learned A. G. A., however, submitted that as the representation was not addressed by the petitioner to the Central Government, it was not obligatory on the part of the State Government to send the same to the Central Government and the delay caused for any reason cannot be of any avail to the petitioner. However, we are not prepared to accept this submission of the learned A. G. A. It is true that the State Government was not under obligation to forward the representation of the petitioner to the Central Government, but once it was proposed by the detaining authority that the representation should be sent to the Central Government also, it became obligatory to forward the same to the Central Government without any delay. From the counter-affidavit filed by the Superintendent. District Jail, it is clear that the petitioner had filed 8 copies of the representation before him for being

forwarded to the authorities. It may be that on account of ignorance, the petitioner may not have specifically addressed the representation to the Central Government, but the fact that he filed 8 copies thereof which were forwarded to the District Magistrate demonstrates that they were meant to be sent to the Central Government as well as to the Advisory Board and that is why a recommendation was made by the detaining authority in the same lines.

16. At this place. It may also be mentioned that in the grounds of detention, the petitioner was not Informed that he is entitled to make a representation to the Central Government and if he desires so, the representation may be addressed to the Secretary (Home) of the Central Government. Though as held by Full Bench of this Court in the case of Raj Bahadur Yadav v. State of U. P. through Secretary (Home) and others. 1997 JIC 645 All (FB), it was not obligatory on the part of the State Government to Inform the petitioner that he is entitled to make representation to the Central Government also, but in case representation has been filed for the purpose of forwarding it to the Central Government, it should have been sent to the appropriate authority with speed and without any unavoidable delay. In case of Jai Prakash v. District Magistrate, Bulandshahr and others, 1992 JIC 635 (SC), Hon'ble Supreme Court held that if the representation was filed only mentioning Home Secretary and without further mentioning whether it is meant to the Home Secretary of the State Government or the Central Government, the Superintendent of Jail was under obligation to send it to the Central Government also. The relevant paragraph 5 is being reproduced below :

'The District Magistrate along with the grounds of detention specifically informed the detenu that he has a right to make representation to the State Government and also to the Central Government. The representation sent by the detenu was neither addressed to the State Government nor to the Central Government. He only mentioned 'Home Secretary' as the address without further Indicating whether he meant Home Secretary to the State Government or the Central Government. It is not disputed that the detenu gave nine copies of the representation to the Superintendent Jail for onward submission to the authorities. We are of the view that the Superintendent Jail, in the circumstances of this case, was under an obligation to send one copy of the representation to the Central Government. The

Superintendent Jail sent the representation only to the State Government and not to the Central Government. When the detenu gave sufficient number of copies of his representation and left it to the Jail authorities to forward the same to the authorities as specified in the grounds of detention, the Superintendent Jail was legally bound to send one copy to the Central Government. We are, therefore, of the view that the detenu was denied his right to make an effective representation and on that short ground his detention is liable to be quashed.'

17. The facts and circumstances of the present case are similar to the case of Jai Prakash[*supra*] with the only difference that in this case, the representation was addressed to the Home Secretary of the State Government and petitioner was not informed that he has a right to make a representation before the Central Government also, but the aforesaid difference in facts does not make any difference so far as the legal position is concerned, as the detaining authority had himself proposed to the State Government to forward the copies of the representation of the petitioner to the Advisory Board as well as to the Central Government and for the purpose sufficient number of copies were already given by the detenu to the Jail Superintendent. In our opinion, the delay of 17 days in sending the representation to the Central Government on the part of the State Government in the aforesaid facts and circumstances render further detention of the petitioner illegal as it has not been explained.

18. An incorrect statement has been made in the counter-affidavit that the representation was sent on 9.7.1998. Even after noticing the mistake, no effort has been made to explain the serious lapse on the part of the Under Secretary who filed an affidavit in this Court.

19. Now, coming to the delay in deciding the representation by the Central Government, learned counsel has submitted that the representation was processed and with all comments and notings, was placed before the Home Minister on 5.8.1998 but it could be decided on 12.8.1998, i.e., after seven days. In para 8 of the counter-affidavit filed by Bina Prasad, explanation has been given for only two days, namely, 8th and 9th August, 1998 which were holidays.

20. Hon'ble Supreme Court in case of Rajammal v. State of Tamil Nadu and another, JT 1998 (8) SC 598, after considering several previous judgments of the Court, held in para 9 as under :

'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 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.'

21. The Apex Court in the above case held the continued detention of the petitioner illegal as the delay of four days between 9.2.1998 to 14.2.1998 remained unexplained. In the present case, the delay of five days remains unexplained. In our opinion, such unexplained delay has vitiated further detention of the detenu.

22. There is yet another ground which we have noticed on perusal of the original record placed before us which is also sufficient to vitiate further detention. Section 10 of the Act casts an obligation on the appropriate Government that it shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of Section 3, also the report by such officer under sub-section (4) of that Section. It is not disputed that representation with parawise comments of the detaining authority was received by the State Government on 9.7.1998. but as clear from the opinion given by the Advisory Board, the representation of the petitioner was not placed before the Advisory Board on 13.7.1998 when the petitioner was given personal hearing. The report clearly mentions that the representation and the report of the detaining authority was not placed before it. In our opinion, on this count also, there was a serious lapse on the part of the State Government which vitiated further detention of the detenu. We are sorry to observe that correct facts were

tried to be concealed from the Court and incorrect averment was made in his counter-affidavit by Shri Rafiq Ahmad Khan that the representation of the petitioner was placed before Advisory Board on 9.7.1998.

23. In our opinion, further detention of the petitioner has been rendered illegal as the Constitutional safeguards under Article 22(4) of the Constitution read with Section 10 of the Act was denied to the petitioner.

24. For the reasons stated above, the petition is allowed. As the continued detention of the petitioner has been rendered illegal, the respondents are directed to set him at liberty forthwith. If he is not wanted in any other case.

25. A copy of this judgment shall be sent to the Chief Secretary, Government of U. P., to apprise the Government of the facts found on perusal of record and mentioned in the judgment and we hope that necessary action and steps shall be taken to avoid such unfortunate happening in future.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com