
(2014) 04 GAU CK 0039
In the Gauhati High Court
Case No : WP (Crl.) No. 15 of 2013

Babu Konwar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Arms Act, 1959 — Section 25(1)(a), 25(a), 25(l)(a), 27
Constitution of India, 1950 — Article 21, 22, 22(2), 226
National Security Act, 1980 — Section 10, 12, 13, 3, 3(3)
Penal Code, 1860 (IPC) — Section 201, 302, 307, 34, 341

Citation : (2014) 3 GLD 357 : (2014) 2 GLT 379

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : P. Kataki, Mr. D.K. Bagchi and Mrs. R. Begum, Advocate for the Appellant; N. Upadhyay, GA and Mr. S. Chakraborty, CGC, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—Heard Mr. P. Kataki, learned Counsel for the petitioner, Mr. S. Chakraborty, learned Central Government Counsel and Mr. N. Upadhyay, learned Government Advocate, Assam. By way of this petition under article 226 of the Constitution of India, petitioner has challenged the legality of his detention under the National Security Act, 1980 vide the detention order dated 19.06.2013 passed by the District Magistrate, Sivasagar as well as the orders dated 26.06.2013 of the Secretary to the Government of Assam, Home and Political Department approving the detention order, 23.07.2013 passed by the same authority rejecting the representation submitted by the petitioner against his detention and the order dated 02.09.2013 also of the said authority confirming the detention of the petitioner and further directing his detention for a period of twelve months.

2. Case of the petitioner is that on 14.03.2012 he was arrested in connection with Amguri Police Station Case No. 131/2012 and since then he is in judicial

custody. According to the petitioner, when his bail was imminent, District Magistrate, Sivasagar passed an order on 19.06.2013 u/s 3(3) of the National Security Act, 1980 (Act) ordering detention of the petitioner for a period of three months in the first instance to prevent him from acting in a manner which is prejudicial to the security of the State, maintenance of public order, peace, sovereignty and integrity of the country. The District Magistrate forwarded the detention order, grounds of detention and "other documents" in respect of the petitioner to the Principal Secretary to the Government of Assam, Home and Political Department for necessary action by his forwarding letter of even date.

3. As per the grounds of detention, it was alleged that petitioner was involved in various crimes. Fifteen instances of such crime were mentioned. Out of those, it was stated that in seven cases in which petitioner was shown arrested, his involvement was well established. It was further stated that as per jail record, petitioner was in jail custody for varying periods starting from 25.02.2001. The detaining authority therefore recorded that it was established that the petitioner has become a hardcore criminal. After every arrest and release from detention, he has emerged stronger, maintaining links with NSCN of Nagaland and having access to sophisticated and prohibited arms for carrying out subversive activities against society and nation.

4. Petitioner submitted a representation dated 24.06.2013 to the District Magistrate through the Jail Superintendent, Sivasagar against the aforesaid detention order. Amongst other grounds, petitioner stated that he was not served with the "other documents" as mentioned in serial No. 3 of the enclosed documents in the letter dated 19.06.2013 of the District Magistrate which prevented him from making an effective representation.

5. Respondent No. 1 passed an order dated 26.06.2013 approving the detention order dated 19.06.2013 passed by the District Magistrate. By subsequent order dated 23.07.2013 passed by the said authority, the representation submitted by the petitioner was rejected.

6. Notwithstanding the above, petitioner submitted a fresh representation dated 14.08.2013 to the District Magistrate with copies to the State Government, Central Government and the Advisory Board. According to the petitioner, the Advisory Board after hearing the petitioner submitted a report dated 07.08.2013 to the State Government. Thereafter, respondent No. 1 in exercise of power conferred by Sub-section (1) of Section 12 of the Act confirmed the detention order of the petitioner and further directed that the petitioner be detained in the District Jail, Sivasagar for a period of twelve months w.e.f. the date of detention or until further orders.

7. Aggrieved, petitioner has filed the present writ petition seeking the reliefs as indicated above.

8. Contention of the petitioner is that there was no justification in detaining him in custody under preventive detention. Order of detention does not disclose

satisfaction of the detaining authority about the likelihood of the petitioner being released on bail consequent upon which he would indulge in activities prejudicial to the security of the state and maintenance of public order. "Other documents" as mentioned in the letter dated 19.06.2013 of the District Magistrate which admittedly were relied upon by the detaining authority were not furnished to the petitioner thereby preventing him from submitting an effective representation. Grounds of detention of the petitioner under the Act alongwith the representation of the petitioner were not placed before the Advisory Board within three weeks from the date of detention. There is thus violation of Section 10 of the Act which has vitiated the impugned order. Central Government also did not dispose of the representations of the petitioner dated 24.06.2013 and 14.08.2013.

