

Court No. - 9

Case :- HABEAS CORPUS No. - 24213 of 2020

Petitioner :- Kanhaiya Awasthi Thru Next Friend Shivangi Awasthi

Respondent :- U.O.I. Thru Secy. Home Affairs New Delhi & Ors.

Counsel for Petitioner :- Nadeem Murtaza, Sudhanshu S. Tripathi

Counsel for Respondent :- G.A., Varun Pandey

Hon'ble Ramesh Sinha, J.

Hon'ble Mrs. Saroj Yadav, J.

(Per Ramesh Sinha, J. for the Bench)

- (1) Questioning the legality and validity of the order dated 06.09.2020 passed by the District Magistrate, Unnao (respondent no.3), directing detention of Kanahaiya Awasthi (detenue/petitioner herein) in exercise of its power under Section 3 (2) of the National Security Act, 1980 as well as the order dated 14.09.2020 passed by the Under Secretary, Home (Confidential) Department, Government of Uttar Pradesh (respondent no.2), confirming the order of detention dated 06.09.2020, petitioner/detenue Kanahaiya Awasthi has preferred the instant Habeas Corpus petition through his next friend and sister-in-law Shivangi Awasthi.
- (2) The prejudicial activities of the petitioner/detenue impelling the third respondent (District Magistrate, Unnao) to clamp the impugned detention order against him are contained in grounds of detention, according to which, on 19.06.2020 at 3:30 p.m., one Subham Mani Tripathi, who was a journalist by profession and the district correspondent of a news daily 'Kampumali'

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published from Unnao, was murdered by the petitioner and other co-accused persons. In this regard, brother of deceased, namely, Rishabh Mani Tripathi, lodged an F.I.R. on 19.06.2020, which was registered as case crime no. 188 of 2020, under Sections 147, 148, 149, 302/34, 120B I.P.C. and Section 7 of the Criminal Law Amendment Act, 1932, at Police Station Gangaghat, District Unnao. Thereafter, the petitioner was arrested and detained in judicial custody for the aforesaid incident. While the detinue was in jail w.e.f. 30.06.2020, the Inspector Incharge, Police Station Gangaghat, District Unnao had forwarded a dossier to the Superintendent of Police, Unnao, who, in turn, forwarded the same to the District Magistrate, Unnao recommending that the detention of the detinue may be ordered under the appropriate provisions of National Security Act, 1980 (hereinafter referred to as “N.S.A.”). The aforesaid Sponsoring Authority, while recommending to detain the detinue under N.S.A., has stated the facts that the detinue has also been involved in six other criminal cases and the detinue has tried to bail out in the aforesaid cases and there is likelihood that if the detinue be released on bail, he may indulge in other criminal activities. Thereafter, the District Magistrate, Unnao, on considering the recommendation of the sponsoring authority, invoked the provisions of Section 3(2) of the N.S.A. and passed the order of detention dated 06.09.2020, directing to detain the detinue/petitioner under the N.S.A., which is impugned in the instant habeas corpus petition.

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- (3) It transpires from the record that the detention order along with the grounds of detention dated 06.09.2020 and other relevant document(s) was served upon the petitioner/detenu on 06.09.2020 itself. On 14.09.2020, the State Government approved the order of detention dated 06.09.2020 and the same was also served upon the petitioner/detenu on 14.09.2020. Thereafter, the detenu/petitioner had filed his representation dated 22.09.2020 to the Uttar Pradesh Advisory Board (Detention), Lucknow, Secretary (Home), Union of India, North Block, New Delhi as well as the Secretary, Department of Home, State of U.P. The said representation of the petitioner dated 22.09.2020 was forwarded by the Superintendent, District Jail, Unnao to the District Magistrate, Unnao vide letter dated 22.09.2020. Thereafter, the District Magistrate, Unnao vide letter dated 29.09.2020, forwarded the representation of the petitioner to the State Government (respondent no.2), Central Government (respondent no.1). The State Government has received the representation of the petitioner on 30.09.2020, whereas the Union of India (respondent no.1) has received the petitioner's representation dated 22.09.2020 on 05.10.2020.
- (4) After due consideration, the State Government had rejected the representation of the petitioner dated 22.09.2020 on 06.10.2020 and information in this regard was also communicated to the petitioner through District Magistrate, Unnao by the State Government via radiogram dated 06.10.2020. Thereafter, the

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U.P. Advisory Board (Detention), Lucknow, after due consideration, opined that there is sufficient cause for the preventive detention of the petitioner under N.S.A. The said report and records of the case were received in the concerned Section of the State Government on 19.10.2020 through the letter of the Registrar, U.P. Advisory Board (Detentions) dated 19.10.2020.

