
(1984) 09 GAU CK 0008
In the Gauhati High Court

Duni Rava

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 21-09-1984

Acts Referred:

National Security Act, 1980 — Section 10, 3
Penal Code, 1860 (IPC) — Section 395, 397

Citation : (1986) CriLJ 89

Hon'ble Judges : T.C. Das, J;K. Lahiri, J

Bench : Division Bench

Judgement

K. Lahiri, J.—By this habeas corpus application the petitioner questions the validity of his detention under the National Security Act, 1980, for short "the Act".

2. The relevant facts are that on 8-3-84 when the petitioner was about to be released on bail pursuant to an order granting him bail in a criminal case, he was served with the order of detention dt. Aug. 10, 1983, passed by the State Government u/s 3(2) of "the Act". The order is extracted below:

Government of Assam Political (A) Department No. PLA. 910/83/5 Dt. Dispur, the 10th Aug. 1983.

ORDERS BY THE GOVERNOR OF ASSAM.

Whereas Government of Assam are satisfied with respect of the person known as Shri Juni Rava @ Duni Rava S/o. Late Dhani Rava, village Jamuguri P.S. Kalaigaon that with a view to preventing him from acting in a manner prejudicial to the security of the State and maintenance of public order it is necessary to detain him under the National Security Act, 1980 and to make the following order.

Now, therefore, in exercise of the powers conferred by Sub-section (2) of Section 3 of the National Security Act, 1980 the Government of Assam direct that the said Shri Juni Rava alias Duni Rava S/o. late Dhani Rava be detained in the District Jail, Gauhati.

By order etc. Sd/- Illegible, Deputy Secretary to the Govt. of Assam, Political Department, Dispur.

The petitioner was immediately served with the grounds of detention, which we extract below:

Grounds of Detention in Respect of Shri Juni Rava @ Duni Ram Rava Son of Late Dhani Rava, Village Jamuguri P.S. Kalaigaon.

You Shri Juni Rava @ Duni Ram Rava, are a supporter of the present agitation cut foreigners issue.

You along with S/Shri Motilal Boro, Phanidhar Nath, Kiron Sarma, Hemo Saikia, Lila Saikia, Khagen Katakya, Mina Saikia, Mukunda Saikia took part in several meetings held during 1st part of July '83 at the initiative of Hari Charan Sarma and Apurba Bhattacharjee in their houses. In course of these meetings the above mentioned persons including yourself formed an underground caucus and decided to recruit selected volunteers from different places of Mangaldoi, Darrang and Kamrup districts to begin with and then to spread the network to other parts of Assam in order to build up an underground resistance movement through armed action against the present Govt. which you all termed as illegal. Hav. Hari Charan Sarma assured that with his commando background he would convert the group into a determined and efficient guerilla band. For this Shri Apurba Bhattacharjee said that two things were immediately necessary viz. large fund and arms/ammunitions as well as explosives. He undertook to give training in preparation and handling of explosives and Hari Charan Sarma shouldered to give training in handling of arms and in guerilla tactics. Shri Khagen Katakya suggested that arms/explosives could be procured from Zhunoboto in Nagaland through Naga rebels and he undertook to visit the area as he was familiar with the said area.

During these meetings you all decided to loot some banks as well as some rich people particularly those, who were opposed to the present agitation on foreigners issue in the State. It was further decided that after procurement of big fund through dacoity, you along with your associates would plan guerilla type attack on selected minority areas in Khoirabari, Kalaigaon, Sipajhar etc. areas.

You along with your associates named above decided to loot the United Commercial Bank at Bezera on 14-7-83 and accordingly you along with S/Shri Hari Charan Sarma, Apurba Bhattacharjee, Motilal Boro, Phanidhar Nath and others hired a taxi No. ASC 4847 driven by Illias Ali under false pretext and proceeded to Bezera on 14-7-83 afternoon and at about 4 P.M. you all committed dacoity at the United Commercial Bank at Bezera being armed with stengun, bombs, revolver, grenades etc. and looted Rs. 41,000/- from that Bank,. During retreat the Bank employees raised alarm and the local public intercepted the gang including yourself. On receipt of information police rushed to the spot and arrested the above persons including yourself. This refers to Karnalpur P. S. Case No. 151/83 u/s 395/397 I. P.C.

Your activities as stated above are considered prejudicial and your remaining at large has posed a direct threat to the security of the State and maintenance of public order.

You have the right to represent before the State Government against the order of detention.

Sd/- Illegible, Deputy Secretary to the Govt. of Assam, Political (A) Department".