9. This Court by order dated 11.12.2013 admitted the writ petition for hearing.

10. Central Government has filed an affidavit through Shri Ashish V. Gawai, Under Secretary, Ministry of Home Affairs, Government of India. It is stated that a copy of the representation dated 24.06.2013 of the petitioner was forwarded by the District Magistrate, Sivasagar vide letter dated 01.07.2013 but without parawise comments. It was received by the Home Ministry on 11.07.2013. Parawise comments were immediately called for. Giving details of the file movement, it is stated that the representation of the petitioner was placed before the Union Home Secretary on 30.07.2013, who on due consideration rejected the same on 31.07.2013. It was communicated to the petitioner and officials of the Assam Government by WT message as well as by post on 02.08.2013. It is contended that the petitioner has been detained with a view to prevent him from acting in a manner prejudicial to the security of the state and maintenance of public order. He is involved in criminal activities since 2001 having links with NSCN. Stand taken is that petitioner will continue to indulge in activities prejudicial to the defence of India, security of the state and maintenance of public order unless he is detained under the Act. Therefore, Central Government was of the view that there was no reason to interfere with the detention order.

11. An affidavit has been filed on behalf of respondent No. 2. On the allegation made by the petitioner that though he was served with a copy of the detention order and grounds of detention on 19.06.2013, the third set i.e. the "other documents" were not given to the petitioner, it is stated that the third set of documents consisted of confidential papers including case records which though related were not required by the detinue at that stage. Justifying detention of the petitioner under the Act, it is stated that the said order was passed by the District Magistrate on being fully satisfied with the dossier prepared and submitted by the Superintendent of Police, Sivasagar. Preventive detention of the petitioner has been justified in the greater interest of the society. Petitioner has access to illegal arms through his acquaintance with NSCN and indulges in illegal activities. To stop such activities of the petitioner, the detention order was passed.

12. Mr. P. Kataki, learned Counsel for the petitioner submits that respondents

have violated the personal liberty of the petitioner, which is the most cherished right of an individual under Articles 21 and 22 of the Constitution, by resorting to preventive detention. No grounds exist for such detention of the petitioner. Preventive detention cannot be a substitute for punitive detention. He also refers to various violations of the procedural safeguards to which the petitioner is entitled under the law thereby adversely impacting the order of detention. Since it is a case of preventive detention, strict adherence to the procedural requirements is a must. Any infraction of the procedural requirements would vitiate the order of detention. In this connection, learned Counsel has referred to non-furnishing of "other documents" to the petitioner as mentioned at Serial No. 3 of the letter dated 19.06.2013 and the delay in placing the relevant materials before the Advisory Board. Learned Counsel for the petitioner vehemently argues that preventive detention of the petitioner is wholly unauthorized and therefore should be quashed. He has placed reliance on two decisions of the Apex Court in *Yumman Ongbi Lembi Leima Vs. State of Manipur and Others*, and *Huidrom Konungjao Singh Vs. State of Manipur and Others*, .

13. Submissions made by learned Counsel for the petitioner have been strongly opposed by both learned Central Government Counsel as well as by the learned State Counsel. Referring to the respective affidavits filed, they have contended that respondents have complied with the procedure prescribed while proceeding with the preventive detention of the petitioner. They have asserted that procedural requirements have been fulfilled and the detaining authority as well as the other authorities under the Act were fully satisfied about the need and necessity to keep the petitioner in preventive detention under the Act. Representation of the petitioner was duly considered by the State Government as well as by the Central Government with reasonable promptitude. They therefore seek dismissal of the writ petition.

14. Submissions made have been considered. I have also perused the documents placed on record.

15. The Act was enacted by the Indian Parliament to provide for preventive detention in certain cases and for matters connected therewith. Section 3 empowers the Central or the State Government to make orders for detaining certain persons with a view to pre-venting them from acting in any manner prejudicial to the defence of India, India's foreign relations and security of India [Sub-section (1)] or with a view to preventing him from acting in any manner prejudicial to the security of the state or to the maintenance of public order [Sub-section (2)]. Under Subsection (3) of Section 3 of the Act, a District Magistrate or a Commissioner of Police, who has been authorized by the State Government, may also exercise the powers conferred by Sub-section (2). The initial detention period shall not exceed three months. After an order is passed under Sub-section (3), the officer concerned shall forthwith forward the order of detention together with the grounds of detention and such other particulars having a bearing on the matter to the State Government, which is required to approve the same within

