

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW BENCH, LUCKNOW

Reserved on 04.10.2021

Delivered on 01.11.2021

A.F.R.

**Case :- HABEAS CORPUS No. - 11132 of 2021**

**Petitioner :-** Sonu @ Mohd. Ishtiyag Through Mother Shameem Bano.

**Respondents :-**

1. Union of India, Through Secretary, Government Of India Ministry Of Home, through Deputy Secretary (Internal Security), Suraksha Prabhag, 9th Floor, C wing, Lok Nayak Bhawan, Khan Market, New Delhi.
2. State of U.P., through the Principal Secretary, Home Department, Civil Secretariat, Lucknow.
3. District Magistrate, District- Barabanki.
4. Superintendent of Jail, District Barabanki.
5. Superintendent of Police, District Barabanki.
6. Additional Superintendent of Police (South), District Barabanki.

**Counsel for Petitioner :-** S.Malik-E-Ashtar Rizvi, Anil Kumar Pandey

**Counsel for Respondent :-** Government Advocate, Assistant Solicitor General, Chief Standing Counsel.

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Mrs. Saroj Yadav, J.**

**(Per Saroj Yadav, J. for the Bench)**

1. The instant Habeas Corpus petition has been filed under Article 226 of the Constitution of India by the detinue/petitioner Sonu @ Mohd. Ishtiyag through his next friend/mother Shameem Bano to

quash the impugned detention order passed by the respondent No.3 i.e. District Magistrate, Barabanki vide No.01/J.A./Ra.Su.Ka./2021 dated 11.04.2021, whereby the detention order has been passed exercising the power under Section 3(2) of the National Security Act, 1980 (in short 'NS Act') and directing to retain the petitioner/detenu under Section 3(2) of the NS Act as well as the impugned order dated 22.04.2021 passed by the respondent No.2, whereby the detention order has been approved by the State Government.

2. The pre-judicial activities of the petitioner/detenu necessitating the District Magistrate, Barabanki to pass the impugned detention order against him are detailed in grounds of detention. The facts relating to detention of the petitioner/detenu has been described in the 'grounds of detention' followed by detention order dated 11.04.2021 in short are as under:-

One Mr. Mahendra Singh, Sub Inspector, Police Station Ram Sanehi Ghat, District Barabanki has lodged a First Information Report against 22 named persons including the petitioner and about 150 unknown persons on 20.03.2021 at about 8:00 P.M. which was registered at Case Crime No.89 of 2021, under Sections 147, 148, 149, 323, 504, 506, 307, 332, 333, 336, 352, 427, 34 & 188 of the Indian Penal Code (in short I.P.C.) and Section 7 of Criminal Law Amendment Act and Case Crime No.90 of 2011, under Section 3/25 of Arms Act, both are relating to Police Station Ram Sanehi Ghat, District Barabanki.

3. In the First Information Report it was alleged that on 19.03.2021 the complainant alongwith other police personnel were present at the gate of Tehsil Ram Sanehi Ghat to maintain law and order, the accused persons armed with deadly weapons and making

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protest against the policies of State Government and removal of illegal encroachment made in Tehsil compound tried to forcibly enter in Tehsil compound. When the police personnel tried to restrain them, they became aggressive and attacked upon the police personnel by lathi, danda, bricks, stones and sharp edged weapons. The accused persons assaulted the police personnel with an intention to commit their murder, hurled abuses and ripped their uniforms. They also caused damages to the vehicles. The extra police force was called only then the riot could be controlled. It has also been alleged that the police personnel caught hold 22 persons including the petitioner at the spot by using necessary force. From the possession of petitioner/detenué, a country made pistol of 12 bore and 2 live cartridges were recovered.