- (5) On receipt of the aforesaid report of the U.P. Advisory Board (Detentions) vide letter dated 19.10.2020, the State Government had examined the issue afresh and confirmed the detention order dated 06.09.2020 and also for keeping the detenu/petitioner under detention for a period of three months tentatively from the date of actual detention of the petitioner i.e. since 06.09.2020, vide orders dated 22.10.2020. Thereafter, on the basis of the report/recommendation dated 21.11.2020 of the District Magistrate, Unnao, the aforesaid orders dated 22.10.2020 was amended vide order dated 26.11.2020, extending the period of detention tentatively for six months from the actual date of detention i.e. since 06.09.2020.
- (6) Heard Sri Nadeem Murtaza and Sri Sudhanshu Shekhar Tripathi, learned Counsel for the detenu/petitioner, Mr. S.B. Pandey, learned Assistant Solicitor General of India, assisted by Sri Varun Pandey, learned Counsel for the Union of India and

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Mr. S.P. Singh, learned Additional Government Advocate for the State.

- (7) Challenging the impugned order of detention as well as impugned confirmation order of detention, it has been argued by the learned Counsel for the detenu/petitioner that the proceedings recommending invocation of N.S.A. had been initiated by the sponsoring authority much belatedly after two and half months of the alleged solitary incident of 19.06.2020, which itself creates doubt on the veracity of the entire proceeding for invocation of preventive detention under N.S.A. as well as same has a broken life link between the alleged prejudicial activity and the passage of the impugned detention order. He further argued that the detaining authority, without application of mind, had passed impugned detention order irrespective of the fact that the criminal antecedents of the petitioner pertain merely to offences of petty in nature, which were neither life threatening nor heinous. Moreover, the detaining authority even failed to appreciate that the alleged prejudicial activity was also not attributable to the petitioner as the investigation was still going on at the time of passing the impugned detention order and the charge-sheet was submitted much belatedly after invocation of NSA on 20.09.2020 as well as the alleged offence of the petitioner is yet to be ascertained by the Court of law. The detaining authority has also failed to appreciate that at most, the act may only be considered as a

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disturbance of law and order rather than a social order, affecting merely the individual deceased and his family, thereby rendering the impugned detention order as bad in law.

- (8) Learned Counsel for the detenu/petitioner, while placing reliance upon **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others** : (2017) 13 SCC 519, has argued that the proviso to Section 3 (2) of the N.S.A. prescribed that no order passed under Section 3 (2), shall, in the first instance, exceed six months and if the State Government is satisfied that the order is required to be passed for a further period, it may extend the period of detention by such period not exceeding three months at any one time and in no case, the period of detention would exceed the period of one year in total. He argued that in the present case, perusal of the impugned order of detention passed by the detaining authority as well as impugned order of affirmation passed by the State Government reveals that it does not specify the period for which detention has been ordered and, therefore, in view of the ratio laid down by the Apex Court in **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others (supra)**, the impugned detention order and consequential order is illegal.
- (9) The next contention of the learned Counsel for the petitioner is that admittedly the statutory representation of the detenu was

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forwarded by the detaining authority after a considerably delay of seven days, which was received by the Ministry of Home Affairs, Government of India on 05.10.2020. The Union Government in the most callous and lackadaisical manner processed the same for consideration much belatedly after a delay of nine days after receipt of the statutory representation for which no explanation at all has been afforded by the Central Government. Further, there is a long and inordinate delay of 43 days in disposing of the statutory representation of the petitioner. There is also inordinate and unexplained delay of four days in communication of its result to the petitioner, which has been admitted by the jail authorities. Thus, the impugned order of detention as well as consequential orders are liable to be quashed on this ground alone.

- (10) Union of India, Ministry of Home Affairs through Under Secretary, Smt. Meena Sharma has filed supplementary counter affidavit and in para 4, there is explanation for delay, if any, in disposal of representation, which is reproduced as under:-

“4. That in continuation of para 5 of the affidavit dated 24.12.2020, it is further submitted that a copy of the representation dated 22.09.2020 of the detinue along with parawise comments of the detaining authority was forwarded by the District Magistrate, Unnao to the Central Government in the Ministry of Home Affairs vide letter dated 29.09.2020. The same was received in the section concerned in the Ministry of Home Affairs on 05.10.2020. It is pertinent to mention that after relaxation of few COVID norms, the section received 51 nos. of receipts including 09 nos. of representations from various State Governments

