

(2003) 05 AHC CK 0156

Allahabad High Court

Case No: Habeas Corpus Writ Petition No. 832 of 2003

Manveer

APPELLANT

Vs

District

Magistrate, Bulandshahr
& Ors.

RESPONDENT

Date of Decision: May 22, 2003

Acts Referred:

- Constitution of India, 1950 - Article 22(5), 226
- National Security Act, 1980 - Section 3, 8

Hon'ble Judges: U.S.Tripathi, J and D.P.Gupta, J

Final Decision: Allowed

Judgement

U.S. Tripathi, J.

This writ petition has been filed by the petitioner for quashing his detention order dated 1082002 passed by District Magistrate, Bulandshahr, respondent No. 1 under Section 3 (2) of National Security Act.

2. Though the detention order was challenged on various grounds, but the learned Counsel for the petitioner has confined his argument only on two points, (1) The representation of the petitioner was not decided by the Central Government, which infringed his fundamental right guaranteed under Article 22 (5) of the Constitution of India; and (2) the statements of prosecution witnesses were recorded subsequently and the witnesses turned hostile and did not support the case of prosecution and it shows that detaining authority has not applied his mind.

3. Since for decision of above two points, the detailed facts of the case on the basis of which detention order is passed is not essential we are not adverting to the facts of the case in detail.

4. We have heard Sri J.S. Sengar assisted by Sri Ajit Kumar Singh Solanki, learned Counsel for the petitioner, learned AGA and learned Standing Counsel and have

gone through the record.

5. Regarding non decision of representation of the petitioner by the Central Government, it was alleged in para 26 of the petition that against the detention orders, the petitioner submitted representation through Jail Superintendent to the detaining authority through Jail Superintendent to the detaining authority, State Government, Advisory Board and Union of India. In para 28 it was alleged that the petitioner was informed through letter dated 2092002 by Sri V.K. Gupta, Additional Secretary, Union of India that the Union of India rejected the representation of the petitioner, but it has not stated a word that as to when the representation of the petitioner was rejected by the Union of India. In para 30 it was alleged that there is considerable delay in deciding representation of the petitioner on the part of Union of India.

6. In para 6 of his counteraffidavit Sri C.P. Tripathi, Deputy Jailor, District Jail, Bulandshahar disclosed that the petitioner has submitted his representation to the Jail Authorities on 2382002 and on same day the said representation was sent to District Magistrate, Bulandshahar for further action in the matter. Second time, the petitioner has submitted another representation in eight copies to the Jail Authorities on 2982002, which was sent to District Magistrate, Bulandshahar on same day for further action.

7. The counteraffidavit of Sri Sudhir Garg, District Magistrate, Bulandshahar disclosed that petitioner submitted his representation through Jail Authorities on 2382002 on which police report was called for on the same day. Thereafter, after receiving the police report parawise comments were prepared. An application for correction was given on behalf of the petitioner regarding correctness in the representation on 2982002 and the representation with comments was sent to the State Government by special messenger on same day and also to the Central Government.

8. The counteraffidavit of Sri C.P. Singh, Deputy Secretary, Home and Confidential Department, U.P. Civil Secretariat Lucknow disclosed that the petitioner's representation dated 2382002 along with parawise comments thereon forwarded by the District Magistrate, vide his letter dated 2982002 was received in the concerned section of State Government on 3182002 and the State Government sent copies of the representation and parawise comments thereon to Central Government by letter dated 292002.

9. In the counteraffidavit of Sri Ramesh Kumar, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi it was disclosed in para 6 as below:

◆The allegations made in the para Nos. 26, 28, 30 and ground 7, 10 of para 37 of the petition are denied being incorrect. It is stated that a representation dated 2382002 from the detenu along with parawise comments of the detaining authority was received by the Central Government in the Ministry of Home Affairs on 292002

and in the concerned Desk of Ministry of Home Affairs on 392002 through District Magistrate, Bulandshahar on behalf of State Government of Uttar Pradesh vide letter No. 1524/Justice dated 2982002. As the said representation was addressed to Home Secretary, Government of Uttar Pradesh, Lucknow and not to the Central Government it was returned to Government of Uttar Pradesh (Home Confidential) vide Ministry's letter dated 1292002 for dealing at their end under Section 8 of the NSA, 1980.◆

10. Thus, it is clear from the above counteraffidavit on behalf of Union of India that since the representation of the petitioner was not addressed to Central Government, it was not decided by the Central Government and was returned back to the State Government. However, neither the petitioner nor the respondents have filed copy of representation. Therefore, we called for record and perused the record of the District Magistrate. Perusal of the record shows that the representation by petitioner Manveer Singh, S/o Sukhram Singh, Village Sukhalpur, P.S. Sikandarabad, district Bulandshahr at present detained in District Jail, Bulandshahr dated 2382002 addressed to Sachiv, Bharat Sarkar, Grih Mantralaya Antarik Suraksha Vibhag, North Block, Nai Dilli. Therefore, the representation was addressed to the Central Government and the Central Government failed to decide the same on wrong plea which was clear infringement of right of detenu guaranteed under Article 22 (5) of the Constitution of India.

11. Therefore, the petition of the petitioner is liable to be allowed on the above ground and we need not consider the second ground raised by learned Counsel for the petitioner.

12. The petition is, accordingly, allowed and continued detention of the petitioner is held illegal. The respondents are directed to release the petitioner forthwith unless wanted to be detained in connection with some other cases.