4. The impugned detention order dated 11.04.2021 depicts that the detention order was passed to maintain public order and public peace. In the grounds of detention it has also been mentioned that the in-charge Inspector of Ram Sanehi Ghat reported that in Tehsil Ram Sanehi Ghat some people were living after constructing the illegal houses on the Government land, whereas on the above Government land bearing Gata No. 776 and 777, which are adjacent to offices and official residences of Deputy Collector Ram Sanehi Ghat and Circle Officer were there. The persons who are living illegally in an unauthorized manner, have also constructed a passage unauthorizedly, which was being used by the persons of doubtful category, causing danger to the Government records and other properties and also that the Government work was also being disturbed. It was also found that on the Government land some rooms were constructed unauthorizedly and they were used for "Offering Namaz". Tehsildar Ram Sanehi Ghat issued a notice in this regard, but no reply was

received from the unauthorized occupants. Thereafter the Tehsildar Administration got constructed the wall and closed the unauthorized passage, but kept both the legal passages open which were already in existence. On 19.03.2021 after "Offering Namaz" the petitioner and his companions reached the spot armed with deadly weapons and they assaulted the police force. Many police personnel got injured and the public order got disturbed. The petitioner was arrested at the spot along with many other co-accused persons, the country made pistol was recovered from the possession of the petitioner in connection of which a separate proceedings under Section 25 of the Arms Act was registered.

5. In this matter the detention order was passed by the District Magistrate, Barabanki/Detaining Authority on 11.04.2021 on the basis of recommendation report of Additional Superintendent of Police (South), District Barabanki dated 09.04.2021, recommendation report of Circle Officer, Ram Sanahi Ghat, District Barabanki dated 09.04.2021 and recommendation report of Incharge Inspector Police Station Ram Sanahi Ghat District Barabanki dated 09.04.2021 alongwith the Dozier containing the papers, related to the Case Crime No.89 of 2021, under Sections 147, 148, 149, 323, 504, 506, 307, 332, 333, 336, 352, 427, 34 & 188 I.P.C.) and Section 7 of Criminal Law Amendment Act and Cases Crime No.90 of 2011, under Section 3/25 of Arms Act approved by the Superintendent of Police, District Barabanki on 10.04.2021.

6. The impugned order dated 11.04.2021 as well as other material on the basis of which the detaining authority drew his subjective satisfaction was served on the detenu/petitioner on the same day i.e. 11.04.2021.

7. The perusal of the grounds of detention (annexure No.3) dated 11.04.2021 reveals that apart from grounds recorded by the detaining authority in clamping NSA on the detenu, the detaining authority also informed to the detenu about his right of making a representation to detaining authority, State Government, Advisory Board and Central Government. The detention of the petitioner / detenu was confirmed by the Advisory Board and thereafter the State Government vide order dated 2/3.06.2021 had extended the tentative period of detention w.e.f. 11.04.2021 for three months which was duly communicated to the detenu.

8. Heard Mr. Anil Kumar Pandey, learned counsel for the petitioner, Mr. S.P. Singh, learned A.G.A. for the State and Mr. Varun Pandey, learned counsel for the Union of India.

9. The petitioner/detenu challenged the impugned orders on many grounds, but during the arguments, the counsel for the petitioner pressed it on the ground of delay alone on the part of the State Government as well as the Union of India.

10. Learned counsel for the petitioner/detenu submitted that there was undue delay in disposal of the representation of the detenu/petitioner on the part of the Central Government, Ministry of Home Affairs, New Delhi as the representation of the petitioner/detenu dated 10.05.2021 has not been decided by the Union of India so far. However, the representation dated 18.05.2021 and that has been decided by the concerned authority on 25.06.2021 after a delay of more than a month. He further argued that no plausible explanation of delay in deciding the petitioner's representation has been given in the affidavit filed on behalf of the Union of India. The delay committed by the Union of India and

deciding the detinue/petitioner representation has infringed fundamental rights of the detinue envisaged under Article 21 and 21(5) of the Constitution of India. On this count alone the impugned orders are liable to be quashed.

11. Learned counsel for the petitioner to support his arguments placed reliance on **Rajammal Vs. State of Tamil Nadu and another** : (1991) 1 SCC 417, **Mohinuddin @ Moin Master Vs. District Magistrate, Beed** : AIR 1987 SC 1977, **Satyapriya Sonkar Vs. Superintendent, Central Jail** : 2000 Cr.L.J. Allahabad (B.D.), **Kundanbhai Dulabhai Shaikh Vs. Distt. Magistrate, Ahmedabad** : 1996 (3) SCC 194, **K.M. Abdulla Kunhi Vs. Union of India** : (1991) 1 SCC 476 and **Harish Pahwa Vs. State of Uttar Pradesh and others** : A.I.R. 1981 SC 1126.