3. The grounds of detention spell out that the petitioner was a party to form an underground caucus and decided to recruit volunteers for building up an underground resistance movement through armed actions against the Government. He contacted a person with commando background to build "a guerilla band" and decided to procure large fund, arms and ammunition, to achieve the objectives. To procure fund and arms they resolved to loot banks etc. The petitioner and others armed with stengun, bombs, grenades etc. looted a bank but he was apprehended by some local people and arrested by the police. The case was registered as Kamalpur P. S. Case No. 151 of 1983 for short "Kamalpur Case". The detaining authority considered the activities to be prejudicial and his remaining at large posed a direct threat to the security of the State and maintenance of public order, and, accordingly rendered the order.

4. Although a number of grounds had been taken in the writ petition Mr. A.K. Bhattacharya, learned Counsel for the petitioner raised two contentions. The first contention is that the representations made by the petitioner were not considered by the Governments. Secondly, it has been contended that the order of detention was rendered by the detaining authority without keeping in view that the subject was already detained in jail. The detention order was made without considering whether the detention order was still necessary although the petitioner was in jail in connection with a Criminal Case. In short, the contention is that the subjective satisfaction of the detaining authority as to necessity of the detention was reached without the awareness of the relevant fact that the petitioner had been in jail in connection with the criminal case.

5. Apart from the contentions raised we have ourselves considered as to whether the detaining authority had jurisdiction to make the order and whether any of the safeguards in Arts. 21 and 22 of the Constitution read with the safeguards provided under "the Act" was breached or not. We find that the State Government, the detaining authority, has had the jurisdiction to make the order of detention. We have considered the grounds of detention and find that they are neither vague nor irrelevant nor stale. We find that the grounds of detention were communicated to the petitioner simultaneously with the service of the order of detention. The petitioner was afforded opportunity to make the representations. The grounds are full, compact, clear and explicit.

6. Now, let us turn to the first contention of the petitioner. The petitioner sent two representations dt. 15-3-84 to the State Government, one addressed to the Government of Assam and the other addressed to the Central Government. On

receipt of the representation the State Government by its order dt. 29-3-84 considered and rejected it. The representation addressed to the Central Government but received by the State Government was duly sent to the Ministry of Home Affairs on 20-3-1984. On receipt thereof the Home Ministry called for further information. On receipt of further information, the Central Government considered the representation of the detenu but could not accede his prayer to revoke the order of detention. By their letter dt. 3-4-84, Central Government directly communicated their decision to the petitioner in jail and sent copies thereof to the Chief Secretary, Government of Assam and the Superintendent of District Jail, Gauhati. These assertions as to the disposal of the representations have been made in para 3 of the affidavit-in-opposition filed by the State Government. The case of the detenu was referred to the Advisory Board within 21 days from the date of detention as required u/s 10 of "the Act". The order of detention was confirmed by the State Government after the Advisory Board had reported that there was sufficient cause for detention of the petitioner. We are satisfied from the records made available to us that the Central Government as well as the State Government have considered and expeditiously disposed the representations made by the petitioner. As such, the first contention fails.

7. Now, let us consider the second contention of learned Counsel for the petitioner. The contention is that the preventive order was made against the petitioner whilst he was in jail in connection with "Kamalpur Case". It has been contended that the order of detention was bad as the detaining authority was never aware that the petitioner was already in jail, and, as such, the detaining authority had no occasion to consider the necessity of making the preventive detention order against the petitioner. In absence of the awareness and/or any compelling necessity to make the order of detention the impugned order was invalid and in support of the contention learned Counsel for the petitioner has relied on *Rameshwar Shaw Vs. District Magistrate, Burdwan* and *Another*, : *Makhan Singh Tarsikka Vs. The State of Punjab*, ; *Vijay Kumar Vs. State of Jammu and Kashmir and Others*, ; *Biru Mahato Vs. District Magistrate Dhanbad*, ; *Merugu Satyanarayana Vs. State of Andhra Pradesh and Others*, *Devi Lal Mahto Vs. State of Bihar and Another*,

8. Lack of awareness is a challenge questioning the jurisdiction of the detaining authority to make an order u/s 3 of "the Act". There is no wrangle that the detaining authority is competent to make an order of detention u/s 3 of "the Act" only upon satisfaction of the twin elements, both touching "satisfaction", contained in Section 3 of "the Act". First, the detaining authority must be satisfied from the materials available to him that the person is required to be prevented from acting in a manner prejudicial to the security of State etc. This branch of satisfaction relates to the character and quality of the materials on the basis of which the detaining authority is satisfied that a person is a potent danger to the security of the State etc. Thereafter, the detaining authority has also to consider whether it is likely that the person would act in a prejudicial manner in future if he is not prevented from doing so by an order of detention.

