

Sarmister Vs. Superintendent, District Jail and ors.

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Court : Allahabad

Decided On : Aug-12-1998

Reported in : 1999CriLJ305

Judge : D.P. Mohapatra, C.J. and ;R.R.K. Trivedi, J.

Acts : [National Security Act, 1980](#) - Sections 3, 3(2), 3(3), 3(5) and 14; [General Clauses Act, 1897](#) - Sections 21; [Constitution of India](#) - Articles 22 and 226

Appeal No. : Habeas Corpus Petition No. 16233 of 1998

Appellant : Sarmister

Respondent : Superintendent, District Jail and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Daya Shanker Misra, Adv.

Disposition : Petition allowed

Judgement :

D.P. Mohapatra, C.J.

1. In this petition, filed under Article 226 of the [Constitution of India](#), the petitioner Sarmister has prayed, inter alia, for a writ in the nature of habeas corpus directing the respondents to produce him in Court; to declare the order dated 26-8-1997

(Annexure 1 to the petition) passed by the District Magistrate, Muzaffarnagar under Section 3(2) of the National Security Act (hereinafter referred to as the Act) as unconstitutional and invalid; and to direct his release forthwith. The Superintendent, District Jail Muzaffarnagar, the District Magistrate Muzaffarnagar, State of Uttar Pradesh represented by Principal Secretary Home Department and Union of India represented by the Secretary Ministry of Home affairs are arrayed as respondents in the writ petition.

2. Since the detention order is challenged before us mainly on the ground of delay in disposal of the petitioner's representation by the State Government as well as the Central Government, it is not necessary to set out in detail the facts of the case. The gist of the relevant facts necessary for appreciation of the contentions raised by counsel for the parties may be stated thus : The petitioner was taken into custody on 14-8-1997 in connection with an incident which took place on 8-3-1997. The incident relates to kidnapping of a boy Shivang Garg aged 4-5 years, son of Sri Rajesh Garg, resident of Charthawal Mohalia Bazar Kalan, a rich businessman, in broad daylight, while he was going to school along with his sisters. When the petitioner was in custody, the District Magistrate, on being satisfied about the necessity of his detention under Section 3(2) of the Act, passed the order dated 26th August, 1997. In the grounds of detention, which accompanied the detention order, it was stated, inter alia, that after the aforementioned incident happened on 8-8-1997 the kidnapped boy Shivang Garg was recovered by the police from, the house of the petitioner situated in village Nirottampur Mazra, P. S. Titavi, district Muzaffarnagar on 12-8-1997 and his school bag containing books and copies and school dress were also recovered. Petitioner's mother along with other accused persons were arrested on the spot. The petitioner absconded from the scene and surrendered in Court on 14-8-1997. It is further stated in the grounds of detention that on account of the above incident and daredevil manner in which the boy of a rich businessman was kidnapped in broad daylight, people were scared to send their children to school; markets and schools were closed; residents of the locality were agitated and they surrounded the police station and thereby the public order was disturbed. In the grounds of detention the District Magistrate has stated: 'From 14-8-1997 you are lodged in judicial custody in district jail Muzaffarnagar after your surrender in the said case

and you are trying to be released on bail and your bail application is pending consideration in the competent court; there is every likelihood of your being enlarged on bail and in that event you are likely to act in such manner again which will be adverse to maintaining the public order; therefore, in order to prevent you from acting in a manner prejudicial to public order it is necessary to detain you under the National Security Act', (translated from Hindi).

3. The order of detention, grounds of detention and relevant documents were served on the petitioner in the jail on 26-3-1997. The State Government approved the order of detention on 30-8-1997. The State Government informed the Central Government about the order of detention of the petitioner as required under Section 3(5) of the Act on 4-9-1997. The matter was referred to the. Advisory Board on 1-9-1997. The Advisory Board gave its report in favour of the detention order on 4-10-1997 which was received by the State Government on 7-10-1997. On consideration of the report of the Advisory Board the State Government confirmed the detention order by order dated 21-10-1997.

4. The petitioner made representations to the State Government as well as the Central Government through the District Magistrate Muzaffarnagar on 2-9-1997. The District Magistrate sent the representations together with this report to the State Government as well as the Central Government on 5-9-1997. The representation and the report was received by the State Government on 6-9-1997. The State Government rejected the representation on 10-9-1997 and the order was communicated to the petitioner through the district authorities on 12-9-1997.

