(2000) CriLJ 2264

Allahabad High Court

Case No: Civil Miscellaneous Habeas Corpus Petition No. 42739 of 1999

Idris		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Feb. 18, 2000

Acts Referred:

- National Security Act, 1980 - Section 3(2)

Citation: (2000) CriLJ 2264

Hon'ble Judges: R.R.K. Trivedi, J; M.C. Jain, J

Bench: Division Bench

Advocate: Sunil Kumar, for the Appellant;

Final Decision: Allowed

Judgement

M.C. Jain, J.
By means of this habeas corpus petition the petitioner Idris has challenged the detention order dated 3-7-1999 passed against him by respondent No. 3 (District Magistrate Bulandshahr) u/s 3(2) of the National Security Act, 1980 and his continued detention thereunder.

2. Affidavit and counter-affidavits have been exchanged between the detention the parties.

3. We have heard Sri Sunil Kumar, learned counsel for the petitioner, learned A.G.A. for respondents No. 2, 3 and 4 and the learned counsel representing respondent No. 1 - Union of India. The record has also been examined by us. The grounds of detention of the Petitioner have been annexed as Annexure 1 to the writ petition. According to them, in between the night of 13/14 th June, 1999 at a distance of 50-60 yards from Ganga Ghat Basi within Police Station Narsena, District Bulandshahr, 60 or 65 calves aged between 1 and 11/2 year had been slaughtered with a planning and the beef had been

carried to Delhi on trucks etc. for sale. 40 heads of calves, 192 legs and 9 skeletons had been found there. The petitioner was allegedly one of the offenders of this crime whose complicity came to be known during investigation consequent upon the lodging of the first information report the following day by one Om Prakash at 12.30 P.M. The news of slaughtering of calves at such a large scale spread like wild fire and communal tension was created in the area. Public order was disturbed. Steps had been taken to maintain public order by deploying police force in the area inhabited by mixed population of different communities A case under the U.P. Prevention of Cow Slaughter Act has also been registered.

4. The grounds also stated that the petitioner was attempting to get bailed out and there was every apprehension that on coming out of jail he would again indulge in such activities adversely affecting public order and would also destroy the evidence.

5. The first contention of the learned counsel for the petitioner is that the petitioner was not named in the first information report and he had simply been falsely implicated at the instance of his enemy Shabbir. It has been urged that at any rate, the incident was only a law and order problem having nothing to do with public order.

6. So far as the alleged false implication of the petitioner is concerned, this Court would not enter into the sufficiency or otherwise of the material because while deciding Habeas Corpus Petition we do not sit in appeal over the order of detention passed by the detaining authority. The basic thing is that credible material before the detaining authority was there on the basis of which reasonable inference could be drawn regarding adverse effect on the maintenance of public order owing to the incident in question in which the involvement of the present petitioner was alleged.

7. On a careful consideration we are inlined to reject this contention also that the incident was only matter of law and order The slaughtering of calves at such a large scale in an area inhabited by different communities had the potentiality of disturbing communal harmony and to give rise to communal riots by the flaring up of communal frenzy. It cannot be denied that such an incident was to hurt the religious feelings of certain section of the society. The detention order clearly states that additional police force had to be deployed to maintain public order because of the situation arising from this incident. So, in our view, it was such an act as to give rise to an inference prejudicial to the maintenance of the public order. We, therefore, reject the first argument advanced by the learned counsel for the petitioner.

8. It has next been argued by the learned counsel for the petitioner that there was unexplained delay in disposal of his representation by the Central Government. It has been submitted that the petitioner had furnished ten copies of his representation to the District Superintendent Jail, Bulandshahr on 7-7-1999 with a request to send the same to the State Government and Central Government. The representation of the petitioner was ultimately rejected by the Central Government on 22-7-1999. On the other hand, it is

submitted that by the learned A.G.A. on behalf of respondent No. 2 to 4 and learned counsel for respondent No. 1 - Union of India that there was no delay at all in the decision of the representation of the petitioner. It has also been submitted that the petitioner did make a second representation dated 27-12-1999 which also came to be rejected during pendency of this writ petition. The contention from the side of the respondent is that the petitioner having made a second representation dated 27-12-1999. He cannot now rake up the question of alleged delay in disposal of his first representation.