Section 3 of "the Act" postulates that the detaining authority must be satisfied that if the person is not detained then he would act in a prejudicial manner in future. Ordinarily, it postulates existence of "freedom of action" of the person, at the relevant time when the order of detention is made. It is thus seen that the satisfaction that it is necessary to detain a person for the purpose of preventing him to act in a prejudicial manner is the basis of an order u/s 3 of "the Act".

It has been contended that neither in the order of detention nor in the return submitted by the detaining authority, there is any indication that the detaining authority was aware of the fact that the detenu was in jail and/or the detaining authority ever satisfied itself that it was necessary to detain the petitioner u/s 3 of "the Act" in spite of his detention in jail in connection with the criminal case. Admittedly, the petitioner was not a "free man" who could have indulged in prejudicial activities, because he was detained in jail custody. As such, it has been contended that there was no necessity of making the detention order on Aug. 10, 1983. Indeed, the order of detention does not indicate that the authority had knowledge that the detenu was in jail. Mr. Bhattacharya, learned Counsel for the petitioner had urged that when there is no indication in the order of detention that the detenu was in jail at the time of making the order, it reinforces that the detaining authority had no knowledge about his detention in jail, and, therefore, the detaining authority had no occasion to satisfy itself as to the necessity of making the detention order against a locked up prisoner. As such, the detaining authority had no jurisdiction to make the order u/s 3 of "the Act". The detaining authority, it is submitted, assumed that the subject was a free man and as such it had no occasion to consider the necessity of order of detention.

9. Where a preventive detention order becomes necessitous in respect of a person confined in jail the detaining authority must show its awareness of the fact that the person in respect of whom the detention order is being made is already in jail and yet the detention order is a compelling necessity. There is no manner of doubt that the awareness must be of the fact that the person against whom the detention order is being made is in jail in respect of some offence or for some reason. It would show that such a person is required to be prevented by the detention order. This awareness must find place either in the order of detention or in the affidavit filed by the detaining authority justifying the detention order when challenged. This is the law laid down by the Supreme Court in *Biru Mahato Vs. District Magistrate Dhanbad*, ; *Merugu Satyanarayana Vs. State of Andhra Pradesh and Others*, ; *Devi Lal Mahto Vs. State of Bihar and Another*, relied on by learned Counsel for the petitioner. As such, the awareness must appear in the order of detention or in the affidavit justifying the detention order, when challenged on the ground of lack of awareness.

In the instant case lack of awareness has been challenged by the petitioner. In the affidavit-in-opposition by the Joint Secretary, Government of Assam, Political Department, the allegations have been stoutly denied by the officer, who apart

from making the affidavit has caused the relevant record to be produced before us. It has been categorically stated in para 20 of the affidavit-in-opposition that there was a possibility of the detenu being enlarged on bail so the order of detention was made on 10-8-83 as his remaining at large was considered a direct threat to the security of the State and maintenance of public order. In para 30 of the affidavit-in-opposition it has been stated that the State Government was aware of the possibility of the detenu's release on bail and the detention order had been issued to enable the authority to execute the order as soon as the detenu was released on bail for preventing him from indulging in the prejudicial activities. Further, the history sheet, on the basis of which the detention order was made, clearly reflects that the detaining authority was informed that the subject was arrested in connection with the criminal case and the detaining authority was further informed that the detenu's remaining at large posed a direct threat to the security of the State and maintenance of public order. Further, the grounds of detention prepared on Aug. 10, 1983 show that the detaining authority was aware that the detenu was arrested in connection with "Kamalpur case". It is also stated in the grounds of detention that the detaining authority considered the detenu's remaining at large would pose a direct threat to the security of the State and maintenance of public order. This is another contemporaneous document. Further, Annexure-I to the affidavit-in-opposition shows that the detention order was not executed until the detenu was enlarged on bail by the Magistrate. It supports that the detaining authority having had the knowledge that the detenu was in jail in connection with the criminal case caused the order executed only after the release of the detenu and not -when the detenu was undergoing imprisonment. However, for the present we leave aside the contemporaneous documents but focus attention to affidavit-in-opposition.

