

(2005) 12 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (Cri.) No. 31 of 2005

Kshetrimayum Prakash Singh alias Paka	APPELLANT
Vs	
District Magistrate and Others	RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5)
Criminal Procedure Code, 1973 (CrPC) — Section 161
National Security Act, 1980 — Section 14, 3(2), 3(3), 8

Citation : (2006) CriLJ 464 : (2006) GLT 453 Supp

Hon'ble Judges : T. Nandakumar Singh, J; R.B. Misra, J

Bench : Division Bench

Advocate : A. Nilmani Singh assisted by A. Bimol Singh, for the Appellant; Md. Jalal Uddin, G.A. for Respondent No. 1 and K. Kumar Singh, Addl. CGSC, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—The Framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in Clauses (4) and (5) of Article 22 of the Constitution of India, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be zealously watched and enforced by the Court. A constitutional protection is given to the detenu which mandates the grant of liberty to the detenu to make a representation against detention, as imperated in Article 22(5) of the Constitution and it also mandates the authority to whom the representation is addressed to deal with the same with utmost expectation inasmuch as personal liberty granted under Article 21 of the Constitution is so sacrosanct and so high in the scale of the constitutional value. Infringement of the constitutional rights conferred under Article 22(5) invalidates detention order.

2. The Parliament in 31st Year of Republic had enacted the National Security Act,

1980 for detention of a person with a view to prevent him from acting in any manner prejudicial to the defence of India, relation with India with the Foreign Power, with the security of India and acting in any manner prejudicial to the security of the States and from acting in any manner prejudicial to the maintenance of the Public Order. Clauses (4), (5), (6) and (7) of the Article 22 dealt with the fundamental rights of the detenu under the preventive detention law. Clauses (4) and (5) of Article 22 read as follows:

22(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless--

(a) An Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under Sub-clause (b) of Clause (7); or

(b) Such person is detained in accordance with the provisions of any law made by Parliament under Sub-clauses (a) and (b) of Clause (7).

22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

3. Justice S. Ratnavel Pandian In Kartar Singh v. State of Punjab (C/B) reported in observed that:

When Law ends. Tyranny begins: Legislation begins where Evil begins. The function of the Judiciary begins when the function of the Legislature ends, because the law is when the Judges say it is since the power to interpret the law vests In the Judges.

4. Heard Shri A. Nilmani Singh, learned ST. Counsel assisted by Mr. A. Birnol Singh, learned Counsel for the petitioner, Md. Jalal Uddin, learned G.A. for respondents 1 and 2 as well as Mr. K. Kumar Singh, learned Addl. CGSC appearing for respondent No. 3.

5. By this writ petition, the petitioner is assailing the detention order dated 27-6-2005, approval order dated 6-7-2005 and also the order of confirmation of the State Government dated 12-8-2005 on the ground that the detention orders are vitiated for the reasons that:

(1) There is unexplained delay of 8 days by the State respondents in disposing the representation dated 12-7-2005 filed by the detenu;

(2) There is also unexplained delay of 37 days in disposing the representation dated 12-7-2005 by the Central Government as well as the State Government in the facts and circumstances of the present case;

(3) Failure to furnish complete copies of the statement of Moirangthem Banu Devi @ Monika @ Ichaltombi (19), D/o M. Koklei of Ngangkha Lawai Mayai Leikai given before the I.O. on 21-6-2005 and the statement of Irom Ibemcha Chanu @ Meiteinganbi @ Monika @ Thoibi (19) D/o I. Bobo Singh of Pungdongbam Makha Leikai given before the I.O. on 21-6-2005, which form the basis of grounds of detention of the petitioner mentioned in para-5(b) and (c) of the grounds of detention dated 1-7-2005, to the petitioner;

(4) Rejection of the prayers of the petitioner by the Advisory Board to produce and examine the said 2 (two) ladies, i.e. Moirangthem Banu Devi and Irom Ibemcha Chanu, before the Advisory Board even if the petitioner made a specific prayer in para-9 to his representation dated 12-7-2005, which was admittedly placed before the Advisory Board.

6. For deciding the above 4 (four) grounds assailing the detention order, a short factual panorama of the petitioner's case would be sufficient.