5. So far as the Central Government is concerned, as appears from the counter-affidavit filed on its behalf by Sri Bina Prasad, Under Secretary, Ministry of Home Affairs, Government of India, the report sent by the District Magistrate on 1-9-1997 about detention of the petitioner to the Central Government in compliance with the provisions of Section 3(5) of the Act was received in the Ministry of Home Affairs on 5-9-1997. The Central Government completed the examination of the report in the Ministry of Home Affairs on 13-10-1997. In paragraph 6 of the counter-affidavit it is averred, inter alia, that the representation dated 2-9-1997 was received by the Central Government in the Ministry of Home Affairs on 8-9-1997 through the

District Magistrate, Muzaffarnagar. On examination the Central Government required opinion of the Advisory Board for its consideration and called for the same from the State Government on 18-9-1997 by a crash wireless message. The required information was received by the Central Government in the Ministry of Home Affairs on 5-11-1997 vide the State Government's wireless message dated 29-10-1997. On receiving the said information on 5-11-1997 the case of the petitioner was put up before the Deputy Secretary, Ministry of Home Affairs on 10-11-1997 who in turn put up the same before the Joint Secretary, Ministry of Home Affairs on 10-11-1997 itself; the Joint Secretary considered the case and with his comments put up the same before the Minister of State for Home, Government of India on 10-11-1997. The Minister rejected the representation by the order dated 17-11-1997. The order was communicated to the petitioner on 18-11-1997 by a radiogram. This message was followed by a letter dated 20-11-1997.

6. Sri D. S. Misra, learned counsel for the petitioner, attacked the validity of the detention order of the petitioner and his continued detention mainly on two counts: First, that the statements contained in the grounds of detention dated 26-8-1997 that the petitioner had filed a petition for being released on bail, which was pending in Court and that there was every likelihood of his being released on bail are incorrect and untrue. In fact, as contended by Sri D.S. Misra, the bail petition filed by the petitioner had been rejected by the Court on 19-8-1997 and there was no bail petition filed by the petitioner which was pending in any Court on 26-8-1997. Therefore, submitted Sri Misra, the subjective satisfaction of the detaining authority that there was necessity to pass the order for detention of the petitioner, who was already in custody, was based on non-existent factual position. Secondly, that there has been inordinate unexplained delay on the part of the State Government and the Central Government in dealing with the petitioner's representation on account of which his continued detention has been rendered invalid. Sri Misra cited a number of decisions in support of his contention some of which may be noticed here :

7. Raj Bahadur Yadav v. State of U.P. 1997 (35) ACC 33; Prem Lata Sharma (Smt.) v. District Magistrate Mathura 1998 (3) JT SC 41 : 1998 (4) SCC 260 : 1998 AIR SCW 2103; Kundanbhai Dulabhai Shaikh v. District Magistrate Ahmedabad

1996 (2) JTSC 53 : AIR 1996 SC 2998; Rajendra v. Commissioner of Police Nagpur Division, Nagpur 1994 SCC (Cri) 1706; Raghavendra Singh v. Supdt. Jail, Kanpur AIR 1986 SC 356 : 1986 All LJ 397; Sabir Ahmad v. Union of India 1980 (3) SCC 295; Yusuf Abbas v. Union of India AIR 1982 SC 1170 : 1982 Cri LJ 1398; Raj Kishore Prasad v. State of Bihar 1982 SCC (Cri) 530 : AIR 1982 SC 320; Prof. Khaidem Ibocha Singh etc. v. State of Manipur AIR 1972 SC 438; Aslam Ahmad Zahire Ahmad Shaikh v. Union of India 1989 SCC (Cri) 554 : AIR 1989 SC 1403; Rameshwar Shaw v. District Magistrate, Burdwan AIR 1964 SC 334 : 1964 All LJ 211 and Navalshankar Ishwarlal Dave v. State of Gujarat AIR 1994 SC 1496 : 1994 Cri LJ 2170.

8. Sri A. K. Tripathi, learned Additional Government Advocate, on the other hand, urged that there has been no delay on the part of the State Government in disposing of the petitioner's representation. So far as the representation made to the Central Government is concerned, it is the submission of Sri Tripathi that the right to make such a representation is only a statutory right and not a constitutional right; that the time taken by the Central Government is not to be judged on the same standard as a constitutional requirement of expeditious disposal of the representation by the State Government which is mandated in Article 22 of the Constitution. No separate argument was advanced by the counsel appearing for the Union of India.