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during 05.10.2020 and 06.10.2020. Due to roaster system as well as in view of the large nos. of receipts and representations, the matter was examined in detail by the dealing hand and was put up for consideration of Union Home Secretary on 14.10.2020. During this, there was an intervening period of two holidays on 10.10.2020 and 11.10.2020 being Saturday and Sunday. The file reached the Under Secretary (NSA) on 14.10.2020. The Under Secretary (NSA) was on leave on 15.10.2020 and 16.10.2020 and there was an intervening period on 17.10.2020 and 18.10.2020 being Saturday and Sunday. Thereafter, the matter was examined in detail as document provided by the State Government was voluminous. After satisfying the same viz a viz representation of the petitioner, it was considered that an independent report from the central agency may be sought to ascertain the detenu's complicity in crime, his antecedents and the likely impact of his release on public order. Thereafter, the Under Secretary with her comments forwarded the same to the Deputy Legal Advisor on 20.10.2020. The Deputy Legal Advisor forwarded the same to the Joint Secretary (IS-II) on 21.10.2020. The Joint Secretary (IS-II) with his comments forwarded the same to the Union Home Secretary on 21.10.2020. The Union Home Secretary approved the same and sent the file back to the Joint Secretary (IS-II) on 22.10.2020. The file reached the section through aforesaid level on 23.10.2020. Accordingly, the requisite report was sought from the Central Agency on 23.10.2020. The report from the Central Agency was received in the section concerned on 06.11.2020. Thereafter, there was an intervening period of 2 holidays on 07th and 8th November, 2020 being Saturday and Sunday. After receiving the input from the Central Agency, the matter was examined by the Under Secretary, in consultation of section level officials, to ascertain the facts provided by the Central Agency viz a viz the report and the representation of the detenu. After satisfying the facts, she processed the representation of the detenu along with para-wise comments and the report of the central agency for the consideration and forwarded the file to Deputy Legal Advisor on 11.11.2020. The

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Deputy Legal Advisor forwarded the file to the Joint Secretary (IS-II) on 11.11.2020. The Joint Secretary (IS-II) with his comments forwarded the file to the Union Home Secretary (IS-II) with his comments forwarded the file to the Union Home Secretary on 13.11.2020. After that there was an intervening period of two holidays on 14.11.2020 and 15.11.2020 being Saturday and Sunday. 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, the comments of the detaining authority thereon and the inputs from central agency concluded that the detenu had failed to bring forth any material cause or grounds 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 on 16.11.2020 and sent the file back to the Joint Secretary (IS-II). The file reached the section concerned through aforesaid level on 17.11.2020. Accordingly, the authorities concerned and the detenu were informed vide Wireless Message No. II/15028/150/2020-NSA dated 17.11.2020. It is further submitted that despite of unprecedented situation of COVID-19, the matter was examined and processed with utmost care and caution with promptitude. Hence, there was no bonafide or wilful delay in disposal of the representation of the Respondent No.01 i.e. the Union of India.”

(11) We have heard learned counsel for parties and perused the material brought on record.

(12) Learned counsel for the petitioner has attacked the impugned order of detention on the following grounds :-

“(1) The solitary incident, on the basis of which, the impugned detention order has been passed was allegedly committed on 19.06.2020, whereas the impugned detention

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order has been passed on 06.09.2020 i.e. after two and half months but the detaining authority, without applying his mind and without forming any cogent satisfaction, has passed the impugned order of detention on the basis of past conduct of the detenu.

- (2) The detention order does not specify the period for which detention has been ordered, hence in view of the law laid down by the Apex Court in **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others (supra)**, the detention order is illegal.
 - (3) There is an inordinate and unexplained delay in adjudication of the representation of the detenu by the Central Government, hence constitutional safeguard provided to the detenu under Article 22 (5) of the Constitution of India is violated.
- (13) So far as first question with regard to slapping detention order upon the detenu on the basis of a solitary case after two and half months from the date of incident is concerned, it is trite law that generally the Court cannot sit as an appellate authority in such cases over the subjective satisfaction of the detaining authority. However, judicial review of such exercise of power by the detaining authority on his subjective satisfaction is available. At this juncture, it is worthwhile to refer to the decision of the Apex Court rendered in the case of

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Senthamilselvi v. State of T.N. reported in (2006) SCC 676, which is referred to in the decisions in the case of **Union of India v. Dimple Happy** reported in (AIR 2019 SC 3428). In the said decisions, satisfaction of the authority in coming to the conclusion that there is likelihood of the detenue being released on bail is "subjective satisfaction" based on the material and normally subjective satisfaction is not to be interfered with. In the present case also, the detaining authority has referred to every material placed before him and has also considered the retracted statements of the persons concerned and has satisfied himself to pass the detention order against the detenue/petitioner.