12. To the contrary, learned A.G.A. appearing on behalf of the State/respondent Nos. 2 to 8 argued that the procedure provided under the National Security Act has been followed perfectly. The detinue/petitioner was served the copy of the orders passed promptly. The State Government approved the detention order well within time as provided under Section 3(4) of NS Act. The State Government forwarded the copy of the detention order and other material to the Central Government within the time prescribed. He further submitted that the State Government forwarded the detention order and grounds of detention etc. to the U.P. Advisory Board (detentions) Lucknow within time from the date of actual detention as required under the provisions of Section 10 of the NS Act. The detinue/petitioner was heard in person through video conferencing by the Advisory Board and the Advisory Board sent its report alongwith opinion that there is sufficient cause for issuing the order of preventive detention to the petitioner within time as provided under Section 11(1) of the NS Act.

The detention order was confirmed tentatively for three months from the date of actual detention and the copy of the same was served upon the detenu/petitioner.

13. He further submitted that the State Government rejected the representation of the petitioner without any delay and forwarded the representation of the petitioner to the Central Government along with parawise comments expeditiously within time. Hence the petition should be dismissed.

14. Mr. Varun Pandey, learned counsel for the Union of India - respondent No.1 has submitted that the representation of the detenu/petitioner was considered and rejected expeditiously without any unreasonable delay.

15. Considered the submissions of all the parties and gone through the impugned orders as well as material brought on record.

16. The counter affidavit dated 17.06.2021 filed by the District Magistrate, Barabanki in which, it has been stated that petitioner was instrumental in hatching the conspiracy as a consequence of which during the course of investigation under Section 120-B of I.P.C. has been added to the list of offences. The petitioner has been granted bail by the concerned Court. However to restrain the petitioner from creating trouble which may result in collapse of public order, proceedings under National Security Act had been invoked.

17. The detention order dated 11.04.2021 was approved by the State Government on 22.04.2021. The petitioner has stated in the writ petition that due to Covid-19 Pandemic the petitioner could not give a representation against the aforesaid detention order dated 11.04.2021 within the prescribed time limit and he could give his representation under Section 8 of National Security Act through the

Superintendent of Jail District Barabanki to the Union of India, State Government and District Magistrate, Barabanki on 10.05.2021 that is why the respondent No.2 approved the illegal detention order dated 11.04.2021 vide impugned order 22.04.2021.

18. The Detaining Authority/ District Magistrate, Barabanki in the counter affidavit has denied this contention and submitted that necessary services were in operation during the Covid-19 period. Therefore, the plea of the petitioner is that he could not make representation within time is totally misconceived.

19. However, this reply of the detaining authority is not convincing because it is an open truth that in the month of April and May the Covid-19 pandemic was on its peak in the State of U.P., and in such circumstances to expect from a person detained in jail or from his relative/next friend to file a representation is beyond imagination.

20. Learned counsel for the petitioner during the argument submitted that he wants to press this writ petition mainly on the point of delay in the disposal of the representation of the petitioner.

21. The fact is that detention order was passed on 11.04.2021, the petitioner could not file representation against the same due to Covid-19 Pandemic as has been written by him in his petition and the detention order was approved by the State Government on 22.04.2021.

22. In the affidavit filed by the Detaining Authority/District Magistrate dated 17.06.2021 it has been stated that the sponsoring agency has filed a comprehensive police report and brought on record ample material which was sufficient for invocation of the National

