

(1992) 11 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. (HC) 52 of 1992

Ashish Gupta

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 16-11-1992

Acts Referred:

Assam Police Manual — Rule 213 Part 5, 213 Part 5
Constitution of India, 1950 — Article 14, 14, 19, 19, 21, 21
National Security Act, 1980 — Section 4, 4

Citation : (1993) 1 GLJ 65

Hon'ble Judges : R.K.Manisana Singh, J and D.N.Baruah, J

Bench : Division Bench

Advocate : P.Pathak, G.Uzir, A.S.Bhattacharjee, A.R.Barthakur, S.N.Sharma, S.Mitra, Advocates appearing for Parties

Judgement

R.K. Manisana, J.—In this application under Article 226 of the Constitution of India, the petitioner has complained that Shri Ajit Kumar Bhuyan was handcuffed in violation of Articles 14, 19 and 21 of the Constitution while he was taken from Chandmari Police Station to Snbsidiary Jail at Missa on 6.3.92 in execution of the detention order made under the National Security Act by the Government of Assam on 5.3.92 directing that Shri Ajit Kumar Bhuyan be detained in the Subsidiary Jail at Missa with a view to preventing him from acting in any manner prejudicial to the security of the State and maintenance of public order. The respondents deny that Shri Bhuyan was handcuffed.

2. The question which arises for consideration is whether Sbri Ajit Kumar Bhuyan was handcuffed while he was sent from Chandmari Police Station to Subsidiary Jail at Missa

3. Normally, the High Court should make the enquiry directly. But, there are some cases where the High Court finds it difficult to make enquiry or investigation directly, difficulty in taking evidence without which the question cannot be satisfactorily decided, for example In this case, considering the facts

and circumstances of the case, under order dated 11.5.92 the Chief Judicial Magistrate, Guwahati was directed to make an enquiry into the question as to whether Shri Bhuyan was handcuffed while he was sent from Chandmari Police Station to Subsidiary Jail at Missa on 6.3.92. The enquiry report of the Chief Judicial Magistrate indicates that Shri Bhuyan was handcuffed while he was taken from the Police Station to Subsidiary Jail by bus. A copy of the report was furnished to the learned counsel for the parties and the respondents were asked to say their say. No objection came from the respondents side. It is, therefore, held that Shri Bhuyan was handcuffed when he was taken to Subsidiary Jail at Missa.

4. The next question which arises for consideration is whether handcuffs can be put on a person arrested under the National Security Act.

5. Under section 4 of the National Security Act, a detention order may be executed at any place in India in the manner provided for execution of warrant of arrest under the Code of Criminal Procedure, 1973. Rule 213 of the Assam Police Manual (Part V) provides, inter alia, that the Officer in charge of a Police Station or outpost or any other police officer despatching a prisoner is responsible that the latter is sent with an adequate escort and that if this is necessary to prevent escape or violence he is properly secured with serviceable handcuffs. Under clause (b) of the instruction incorporated in Rule 213, prisoners arrested by the police for transmission to a Magistrate or to the scene of enquiry and under trial prisoners should not be subjected to more restraint than is necessary to prevent their escape. The usual procedure, however, will be to handcuff prisoners under escort.

6. A reading of section 4 together with Rule 213, indicates that Rule 213 shall apply *mutatis mutandis* in the case of arrest of a person under a detention order under the National Security Act. Therefore, a person who is arrested under the National Security Act by the police for transmission to the place of detention is normally to be handcuffed. But, it is now wellsettled that, whether inside the prison or outside, a person shall not be deprived of his guaranteed freedom save by methods, "right, just and fair" (See *Meneka Gandhi's case*, AIR, 1978 SC 597). In *Sunil Batra vs. Delhi Administration*, AIR, 1980 SC 1479 : (1978) 4 SCC 494, a Constitution Bench of the Supreme Court has held that "the convicts are not wholly denuded of their fundamental rights prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed". In *Prem Shankar Shukla vs. Delhi Administration* AIR 1980 SC 1534 : (1980) 3 SCC 525, the Supreme Court observed : "To be consistent with Articles 14 and 19 handcuffs must be the last refuge as there are other ways for ensuring security. No prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort." In *Sunil Gupta vs. State of MP*, (1990) 3 SCC 119, the Supreme Court reiterated the principles laid down in *Sunil Batra's case* (supra) and held that handcuffing is an act against all norms of decency and amounts to violation of principle underlying Article 21.