twelve days. The State Government in turn shall report to the Central Government within seven days after approval is granted. Section 9 of the Act provides for constitution of Advisory Board and u/s 10, in every case of detention, the grounds of detention and the representation of the detainee against such detention are required to be placed before the Advisory Board within three weeks from the date of detention. The Advisory Board on due consideration and after hearing the detainee, shall submit its report to the appropriate Government. As per Section 12, the appropriate Government shall act upon the report of the Advisory Board. If the Advisory Board has reported that there is sufficient cause for the detention, the appropriate Government may confirm such detention and continue with the detention for such period as it thinks fit. If as per report of the Advisory Board there is no sufficient cause for the detention, the appropriate Government shall revoke the same and release the detainee forthwith. u/s 13, the maximum period for which any person may be detained in pursuance of any detention order which has been confirmed u/s. 12 shall be twelve months from the date of detention.

16. As is well known, nature of preventive detention is qualitatively different from detention under the normal criminal laws. The objective of preventive detention is not to punish a person for something he has done but to prevent him from doing it. As pointed out by the Apex Court in the case of Union of India (UOI) Vs. Yumnam Anand M. @ Bocha @ Kora @ Suraj and Another, , in case of preventive detention, no offence is proved nor any charge is formulated. The justification for such detention is suspicion or reasonability. There is no criminal conviction which can only be warranted by legal evidence. Preventive detention requires an action to be taken to prevent apprehended objectionable activities. But since a person's personal liberty is deprived, the laws of preventive detention are strictly construed and a meticulous compliance with the procedural safeguards, howsoever technical, is mandatory.

17. In the case of Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another, , the Hon'ble Supreme Court held that if the ordinary laws of the land i.e. the Penal Code and other penal statutes can deal with a situation, recourse to preventive detention law will be illegal.

18. In Yumman Ongbi Lembi Leima (supra), the Hon'ble Supreme Court after reiterating the principles governing preventive detention cautioned that due care and caution must be taken before resorting to preventive detention since personal liberty of an individual, which is most sacrosanct, is concerned as preventive detention is an exception to Articles 21 and 22(2) of the Constitution of India. It has been held that an individual incident of an offence under the Penal Code, howsoever heinous it may be, would be insufficient to make out a case for issuance of an order of preventive detention.

19. The Apex Court in Huidrom Konungjao Singh (supra) while restating the law that a person who is already in jail can be detained under the preventive detention law provided the grounds of detention show that the detaining

authority was aware of the fact that the detainee was already in detention and that there were compelling reasons justifying preventive detention despite the fact that the detainee was already in detention. Compelling reasons would mean that there must be cogent material before the detaining authority on the basis of which satisfaction may be arrived at that (a) the detainee is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detainee it is likely that after his release from custody he would indulge in prejudicial activities of similar nature and therefore it is necessary to detain him in order to prevent him from engaging in such activities.

20. Having broadly noticed the contours of the law relating to preventive detention, the detention order and the grounds of detention may now be adverted to. The impugned order of detention dated 19.06.2013 and the grounds to detention read as under:-

ORDER UNDER NATIONAL SECURITY ACT, 1980

Whereas sufficient materials against the accused Shri Bubu Konwar @ Dilip @ Binod @ Rajib, S/o Shri Luhit Konwar, R/o Ratanpuria Village, PS- Amguri District- Sivasagar have been presented before me.

Whereas the dossier submitted by the Superintendent of Police, Sivasagar vide his letter No. DSB/SVR/12/3567 dated 26.12.2012 adequately provides information about the said accused on his involvement in various anti national activities.

And whereas from all these evidences, material/ingredient so far available, I am convinced and satisfied that Shri Bubu Konwar @ Dilip @ Binod @ Rajib, the detenu is an active and hard core anti national element and he has been involved in frequent use of illegal fire arms, so his detention is essential for the maintenance of peace, tranquility, security of public life and property and sovereignty of the country.

Therefore, on the above stated ground I, Shri J. Lahkar, ACS, District Magistrate, Sivasagar in exercise of power conferred upon me under 3(3) of NSA, 1980 do hereby order for detention of Shri Bubu Konwar @ Dilip @ Binod @ Rajib for a period of 3 (three) months at first instance to prevent him from acting in a manner which is pre-judicial to the security of the state, maintenance of public order, peace, sovereignty and integrity of the country.

It is also ordered that the Superintendent of District Jail, Sivasagar shall keep the accused in jail custody until further orders from this end or from the competent authority under NSA, 1980.

Since it is a case of very urgent and important nature from the point of national security and public interest, the order is passed ex-parte and the affected person will be at liberty to file representation before Central Govt./State Govt./Advisory Board of NSA.