9. We have carefully considered the contention raised by learned counsel for parties. It is our considered view that both the contention raised by Sri D S. Misra have ample force. The Supreme Court has laid down in several decisions that in a case where an order of detention is passed under the preventive detention law there must be material to show that the detaining authority was aware of the fact that the person is already under detention and there must be cogent reasons for his satisfaction that the person is likely to be released on bail and on being released he will be engaged in activities detrimental to maintenance of public order. If these conditions are not fulfilled the detention order will be rendered invalid on the ground of non-application of mind by the detaining authority to a relevant and vital fact. Indeed, if the order of detention is made without any material in support of the satisfaction recorded by the detaining authority that the

person is likely to be released on bail and on being released he will indulge in activities detrimental to public order, then the detention order itself will be unnecessary and superfluous. The factual position stated earlier that the petitioner's bail petition had already been rejected and no other bail petition filed by him was pending in any Court was neither disputed in the counter-affidavit nor was the fact disputed before us by the learned Additional Government Advocate. His only contention in this regard, referring to paragraph 6 of the counter-affidavit of District Magistrate, was that a copy of the order rejecting the bail petition of the petitioner has not been placed before the Court.

10. Coming to the question of delay in disposal of the representation by the State Government and the Central Government, we do not accept the contention raised by the learned Additional Government Advocate that the question of delay in disposal of detenu's representation by the Central Government should be judged on a standard different from that in judging the question of delay on the part of the State Government. Section 3(5) of the Act provides that when any order is made or approved by the State Government under Section 3, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order. In Section 14 of the Act it is provided that 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.

11. From the provisions as noted above, it is clear that the Central Government has been vested with the power to revoke or modify the detention order at any time whether such order is passed by the State Government or by an officer subordinate to the State Government. With a view to enable the Central Government to discharge its role as a supervisory authority in matters of detention it is mandated in Section 3(5) of the Act that the State Government shall, within

seven days, report the fact about the detention order to the Central Government together with the grounds on which the order has been made. When a representation by the detenu is made to the Central Government to get the order of detention revoked, it has to be dealt with promptitude. In this connection we may note the observations of a Full Bench of this Court in the case of *Raj Bahadur Yadav v. State of U.P.* 1997 (35) ACC 33 in paragraph 17 whereof it is observed :

Coming to the question of delay in disposing of the detenu's representation, the position is clear that the Advisory Board, the appropriate Government and the Central Government are required to act with promptitude and reasonable dispatch in dealing with the representation of the detenu and to consider whether his further detention is legal. Inordinate and unexplained delay on the part of any of the authorities in dealing with the matter will render further detention of the detenu illegal.

(Emphasis supplied).

In view of the clear mandate of law requiring all the concerned authorities, the Advisory Board, the appropriate Government and the Central Government, before whom the detenu is entitled to plead/represent for revocation/modification of the detention order, should act with promptitude and reasonable dispatch no distinction can be made while judging the matter of delay on the part of the State Government (appropriate Government) or the Central Government. It needs no emphasis that in dealing with a matter of personal liberty of a citizen the authority, whether it is specifically required by a provision under the

I Act or not, should act with utmost promptitude in disposing of the representation.

12. Testing the facts of the present case on the touchstone of the principles laid down in the decisions noticed earlier, we find that there has been inordinate delay on the part of the Central Government in disposing of the petitioner's representation for which no explanation has been placed on record. As noted earlier, the petitioner's representation was received in the Ministry of Home Affairs on 8-9-1997 which was rejected by the order dated 17-11 -1997, after 69 days. No explanation whatsoever has been offered for the delay during the period between

8-9-1997 and 18-9-1997 when the Central Government required certain relevant informations from the State Government. Similarly no explanation has been offered on behalf of the State Government of time till 29-10-1997 in sending its report along with the report of the Advisory Board, which was admittedly received by the State Government on 7-10-1997. There is no explanation for these 22 days in furnishing the relevant information to the Central Government. We also do not find any explanation why the information allegedly sent by wireless on 29-10-1997 was received in the Ministry of Home Affairs only on 5-11-1997. No satisfactory explanation is also forthcoming for the delay between 5-11-1997 and 17-11-1997 when the Minister of State, Home Affairs, passed the order rejecting the representation of the petitioner excepting that there were public holidays of 4 days, that is, 8th, 9th, 15th and 16th November, 1997. In our considered view such long unexplained delay renders continued detention of the petitioner illegal.

13. On the analysis and the discussions in the foregoing paragraphs and for the reasons stated therein the writ petition is allowed, the order of petitioner's detention dated 26-8-1997 is quashed and he is directed to be released forthwith if his detention is not required in any other case.