The detaining authority has asserted in the affidavit that it was aware that the detenu was in jail in connection with the criminal case and yet the detention order had to be made to prevent the detenu from indulging in the prejudicial activities jeopardising the security of the State and maintenance of public order. We cannot expect that any responsible authority could have remained inactive in the face of grave allegations contained in the grounds of detention. When the security of the State was endangered, it was but natural for the detaining authority to make an order of detention forthwith, notwithstanding the detention of the petitioner in jail. Bail is the order of the day and detention in jail is an exception. Under these circumstances, we hold that the detaining authority was justified in making the detention order apprehending the likely release of the prisoner on bail. It has been rightly contended by Mr. B.C. Das, learned Government Advocate that the detaining authority, in view of the gravity of the allegations rightly did not take any risk and in public interest prepared the order of detention, kept it ready for service after release of the prisoner on bail. It has been rightly contended by learned Government Advocate that if the authority would have waited for the release of the detenu on bail and then made an order

of detention, issued it for service, there was every possibility of whisking away the prisoner from the jail gate, in view of the allegations made against him in the grounds of detention. The detaining authority, it has been rightly contended, performed a public duty and in public interest made the order, kept it ready without taking any chance to prepare it only after the release of the detenu on bail. It would have given every chance to the detenu to foil the order by going underground. The contention has strong force.

10. For the foregoing reasons we hold that the making of the detention order during the pendency of the prosecution did not vitiate the order for the reasons alluded. We cannot hold, under the facts and circumstances of the case that it was unnecessary to make the order of detention ready for service. The detaining authority had a hunch that the subject might be released on bail at any moment cut and run the order and, therefore, the order of detention was prepared and kept ready for service no sooner bail was granted to the prisoner. This apart the contemporaneous documents namely, the history sheet and grounds of detention clearly indicate that the authority had known that the detenu was in custody and yet the order had to be rendered to secure the security of the State and maintenance of public order. The history sheet clearly reflects that the detenu was apprehended by the local people and later police arrested him in connection with "Kamalpur case". As such, the arrest of the accused in connection with the case was brought to the notice of the detaining authority. Further, the officer recording the history sheet informed the detaining authority that in view of the allegations against the petitioner it was necessary to detain him for preventing him from indulging in these prejudicial activities jeopardising the security of the State and maintenance of public order. The grounds of detention also show that the detaining authority was aware about the arrest of the petitioner in connection with "Kamalpur case". It is also stated therein that considering the prejudicial activities the detaining authority concluded that his remaining at large would pose a direct threat to the security of the State and maintenance of public order. As such, from the contemporaneous documents it is revealed that the detaining authority was aware that the detenu was in jail and yet the order was necessary in view of the quality and character of the grave allegations.

Learned Counsel for the petitioner submits that the contemporaneous documents cannot be taken into consideration to justify the making of the order. The awareness of the detaining authority, according to the learned Counsel, cannot be judged from the contemporaneous documents. We are of the view that the facts and circumstances of the case and documents at the disposal of the detaining authority may be considered to judge whether the order of detention was rendered by the detaining authority being aware of the fact that the detenu was in jail yet it was necessary to make the order of detention. We find from *Merugu Satyanarayana Vs. State of Andhra Pradesh and Others*, a decision relied on by learned Counsel for the petitioner, the Supreme Court deprecated non-production of the records in Court at the hearing of the petition; What for? It shows the record, if made available to the court, is a relevant source to judge

whether the detaining authority had the requisite awareness. Further in *Merugu* (supra) the Supreme Court observed as follows:

And the Sub-Inspector of Police does not say how he came to know about the subjective satisfaction of the District Magistrate. He does not say that he had access to the file or he is making the affidavit on the basis of the record maintained by the District Magistrate.

(Emphasis supplied)

The detaining authority did not file the affidavit but the statements were made by a Sub-Inspector of Police in an affidavit. Under this circumstance their Lordships observed that in the affidavit there was no mention that he had access to the file and he made the affidavit on the basis of the record maintained by the District Magistrate. As such, it appears that if an affidavit is filed by a person other than the detaining authority, awareness may be established from the record. It shows that the court can look into the record in justification of the assertions that the detaining authority was aware of the relevant factors. If the contemporaneous documents go to show that the detaining authority was aware of the relevant facts, the awareness can be established even on the basis of the record. As such, we are of the view that the contemporaneous documents can be made use of to establish the existence of the awareness in the mind of the detaining authority. If the documents show that the detaining authority was aware that the detenu had been in jail and yet the order was necessary, it is sufficient to establish the requisite awareness in the mind of the detaining authority. In the instant case it cannot be said, on the facts and the circumstance of the case, that there was no necessity of making the order in view of the quality and character of the allegations. Rather, there was urgent necessity of making the order of detention. In *Biru Mahato Vs. District Magistrate Dhanbad*, the successor in office of the District Magistrate who had passed the order of detention filed affidavit, asserted that the detaining authority, the predecessor, had the requisite awareness. How could the successor-in-office of the detaining authority assert that his predecessor had the requisite knowledge or awareness? The deponent did not say a word that he gathered it from the record. Under the circumstances their Lordships, while rejecting the affidavit of the successor-in-office, observed:

But when the subjective satisfaction of holder of office is put in issue the mere occupant of office cannot arrogate to substitute his subjective satisfaction. He may speak from the record but that is not the case here.

