
(2015) 11 GAU CK 0022
In the Gauhati High Court
Case No : W.P. (Crl.) No. 072014

Kamal Dutta

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Penal Code, 1860 (IPC) — Section 120(B), 34, 406, 409, 420

Citation : (2016) 1 GLT 483

Hon'ble Judges : Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : D. Mazumdar, Learned Senior Counsel, for the Appellant; M. Bora, Learned Govt. Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Ujjal Bhuyan, J.—Heard Mr. D. Mazumdar, learned Senior Counsel for the petitioner and Ms. M. Bora, learned Govt. Advocate, Arunachal Pradesh.

2. This petition was initially filed for issuance of a writ of Habeas Corpus for production of petitioner's brother Sri Tapan Dutta before the Court and to secure his release from custody.

3. At an earlier stage of the present proceeding, factual aspect of the case was examined by this Court. In the course of hearing on 09.01.2015, this Court took the view that petitioner's brother Sri Tapan Dutta, lodged in the Itanagar jail, should be produced before the Court. Accordingly, his production was directed on 20.01.2015.

4. On 20.01.2015, on production of Sri Tapan Dutta and after hearing learned counsel for the parties, this Court had passed the following order: -

"In terms of the order of this Court dated 09-01-2015, Shri Tapan Dutta has been produced before the Court by Mr. T Buker, S.I of Police, Arunachal Pradesh,

Naharlagun Police Station.

This petition has been filed for issuance of writ of Habeas Corpus for production of the brother of the petitioner, Shri Tapan Dutta (accused hereafter).

It is stated that the accused is an insurance agent having licence under the Insurance Regulatory and Development Authority (Licensing of Insurance Agents) Regulations, 2000. He is associated with a company called Genex Infra Projects Ltd., Kolkata. The accused is a resident of Kolkata.

The aforesaid company had collected deposits under various schemes from depositors in various places of Arunachal Pradesh. A allegation is that on maturity of the deposits, the investors were not repaid their dues.

In this connection, Aalo PS Case No. 7/2014, under Sections 420 /468 /406 /120 (B) /34 IPC was registered. Aalo police arrested the accused from Kolkata on 06-05-2014. On 08-05-2014, he was produced before the Chief Judicial Magistrate, Aalo, who, thereafter remanded him to police custody for 4 days. Remand of the accused was thereafter extended. Though bail application was filed, no order for bail was passed. In the process, the statutory period of 60 days under Section 167(2) Cr.P.C expired without completion of investigation with the accused remaining in detention.

Thereafter, the accused was shown arrested in connection with Pasighat PS Case No. 56/2014 registered under Sections 420 /34 IPC. The accused moved this Court for bail by filing Bail Application No. 2777/2014. The bail application was moved in the Principal Seat on receipt of administrative approval from the Hon"ble Chief Justice (Acting). This Court by order dated 14-11-2014 found that petitioner had completed about 80 days in custody since he was shown arrested on 27-08-2014. Learned Addl. PP had submitted before the Court that to the best of her information charge sheet had not been filed. Having regard to the above, prayer for bail was accepted and it was directed that the accused should be released on bail on furnishing bail bond of Rs. 25,000/- with 2 sureties of like amount to the satisfaction of the learned Judicial Magistrate, First Class, Pasighat subject to the condition that he should continue to cooperate with the investigation of the case and should appear before the IO as and when required.

It is stated that on 19-11-2014, learned Judicial Magistrate, First Class, Pasighat accepted the bail bond submitted on behalf of the accused and issued release order.

It is alleged that even after passing of the release order, the accused was not released and he was kept in i legal detention.

Request made by the petitioner and other family members and lawyers of the accused for release of the accused went in vain. It is further alleged that whereabouts of the accused Shri Tapan Dutta was not known thereafter. It is under such circumstances, the present Habeas Corpus petition has been filed.

On 12-12-2014, Mr. RKD Choudhury, learned State Counsel, Arunachal Pradesh submitted before the Court that the accused was again arrested in connection with Basar PS Case No. 9/2014. This Court therefore directed filing of affidavit by the respondents annexing therewith the first information report in connection with which the accused has been again arrested.

Affidavit has since been filed.

