

(1999) 10 AHC CK 0154

Allahabad High Court

Case No: Habeas Corpus Petition No. 27865 of 1999

Zamir Ahmad

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision: Oct. 14, 1999

Acts Referred:

- Constitution of India, 1950 - Article 22, 22(5)
- National Security Act, 1980 - Section 3(2)

Citation: (2000) CriLJ 2261

Hon'ble Judges: V.K. Chaturvedi, J; O.P. Garg, J

Bench: Division Bench

Advocate: N.I. Jafri and D.S. Misra, for the Appellant; Mahendra Pratap Singh, A.G.A. and N.K. Pandey, for the Respondent

Final Decision: Allowed

Judgement

V.K. Chaturvedi, J.

By means of this Habeas Corpus petition, the petitioner, Zahir Ahmad has challenged his detention order dated 6-4-1999 passed by respondent No. 3, District Magistrate, Rampur u/s 3(2) of the National Security Act and his continued detention thereunder.

2. We have heard Sri D.S. Mishra and Sri N.I. Jafri, learned counsel for the petitioner, Sri Mahendra Pratap Singh, learned A.G.A. and Sri N.K. Pandey, learned counsel representing Union of India, respondent No. 1.

3. Learned counsel for the petitioner has challenged the continued detention of the petitioner as illegal on the ground of inordinate delay on the part of the Central Government in deciding the representation of the petitioner. Learned counsel for the petitioner submitted that the representation of the petitioner was sent on 18-4-1999 by the Jail Superintendent, Rampur, and the same was admittedly received by the Central Government on 21-4-1999. On the basis of the said

representation filed by the petitioner, Central Government required certain vital information from the State Government through a crash wireless message on 22-4-1999 and the same was made available to the Central Government on 31-5-1999. The case of the petitioner was put up before the Joint Secretary, Ministry of Home Affairs, New Delhi on 2-6-1999. The Joint Secretary considered the case and put up the same before MOS(H), Government of India on 2-6-1999. The MOS(H) duly considered the case of the detenu and rejected the representation of the petitioner on 3-6-1999. Learned counsel for the petitioner submitted that in the counter-affidavit there is no explanation regarding delay in deciding the representation of the petitioner, as such continued detention of the petitioner is illegal and he is entitled to be released from detention.

4. Sri Mahendra Pratap Singh and Sri N.K. Pandey, learned counsel representing the respondents have argued that there is no delay on the part of the State as well as Central Government in deciding the representation of the petitioner.

5. While appreciating the arguments made above, we may advert to averments made in paragraphs Nos. 6 and 7 of the counter-affidavit filed by Bina Prasad. Under Secretary, Ministry of Home Affairs, Government of India, New Delhi Which read as under:-

6. The allegations made in the paras Nos. 10 and 13 and ground (e) of para 21 of the petitioner are denied being incorrect. It is stated that a representation dated 18-4-1999 from the detenu was received by the Central Government in the desk of Ministry of Home Affairs on 21-4-1999 through District Magistrate. Rampur. The representation was immediately processed for consideration and it was found that certain vital information required for its further consideration was needed to be obtained from the State Government/District Magistrate. Rampur through a crash wireless message dated 22-4-1999. the same was desired.

7. That required information was received by Central Government in the Ministry of Home Affairs on 31-5-1999 vide the State Government letter dated 26-5-1999. On receiving the same information on 31-5-1999. the case of the detenu was put up before the Joint Secretary. Ministry of Home Affairs on 2-6-1999. The Joint Secretary considered the case and put the same before MOS(H). Government of India, on 2-6-1999. The MOS(H) himself duly considered the case of the detenu and rejected the representation of the detenu on 3-6-1999.

6. From what have been stated in the counter-affidavit filed on behalf of the Central Government, the question which falls for consideration before us is as to whether it was necessary for the Central Government to seek vital information for the purposes of considering the petitioner's representation and thereafter postpone the disposal of the representation for want of report from the State Government or not.

7. It has been submitted on behalf of the petitioner that the disposal of the representation of the petitioner cannot be delayed or postponed for want of vital information from the State Government, as such, the Central Government wrongly has availed report of the State Government. Therefore, the reasons which have been put forward by the respondents for not deciding the representation are neither valid nor cogent. The representation filed by the petitioner should have been decided at the earliest. Had the Central Government not asked or waited for vital information from the State Government, there would have been no reason for not deciding the representation filed by the petitioner earlier. Postponing consideration of the representation of the petitioner for want of information from the State Government has in no way explained the delay.

8. Learned counsel for the petitioner has relied upon the decisions reported in 1999 UP Cri R 208, Mohd. Alam v. State of U.P. (Alld), 19547 of 1999 (reported in 1999 (26) All Cri R 2099); Mohar Ali v. State of U.P., 1999 (1) EFR 202 : 1999 All LJ 612; Pappu v. Adhikshat Janpat Karagar, Mainpuri, Habeas Corpus Petitioner No. 35469 of 1998, Lalla alias Arvind v. Adhikshat, Janpat Karagar, Mainpuri, 1999 UP Cri R 229, Sri v. State of U.P. and on its basis submitted that the detention of the petitioner is illegal and invalid on the ground of delay in deciding the representation by the Central Government.

9. We are not impressed by the arguments advanced by he learned counsellor the respondents that right to make representation to the Central Government is neither a fundamental right nor a constitutional right, hence, delay in disposing of the representation by the Central Government would not result into invalidating the continued detention. Hon"ble Supreme Court in the case of Raja Mal v. State of Tamil Nadu, 1999 UP Cri R 158 : 1999 Cri LJ 826, has held that even if there is no explanation of short delay, detention is rendered illegal. Paragraph No. 7 (of U.P. Cri R) : (Para 8 of Cri LJ) of the aforesaid judgment read as under :-

7. It is a constitutional obligation of the Government to consider the representation forwarded by detenu without any delay. Though no period is prescribed by Article 22 of the Constitution of India for the decision to be taken on the representation "word as soon as may be" in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of Court in [K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India \(UOI\) and Others and State of Karnataka and Others](#), . The following observations of the Bench can profitably be extracted here (Para 12 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 presentation 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.

10. In our opinion, since there is no valid and justified reason for the delay in deciding the representation of the petitioner by the Central Government, therefore, the Habeas Corpus Petition deserves to be allowed only on this ground alone.

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