9. We have examined this aspect of delay in disposal of first representation of the petitioner by the Central Government. We are of the opinion that the petitioner cannot be precluded from raising the contention of delay in disposal of his first representation by the Central Government simply because he made a second representation on 27-12-1999. Making of second representation does not wipe off the delay, if any on the part of the Central Government in disposal of the first representation the petitioner. The learned counsel for respondents have reasoned that the first representation of the petitioner was not addressed to the Central Government. The same had been received in the office of the District Magistrate through jail authorities on 7-7-1999 and after collection of relevant information parawise comments were prepared and the representation was sent through special messenger to the State Government on 10-7-1999. It is so stated in paragraph No. 8 of the counter affidavit filed by the District Magistrate Bulandshahr. The affidavit of Sri .R.A.Khan filed on behalf of State Government states in paragraph No. 3 that the representation of the petitioner was received by the State Government on 12-7-1999 and the same along with parawise comments was sent to the Advisory Board as well as to the Central Government on 13-7-1999. The argument of learned A.G.A. is that it was discovered only on the perusal of the representation that the petitioner also meant it to be considered by the Central Government (though it was not addressed to the Central Government). As per the counter affidavit of Sri Sushil Kumar filed on behalf of Central Government, it was received there on 16-7-1999. In this way, it s submitted tha no delay occurred when the representation of the petitioner was decided by the Central Government on 22-7-1999 after having been received only on 16-7-1999. From the side of the respondents reliance is placed on the case of Jasbir Singh v. Lt. Governor Delhi (38) 1999 Acc 801 in which in a case of detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, the disposal of representation by the Central Government on 13-7-1995 which had been filed on 22-6-1995 was not held to have been decided after inordinate delay.

10. In our opinion, the said ruling would not be of much help to the respondents under the facts and circumstances of the present case. The Apex Court observed in the said case as under:

...There is no inflexible Rule that delay in considering the representation in all cases ipso facto would be sufficient to render the detention void. Further what can be held to be an unexplained delay in disposing of the representation would depend upon the facts and circumstances of each case. The right to make a representation is undoubtedly a

constitutional right of detenu and such a representation should be considered as expeditiously as possible. But what is reasonable expedition will depend upon the facts of each case....

11. In the present case, the averment of the petitioner has not been disputed in the counter affidavit filed by Sir Shobh Nath Yadav, Dy. Jailer that he had submitted ten copies of representation on 7-7-1999. In the case of Jai Prakash v. District Magistrate Bulandshahr (38) 1992 ACC 256 the Apex Court held that when the representation was simply addressed to "Home Minister" without disclosing whether it was for State or Central Government and the detenu had given nine copies of it to the Jail Superintendent, one copy ought to have been sent to the Central Government. By not doing so, the detenu was denied his right to make effective representation and the detention was liable to be quashed on this ground. In the present case . When the representation of the detenu was scrutinized by the detaining authority-District Magistrate Bulandshahr and comments were prepared, it must have necessarily come to his notice by the bare reading of the representation of the petitioner that he also meant it to be considered by the Central Government, Despite that he adopted a circumlocutory course by sending his representation to the State Government wherefrom it was transmitted to the Central Government on 13-7-1999 to be received there on 16-7-1999. The detaining authority sent the representation of the petitioner to the State Government through special messenger but took no steps to send one copy of the same simultaneously to the Central Government for consideration. Had the same been sent simultaneously to the Central Government on 10-7-1999 itself (on which date it was sent to the State Government by special messenger) even by ordinary post, the same would have ben received in the central Government much before 16-7-1999 when it was actually received there. It is thus apparent that the transmission of the representation to the Central Government was dealt with in a casual and insouciance manner. It ultimately contributed an unexplained delay in consideration of the representation of the petitioner by the Central Government which decided it on 22-7-1999. In any view of the matter, the delay between 10th July 1999 goes unexplained. The Apex Court has held in the case of Rajammal Vs. State of Tamil Nadu and Another, that even four days unexplained delay renders the continued detention of the petitioner to be illegal. Their Lordship held that even longer delay could be explained. The test was not duration or range of delay but how it was explained by the authority concerned. We are therefore, of the opinion that respondent No. 3 District Magistrate Bulandshahr did not take requisite steps and care in sending the representation of the petitioner to the Central Government simultaneously when he sent it to the State Government. It resulted in six days" unexplained delay, ultimately contributing in the disposal of the representation of the petitioner by the Central Government. We are of the view that it had rendered the continued detention to be illegal and he is entitled to the relief.

12. For the reasons stated above the writ petition deserves to succeed on the ground of unexplained delay in deciding the representation by the Central Government. The Writ

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 connection.