

SMT. PREM LATA SHARMA

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v.

DISTRICT MAGISTRATE, MATHURA AND ORS.

MARCH 31, 1998

[M.K. MUKHERJEE AND S.S. MOHAMMED QUADRI, JJ.]

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*National Security Act, 1980 : Sections 3(3) and 14.*

*Preventive Detention—Right of detenu to make representation to Central Government—Detention order—Detenu's representation against—Rejection by State Government—Representation forwarded by State Government to Central Government—Rejection of representation by Central Government also—Second representation made by detenu to Central Government—Failure of detaining authority to forward second representation on the ground that it was made after extraordinary delay—Writ petition by wife of detenu—Stand of detaining authority that earlier representation of Revenue was rejected—Therefore it was not considered proper to forward the subsequent belated representation made after four months of the passing of the detention order—Held the stand of the detaining authority was wholly untenable—There is no period of limitation regarding exercise of a right of a detenu to make a representation and the corresponding obligation of the Central Government to consider the same for deciding upon the question of revocation of the detention order—When the representation was made to the Central Government it was for it and not for the detaining authority to decide whether the representation should be rejected on the ground that his earlier representation had already been considered and rejected—Refusal on the part of the detaining authority to send the representation of the detenu to the Central Government resulted in denial of the right conferred on him under Article 22(5)—Detention order quashed as it became illegal.*

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*Constitution of India, 1950 : Article 22(5).*

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*Detention order—Representation of detenu—Failure of detaining authority to forward the same to Central Government—Held violative of Article 22(5).*

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (CRL.) No.

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A 290 of 1997.

(Under Article 32 of the Constitution of India.)

K.B. Sinha and Ashok Kumar Sharma for the Petitioner.

R.K. Singh and A.S. Pundir for the Respondents.

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The following Judgment of the Court was delivered :

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Pursuant to an order dated April 26, 1997 made by the District Magistrate, Mathura (hereinafter referred to 'the obtaining authority') in exercise of his powers under Section 3(3) of the National Security Act, 1980 ('Act' for short), Suresh Chander Sharma, a resident of Alwar Kunj in the city of Vrindavan, has been detained since May 5, 1997 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Against his detention he made a representation to the State Government on May 14, 1997 which was rejected on May 23, 1997. A copy of the said representation, along with para-wise comments, was forwarded by the State Government on May 21, 1997 to the Home Secretary, Government of India, New Delhi for consideration. The Central Government also rejected the representation of the detenu on August 6, 1997. Thereafter, on August 22, 1997 the detenu made a representation to the Home Secretary, Government of India, through the Superintendent of Mathura Jail, where he is confined. By its letter dated August 26, 1997 the detaining authority informed the detenu that the representation could not be sent to the Central Government as it was made after extraordinary delay. The detaining authority pointed out that according to the Rules the said representation should have been made within three weeks from the date of his detention. Thereafter, the petitioner, who happens to be wife of the detenu, filed this petition seeking a writ of Habeas Corpus.

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The only point that has been urged in support of this petition is that the detenu has a right to make a representation to the Central Government, independent of the representation he made to the State Government, to persuade the former to invoke its powers of revocation of the detention order under Section 14 of the Act and that by refusing to send the representation to the Central Government the detaining authority has deprived him of his such right.

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In repudiating the above contention the detaining authority relied upon the following averments made in its supplementary counter affidavit:-

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"That the copy of the representation dated 14.5.1997 was already forwarded for consideration to the Central Government by the State Government, which representation was considered and rejected by the

Central Government. The said Detenue addressed a second representation dated 22.8.1997 to the Secretary, Home, Govt. of India, New Delhi, since the earlier representation was already considered and rejected by the Central Government on 6.8.1997. The communication about which was already made to the said detenue through the Radiogram dated 6.8.1997 from the Ministry of Home Affairs, New Delhi served upon the detenue through the Superintendent, District Jail, Mathura. Under the circumstances it was not considered proper to forward the subsequent belated representation made after four months of the passing of the detention order. The detenue was accordingly informed vide letter dated 26.8.1997 of the deponent.”

In our considered view the above stand of the detaining authority is wholly untenable: firstly, because in its letter dated August 26, 1997 the reason given by the detaining authority (mentioned earlier) for not sending the representation to the Central Government was different; secondly, because no Rules referred to in that letter were brought to our notice; thirdly, because there is no - nor can there be - a period of limitation regarding exercise of a right of a detenu to make a representation and the corresponding obligation of the Central Government to consider the same for deciding upon the question of revocation of the order of detention, for such right and obligation subsist so long as the detention continues; and lastly, because when the representation was made to the Central Government it was for it - and not for the detaining authority - to decide whether the representation should be rejected on the ground that his earlier representation had already been considered and rejected. To put it differently, when the representation was addressed to the Central Government it was incumbent on the part of the detaining authority to forward the same to the Central Government and not to take a pre-emptive action thereupon of its own.

For the foregoing discussion, it must be held that refusal on the part of the detaining authority to send the representation of the detenu to the Central Government resulted in denial of the right conferred on him under Article 22(5) of the Constitution of India to persuade that Government to revoke the order of detention under Section 14 of the Act and on that ground his continued detention has become illegal. We, therefore, allow this petition, quash the impugned order of detention and direct that the detenu be released forthwith unless wanted in connection with any other case.

T.N.A.

Petition allowed. H