- (14) Considering the aforesaid, we are of the view that no interference is required to be exercised on the subjective satisfaction of the detaining authority in passing such detention order.
- (15) The next argument of the learned Counsel for the detenue/petitioner is that the detention order does not specify the period for which detention has been ordered, hence in view of the law laid down by the Apex Court in **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others (supra)**, the detention order is illegal, it transpires from the record that this plea has been taken by the detenue/petitioner in paragraph-39 and ground (WW) in the

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memo of the writ petition but the same has not been denied in para-24 of the short counter affidavit filed on behalf of the respondent no.3-District Magistrate, Unnao. Thus, the undisputed fact is that no period of detention has been mentioned in the impugned detention.

(16) Now, the question as to whether in non-mentioning of the period of detention in the impugned order of detention, it is illegal and on this ground, the impugned order of detention can be quashed.

(17) Before analyzing the aforesaid question, we deem it appropriate to reproduce Section 3 of the N.S.A., which reads as under :-

“3. Power to make orders detaining certain persons.-

(1) The Central Government or the State Government may,—

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community

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it is necessary so to do, make an order directing that such person be detained.

Explanation.—For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the *Explanation* to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ¹ [fifteen days] from the date of detention, this sub-section shall apply subject to the modification

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that, for the words "twelve days", the words ² "[twenty days]" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

(18) Section 13 of the N.S.A. deals with the maximum period of detention, which reads as under :

"13. Maximum period of detention. - The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Section 12 shall be twelve months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time"

(19) In **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others (supra)**, upon which the learned Counsel for the detenu/petitioner has placed reliance, the Two Hon'ble Judges Bench of the Apex Court has held that any blanket order of detention passed without specifying the period of detention is invalid in view of proviso to sub-section (2) of Section 3 of the N.S.A.

(20) The view of Three Hon'ble Judges Bench of the Apex Court in **T. Devaki Vs. Government of Tamil Nadu and others** : 1990 (2) SCC 456 has been followed by the Apex Court in **State of Maharashtra & others vs. Balu S/o Waman Patole** (Criminal

Appeal No. 1681 of 2019, decided on 13.11.2019), wherein the Apex Court, while also considering the provisions of Sections 3 and 13 of the N.S.A., has observed as under :-

“On fair reading of Section 3 of the Act, more particularly, subsection (2) of Section 3 of the Act, upon which much reliance has been placed by the High Court, **sub section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force. It has no relevance to the period of detention.** The Legislature has entrusted the power of detention to the State Government. However, those powers can be delegated to the Jurisdictional District Magistrate or the Commissioner of Police, as provided in subsection (2) of Section 3 of the Act.

As per Section 13 of the Act, a person can be detained under the Act for such period not exceeding the maximum period of 12 months from the date of detention. The order of detention passed by the authorities mentioned in subsection (2) of Section 3 of the Act is required to be confirmed by the State Government. As per Section 13 of the Act, once the order of detention is confirmed by the State Government, the maximum period for which the detenu shall be detained cannot exceed 12 months from the date of detention. **The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained.**

5.2 An identical question came to be considered by this Court in the case of T. Devaki (supra). In paragraph 10, this Court has observed and held as under:

"10. Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered to, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained.

The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order" occurring in subsection (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The legislature has taken care to entrust the power of detention to the State Government; as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months.

The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.

5.3 Applying the law laid down by this Court in the aforesaid decision and, even otherwise, considering the provisions of Section 3 read with Section 13 of the Act, the High Court has committed a grave error in holding that as the period of detention of 12 months was mentioned in the order of detention, the same is contrary to Section 3 of the Act and, therefore, the same is liable to be quashed and set aside.

5.4 The High Court has wrongly relied upon and misinterpreted Section 3 (2) of the Act with respect to the period of detention. As observed hereinabove, subsection (2) of Section 3 of the Act relates to the period for which the order of delegation issued by the State Government is to

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remain in force and does not relate to the period of detention.”

