
(1952) 07 GAU CK 0003
In the Gauhati High Court

Abdul Aziz

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 31-07-1952

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1954 Guw 93 : (1954) CriLJ 747

Hon'ble Judges : T.V. Thadani, C.J

Bench : Single Bench

Judgement

Thadani, C.J.—This is a petition by one Abdul Aziz son of Nichar Ali, under the provisions of Article 226 of the Constitution of India directed against an order of detention passed against him by the District Magistrate of Cachar, dated 10-2-52, in the exercise of the power conferred by Sub-section (2) of Section 3 read with Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 3 and Section 4 of the Preventive Detention Act of 1950 as amended by the Preventive Detention Act of 1951 (4/51).

2. The ground of detention as communicated to the petitioner is this:

1. That when the "Zehad cry" against India was gaining momentum in Pakistan early in 1951, you with a view to undermine the security and territorial integrity of India, became a member of the spy-ring formed by Abdur Rouf of Singaria for collection of secret information about the disposition and movement of Indian armed forces and of border forces officials through a well organised courier system in order to help Pakistan authorities against India. The operation of the aforesaid spy-ring was detected while you were arrested by Cachar Police at Sutar Kandi Bus Stand (India) on 17-8-51 at the time of your making delivery of a secret written document containing information regarding dispositions and movements of Indian armed forces in Cachar District and other secret official informations concerning Cachar emanating from the aforesaid Abdur Rouf and his son, Samsul Huda, to one Madaris Ali, another member of the secret spy-ring for transmission to Pakistan secret service agency.

3. The petitioner has challenged the validity of the order of detention on certain grounds, but there is one ground which must prevail. It appears that the order of detention was passed against the petitioner on 10-2-52 when he was in jail as undertrial prisoner for an offence under the Official Secrets Act. This Court has repeatedly held that when a person is in custody and is, therefore, already prevented from acting in a manner prejudicial to the security of the State, it cannot be said that the satisfaction of the State as required by Section 3, Preventive Detention Act is real. It is admitted by Mr. Medhi that the petitioner was arrested on 17-3-51 in connection with an offence under the Official Secrets Act and that he was from that date, namely, 17-3-51, in custody as an undertrial prisoner till 18-4-52. The order of detention passed on 10-2-52, lacks the reality of satisfaction required by Section 3 of the Act.

4. The result is that the petitioner will be released forthwith. The Rule is made absolute.