Upon hearing the learned counsel for the parties and on perusal of the documents on record including the affidavit filed, this Court by order dated 09-01-2015 directed production of the accused Shri Tapan Dutta before this Court today. Accordingly, Shri Tapan Dutta has been produced before the Court.

In the affidavit jointly filed by respondent Nos. 2, 3, 4, 5 and 6 it is stated that Shri Tapan Dutta is an accused in Aalo PS Case No. 7/2014 and he was arrested on 06-05-2014 in Kolkata with the assistance of Golabari Police, Howrah in West Bengal. On the same day, Aalo Police left Howrah at about 1800 hours alongwith the accused to Aalo. On 08-05-2014, the police party reached Aalo and on the same day the accused was produced before the Chief Judicial Magistrate. It is stated that due to continuous train and road journey from West Bengal to Aalo, the accused could not be produced before the Court within 24 hours of the arrest. It is further stated that Shri Tapan Dutta has not been granted bail by the Court of the learned Chief Judicial Magistrate, Aalo in Aalo Police Case No. 7/2014.

Since Shri Tapan Dutta is also an accused in Pasighat PS Case No. 56/2014, he was also shown arrested in connection with the said case.

In the meanwhile, the Officer In-charge of Basar PS informed the Officer In-charge of Pasighat PS by WT message dated 14-11-2014 that Shri Tapan Dutta was wanted in Basar PS Case No. 9/2014 under Sections 409 /421 /120(B) /34 IPC. Following bail granted by this Court in BA No. 2777/2014, Shri Tapan Dutta was released by the learned Judicial Magistrate, First Class, Pasighat on 19-11-2014 in connection with Pasighat PS Case No. 56/2014.

Immediately on his release, Shri Tapan Dutta was arrested by the Pasighat Police from outside the Court at about 4 pm on 19-11-2014 in connection with Basar PS Case No. 09/2014. It is stated that Shri Tapan Dutta was informed about the grounds of his arrest in Basar PS Case No. 09/2014. From his mobile phone, calls were made to his relatives in the numbers given by Shri Tapan Dutta and they were informed about his arrest in Basar PS Case No. 09/2014. Shri Tapan Dutta was handed over to the Basar Police on 20-11-2014.

It is further stated that the Officer In-charge of Basar PS issued WT message dated 21-11-2014 informing the OC of Mali Panchghara PS, West Bengal about the arrest of Shri Tapan Dutta who was in custody of Basar Police. The affidavit further discloses that Shri Tapan Dutta was thereafter shown arrested in connection with Itanagar PS Case No. 304/2013 under Sections 420 /34 IPC.

After orders of remand passed by the learned Chief Judicial Magistrate, Shri Tapan Dutta was thereafter lodged in the District Jail, Itanagar where he is presently lodged.

Mr. NNB Choudhury, learned counsel for the petitioner submits that continued detention of the accused is wholly illegal. He has been ill treated in detention. Because of the aggressive stance of the alleged depositors, it has become impossible to pursue the cases in Arunachal Pradesh as there is threat to the life and liberty of the accused and his family members. In such circumstances neither fair investigation nor free and fair trial would be possible in Arunachal Pradesh.

Mr. RKD Choudhury, learned State Counsel, Arunachal Pradesh submits that as on date there are 4 pending cases against Shri Tapan Dutta, namely, (1). Aalo PS Case No. 07/2014, (2) Pasighat PS Case No. 56/2014, (3) Basar PS Case No. 09/2014 and (4) Itanagar PS Case No. 304/2013. He submits that the allegation made by the petitioner that relatives/friends of the accused were not informed about the arrest as well as grounds of arrest of the accused is not correct. There are materials to support the above contention that the relatives/friends were informed about the arrest and grounds of arrest of the accused.

From the above, two things are clearly discernible.

Firstly, after the arrest of the accused in Kolkata on 06-05-2014 he was not produced before the nearest magistrate within 24 hours. Respondents have admitted in the affidavit that Shri Tapan Dutta was first produced before the learned Chief Judicial Magistrate, Aalo on 08-05-2014, though he was arrested on 06-05-2014.

