
(1956) 04 GAU CK 0005
In the Gauhati High Court

Golam Rafique

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 02-04-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 54

Citation : (1957) CriLJ 480

Hon'ble Judges : Brij Narain, J.C.

Bench : Single Bench

Judgement

Brij Narain, J.C.

1. This is a habeas corpus petition under Art 226, Constitution of India on behalf of Mohammad Golam Rafique, son of Moulvi Mohammed Golam Rabbani praying that the order of detention passed against him by the Chief Commissioner, Tripura on 8-6-1955 by means of the notification no. F.3(79)-LR/55/943 and his earlier arrest u/s 54 Cr. P. C. by Tripura police are illegal and he should be released forthwith.

2. According to the petitioner he is a citizen of India and his birth place is Agartala and homestead at Joynagar, P. S. Sadar, Tripinra State. He alleges that he read at Agartala Umakanta Academy, High School in Classes II, III and V to VIII. His father is stated to have purchased the homestead on 4th Aswin, 1335 T. E. and the same was sold away by him on 7th March, 1950 A. D. The petitioner's father worked as a teacher of Agartala Umakanta Academy for more than 30 years and he retired in the year 1952 or 1953 and went to paternal home at village Talki under P. S. Kasba, Pakistan. The petitioner went with his father for sometime but as there was no means of livelihood for him there, he returned to Agartala in the first week of April, 1955 his birth place without obtaining proper Passport from Pakistan.

He was arrested by Tripura police on 22-4-1955 on the allegation that he was a citizen of Pakistan and he was a paid agent of the Government of Pakistan for

espionage in the Indian territory and he had been collecting secret information about the strength of Army and police stationed in Tripura along with the details of arms and ammunitions in possession of the Army and Police and he was transmitting the same to the Government of Pakistan.

It was further contended by the State that the petitioner had been stationed in village Kharampur on Pakistan-Indian border close to Akhaura Railway station by the Government of Pakistan for the above mentioned purposes and as a result of the petitioner's action a section of the Communist party in " Tripura was given help by the Government of Pakistan through the petitioner in order to create disturbance to the maintenance of peace, law and order.

3. Lastly, it was contended that the petitioner had been communicating information about the activities of the other political organisations like Congress, Forward Block and Anjuman Islamia and also about the Agartala-Assain road including the number and position of the bridges on that road and such other details in respect of the road as the number of contractors, the labourers etc., employed so that the above information might be used against India.

4. According to the State the petitioner entered secretly the territories of Tripura without any travel documents in order to collect information about the location of Bibhuti Bejoy Paul alias Mohammad Kashem and also the causes of his arrest and he collected the relevant copies of the orders and other details in that connection with the help of certain local muslims and these were transmitted to the Pakistan Government. All these facts as well as the petitioner's threatening his companion Bibhuti Bejoy Paul alias Mohammed Kashem (or alleged betrayal have revealed his character as a spy and so he was arrested and legally detained under the provisions of Preventive Detention Act. 1950.

5. The petitioner has urged before me that the allegations made by the State for detaining him under the provisions of the Preventive Detention Act, 1950 are false and baseless and he is innocent. The petitioner is admittedly being detained under the provisions of the Preventive Detention Act, 1950 and his case has been examined by the Advisory Board on 29-6-1955.

The order passed by Sri S. K. Ghosh, Chairman, Advisory Board dated 29-6-1955 shows that the Advisory Board was of the opinion that there was sufficient cause for the detention of the said Mohammed Golam Refique, son of Moulvi Mohammad Golam Rabbani. The petitioner has admitted before me that he did not pray for being produced before the Advisory Board and so he cannot complain that the Advisory Board decided his case without giving proper weight to his contention.

If the petitioner had thought that there was any force in his present contention, he would certainly have appeared before the Advisory Board to make his submissions but he refrained from doing so. The petitioner has not given the details of the circumstances of his arrest in his petition and the petition appears to me to be vague. At any rate there does not appear to be any good reason for

believing that the allegations made against him by the State are not correct.

6. It has been laid down in A.K. Gopalan Vs. The State of Madras, that Section 3 of the Preventive Detention Act cannot be impugned on the ground that it does not provide an objective standard which the Court can utilize for determining whether the requirements of law have been complied with. The reason is that no such objective standard of conduct can be prescribed, except as laying down conduct tending to achieve or to avoid a particular object.

For preventive detention, action must be taken on good suspicion. It is a subjective test based on the cumulative effect of different actions, perhaps spread over a considerable period....

As the very term implies, the detention in such cases is effected with a view to prevent the person concerned from acting prejudicially to certain objects which the legislation providing for such detention has in view.

7. It has further been laid down in this ruling that Article 19 has to be read without any pre-conceived notions. So read, it clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc. the question whether that legislation is saved by the relevant saving clause of Article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance, for punitive or preventive detention, his right under any of the sub-clauses of Article 19 does not arise.

8. As the petitioner has been detained u/s 3, Preventive Detention Act, 1950 and his case has already been examined by the Advisory Board and report u/s 10 has duly been submitted, I think the present petition is legally not maintainable.

9. I have already shown above that there is no good ground for believing that the allegations made by the State against the petitioner are incorrect or the order of detention is in any way mala fide and so I see no force in the present petition which is hereby rejected.