7. On 22-6-2005, the petitioner was arrested by a team of Lamphel Police Station of Imphal West District from his quarter at Sajiwa Jail Colony and seized a sum of Rs. 1,500/- from him. Petitioner is employed as a Warder in Jail Department, Manipur. When the petitioner was in Police Custody, the District Magistrate, Imphal West issued order being No. Cril/National Security Act, 1980/ No. 73 of 2005, dated 27th June, 2005 detaining him (the petitioner) u/s 3(2) read with Section 3(3) of the National Security Act, 1980 (for short "National Security Act, 1980"). The District Magistrate furnished a copy of the ground of detention dated 1-7-2005 u/s 8 of the National Security Act, 1980 to the petitioner while he was in Manipur Central Jail at Sajiwa. In para-5 of the ground of detention order dated 1-7-2005 it has been mentioned that copies of the documents which form the basis of ground of detention are enclosed herewith for reference. Para-5 of the grounds of detention reads as follows:

5. That, the copies of the following documents which form the basis of grounds of your detention are enclosed herewith for your reference:

(a) Your statement given before the I.O. on 23-6-2005;

(b) Statement of Moirangthem Banu Devi @ Monika @ Ichaltombi (19) D/o M. Koklei of Ngangkha Lawai Mayai Leikai given before the I.O. on 21-6-2005;

(c) Statement of Irom Ibemcha Chanu @ Meiteinganbi @ Ichathoibi @ Monika @ Thoibi (19) D/o I. Bobo Singh of Pungdongbam Makha Leikai given before the I.O. on 21-6-2005;

(d) Statement of H. Premananda Singh, Hav. No. 132001003 of CDO/I.W., Smt. Kshetrimayum ongbi Babita Devi (31) W/o Ksh. Prakash Singh @ Paka(yourself)

of Kwakeithel Haorokchanbi a/p Quarter of Sajiwa Jail, Smt. Laitonjam ongbi Memcha Devi (45) w/o L. Ibomcha Singh of Quarter of Sajiwa Jail recorded u/s 161, Cr.P.C. in connection FIR No. 99(6)2005 LPS;

(e) Copy of arrest memo dated 22-6-2005;

(f) Copy of seizure memo dated 21-22-6-2005;

(g) Copies of local daily "The Sangal Express" dated 15-5-2005, 3-6-2005 and 4-6-2005 and "The Poknapham" dated 17-6-2005;

(h) Copy of FIR No. 99(6)2005 LPS u/s 20 UA (P)A.O. 2004 Act;

(i) Copy of Government of Manipur, Home Department's Order No. 17(1)/49/80-H (Pt), dated 31 -5-2005 and

(j) Copy of letter No. 22/SPL-CELL/ 2005(76), dated 27th June, 2005 along with its enclosed history sheet received from the Superintendent of Police, Imphal West.

As stated above, one of the main grounds for assailing the detention order is that the complete copies of the statements of Moirangthem Banu Devi and Irom Ibemcha Chanu mentioned in ground 5(b) and (c) are not furnished to the petitioner as a result thereof, effective representation against the detention order cannot be filed.

8. On 12-7-2005, the petitioner submitted his representation dated 12-7-2005 to the Government of Manipur and the Government of India, through the Additional Superintendent of Manipur Central Jail at Sajiwa for consideration and necessary/appropriate actions to secure the release of the petitioner from his detention under the National Security Act, 1980. Admittedly, the said representation dated 12-7-2005 was forwarded by the Additional Superintendent of Manipur Central Jail, Sajiwa under his letter dated 12-7-2005. It is also admitted case of both the parties that the Manipur Central Jail, Sajiwa is only about 8 Kms. from Manipur Secretariat where the Offices of the Chief Secretary/Secretary (Home), Dy. Secretary (Home) and Section Officer-in-charge of Home are located. But the representation of the petitioner dated 12-7-2005 took 2 (two) days to reach the Manipur Secretariat inasmuch as the Manipur Government received the said representation only on 14-7-2005 and the Secretary (Home)/ Chief Secretary Govt. of Manipur took another 4 (four) days to dispose of the representation dated 12-7-2005 by rejecting the same on 18-7-2004 and the decision of the Manipur Government was delivered to the petitioner only on 20-7-2005. As stated above, the main thrust of the petitioner for assailing the detention order was that because of the unexplained delay of 2 (two) days in reaching the representation of the petitioner dated 12-7-2005 forwarded by the Additional Superintendent of Manipur Central Jail, Sajiwa on the same day to the Manipur Secretariat located at about 8 kms. from Manipur Central Jail, Sajiwa and also the unexplained delay of 2 (two) days for simple placing of the representation to the Chief Secretary/Secretary (Home) on 16-7-2005, the continued detention of

the petitioner is illegal.

9. The representation of the petitioner dated 12-7-2005 to the Central Government was forwarded to the Central Government only on 18-7-2005. It is also the case of the petitioner that there is an unexplained delay of 6 (six) days in forwarding the said representation of the petitioner dated 12-7-2005 to the Central Government by the State Government inasmuch as the representation of the petitioner dated 12-7-2005 was forwarded to the Central Government only on 18-7-2005. The Central Government took 31 days for disposing the representation of the petitioner dated 12-7-2005 to the Central Government by the State Government and the Central Government together. Again, delay of 37 days in disposing the representation of the petitioner dated 12-7-2005 to the Central Government is also one of the main grounds for assailing the detention order.