Article 22 of the Constitution of India deals with protection against arrest and detention in certain cases. While clauses 1 and 2 deal with arrest, second part of Article 22 deals with preventive detention with which the present case is not concerned. Clause 1 provides that no person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice. Clause 2, which is relevant, provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate. The language of clause 2 makes it abundantly clear that the requirements under the said clause is of mandatory nature, non-compliance of which will render the arrest unconstitutional. Clause 2 makes it very clear that no person who is arrested shall be detained in custody beyond 24 hours without the authority of a magistrate. In this case, Aalo Police did not produce the accused before the nearest magistrate upon his arrest on 06-05-2014 and did not obtain any transit remand. Without complying with this

requirement he was straight away brought to Aalo PS and produced after 2 days on 08-05-2014 which is i legal and unconstitutional. Unfortunately, learned Chief Judicial Magistrate, Aalo did not notice this aspect. Therefore, the very basis of the detention of the accused is clearly unconstitutional and cannot be sustained.

Secondly, when this Court had granted bail in Pasighat PS Case No. 56/2014, this Court was not informed that the accused was also wanted in Basar PS Case No. 09/2014 and Itanagar PS Case No. 304/2013. Even the learned Judicial Magistrate, First Class, Pasighat who had passed the consequential order on 19-11-2014 following the bail order of this Court was not informed that Shri Tapan Dutta was wanted in those cases where he is an accused. It is stated in the affidavit that Shri Tapan Dutta was arrested by the Pasighat Police on requisition of Basar Police from outside the Court on 19-11-2014 at about 4 pm. He was handed over to the Basar Police on 20-11-2014 who in turn produced the accused before the magistrate on 21-11-2014 which is again beyond 24 hours of arrest on 19-11-2014. Arresting the accused in a different case from outside the Court where he was granted bail without disclosing to the Court about the need to arrest him in another case is wholly unacceptable.

In Uday Chand v. Sk. Mohd. Abdullah, Chief Minister, J& K, (1983) 2 SCC 417, the Apex Court deprecated the practice of withholding information from the Court about the requirement to arrest the accused in other cases. It was held that if after order of bail is passed by the Court, the authorities of the state consider it fit to arrest a released person for any other offence, it was their bounden duty to apprise the Court before taking such person in custody. In the facts of that case the arrests were held to be contrary to the bail order passed by the Apex Court and accordingly the petitioners of that case were released from custody treating them to be free citizens.

Having regard to the above, Court is of the view that the accused Shri Tapan Das should now be released as his continued detention has become clearly untenable. As noticed above, he has been granted bail by this Court in one out of the 4 cases i.e., in Pasighat PS Case No. 56/2014. He shall now be released on bail in connection with other three cases, namely, Itanagar PS Case No. 304/2013, Basar PS Case No. 09/2014 and Aalo PS Case No. 07/2014 subject to the condition that he shall cooperate with the investigation of the cases and that he shall also appear before this Court on the next date.

Since a finding has been recorded that the initial detention of Shri Tapan Dutta is i legal and amounted to violation of Articles 21 and 22 of the Constitution of India, question of compensation may also have to be gone into by this Court. On this point, Court would like to keep the matter pending. Respondents may file additional-affidavit on this issue, if so advised.

List on 06-04-2015 on which date Shri Tapan Dutta shall appear before this Court.

Accordingly, Shri Tapan Dutta can now walk out of this Court as a free man."

5. In view of the detailed order dated 20.01.2015, it is not necessary for restatement of the facts. Suffice it to say that by the said order dated 20.01.2015, this Court held that initial detention of Sri Tapan Dutta was clearly illegal and unconstitutional. It was observed that since the detention has been held to be illegal and amounted to violation of Articles 21 and 22 of the Constitution of India, question of compensation may also have to be gone into by the Court. On the point of compensation, case has been kept pending.

6. Thereafter, petitioner has filed additional-affidavit indicating the financial position of Shri Tapan Dutta and also about his status in society.

