

## Mayank Kumar Rana - Petitioner @HASH State of U.P. And 4 Others

**Court:** ALLAHABAD HIGH COURT

**Date of Decision:** Sept. 19, 2016

**Acts Referred:** Constitution of India, 1950 - Article 226

National Security Act, 1980 - Section 3(2)

**Citation:** (2016) 10 ADJ 498 : (2016) 6 AILLJ 458 : (2017) 1 AllWC 849

**Hon'ble Judges:** Ramesh Sinha and Shamsher Bahadur Singh, JJ.

**Bench:** Division Bench

**Advocate:** Arun K. Singh Deshwal and Arun K. Singh -I, Advocates, for the Petitioners; G.A. and Deepak Mishra, Advocate, for the Respondent

**Final Decision:** Allowed

### Judgement

Ramesh Sinha, J. - This petition has been filed by the petitioner with a prayer to direct the respondents to produce the petitioner before this

Court and set him at liberty forthwith and also for quashing the order dated 27.1.2016 passed by respondent no.2, District Magistrate, Bijnor as

well as order dated 16.3.2016 passed by respondent no.1.

2. The brief facts of the case are that an FIR was lodged by one Manoj against the petitioner on 22.12.2015 u/s 307 IPC which was registered as

Case Crime No.1288 of 2015 at Police Station Kotwali City, District Bijnor at 20.10 hours for an incident which is said to have taken place on

the same day at 14 hours. In the incident one person namely Nagesh Kumar received injuries, who was medically examined on 22.12.2015 and

was discharged from the hospital on 2.1.2016.

3. It appears that on the basis of the said solitary case, the detention order was passed by the District Magistrate, Bijnor, respondent no.2 against

the petitioner u/s 3(2) of National Security Act (hereinafter referred to as the NSA). The District Magistrate while passing the detention order has

mentioned in the grounds of the detention that the petitioner is a man of criminal antecedents and because of his criminal personality, he disturbs the

social harmony.

4. It has been stated by the detaining authority that on 22.12.2015, the District President of Uttar Pradesh Prathmik Shikshak Sangh, Bijnor

namely Nagesh Kumar, S/o Lal Bahadur Singh who was the Headmaster of the Primary School, Haldaur and was also working on the post of

A.B.R.C., Haldaur, had called a meeting in Indra Park, Bijnor. The petitioner in a public place at Indra Park where the said meeting of the

teachers association was going on, reached there and in broad-day-light shot a fire at the temporal region of Nagesh Kumar who received serious

injuries. Due to the said act of the petitioner, the teachers present at the Indra Park and people of the nearby area became panic and tension

prevailed and there was a sense of insecurity and fear in the people due to which there was disturbance of public order for which an FIR was

lodged by one Manoj Kumar against the petitioner.

5. After registration of the said case, the Investigating Officer started the investigation and made spot inspection and further recovered empty

cartridge and other articles from the place of occurrence. The statement of the informant and eye-witness Manoj Kumar was recorded who has

supported the prosecution case. The other eye-witnesses also in their statements have supported the prosecution case and from the medical report

of the said injured, injuries of fire-arm were found. As per the statement of the Doctor who had examined the injured opined that due to the injuries

received by the injured Nagesh Kumar he was not able to speak. The Investigating Officer of the case tried to arrest the petitioner but the

petitioner could not be arrested and it was stated that he surrendered on 1.1.2016 before the Magistrate concerned. He was thereafter sent to jail

and the petitioner was taken in the custody of the Investigating Officer on 12.1.2016 and on remand at his pointing out, a country-made pistol of

32 bore was recovered from the village Bakar from a Sugar Cane field and from the said pistol, a live cartridge was also recovered. The recovery

memo of the pistol was prepared, on the basis of which the Investigating Officer has registered a case u/s 25/27 of the Arms Act which was

registered as Case Crime No.30 of 2016 and the same was endorsed in the G.D of Police Station Kotwali City, district Bijnor at 12.30 hours on

12.1.2016.

6. When the detaining authority came to know that while being in judicial custody since 1.1.2016, the petitioner was trying to obtain bail for which

he has filed bail application through his lawyer before the District & Sessions judge, Bijnor which was pending and there is every likelihood that he

would be allowed bail and as soon as he is released on bail, he would again indulge in such anti-social activities which may disturb the public order

and on the said satisfaction the detaining authority in order to prevent the petitioner from committing such anti-social activities, passed the detention

order on 27.1.2016 against the petitioner informing him about his right to make representation against the same before the detaining authority

(District Magistrate), State Government, U.P. Advisory Board, Lucknow and Central Government, New Delhi respectively. The said detention

order was passed by the detaining authority on the basis of report submitted by the Superintendent of Police to him under the N.S.A. Act to

prevent him from committing such anti-social activities which was prejudicial to the disturbance of public order. The detention order was served to

the petitioner along with grounds of detention in District Jail, Bijnor on 27.1.2016 itself. The petitioner submitted his representation dated 9.2.2016

to the various authorities as mentioned in the detention order through Superintendent of District Jail, respondent no.4 who sent the same to the

District Magistrate on the same day.