7. What emerges out of or from the above decisions is that handcuffing to prevent escape from the custody or becoming violent is permissible and whether handcuffs or other restraint should be used is a matter of the authority responsible for his custody. Therefore, the "usual practice" to put handcuffs on prisoner under clause (b) of the Instruction under Rule 213 is bad in law.

8. In the above view of the matter, the respondents were to show that handcuffs were put on Shri Bhuyan to prevent escape from the custody or becoming violent. The respondents have failed to explain that handcuffing was required. Therefore, it is held that Shri Bhuyan was handcuffed in violation of Article 21 of the Constitution.

9. In *Rudul Sah vs. State of Bihar*, AIR 1983 SC 1086, the Supreme Court has held that the Supreme Court in the exercise of its jurisdiction under Article 32 can pass an order for payment of money in the nature of compensation for gross violation of the fundamental right under Article 21. The fact of that case was that the petitioner was kept in jail for more than 14 years after he was acquitted by the Court of Session Mirzapur, The principle laid down in *Rudul Sah* (supra) was followed in *Bhim Singh vs State of J & K*, AIR 1986 SC494. In that case, the petitioner Bhim Singh, who was an MLA, was detained in police lock up for four days without producing him before a Magistrate or any competent authority. The Supreme Court has held that it was a gross violation of Bhim Singh's constitutional right under Article 21 and 22 (2) of the Constitution, and that, in appropriate case, the Supreme Court has the jurisdiction to compensate the victim by awarding suitable monetary compensation.

10. In the above cited case, it has been laid down that, where there is gross or flagrant violation of the fundamental right, the Supreme Court has jurisdiction to award compensation in appropriate cases. It appears that the Supreme Court exercised its powers conferred on it by Article 142.

11. The questions then are, Whether the jurisdiction vested in the Supreme Court under Article 142 of the Constitution can be exercised by the High Court; whether similar order passed by the Supreme Court can be made by the High Court in a similar fact position; At this Stage, it will be helpful to refer to a decision of the Supreme Court in *State of Punjab vs. Surinder Kumar*, AIR 1992 SC 1593. In that case, the Supreme Court has held :

"A decision is available as a precedent only if it decides a question of law. The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary employee to be regularized his service without assigning reasons. It is therefore, futile to suggest that if the Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142 empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it" which authority the High Court does not

enjoy. The jurisdiction of the High Court while dealing with a writ petition, is circumscribed by the limitations discussed. It is declared by the judicial decisions, and it cannot transgress the limits "on the basis of whim or subjective sense of justice varying from Judge to Judge." (emphasis added)

In view of the above decision of the Supreme Court, if the Supreme Court passes an order in the context of a fact situation, the High Court can also pass similar orders in the context of similar fact situation. Therefore, in the present case, it is to be examined if there was gross or flagrant violation of the constitutional right of Shri Bhuyan though it has already been concluded that the handcuffing of Shri Bhuyan was in violation of Article 21 of the Constitution. In the course of the inquiry by the Chief Judicial Magistrate, statement of Officer incharge Shri Ganesh Dutta was recorded. His statement shows that Shri Bhuyan was in one of the rooms, of the Police Station and he was with Shri Bhuyan in that room. In the Police Station Shri Bhuyan was not handcuffed and he was made over to Shri JBD Goswami for taking him to Subsidiary Jail at Missa but he had not seen whether Shri Bhuyan was handcuffed. Therefore, we are not able to arrive at a correct conclusion as to where and under what circumstances Shri Bhuyan wore the handcuffs.

12. In more or less similar situation in *Sunil Gupta vs State of MP*, (1990)3SCC119(supra), the Supreme Court has held that "with regard to the prayer for claim for adequate compensation, we observe that it is open to the petitioners to take appropriate action against the erring official in accordance with the law, if they are so advised and that the Court in which claim is made can examine the claim not being influenced by the observations made in the judgment". That case also related to complaint of handcuffing.

13. In the above view of the matter, the writ petition is disposed of with an observation that it is open to the aggrieved party to take appropriate action against the erring official in accordance with law, if he is so advised and that the Court in which the claim is made can examine the claim untrammelled by the observations made by us. No costs.