

Munna Tuin

Vs

District Magistrate Lucknow and Others

Writ Petition No. 9373 of 1981

(Syed M. Fazal Ali, E. S. Venkataramiayh, A. Varadarajan JJ)

02.02.1982

JUDGMENT

FAZAL ALI, J. -

1. In this petition the detenu Munna alias Mohsin Raza was detained by an order dated April 15, 1981 passed by District Magistrate, Lucknow. The detenu was arrested on April 18, 1981 and was supplied the grounds of detention at the time of his arrest. In support of the rule, Mr Goyal has raised two short points. In the first place he submitted that one of the important documents on which reliance was placed by the detaining authority was an enquiry report which was not supplied to him along with grounds and this is sufficient to vitiate the order of detention. Secondly, it was argued that the counter-affidavit was filed by an incompetent person, namely Shri Pratap Chandra Saxena who was a mere clerk in the Judicial Section and was not therefore authorised to file counter-affidavit in the highest court of the country and could not be expected to know the truth and the details of the matter. The District Magistrate should have filed counter-affidavit himself. In fact by an Order of this Court dated January 8, 1982 the District Magistrate was directed to file Counter-affidavit which alone could be treated as a proper return. Despite this direction, no counter-affidavit has been filed by the District Magistrate. Thus, in short there is no proper explanation or return before us to rebut the allegations made by the detenu. On this ground alone, we are of the opinion that the petitioner should be released. We, therefore, allow the petition, set aside the order of detention and direct the petitioner to be released forthwith. Order to be communicated today itself.

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