(Emphasis supplied)

As such, even the successor-in-office of the detaining authority can assert in the affidavit that his predecessor was aware of the relevant material and say that he gathered it from the record at his disposal and the record could be looked into by the Court and acted upon. As such, the contemporaneous documents at the disposal of the detaining authority are relevant materials to establish the

existence of awareness. In *Makhan Singh Vs. State of Punjab* (and connected appeals), their Lordships observed (in paragraph 16) as follows:

Even though the appellant was in jail custody, it is not unlikely that he could have applied for bail and might have obtained an order of bail, and bearing that contingency in mind, the appropriate authority would be justified in making an order of detention against the appellant, provided of course, the authority waited for the service of the order after the appellant was released on bail....Whether or not the said making of the order is valid in a particular case may have to be determined in the light of the relevant and material facts.

As such, the relevant and material fact of a particular case is also relevant to adjudge the necessity of making the order of detention. As alluded, the allegations were grave and in the light of relevant and material fact disclosed in the grounds. It cannot be said that the making of the order was not necessary only because the petitioner was in jail. Even though, the detenu is in jail, an order can be validly made if the detaining authority on apprehension is "satisfied that he could apply for bail and might obtain an order for bail. Upon making the order of detention, if the execution of the said order is kept in abeyance, and, it is served on the detenu after he is released on bail, it would be a valid order as ruled in *Makhan Singh* (supra). In the instant case, it is clear that the order of detention was made when the detenu was in jail. However, it was kept in abeyance until he was released on bail. It shows that the detaining authority waited for the release of the detenu on bail and then caused it to be served on him. Under these circumstances, on the authority of *Makhan Singh* (supra) the order must be held to be valid and justified. In *Makhan Singh* (supra) it has been further observed as follows:

Besides, when a person is in jail custody and Criminal proceedings are pending against him, the appropriate authority may, in a given case take the view that the criminal proceedings may end very soon and may terminate in his acquittal. In such a case, it would be open to the appropriate authority to make an order of detention, if the requisite conditions of the rule or the section are satisfied, and serve it on the person concerned if and after he is acquitted in the said criminal proceedings.

In the instant case the very fact that an order of detention was caused to be served on the detenu after he obtained the order of bail shows that the detaining authority was aware about the arrest and detention of the petitioner in jail and it was a valid order because it was served after the detenu was ordered to be released on bail. This conduct of the detaining authority is enough to hold that the authority was aware of the requisite facts and the necessity of making the order of detention although the detenu was in jail. In *Rameshwar Shaw Vs. District Magistrate, Burdwan and Another*, their Lordships did not hold that an order rendered against a detenu whilst he was in jail was invalid. Their Lordships left the question open by making the following observations:

Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.

11. Under these circumstances, we are constrained to hold on the facts and circumstances of the case, that the necessity of making the order of detention has been established from the material facts emanating from the grounds of detention and contemporaneous documents placed at our disposal, which were before the detaining authority when it made the order of detention. Further, the very fact that the order was caused to be executed only after the detenu was released on bail in the criminal prosecution shows that the detaining authority had the requisite awareness.

12. In the result we are satisfied from the affidavit filed by the detaining authority that it was aware about the detention of the subject in jail and that the making of the order was considered necessary in spite of the fact that he was in jail. This awareness is also revealed from the contemporaneous documents in the record. The fact that the detaining authority caused the execution of the order of detention only after the detenu had been granted bail shows that the detaining authority was aware of the relevant facts and also the necessity of detention no sooner the detenu comes out from jail.

13. Indeed, the only point that can be made is that the grounds were stale in view of the passage of time between the making of the order of detention and its execution. The allegations are serious and lethal. The activities of forming underground caucus and building up a guerilla band were serious threat to the security of India. The threat never diminished on the date of the execution of the order of detention. Under these circumstances when the grounds were not stale on the date of the execution of the order of detention, the impugned order cannot be declared invalid.

14. For the foregoing reasons we reject the contentions of the petitioner and dismiss the petition.

T.C. DAS, J.

15. I agree.