

**(2003) 01 GAU CK 0002**

**In the Gauhati High Court**

**Case No : Writ Petition (Criminal) No. 34 of 2002**

Anamul Haque

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

**Date of Decision : 03-01-2003**

**Acts Referred:**

Arms Act, 1959 — Section 25(1)  
National Security Act, 1980 — Section 12(1), 12(2), 3(2)  
Penal Code, 1860 (IPC) — Section 120B

**Citation : (2003) 2 GLT 27**

**Hon'ble Judges : P.P. Naolekar, C.J;P.G. Agarwal, J**

**Bench : Division Bench**

**Advocate : B. Ahmed and M.A. Barbhuyan, for the Appellant; A.R. Borthakur, A.G. and P. Khataniar, for the Respondent**

## **Judgement**

P.P. Naolekar, C.J.—The facts of the case as alleged by the Petitioner is that - on 8.3.2002 when the Petitioner was standing near the Public Call Office of Jubenoor Hussain the security personnel came and arrested him. A police case (PS Case No. 6/2002) (GR No. 126/ 2002) was registered against the Petitioner u/s 120-B IPC read with Section 25(1)(a) of the Arms Act, 1959. When the Petitioner was in custody in regard to the aforesaid case a detention orders has been issued by the State on 18.4.2002 in exercise of the powers conferred by Sub-section (2) of Section 3 of the National Security Act, 1980. The Petitioner was served with the ground of detention on 18.4.2002 itself. The grounds of detention contained in the said order are-

1. That your activities in the capacity of an Arms Smuggler were prejudicial to-

a) Security of the State of Nagaland, and

b) Maintenance of public order.

2. The particulars which have a bearing on the above two matters are specified in the Schedule attached.

3. You are also informed that you have a right to make a representation to the detaining authority, State Government and the Central Government through the concerned Jail authorities. You have also a right to claim a personal hearing before the Advisory Board constituted by the State Government under the aforesaid Act.

2. The Petitioner has submitted a representation against the grounds of detention to the State Government on 6.5.2002. The representation submitted by the Petitioner on 6.5.2002 was disposed of by order dated 20.5.2002 (Annexure-6 to the writ petition) whereunder the representation made by the Petitioner was rejected. Thereafter, a final order of detention was issued on 28.5.2002 (Annexure-8 to the writ petition) in exercise of the powers conferred by Sub-section (1) and (2) of Section 12 of the National Security Act, 1980.

3. In spite of several opportunities given to the State Respondent no counter has been filed controverting the allegations made in the petition. Thus we can safely presume that the facts stated in the petition to be correct and the Petitioner submitted a representation on 6.5.2002 and the same has been decided by the order dated 28.5.2002. It is submitted by the learned Counsel for the Petitioner that there was an inordinate delay in deciding the representation made by the Petitioner and there is no explanation coming forward for the delay in deciding the representation made by the Petitioner.

4. A Division Bench of this Court in WP(Crl) No. 22/2002 (Jubenor Hussain Vs. Union of India (UOI) and Others, disposed of on 9.10.2002, after consideration of various judgments of the Apex Court has held that the delay if caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. It is for the authority concerned to explain the delay, if any, in disposing of the representation. And if such delay has not been explained and the detenu had to be in custody for unreasonable long period without his representation being decided the same shall vitiate the continued detention.

5. In the present case the representation was made on 6.5.2002 and it was decided on 20.5.2002 and there is no reason coming forward from the State Respondent nor any record has been produced before us to show as to why the representation was not decided expeditiously as soon as it is received by the authority concerned. Under the aforesaid circumstances we hold that further detention of the Petitioner-Anamul Haque is illegal and consequence thereof we quash the detention orders passed on 18.4.2002 (Annexure-4) and 28.5.2002 (Annexure-8) and direct that the Petitioner shall be set at liberty immediately, if his detention is not required in any other pending case(s).

6. The petition stands disposed of.