(emphasis supplied)

- (21) The view taken by the Two Hon’ble Judges Bench of the Apex Court in **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others (supra)** came up for consideration before the Three Hon’ble Judges Bench of the Apex Court in the case of **Secretary to Government of Tamil Nadu Public (Law and Ordre) Revenue Department and others Vs. Kamala and others** : (2018) 5 SCC 322, wherein the Apex Court, on considering the law laid down by the Apex Court in **T. Devaki Vs. Government of Tamil Nadu (Supra)** and **Commissioner of Police Vs. Gurbux Anandram Bhiryani** : 1988 (Supp) SCC 568, has overruled the decision rendered by the Apex Court in **Commissioner of Police Vs. Gurbux Anandram Bhiryani (supra)** and has observed as under :-

“5 In the circumstances, **the High Court was not justified in quashing the order of detention on the basis that no period of detention was provided in the order.** The High Court has proceeded on the basis of the decision of this Court in Bhiryani which is no longer good law in view of the subsequent decision of a larger Bench in Devaki. The decision of the High Court in Santhi, to the extent that it adopts the same position as in Bhiryani, will not reflect the correct legal position.”

(emphasis supplied)

- (22) Considering the aforesaid, particularly the decisions of **T. Devaki Vs. Government of Tamil Nadu (Supra)** and

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Secretary to Government of Tamil Nadu Public (Law and Order) Revenue Department and others Vs. Kamala and others (Supra) were rendered by three Hon'ble Judges Bench, larger than the Bench which decided the case of **Lahu Shrirang Gatkal Vs. State of Maharashtra through the Secretary and others (supra)**, we are of the considered view that there is no substance in the plea of the detinue/petitioner that the impugned detention order and the impugned order confirming the detention order, both are bad in law as they do not mention the period of detention at the first instance.

(23) The next submission of the learned Counsel for the detinue/petitioner is that the delay and laches committed by the respondent no.1-Union of India in considering the representation has infringed fundamental rights of the detinue enshrined under Article 21 and 22 (5) of the Constitution of India. To justify inordinate delay in considering the petitioner's representation, the learned Counsel for the petitioner has drawn our attention to certain relevant dates and correspondences that took place between different authorities.

(24) From the record, it transpires that the petitioner was detained under N.S.A. on 06.09.2020 and the detention order as well as grounds of such detention was also supplied to the detinue on the same day i.e. on 06.09.2020. Thereafter, the petitioner has submitted his representation to the U.P. Advisory Board

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(Detention), Lucknow, Secretary (Home), Department of Home (Internal Security), Government of India, New Delhi and the Secretary (Home), Government of Uttar Pradesh, Lucknow through Superintendent, District Jail, Unnao on 22.09.2020. The said representation of the petitioner dated 22.09.2020 has been forwarded to the District Magistrate, Unnao by the Superintendent, District Jail, Unnao on 22.09.2020 itself.

- (25) According to the learned Counsel for the petitioner, the delay was committed in forwarding the representation of the petitioner to the State Government as well as to the Central Government and thereafter the Central Government committed inordinate delay in disposing of the same. According to him, the detenu's representation dated 22.09.2020 was forwarded by the District Magistrate, Unnao after a considerable delay of seven days as the District Magistrate, Unnao has sent the petitioner's representation vide letter dated 29.09.2020 to the State Government as well as Central Government, which was received by the Ministry of Home Affairs, Union of India (respondent no.1) on 05.10.2020, whereas the State Government (respondent no.2) has received the same on 30.09.2020. The State Government has rejected the petitioner's representation on 06.10.2020 but the Central Government took nine days in processing the petitioner's representation after receipt of the statutory representation of the petitioner. Ultimately, the representation of the petitioner was rejected by

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the Central Government only on 16.11.2020 and the order of rejection was communicated to the petitioner on 17.11.2020 via wireless message. Thus, there is a long and inordinate delay of 43 days in disposing of the statutory representation of the petitioner.

- (26) The Under Secretary, Home (Confidential), State of U.P., Lucknow, District Magistrate, Unnao, District Magistrate, Unnao and Deputy Jailor, District Jail, Unnao have filed their short counter affidavits. However, the District Magistrate, Unnao as well as Deputy Jailor, District Jail, Unnao are conspicuously silent about the date on which date petitioner's representation was forwarded to the Central Government. According to Deputy Jailor, District Jail, Unnao, no representation addressed to the District Magistrate, Unnao was at all submitted by the detenu/petitioner. However, the Under Secretary, Home (Confidential), State of U.P., has stated in its short counter affidavit that a copy of the petitioner's representation dated 22.09.2020 along with parawise comments was received in the concerned section of the State Government on 30.09.2020 along with the letter of District Magistrate, Unnao dated 29.09.2020. Smt. Meena Sharma, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, has stated in its supplementary counter affidavit that a copy of the petitioner's representation dated 21.09.2020 with parawise comments of the detaining authority was

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forwarded by the District Magistrate, Unnao to the Central Government in the Ministry of Home Affairs, vide letter dated 29.09.2020 and the same was received in the section concerned in the Ministry of Home Affairs on 05.10.2020.