10. The respondents 1 and 2 also filed their affidavit-in-opposition. In their affidavit-in-opposition nothing is mentioned as to how the representation of the petitioner dated 12-7-2005, which was forwarded by the Additional Superintendent of Manipur Central Jail, Sajiwa on the same day took 2 (two) days to reach to the State Government, i.e. the Manipur Secretariat located at about 8 kms. from Manipur Central Jail, Sajiwa, and also as to how another 2 (two) days were taken by the Section Officer concerned and the Special Secretary (Home) to place the said representation of the petitioner dated 12-7-2005 to the Chief Secretary/Secretary (Home) for consideration. Further, in the affidavit-in-opposition of the respondents 1 and 2 nothing is mentioned as to how the Manipur Govt. took 6 (six) days in forwarding the representation of the petitioner dated 12-7-2005 to the Central Government.

11. The respondent No. 3, i.e. Union of India, also files the affidavit-in-opposition. In the affidavit-in-opposition, the only explanation for the delay in disposing the said representation of the petitioner dated 12-7-2005 was that despite request under wireless message to the State Government to send the para-wise comments on the representation of the petitioner dated 12-7-2005, the State Government had furnished the para-wise comments only on 4-8-2005 and it took 4 (four) days in placing the said representation of the petitioner along with the para-wise comments of the State Government to the Union Home Secretary and the Union Home Secretary took 2 days in disposing the said representation. In the affidavit-in-opposition of the respondent No. 3, the Union of India, nothing is mentioned as to how and why the para-wise comments of the State Government to the representation dated 12-7-2005 are required for disposal of the same. This aspect will be discussed in the appropriate stage of this judgment and order.

12. The learned Sr. Counsel appearing for the petitioner in order to substantiate the grounds for assailing the detention order that there are unexplained delays in disposing the representation of the petitioner dated 12-7-2005 has referred to the decisions of the Apex Court in:

- (1) K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others,
- (2) Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others,
- (3) Aslam Ahmed Zahir Ahmed Shaik Vs. Union of India and Others,
- (4) Kundanbhai Bulabhai Shaikh v. Distt. Magistrate Ahmedabad reported in : 1996CriLJ1981 ;
- (5) Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others,
- (6) Mrs. Venmathi Selvam Vs. State of Tamil Nadu and Another, and,
- (7) Rajammal Vs. State of Tamil Nadu and Another,

13. On the other hand, the learned G.A. in support of his contention has referred to the decisions of the Apex Court in:

- (1) Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others,
- (2) Sitthi Zuraina Begum Vs. Union of India (UOI) and Others, and
- (3) Kantilal Hirji Shah Vs. State of Tamil Nadu and Others,

14. The Apex Court in K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, held that the representation relates to the liberty of the individuals, the highly cherished right enshrined in Article 21 of the Constitution. Clause (5) of Article 22 casts a legal obligation on the Government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in Clause (5) of Article 22 reflects the concern of the framers that the representation should be expeditiously considered and disposed of with the sense of urgency without an unavoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of the case. There is no prescribed time limit either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement, however, is that there should be no supine indifference, slackness or callousness attitude in considering the representation. Any unexplained delay in the disposal of the representation would be a prejudice of the constitutional imperative and it would be render the continue detention Impermissible and Illegal." The Apex Court again, reiterated in Rama Dhondu Borade 1989 CriLJ 2119 (supra) that the detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within

reasonable dispatch and to dispose of the same as expeditiously as possible. The Apex Court in *Rajammal Vs. State of Tamil Nadu and Another*, had discussed as to how the duration or range of delay in disposing the representation is fatal or not and held that the test is not the duration or range of delay but it is the explanation made by the concerned authority. Para-8 of SCC in *Rajammal v. State of T.N.* reads as follows:

8. The position, therefore, now is that if delay was caused on account of any indifference, or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So, test is not the duration or range of delay, but how it is explained by the authority concerned.

15. The Constitution Bench of the Apex Court in *Kamleshkumar Ishwardas Patel v. Union of India* (supra) observed that while discharging the constitutional obligation to enforce the fundamental rights of the people, more specially right to personal liberty, the Court would not be Influenced by the nature of the activities of the detenu. The history of liberty is the history of procedural safeguards. The safeguards enshrined In Clauses (4) and (5) of Article 22 are required to be zealously watched" and enforced by the Court."