7. Sri Taba Toko, Superintendent of Police (PHQ), Arunachal Pradesh, who was present before the Court on the last date i.e., on 14.10.2015, has filed additional-affidavit. In the said affidavit details of the police cases where the petitioner's brother is an accused have been mentioned. Allegations against the petitioner's brother relating to the criminal cases have also been mentioned and highlighted. However, it is stated that the violation, as pointed out by this Court in its order dated 20.01.2015, was not intentional and deliberate. Moreover, after the said order was passed, copies of the same have been circulated to all the districts for future guidance and information. He has stated that in future, police department in Arunachal Pradesh will ensure that there is no procedural lapse as such.

8. At the outset, Court would like to clarify that in this proceeding, it is not considering the merit of the allegations against the petitioner's brother in the police cases where he is an accused. Since it is a Habeas Corpus proceeding, it is only concerned with the legality of the detention and no more. As already noticed above, this Court in the order dated 20.01.2015 had come to the definite conclusion that the initial detention of the petitioner's brother was in violation of Articles 21 & 22 of the Constitution of India. On a query by the Court, learned Govt. Advocate submits that State has not gone in appeal against the order dated 20.01.2015. Accordingly, the said order has attained finality. In the order dated 20.01.2015 itself, it was indicated that the proceeding would be kept pending only on the limited point of compensation.

9. When there is violation of Articles 21 & 22 of the Constitution, a writ court exercising its jurisdiction under Article 226 of the Constitution of India can certainly award compensation as a public law remedy. This branch of civil rights jurisprudence was acknowledged by the Supreme Court of India in Rudul Sah Vs. State of Bihar and Another, where, it was explained that order for compensation in such a proceeding would be in the nature of a palliative and would not preclude the affected person from bringing in a suit to recover appropriate damages from the State and its erring officials. Compensation awarded under the public law remedy is in the nature of exemplary damages for violation of civil liberties of a person, which is not compensation as is understood under the private municipal law.

10. In The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and

Others, , which was a case relating to award of compensation by the High Court under Article 226 of the Constitution of India to a foreign national, who had suffered the heinous offence of rape within railway premises, the Apex Court while upholding the compensation held that where public functionaries are involved and the matter relates to violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law, notwithstanding that a suit for damages can still be filed under the private law.

11. This aspect of the law was further elaborated by the Supreme Court of India in Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, where, it was stated that a constitutional court would have the right to award monetary compensation by way of exemplary cost or otherwise in the event of breach of a fundamental right.

12. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , the view in Rudul Sah (supra) was approved and it was held that a superior court in exercise of its powers under Articles 32 and 226 of the Constitution of India would be competent to award compensation for contravention of a fundamental right. The Apex Court observed as follows: -

"17. It follows that a "claim in public law for compensation" for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Article 32 and 226 of the Constitution. This is what was indicated in Rudul Sah v. State of Bihar and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

13. The above legal position has been approved and consistently applied by the constitutional courts of the country in several subsequent decisions, including in the latest case of Sanjay Gupta Vs. State of Uttar Pradesh, .

14. As already noticed above, in a proceeding of this nature, Court would not be guided by the principles, which would be available while determining compensation under the private law. Nature of compensation under both the

jurisdictions is different as explained above. Here in this case, admittedly, the fundamental right of petitioner's brother under Articles 21 & 22 of the Constitution of India was violated.

15. Having regard to the above and the explanation submitted by the Superintendent of Police in the affidavit filed, Court is of the view that compensation by way of exemplary cost of Rs. 50,000.00 imposed on the State would be just and adequate in the facts and circumstances of the case. This Court makes it clear that it would be open to the petitioner to avail his remedy under the private law to seek compensation, if so advised. It is also made clear that in so far the criminal cases where the petitioner's brother is an accused are concerned, neither the order dated 20.01.2015 nor this order would have a bearing on the adjudication of those cases on merit.

16. Respondent No. 2 is accordingly directed to deposit the aforesaid amount of Rs. 50,000.00 before the Registrar of this Court at Guwahati within a period of six (6) weeks from today. Thereafter, it will be open to either the petitioner Sri Kamal Dutta or his brother, Sri Tapan Dutta to receive the said amount from the Registry of this Court.

17. A copy of this order may be furnished to Ms. M Bora, learned Govt. Advocate, Arunachal Pradesh for doing the needful.

18. Writ petition stands disposed of.