

## Jubenor Hussain Vs Union of India (UOI) and Others

**Court:** Gauhati High Court

**Date of Decision:** Oct. 9, 2002

**Acts Referred:** National Security Act, 1980 " Section 3(1), 3(2)

**Citation:** (2003) 1 GLR 596 : (2003) 1 GLT 13

**Hon'ble Judges:** P.P. Naolekar, C.J; Amitava Roy, J

**Bench:** Division Bench

**Advocate:** J.M. Choudhury, N.N.B. Choudhury and S. Bharali, for the Appellant; A.R. Borthakur, General, A. Aier, GA and G. Sinha, CGSC, for the Respondent

### Judgement

P. P. Naolekar, C.J.

This habeas corpus petition has been filed by the detenu challenging the order of detention dated 18.4.2002. The

facts in brief are that the petitioner-detenu was arrested on 8.3.2002 and afterwards on 18.4.2002 he was served in Jail with a detention order

No. CON/NSA/41/2002 dated 18.4.2002 alongwith the grounds of detention passed by the Special Secretary to the Government of Nagaland in

the name of Governor of Nagaland in exercise of powers conferred by Sub-sections (1) and (2) of Section 3 of the National Security Act, 1980.

The grounds of detention as mentioned in the aforesaid order dated 18.4.2002 are as follows :

1. That your activities in the capacity of a Arms Smuggler were prejudicial to -

(a) Security of the State of Nagaland, and

(b) Maintenance of public order.

2. The particulars which have a bearing on the above two matters are specified in the schedule attached.

3. You are also informed that you have a right to make a representation to the detaining authority, State Government and the Central Government

through the concerned Jail authorities. You have also a right to claim a personal hearing before the Advisory Board constituted by the State

Government under the aforesaid Act.

From the grounds of detention it appears that the petitioner was detained for purchase of prohibited 38 revolver which was sold by Yimtokiu

Yimchunger to one Anamul Haque for Rs. 12,000 and the detaining authority was of the view that the detenu is suspected to be a habitual dealer

of illegal arms trade. After the service of detention order on the detenu alongwith the documents the detenu submitted his representation against the

order of detention on 15.5.2002. It is an admitted fact that the representation made by the detenu was forwarded to the State Government on

27.5.2002 and thereafter the State Authority has rejected the representation by its order dated 3.6.2002. Thus it reveals that although the

representation was made by the detenu on 15.5.2002 the Jail Authorities have forwarded the same to the State Government only on 27.5.2002

and thereafter this has been disposed of on 3.6.2002, In the order dated 3.6.2002 passed by the Special Secretary to the Government of

Nagaland it has been stated that--"your representation dated 15.5.2002 regarding revocation of detention order under NSA, 1980 submitted by

you was considered carefully by the Government but finding no substance in your representation Government have rejected the same".

2. The respondents have filed affidavits in opposition. The State Government in its affidavit in paragraph 10 has explained the delay stating that--

the representation dated 15.5.2002 of the detenu was received by the Home Department on 27.5.2002 and after due examination at various

levels it was disposed of on 3.6.2002, i.e., within a week time". However, the affidavit filed by the State Government does not explain as to why

there was delay in forwarding the representation of the detenu when it was made on 15.5.2002 till 27.5.2002. We do not find any explanation

except the statement that the representation dated 15.5.2002 received by the Home Department on 27.5.2002 was examined at various levels and

disposed of on 3.6.2002.

3. In the counter affidavit filed by the Under Secretary to the Government of India it was stated that the representation dated 15.5.2002 of the

detenu was received by the Central Government on 31.5.2002 through the Government of Nagaland and Office of the Sr. Superintendent, Central

Jail, Dimapur and it was put up on 31.5.2002 before the Joint Secretary, Ministry of Home Affairs, Thereafter the Union Home Secretary

considered the case of the detenu and rejected the representation of the detenu on 3.6.2002.

4. The record reveals that the representation dated 15.5.2002 of the detenu was received by the State Government on 27.5.2002 and it was

disposed of by order dated 29.5.2002. It is submitted by the learned counsel for the petitioner that the respondents have failed to explain as to

why the representation submitted by the detenu on 15.5.2002 was forwarded to the State Government only on 27.5.2002.

