

Aslam Khan Vs. Superintendent, District Jail and ors.

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Court : Allahabad

Decided On : Nov-30-1999

Reported in : 2000CriLJ4959

Judge : O.P. Garg and ;V.K. Chaturvedi, JJ.

Acts : [National Security Act, 1980](#) - Sections 3(2) and 8

Appeal No. : Habeas Corpus W.P. No. 44025 of 1999

Appellant : Aslam Khan

Respondent : Superintendent, District Jail and ors.

Advocate for Def. : Mahendra Pratap, A.G.A.

Advocate for Pet/Ap. : D.S. Misra, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. By means of this writ petition, the petitioner has challenged detention order dated 22-7-1999 passed against him by respondent No. 2 District Magistrate, Jyotiba Phuley Nagar, under Section 3(2) of the National Security Act and his continued detention thereunder.

2. Counter-affidavit and rejoinder affidavit have been exchanged between the parties. We have heard Mr. D.S. Misra, learned counsel for the petitioner, Mr. Mahendra Pratap, learned A.G.A. appearing on behalf of respondent No. 1, 2 and 3 and Mr. Shesh Mani Misra representing respondent No. 4 - Union of India.

3. Learned counsel for the petitioner has challenged the impugned detention order on the ground that there was inordinate delay in sending the petitioner's representation dated 7-8-1999 to the Central Government which was received there on 24-8-1999.

4. We have considered the respective submissions made by learned counsel for the parties on this point.

5. Mr. Mahesh Kumar Gupta, Jailor district Jail, Moradabad in his counter-affidavit in paragraph 5, has admitted that representation of the petitioner was received on 7-8-1999 and the said representation was sent to the District Magistrate, Jyotiba Phuley Nagar on the same day through Special messenger.

6. In paragraph 11 of his counter-affidavit, Mr. Ram Saran Singh, District Magistrate, Jyotiba Phuley Nagar, has submitted that the representation of the petitioner was received in his office and the deponent called for police report. After receiving the police report, the deponent prepared his parawise comments and sent to the State Government without fail.

7. Mr. R.A. Khan, under Secretary, Home and Confidential Department, U.P. Civil Secretariat, Lucknow in paragraph 4 of his counter-affidavit, has stated that the petitioner's undated representation along with parawise comments was forwarded by the District Magistrate, Jyotiba Phuley Nagar, vide his letter dated 15-8-1999 which was received by the State Government on 16-8-1999. The District Magistrate, Jyotiba Phuley Nagar directly sent the representation and parawise comments to the Advisory Board as well as to the Secretary, Ministry of Home Affairs, New Delhi vide his letter dated 15-8-1999.

8. On behalf of the Union of India, a counter affidavit has been filed by Mr. Sushil Kumar, Under Secretary, Ministry of Home Affairs, Government of India, New

Delhi, and in paragraph 7 thereof he has stated that a representation dated Nil from the detenu along with parawise comments of the detaining authority was received by the Central Government in the concerned desk of Ministry of Home Affairs on 24-8-1999 through District Magistrate, Jyotiba Phuley Nagar on behalf of State of Uttar Pradesh vide letter No. 1451(2)/JA/99 dated 15-8-1999 and the Union Home Ministry rejected the representation of the detenu on 25-8-1999.

9. On the basis of the averments made in the counter-affidavit as indicated above, learned counsel for the petitioner submitted that there is no explanation of delay with effect from 7-8-1999 to 15-8-1999 and from 15-8-1999 to 24-8-1999.

10. It is significant to point out here that the idea behind Section 8 of the National Security Act is that the detenu should have the earliest opportunity of making representation against the detention order to the appropriate authorities and indeed a duty is cast on the authorities concerned also to take all possible steps for consideration of the representation of the detenu at the earliest without any loss of time.

11. In the present case, the District Magistrate, Jyotiba Phuley Nagar ought to have stated in his counter-affidavit that on what date the representation has been received and on what date he has forwarded it to the State Government or Central Government. But his counter affidavit is silent on the point and even the mode of delivery has also not been disclosed in his counter-affidavit. While the Jailor in his counter-affidavit has admitted that the representation of the petitioner has been received on 7-8-1999 on the same day he forwarded the same to the District Magistrate. But the District Magistrate, Jyotiba Phuley Nagar has not explained the delay in forwarding the representation of the petitioner dated 7-8-1999 to the Central Government and thus the delay in forwarding the petitioner's representation with effect from 7-8-1999 to 24-8-1999 remains unexplained, Though there is no delay on the part of the Central Government in deciding the representation because the representation was received in the Ministry of Home Affairs (Central Government) on 24-8-1999 and the same was rejected on 25-8-1999.

12. At this juncture, observations made by the Constitution Bench of the Apex Court in K.M. Abdullah Kunhi v. Union of India (1991) 1 SCC 476 : AIR 1991 SC 574 , are relevant which read as under (at p 578 of AIR) :

It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The word '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 concerned detention law, 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 constitution imperative and it would render the continued detention impermissible and illegal.

13. When question of liberty is involved and that too by means of preventive detention, it is incumbent on all the authorities to explain delay in consideration of the representation. They all have to act as one unit to ensure earlier decision on the representation of the detenu. Every step is required to be taken by each part of the machinery concerned to facilitate and ensure earliest decision, on the representation of the detenu. In the present case, the requisite care has not been taken by respondent No. 2 in sending the representation of the petitioner to the Central Government and there is no valid and justified explanation of delay with effect from 7-8-1999 to 24-8-1999. In our opinion, it renders the continued detention of the petitioner to be illegal and the petitioner is entitled to relief.

14. For the reasons stated above, this Habeas Corpus Petition is allowed and the continued detention of the petitioner is found to be illegal. The respondents are directed to set the petitioner at liberty forthwith if his detention is not required in any other case.