(27) The petitioner has admitted the fact of not submitting any separate representation to be examined and considered by the District Magistrate, Unnao. In Ground (R) of the writ petition, it has been stated that representation should be considered with reasonable expedition and it is imperative on the part of every competent authority, whether in merely transmitting or dealing with it, to discharge their obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay since the delay caused by the slackness on part of any competent authority, will ultimately result in the delay of the disposal of the representation which in turn invalidates the order of detention as having infringed the mandate of Article 22 (5) of the Constitution of India.

(28) It is true that neither Article 22(5) of the Constitution of India nor N.S.A. has prescribed time limit for consideration of representations. However, if one looks at various provisions of N.S.A., prescribing specific periods for furnishing grounds of detention, approval of the detention by the State Government, submitting report to the Central Government and Advisory

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Board, the period prescribed for considering the detention order and representations by the Advisory Board, etc. the intention of the legislature can safely be inferred that representations of detainees have to be considered with all promptitude.

- (29) The Apex Court, in the case of **K.M. Abdulla Kunhi & B.L. Abdul Khader v. Union of India and Ors.** : (1991) 1 SCC 476(C/B) has held that the representation relates to the liberty of the individuals, the highly cherished right enshrined in Article 21 of the Constitution, Clause (5) of Article 22 casts a legal obligation on the Government to consider the representation as early as possible. 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 words "*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 the sense of urgency without any unavoidable delay.

- (30) Again, in the case of **Rama Dhondu Borade v. V.K. Sarqf, Commissioner of Police and Ors.:** (1989) 3 SCC 173 , the Apex Court reiterated that the detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly there is a constitutional mandate commanding the concerned authority to

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whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable despatch and to dispose of the same as expeditiously as possible.

- (31) In the case of **Rajammal v. State of Tamil Nadu and another** : 1999 (1) SCC 417, the Apex Court restated the legal principle in the following words:

“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, test is not the duration or range of delay, but how it is explained by the authority concerned.”

- (32) For brevity of judgment, we are refraining from adverting of scores of other authorities on this point. Suffice is to hold that even though there is no fixed period of time for disposal of representation, the underlying message in the law is that all the concerned authorities, who are empowered to issue, approve or revoke detention orders, are duty bound to consider and dispose of the representations as expeditiously as possible. By now, it is also the settled principle of law that even if some delay in consideration of the representation may not become fatal to the detention but non-explanation of the same would certainly impeach the detention order.

- (33) Coming to the case at hand, we find that the writ petitioner was detained under N.S.A. on 06.09.2020 and submitted a representation on 22.09.2020 through the Superintendent, District Jail, Unnao, who, in turn, forwarded the same to the District Magistrate, Unnao on the same day i.e. 22.09.2020. The District Magistrate took seven days in forwarding the petitioner's representation dated 22.09.2020 as it is an admitted fact of the State Government as well as Central Government that the District Magistrate, Unnao has sent the petitioner's representation vide letter 29.09.2020 to them. There is no explanation on the part of the District Magistrate, Unnao as to why he has forwarded the petitioner's representation after seven days nor a whisper of word in the short counter affidavit filed on behalf of the District Magistrate, Unnao in this regard. Thus, the District Magistrate, Unnao has not justified the period taken for forwarding the petitioner's representation to the State Government and the Central Government after seven days.
- (34) However, the State Government has received the petitioner's representation on 30.09.2020 along with the letter of the District Magistrate, Unnao dated 29.09.2020 and the Central Government has received the petitioner's representation dated 22.09.2020 along with the letter of the District Magistrate, Unnao dated 29.09.2020 on 05.10.2020.