5. The Apex Court while considering the question of delay in the matter of Aslam Ahmed Zahire Ahmed Shaik v. Union of India and Ors. (1989)

3 SCC 277, in a similar circumstances has stated thus:

From the above explanation, it is clear that though the detenu had handed over the presentation to Superintendent of Central Prison on June 16,

1988, the latter has callously ignored it and left the same unattended for a period of seven days and forwarded the same to the Government at his

pleasure on June 22, 1988.

This Superintendent of Central Prison has not given any satisfactory and convincing explanation as why he had kept the representation with himself

except saying that during the period of seven days there was a Sunday.

It has been further held that the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably

delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the representation of the detenu

by the Government which received the representation 11 days after it was handed over to the Jail Superintendent by the detenu. This avoidable

and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.

6. This principle has been reiterated in the case of Rajammal Vs. State of Tamil Nadu and Another, wherein it has been stated that the delay if

caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner, in

other words, it is for the authority concerned to explain the delay, if any. In disposing of the representation, it is not enough to say that the delay

was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the

authority concerned. Therefore, it is for the detaining authority to explain the delay caused in dealing with the representation made by the detenu

and dispose of the same immediately.

7. This Court while dealing with the aspect of delay in disposal of a representation submitted by the detenu under preventive detention and the

procedural safeguards which he is entitled to observe in Md. Monisur Islam v. Union of India and Ors. (WP(CrI) No. 11 of 2002 disposed of on

13.5.2002) as hereunder :

The golden thread of consistent judicial opinion on the topic which runs through the authorities referred to above seems to be that our Constitution

while conceding the power of preventive detention has prescribed procedural safeguards for protecting a citizen against arbitrary and unjustified

invasion at his personal liberty and a duty has been cast on the courts to zealously guard against infringement of the cherished right of personal

liberty and to ensure that such procedural safeguards are not denied to the person concerned. As has been observed by the Apex Court, the

power of preventive detention is a draconian power justified only in the Interest of public security and order and. It is tolerated in a free society as

a necessary evil. It follows thus, that the provisions of law authorising the preventive detention will have to be rigorously enforced and any breach

thereof would be at the pain of invalidation of the related orders and decisions affecting the person concerned. The right to have the earliest

opportunity of making a representation against the order of preventive detention has really its roots in the constitutional guarantee enshrined in

Article 22(5) of the Constitution of India. Any provision in the Act which requires affording of such an opportunity to the detenu is in addition to

such constitutional right. While interpreting the expression ""earlier"" it is not so much the number of days which counts but what really matters is with

what live concern and promptness, the representation is processed and attended to at different levels and stage to stage. True, it is neither possible

nor advisable to lay down a rigid period of time to be uniformly applicable to all cases within which the period, the representation of the detenu has

to be disposed of, but it is incumbent on the authorities, keeping in view their solemn obligation in that regard, to do so with reasonable expedition

and utmost concern. The judicial pronouncement noticed hereinabove, clearly proclaim that if the provisions of the Act are not scrupulously

adhered to and if the representation submitted lay the detenu is not attended to and disposed of at the earliest, the same vitiates the continued

detention so much so that even if such representation is eventually dismissed on merits, the illegality does not get effaced. The constitutional

mandate, therefore, brooks no unreasonable delay in the matter of consideration of the representation of the detenu.

8. In the present case although the detenu submitted his representation on 15.5.2002 to the Jail Superintendent it was received by the Home

Department on 27.5.2002 and no explanation was furnished by the Jail Superintendent as to why the delay has been caused in sending the

representation to the State Government. The State Government also has not explained the reason for the delay in their affidavit. There may be an

explanation on the part of the Jail Superintendent or the State Government as to why the representation has not been forwarded to the appropriate

authority immediately after receipt of the same on 15.5.2002. The explanation has neither come forward from the State Government or from the

record produced before us. We need not enter into other question as the Respondents have failed to explain the delay caused in disposal of the

representation of the petitioner-detenu.

9. In view of the above, we quash the detention orders passed on 18.4.2002 (Annexure I) and dated 12/25.5.2002 (Annexure-V) by the Special

Secretary to the Government of Nagaland and direct that the petitioner shall be set at liberty immediately, if his detention is not required in any

pending case. The petition stands disposed of.