7. The petitioner was heard by the U.P. Advisory Board, Lucknow on 4.3.2016 when he appeared in person in support of his representation filed

against the detention order dated 27.1.2016 which took decision to confirm the detention order. The detention order passed by the District

Magistrate was confirmed by the State Government on 16.3.2016 for detaining the petitioner for the period of 12 months from the date of passing

of the detention order u/s 12(1) of N.S.A. The representation of the petitioner dated 9.2.2016 was rejected by the State Government on

19.2.2016.

8. The pleadings between the parties have been exchanged.

9. Heard Sri Arun Kumar Singh, learned counsel for the petitioner, Sri Deepak Mishra, learned counsel for the respondent no.6 and Sri Vikas

Sahai, learned A.G.A. for the State and perused the record.

10. The sole ground which has been canvassed and argued by learned counsel for the petitioner is that the representation dated 9.2.2016 of the

petitioner against the detention order to the Central Government which was addressed to the Secretary Ministry of Home Affairs, New Delhi was

forwarded by the District Magistrate, Bijnor to the Central Government on 11.2.2016. It was urged that the representation of the detainee-

petitioner was rejected by the Central Government on 26.5.2016 and there has been gross delay in deciding the representation of the petitioner by

the Central Government/respondent no.6 thus the detention order is liable to be set-aside on this ground alone. He pointed out that the explanation

given by the Central Government/respondent no.6 in para no.4, 5 and 6 of the counter affidavit for the said delay does not appear to be a plausible

one as the representation of the petitioner has been lying with the Central Government and was not attended promptly. It was stated that the further

comments were called by the Central Government from the State Government on 22.2.2016 through Secretary Home, U.P. Lucknow and the

District Magistrate, Bijnor and further reminder letters were sent on 11.3.2016, 4.4.2016, 26.4.2016 and 5.5.2016 respectively. The Government

of U.P. Forwarded its report vide letter no.108/2/04/2016-Cx-7 dated 10.5.2016 and the same was received in the Ministry on 17.5.2016.

Thereafter the representation and comments of the Secretary Home of the Government of U.P. were processed for considering the Union Home

Secretary on 17.5.2016. The Home Secretary Ministry of Home Affairs, New Delhi after duly considering the order of detention and grounds of

detention rejected the same on 26.5.2016. Thus there has been a inordinate delay of about three and half months, hence the detention order is

liable to be quashed. In support of his contention he has placed reliance on the judgement of this Court in the case of Nandu @ Nand Kishore v.

Union of India reported in 2012 (79) ACC 869. He further submitted that in the said case also the detention order was quashed on the ground

of delay in deciding the representation by the Central Government which was lying unattended and the explanation given by the Central

Government was not found to be convincing.

11. Learned AGA has stated that there is no delay on the part of the District Magistrate, State Government in deciding the representation of the

petitioner and they promptly attended and rejected the same.

12. Sri Arun Misra holding brief of Sri Deepak Misra, learned counsel for the respondent no.6, Union of India tried to justify the delay in deciding

the representation of the petitioner dated 9.2.2016 by the Central Government which rejected on 26.5.2016 but could not dispute the fact that the

explanation given for the delay is not a convincing one.

13. Considered the submissions advanced by learned counsel for the parties and examined the material brought on record. The representation of

the petitioner dated 9.2.2016 which was received by the Central Government on 11.2.2016 was decided after a gross delay on 26.5.2016 i.e.

after more than three and half months. The explanation which has been given in the counter affidavit of respondent no.6 in para nos.4, 5 and 6 is

wholly unsatisfactory. Thus the detention order passed by the detaining authority and confirmed by the State Government are liable to be set-aside

on this ground alone.

14. Accordingly, the detention order dated 27.1.2016 passed by respondent no.2 as well as order dated 16.3.2016 passed by respondent no.1

are hereby set-aside.

15. The present Habeas Corpus Writ Petition is allowed. No order as to cost.

16. The respondents are directed to set at liberty petitioner Mayank Kumar Rana forthwith, if he is not wanted in any other case.