The case record along with this order of detention and grounds of detention be forwarded to the State Govt. for examination and necessary action as required under the provision of NSA, 1980 as amended.

Given under my hand and seal of this 19th day of June, 2013.

(J. Lahkar, ACS), District Magistrate, Sivasagar

Grounds of detention of Sri Bubu Konwar under NSA for involvement in unlawful activities.

(1) You, Sri Bubu Konwer, S/o Sri Lohit Konwer, R/o Ratanpuria Village, PS-Amguri, District- Sivasagar were involved in various crimes. Before appearing in HSLC Examination, you tried to make one bomb for subversive activities and that bomb exploded in your hand as a result you lost your two fingers of left hand.

(2) On 05.06.2009 at about 11:45 PM you and your associates entered the house of Dr. Syed Atiqul Haque by breaking doors and assaulted house members and snatched away the valuable properties, gold and cash rupees and then fled away. This refers Amguri PS Case No. 30/2000 u/s 395/397 IPC.

(3) On 17.02.2001 at 4:45 PM you were apprehended by Army with Pistol magazine, live rounds of ammunitions and grenade in your possession during checking by army in a train at Amguri Railway Station. This refers Simaluguri GRP Police Station Case No. 01/2001 u/s 25(I)(a) Arms Act R/W Sec. 5 ES Act, R/W Sec. 10/13 UA(P) Act.

(4) On 18.01.2002 you and your associates entered the house of Sri Suren Khanikar of Tepor Gaon and snatched one Maruti vehicle and cash Rs. 2,000/- and other properties. You sold the vehicle in Nagaland and then you were arrested by Gaurisagar Police and identified by the complainant. This refers Gaurisagar PS Case No. 12/02 u/s 392 IPC.

(5) On 09.02.2002 you snatched way one Maruti 800 car at gun point from Bipin Chandra Borkakoty of Jhanji Gormur from his house. In this case you were convicted for 2 years RI as per order by CJM, Sivasagar dated 17.04.2004. This refers Gaurisagar PS Case No. 17/2002 u/s 392 IPC.

(6) On 27.03.2002, you and your three associates hired a Maruti van vehicle from Maligaon, Guwahati and proceeded towards Hajo. On the way, you snatched the Maruti van from the driver at gun point. As the driver shouted, local public chased you. You and your associates fired towards public and tried to flee but you were caught by the public with a pistol in hand. This refers Hajo PS Case No. 66/02 u/s 393/307/34 IPC, R/W Sec. 25(1)(a)/27 Arms Act.

(7) On 17.04.2006 you and your associates snatched away one Maruti 800 car at gun point from the house of complainant Shri Prasanta Khanikar of Gaursigar after that you sold the vehicle to one Naga Person at Rs. 60,000/-. This refers Gaurisagar PS Case No. 45/2006 u/s 395 IPC.

(8) In the year 2008, you with your associates killed one Sri Hemanta Boruah at his residence in village Natun Lunpuria Gaon under Halwating Police Station using pistol on 29.07.2008 for a sum of Rs. 2,00,000/-. In this case you were used as a professional killer by the conspirator and you were apprehended at Dimapur, Nagaland by Sivasagar and Nagaland police jointly on 17.01.2009. This refers Halwating PS Case No. 26/2008 u/s 302/34 IPC R/W Sec. 25(1)(a) Arms Act.

(9) Again in the month of July, 2010, you were involved in the murder of one Sri Prasanta Baruah of Betbari, Sivasagar using fire arms, This refers Sivasagar PS Case No. 393/10 u/s 302 IPC R/W Sec. 25(1)(a) Arms Act.

(10) You and your associates wrongfully restrained the complainant Sri Hemanta Gogoi of Namti Bangali Gaon under Halwating Police Station and fired upon him with a pistol but luckily he could survive the attack. This refers Halwating PS Case No. 49/10 u/s 341/307/34 IPC R/W Sec. 25(1)(a)/27 Arms Act.

(11) You along with your associates killed one driver and stole his car. The dead body of the driver was found at Gaurisagar. This refers Dulijan PS Case No. 237/11 u/s 302/201/379 IPC.

(12) You and your six associates kidnapped one Sri Anil Jain at gun point from Cherekapar, Sivasagar and took him to Tuli, Nagaland. In this case you used the Arms and ammunitions belonging to the NSCN outfit and also took the assistance of NSCN during shelter in Nagaland. In this case, you were in intention to cause inter-state communal conflict between two states. This refers Sivasagar PS Case No. 458/11 u/s 387/365/34 IPC, CS No. 288 dated 22/11/11 u/s 387/365/34 IPC.