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- (35) It transpires that the State Government took nearly six days in disposing of the representation as according to the petitioner, the State Government disposed of the petitioner's representation on 06.10.2020. This factual position has been admitted in the short counter affidavit submitted by the Under Secretary, Home (Confidential), State of U.P. In this way, the State has justified the period taken for consideration of the representation.
- (36) Now, we come to examine the second leg of delay for disposal of the representation at the end of the Central Government.
- (37) The learned Counsel for the petitioner submitted that the Central Government received the representation on 05.10.2020 but it came to be rejected only on 16.11.2020. In this way, 43 days' time was taken by the Central Government to perform its legal duty.
- (38) From the supplementary counter affidavit submitted by Smt. Meena Sharma, Under Secretary, Ministry of Home Affairs, Govt. of India, we find that though a copy of the petitioner's representation dated 21.09.2020 of the detenu along with parawise comments of the detaining authority was received by the Central Government in the Ministry of Home Affairs from the District Magistrate, Unnao on 05.10.2020 but it could only be processed on 14.10.2020 when the file reached to the office of Under Secretary (NSA) on account of the fact that after

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relaxation of few COVID norms, the section received 51 numbers of receipts including nine numbers of representations from various Governments during 05.10.2020 and 06.10.2020. Strangely, the Central Government had made nine days' in processing the petitioner's representation. The affidavit further indicated that as on 15.10.2020 and 16.10.2020, the Under Secretary (NSA) was on leave and there was an intervening period on 17.10.2020 and 18.10.2020 being Saturday and Sunday and, thereafter, the matter was examined in detail as document provided by the State Government was voluminous and after satisfying the same viz-a-viz representation of the petitioner, it was considered that an independent report from the Central Agency may be sought to ascertain the detenu's complicity in crime, his antecedents and the likely impact of his release on public order and thereafter, the Under Secretary with her comments forwarded the same to the Deputy Legal Advisor on 20.10.2020. This shows that the petitioner's representation was lying with the Under Secretary w.e.f. 14.10.2020 to 19.10.2020 i.e. for five days. The affidavit further indicated that on receipt of the comments from the Under Secretary, the Deputy Legal Advisor has forwarded the same on 21.10.2020 to the Joint Secretary (IS-II), who, in turn, forwarded the same to the Union Home Secretary on 21.10.2020 itself. On 22.10.2020, the Union Home Secretary approved the same and sent the file back to the Joint Secretary (IS-II), which has reached the Section through aforesaid level on 23.10.2020.

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Thereafter, on 23.10.2020, requisite report was sought from the Central Agency, which was received in the section concerned on 06.11.2020 i.e. almost after 13 days. Thereafter, on 7th and 8th November, 2020 being Saturday and Sunday, therefore, the Under Secretary has processed the petitioner's representation and after examining it, forwarded the file to Deputy Legal Advisor on 11.11.2020 i.e. after almost five days. Thereafter, the Deputy Legal Advisor has forwarded the file to the Joint Secretary (IS-II) on 11.11.2020 itself and the Joint Secretary (IS-II) with his comments forwarded the file to the Union Home Secretary on 13.11.2020. Thereafter, on 14.11.2020 and 15.11.2020 being Saturday and Sunday, therefore, Union Home Secretary has carefully gone through the material on record and rejected the representation of the petitioner on 16.11.2020 and the file was sent back to the Joint Secretary (IS-II) and the same was reached to the section concerned through aforesaid level on 17.11.2020 and the same was communicated to the petitioner through wireless message on 17.11.2020.

- (39) From the aforesaid assertions of the affidavit filed on behalf of the respondent no.1, it transpires that the processing of the petitioner's representation on day to day basis between the period 06.10.2020 to 13.10.2020 and between 24.10.2020 to 05.11.2020 has not been explained in the said affidavit and, therefore, in the interest of justice, this Court, vide order dated 09.08.2021, provided an opportunity to explain the day to day

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explanation and directed the Union Government (respondent no.1) to file a fresh affidavit giving day to day basis explanation in deciding the petitioner's representation.

(40) In compliance of the order dated 09.08.2021, Sri Dharmendra Kumar, Deputy Secretary, Ministry of Home Affairs, Government of India, New Delhi, has filed response affidavit today, which is on record. Paras 2 and 3 of the aforesaid response affidavit are reproduced as under :-

“2. It is submitted that all the representations received by the answering respondent are dealt with due care and utmost promptitude and the officer dealing with them is very sincere, hard working and understands the gravity of the issues. She has been dealing with the National Security Act matters with due sincerity. The answering respondent submits that all the relevant facts related to the matter and the actionable dates are duly mentioned in the affidavit dated 24.12.2020 and thereafter as directed by Hon'ble Court, in supplementary affidavit dated 12.08.2021, but at the same time craves the leave of the Hon'ble Court to apologize at the outset if an impression has been drawn due to non-mentioning of day-to-day movement in the affidavit dated 24.12.2020 filed by the officer. It is further submitted that the directions of the Hon'ble Court are being complied with in letter and spirit, in the affidavits henceforth being filed before the Hon'ble Court.