Security Act. In the affidavit filed by the jailer District Jail, Barabanki it has been mentioned that detenu has been confined in the district jail, Sultanpur in Case Crime No.89 of 2021, under Sections 147, 148, 149, 323, 504, 506, 307, 332, 333, 336, 427, 34 & 188 of the Indian Penal Code (in short I.P.C.) and Section 7 of Criminal Law Amendment Act and Cases Crime No.90 of 2011, under Section 3/25 of the Arms Act, both are relating to Police Station Ram Sanahi Ghat, District Barabanki under order of learned Judicial Magistrate, Court No.27 w.e.f. 20.03.2021. The detention order dated 11.04.2021 alongwith all documents was served upon the detenu on 11.04.2021 and report was duly sent to the District Magistrate on the same day. On 22.04.2021 vide radiogram the State Government had approved the detention order and same was received on 22.04.2021 which was served upon the detenu on the same day and a information to this effect was also sent to the State Government on the same day. The Government Order dated 22.04.2021 by means of which the State Government had approved the detention order of the detenu had been received in jail on 04.5.2021 and the same was served upon him on the same day. The District Jail had received letter dated 17.05.2021 sent by the Advisory Board through State Government in which the date of proceedings before the same i.e. 20.05.2021 was informed. The letter dated 17.05.2021 was received to the jailor on the same day, which was served upon the detenu on the same day and detenu was produced before the Advisory Board through video conferencing on 20.05.2021 at 11:00 A.M.. The State Government vide order dated 03.06.2021 extended the detention order tentatively for three months which was received on 03.06.2021 and the same was served upon detenu on the same day. There was no laxity on the part of the jail authorities and the orders passed by the Competent Authority in context of detention.

23. In the affidavit filed by the Joint Secretary to Government of U.P. Home (Confidential) Department of U.P. Civil Secretariat, Lucknow, in this regard it has been stated that the detention order dated 11.04.2021, grounds for detention and all other connected documents forwarded by the District Magistrate, Barabanki vide its letter dated 11.04.2021 was received by the State Government on 13.04.2021. The State Government approved order of detention on 20.04.2021. The approval of the detention order was communicated to the petitioner through the District Authorities by the State Government through radiogram and letter both, dated 22.04.2021, which was within 12 days as required under Section 3(4) of the National Security Act.

24. It has further been stated that a copy of detention order, grounds of detention and all other connected documents received from the District Magistrate, Barabanki were also sent to the Central Government by speed post within seven days from the date of approval by the State Government as required under Section 3(5) of the National Security Act. Hence the provisions of Section 3(4), 3(5) of the National Security Act has been fully complied with. The petitioner appeared for personal hearing before the U.P. Advisory Board on the date fixed i.e. 20.05.2021. The U.P. Advisory Board heard the petitioner in person and submitted its report to the State Government that there is sufficient cause for the preventive detention of the petitioner under the National Security Act, 1980. This report was received in the concerned Section of the State Government on 29.05.2021 through the letter of Registrar, U.P. Advisory Board (detentions) letter dated 25.05.2021, well within seven weeks from the date of detention of the petitioner as provided under Section 11(1) of the National Security Act. It has further been stated that after

receiving the report, the State Government once again examined afresh the entire case of the petitioner alongwith the opinion of the U.P. Advisory Board and took a decision to confirm the detention order and also for keeping the petitioner under detention for a period of three months at first instance from the date of actual detention of the petitioner i.e. since 11.04.2021. The copy of the petitioner's representation dated 18.05.2021 along with parawise comments was received in the concerned section of the State Government on 14.06.2021 along with letter of District Magistrate, Barabanki dated 10.06.2021. The State Government sent copy of the representation and parawise comments there on, to the Central Government, New Delhi vide its letter dated 14.06.2021. Thereafter the concerned Section i.e. Home (Gopan) Anubhag (6) of the State Government examined the representation on 15.06.2021.

25. It has further been stated that Joint Secretary examined the representation on 16.06.2021, the Special Secretary examined the representation on 16.06.2021, the Secretary Government of U.P. examined the said representation on 17.06.2021, the Additional Chief Secretary Government of U.P., Lucknow examined the said representation on 17.06.2021. Thereafter file was submitted to the Higher Authorities for orders of the State Government. After due consideration the said representation was finally rejected by the State Government on 18.06.2021. The dates 19.06.2021 and 20.06.2021 were holidays on account of Saturday and Sunday. The information of rejection of representation was communicated to the petitioner through District Authorities, by the State Government radiogram dated 21.06.2021. The representation of the petitioner has been dealt with expeditiously at every stage.