(13) On 05.03.2012, you and your associates lifted a car but you left the car as the owner chased you. You also fired upon the owner of the vehicle before leaving the car. This refers Sivasagar PS Case No. 128/12 u/s 379 IPC R/W Sec. 27 Arms Act.

(14) You and your associates kidnapped one Kailash Ginoria of Jorhat at gun point for ransom and brought him to Nagaland where he was killed by you. The weapons used for killing were recovered on being led by you. Here also you took assistance for NSCN outfit in the form of supplying arms and ammunitions, grenades and also shelter. This refers Jorhat PS Case No. 233/12 u/s 365/387/3021 IPC R/W Sec. 25(1)(a)/27 Arms Act.

(15) You and your associates also stole Govt. vehicle (Bolero) belonging to Circle Officer, Amguri from his rented house, then brought to Nagaland and sold there. This refers Amguri PS Case No. 131/2011 u/s 379 IPC.

In this regard you were shown arrested in different cases for involvement into those cases which were well established.

(1) Amguri Police Station Case No. 30/2000 u/s 395/397 IPC

(2) Simaluguri GRP Police Station Case No. 01/2001 U/S. 25(1)(a) Arms Act R/W

Sec. 5 ES Act, R/W Sec. 10/13 UA(P)Act.

(3) Gaurisagar Police Station Case No. 12/2002 u/s 392 IPC and 17/2002 U/S. 392 and 45/2006 u/s 395 IPC.

(4) Hajo Police Station Case No. 66/02 u/s 393/307/34 IPC R/W Section 25(1)(a)/27 Arms Act.

(5) Halwating Police Station Case No. 26/2008 u/s 302/34 IPC R/W Sec. 25(1)(a) Arms Act.

(6) Sivasagar Police Station Case No. 458/2011 u/s 387/365/34 IPC.

(7) Jorhat Police Station Case No. 233/12 u/s 365/387/302 IPC R/W Sec. 25(a)/27 Arms Act.

As per jail records you were in Jail Custody for the periods as follows:-

(1) w.e.f. 25.02.2001 to 28.05.2001 (As UTP)

(2) w.e.f. 21.04.2002 to 24.12.2005 (including 3 years RI)

(3) w.e.f. 02.07.2006 to 12.01.2008 (As UTP)

(4) w.e.f. 28.01.2009 to 11.06.2009 (As UTP)

(5) w.e.f. 11.12.2010 to 15.05.2011 (As UTP)

(6) w.e.f. 01.04.2012 to till date (As UTP)

It is established from the above referred facts that you have become more and more hardcore criminal after your every arrest and subsequent release from jail, you find new associates in the jail and becomes more stronger. You have kept several prohibited Arms with you, and also maintains active links with NSCN in Nagaland and thus you have got easy access to sophisticated Arms for carrying out subversive activities against society and nation,

Sd/- illegible District Magistrate, Sivasagar.

21. A perusal of the impugned order and the grounds of detention does not indicate that the detaining authority had arrived at or recorded any subjective satisfaction that he was fully aware of the fact that the petitioner was actually in custody or that there was real possibility of his release on bail or acquittal and further that on being so released he would probably indulge in similar activities which are prejudicial to public order and thus to prevent him from indulging in such prejudicial activities, detention order was necessary. In the absence of such satisfaction recorded by the detaining authority, the impugned order of detention cannot be sustained.

22. Moreover, from the grounds of detention, it is seen that though fifteen instances of alleged criminal conduct of the petitioner have been mentioned, according to the detaining authority, his involvement in seven cases were well

established. These seven cases were registered in the years 2000, 2001, 2002, 2008, 2011 and 2012. As already noticed, the detention order is dated 19.06.2013. The alleged involvement of the petitioner in those cases are not proximate in point of time to justify formation of any reasonable satisfaction that on his release from custody, he would again indulge in such prejudicial activities. As has been held by the Apex Court, individual criminal acts howsoever grave those may be would be insufficient to make out a case for issuance of an order of preventive detention.

23. Having regard to the discussions made above, Court is of the view that the impugned order of detention dated 19.06.2013, as approved, confirmed and enhanced by the State Government, cannot be sustained.

24. Since the detention order is being interfered with on the above ground, it is considered not necessary to deliberate upon the other grounds urged by the learned Counsel for the petitioner. Writ petition is accordingly allowed. The impugned order of detention dated 19.06.2013 passed by the District Magistrate, Sivasagar in regard to the detention of the petitioner Sri Babu Konwar @ Dilip @ Vinod @ Rajib is hereby quashed. Let the petitioner be released from custody forthwith, if he is not required in connection with any other case.