(3) That it is further submitted that the answering respondent has utmost regard of the Hon'ble Court and are sensitive to the fundamental right of the detenu. It is humbly submitted that as the directions of Hon'ble Court are being complied with, the Hon'ble Court may accept the submission made herein above and the Hon'ble Court is requested to dispense with filing of personal affidavit by the Home Secretary, Ministry of Home Affairs.

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- (41) It is relevant to mention here that vide order dated 09.08.2021, this Court directed the Union of India, Ministry of Home Affairs, New Delhi to file fresh affidavit giving day to day basis explanation in deciding the representation but surprisingly, instead of giving response to day to day affairs in disposal of the petitioner's representation in pursuance of the order dated 09.08.2021, Sri Dharmendra Kumar, Deputy Secretary, Ministry of Home Affairs, Government of India, New Delhi has filed response affidavit dated 13.08.2021, stating that all the relevant facts related to the matter and the actionable dates are duly mentioned in the affidavit dated 24.12.2020 as well as supplementary counter affidavit dated 12.08.2021.
- (42) At this stage, Sri S.B. Pandey, learned Assistant Solicitor General of India appearing on behalf of the respondent no.1 has accepted the fact that there has been laxity on the part of Deputy Secretary in filing the affidavit in a casual manner. He submits that due to heavy rush of the representations coming out from various States, the same could not be filed by the Deputy Secretary properly, however, he has instructed the Secretary to ensure that proper and effective affidavit are filed in the habeas corpus petition in future.
- (43) Taking into consideration the aforesaid submission of the learned Assistant Solicitor General of India, we refrain ourselves to record any findings on the conduct of the official(s)

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of the Ministry of Home in filing the affidavits in the Habeas Corpus Petitions before this Court.

- (44) However, from the affidavit submitted by the Under Secretary, Ministry of Home Affairs, Government of India, it transpires that the petitioner's representation could not be processed between 05.06.2020 to 13.06.2020 due to 51 numbers of receipts including 09 numbers of the representations from various State Governments during 05.10.2020 and 06.10.2020 have been received after relaxation of few Covid norms. We have given out anxious consideration whether this could have been a proper explanation for withholding the representation. In our considered opinion, both the District Magistrate, Unnao and the Central Government were at fault. It is true that in the present case, the detenu had submitted a representation on 22.09.2020 through Superintendent, District Jail, Unnao and the Superintendent, District Jail, Unnao has sent the same to the District Magistrate, Unnao on 22.09.2020 itself but the District Magistrate, Unnao took nine days in forwarding the same to the State Government and Central Government as the said petitioner's representation dated 22.09.2020 has been sent by the District Magistrate, Unnao on 29.09.2020 to the State Government and District Magistrate, Unnao and there is no explanation on behalf of the District Magistrate, Unnao in forwarding the petitioner's representation beyond nine days. This procedural lacuna resulted in loss of nine days in

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forwarding the representation of the detenue dated 22.09.2020 by the District Magistrate, Unnao. Furthermore, the Central Government though has received the petitioner's representation on 05.10.2020 but it could only be processed on 14.10.2020 when it has been placed before the Under Secretary and the reasons for such a delay or day to day explanation in dealing with the file has not been made in the affidavit. Moreso, the file relating to the petitioner's representation was reached to the office of Joint Secretary (IS-II) on 23.10.2020 and, thereafter, report was sought from Central Agency and in doing so, 13 days time was taken by the Central Agency and the required report was submitted before the Under Secretary on 06.11.2020. It transpires that no day to day explanation w.e.f. 23.10.2020 to 06.11.2020 have been made on behalf of the respondent no.1 (Union of India). Accordingly, there was cumulative delay in disposal of the representation of the petitioner by the District Magistrate, Unnao as well as Central Government. Thus, having regard to the nature of detention and rigor of law, we are of the view that there was disproportionate delay at both the ends.

- (45) For the reasons aforesaid, we are of the view that the plea of the detenue/petitioner that there is delay in forwarding the petitioner's representation on the part of the District Magistrate, Unnao and also delay in disposal of the petitioner's representation on the part of respondent no.1 (Union of India),

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has substance and on this count alone, the impugned detention order is liable to be quashed.

(46) In the result, the instant Habeas Corpus Petition is **allowed**. The impugned order of detention dated 06.09.2020 and the consequential orders are quashed. The detinue/petitioner is ordered to be set at liberty forthwith unless required in connection with any other case.

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

Order Date :- 16.8.2021

A.K. Singh/Ajit/-