26. Above facts shows that there was no delay on the part of the State Government.

27. Now comes the counter affidavit filed on behalf of Union of India i.e. an affidavit of Mrs. Meena Sharma, under Secretary in the Ministry of Home Affairs, Government of India, New Delhi. In her affidavit in this regard it has been stated that representation dated 10.05.2021 of the detenu or on his behalf has not been received in Section so far. However, the copy of the representation dated 18.05.2021 submitted by the Shameem Bano on behalf of her son Sonu @ Mohd. Ishtiyaq was received in the concerned section of the Ministry of Home Affairs on 18.05.2021. Accordingly, wireless message No. II/15028/63/2021-NSA dated 31.05.2021 was sent to the authorities concerned for seeking parawise comments of the detaining authority. Thereafter the District Magistrate, Barabanki vide letter dated 10.06.2021 sent a copy of parawise comments to the detaining authority and was received in Section concerned of the Ministry of Home Affairs on 18.06.2021. The representation dated 18.05.2021 on behalf of the detenu along the parawise comments of the detaining authority was processed for consideration for Union of India, Home Secretary on 18.06.2021. Being aware of the effect and sensitivity of detention under the National Security Act and as per practice in vogue the representation was duly considered at various levels to ascertain the merit. Thereafter the Union Home Secretary having carefully gone through the material on record, including the order of detention, the grounds of detention, the representation of the detenu, parawise comments of the detaining authority thereon concluded that the detenu had failed to bring forth any material, cause shown in his representation to justify the revocation of the order by exercise of the powers of the Central Government under

Section 14 of the National Security Act, 1980. He, therefore, rejected the representation and the detenu was informed vide wireless message II/15028/63/2021-NSA dated 25.06.2021. During the intervening period i.e. 19th and 20th June 2021 were holiday being Saturday and Sunday. It has further been submitted that representation was examined with utmost care and caution with promptitude.

28. In the Case of **Rajammal Vs. State of Tamil Nadu and another : (1999) 1 SCC 417** the Hon'ble Apex Court in this regard has held as under:-

*"9. The position, therefore, now is that if delay was 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."*

29. In the case of **Harish Pahwa v. State of U.P. : AIR 1981 SC 1126**, the Apex Court in this regard held that :-

*"In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June 1980 to 16th June 1980 when we find that it culminated only in a reference to the Law Department nor it is apparent why the Law Department had to be consulted at all. Again, we fail to*

*understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasize that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith.*

*Appeal allowed."*

30. In the affidavit filed on behalf of Union of India the delay on 19.06.2021 and 20.06.2021 has been explained, but the affidavit is silent on the delay of 21.06.2021 to 24.06.2021. Thus delay of four days has not been explained.

31. Thus on account of unexplained delay of four days on the part of Union of India, the continuation of the preventive detention stands vitiated. In ***Abdul Nasar Adam Ismail Vs. State of Maharashtra (2013) 4 SCC 435*** the Apex Court in this regard held that:-

*"16. ....Article 22(5) of the Constitution casts a legal obligation on the Government to consider the detenu's representation as early as possible. Though no time limit is*

*prescribed for disposal of the representation, the constitutional imperative is that it must be disposed of as soon as possible. There should be no supine indifference, slackness or callous attitude. Any unexplained delay would be a breach of constitutional imperative and it would render the continued detention of the detenu illegal. That does not, however, mean that every day's delay in dealing with the representation of the detenu has to be explained. The explanation offered must be reasonable indicating that there was no slackness or indifference. Though the delay itself is not fatal, the delay which remains unexplained becomes unreasonable. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. 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 the range of delay, but how it is explained by the authority concerned. If the inter departmental consultative procedures are such that the delay becomes inevitable, such procedures will contravene the constitutional mandate. Any authority obliged to make order of detention should adopt procedure calculated towards expeditious consideration of the representation. The representation must be taken up for consideration as soon as such representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu."*

32. In light of the aforesaid discussion, we allow this Habeas Corpus petition. The impugned order dated 11.04.2021 and 22.04.2021 and other consequential orders are hereby quashed. The petitioner shall be set at liberty forthwith unless required in any other case.

33. For the facts and circumstances of the case, there is no order as to costs.

**Order Date :- 01.11.2021**

**A.K.Singh**