16. From the above discussion, the corollary of the decisions of the Apex Court are that:

(1) There is no period prescribed either under the Constitution or under the concerned detention law within which representation should be dealt with;

(2) It is a constitutional mandate under Clause (5) of Article 22 commanding the concerned authority to whom detenu submitted his representation to consider the representation and dispose of the same as expeditiously as possible;

(3) There should not be supine, Indifference, slackness or callousness attitude in considering the representation. Any unexplained delay in disposal of the representation would be a prejudice of the constitutional imperative and it would render the continued detention impermissible and illegal;

(4) It is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that delay was very short. Even longer delay can as well be explained. So, the test is not the duration or the range of delay, but how it is explained by the authority concerned.

17. As discussed above, there is no period either under the Constitution or under the National Security Act, 1980 within which representation should be dealt with but the question is whether the delay in disposing the representation, in the facts and circumstances of the present case in hand, had been explained reasonably and properly by the State Government and also by the Central Government and the State Government jointly in explaining the delay in disposing the

representation of the petitioner dated 12-7-2005 to the Central Government. It is now well settled that It is not enough to say that delay was very short, but how it is explained by the authority concerned.

18. From the facts discussed above as well as from perusal of the records of the State Government placed before this Court, we are of the considered view that there was no explanation from the side of the State Government as to how it took 2 (two) days for reaching the representation of the petitioner dated 12-7-2005 from the Manipur Central Jail, Sajiwa to the Manipur Secretariat in the material available on the records and the facts admitted by both the parties that the Mainipur Central Jail, Sajiwa is only about 8 kms. from Manipur Secretariat and also that the representation of the petitioner dated 12-7-2005 was forwarded by the Addl. Superintendent of Manipur Central Jail, Sajiwa on the same day, i.e., on 12-7-2005 under his letter dated 12-7-2005. Further, we are also of the considered view that there was no explanation from the side of the State Government as to how the concerned Section Officer and Special Secretary (Home) took 4 (four) days in placing the representation before the concerned authority, i.e. Chief Secretary/Secretary (Home).

19. Under Clause (5) of Section 3 of the National Security Act, 1980, the State Government shall within 7 (seven) days report the fact of passing the order of detention and also the approval by the State Government to the Central Government together with the grounds on which the order has been made and such other particulars, such as in the opinion of the State Govt, have a bearing on the necessity for the order. In the affidavit-in-opposition of the respondent 1, i.e. the Slate of Manipur, it has been mentioned very clearly that necessary report mentioned in Clause (5) of Section 3 of the NSA, in the present case, had already been made to the: Central Govt. within time given u/s 3(5) of the NSA. For easy reference, Clause (5) of Section 3 of the National Security Act, 1980 is quoted hereun-der:

Section 3(5) When any order is made or approved by the State Govt. under this section, the State Govt. shall, within 7 days, report the fact to the Central Govt. together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Govt., have a bearing on the necessity for the order.

20. By virtue of Section 14 of the NSA, the Central Government has absolute jurisdiction to consider and dispose of the representation of the petitioner dated 12-7-2005 independently without even calling para-wise comments from the State Government. In the case in hand, as discussed above, all the materials including the ground of detention and other materials along with the detention of the petitioner under the NSA were available with the Central Government on the date on which the representation of the petitioner dated 12-7-2005 reached to the Central Government. The only explanation by the Central Government in explaining the delay of altogether 37 days in disposing the representation of the petitioner dated 12-7-2005 was that the para-wise comments of the State Govt.

to the representation of the petitioner were received lately, but in the affidavit-in-opposition nothing is mentioned as to how and why the para-wise comments of the State Government to the representation of the petitioner are required even if all the materials are available with the Central Government. Further, as discussed above, explanation for delay of 6 (six) days in forwarding the representation of the petitioner dated 12-7-2005 to the Central Government by the State Government is mentioned neither in the affidavit-in-opposition of the respondents 1 and 2 nor in the affidavit-in-opposition of the respondent No. 3, i.e. Union of India.

21. In view of the above discussions, we are of the firm view that there was supine, indifference, slackness and callousness attitude in considering the representation of the petitioner by the respondent and delay in disposal of the representation are not explained. As a result thereof, there is a breach of the constitutional imperative rendering the continued detention of the petitioner is impermissible and illegal. Accordingly we hold that detention order dated 27-6-2005 which had been approved by the State Government under its order dated 6-7-2005 and affirmed by the State Government under its order dated 12-8-2005 are illegal and accordingly quashed. Since the writ petition is succeeded on the ground of unexplained delay in disposing the representation filed by the petitioner, we are of the considered view that other grounds taken by the petitioner for assailing the detention order would be of only for academic purposes and hence, we are not deciding the other grounds.

22. Detenu, Shri Kshetrimayum Prakash Singh @ Paka, S/o Late Ksh. Ibopishak Singh of Kwakeithel Haorokchaitai be set at liberty forthwith unless wanted in other cases. Writ Petition is allowed. No order as to costs.