
(2008) 06 GAU CK 0045
In the Gauhati High Court

Lachit Bordoloi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 22
Explosive Substances Act, 1908 — Section 4
National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 120B, 121A, 122, 124

Citation : (2008) 4 GLT 677

Hon'ble Judges : H. Baruah, J;Aftab H. Saikia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Aftab H. Saikia, J.—Heard Mr. B.K. Mahajan, Mr. A. Choudhury, Mr. R. Ali, Mr. P.K. Das and Mr. N.J. Das, learned Counsel representing the petitioner as well as Mr. P.S. Deka and R.K. Adhikary, learned State Counsel on behalf of the State of Assam/respondents No. 2 to 5 as well as Mr. D. Choudhury, learned Central Government Counsel (for short, "the C.GC.") for the Union of India.

2. The legality and correctness of the detention order dated 29.3.08 issued by the District Magistrate, Kamrup Metropolitan District, Guwahati in exercise of power conferred upon him u/s 3(2) of the National Security Act, 1980 (for short, "the Act") detaining the petitioner/detenu (hereinafter referred to as "the detenu") have been assailed in this Habeas Corpus Petition preferred by the detenu.

3. The order dated 29.3.2008 reads as under:

Government of Assam. Office of the District Magistrate Kamrup (Metropolitan) District, Guwahati (Confidential Branch) Order

Perused the report submitted by the Senior Superintendent of Police, DSB City

Guwahati vide letter under Memo No. DSD/ City/XI(A) SPC/08/2197/C dated 20.3.08 along with enclosed dossier of Shri Lachit Bordoloi @ Bhaity, son of Late Charitra Bordoloi of Village-Bor-Raidingia Gaon, P.O.- Aibheti, P.S.-Jagori, Dist.- Nagaon, Assam, Present address - Jyotinagar, P.S.- Chandmari, Guwahati-21, adviser of MASS, Chief Coordinator of PCPIA & Coordinator of PCG, ed the prayer of the Senior Superintendent of Police (DSB) City, Guwahati, vide letter referred to above, to consider detention of the subject under National Security Act on the grounds stated in the dossier.

After careful study of the report and grounds stated in the dossier, it appears that Shri Lachit Bordoloi @ Bhaity son of Late Charitra Bordoloi of Village - Bor-Raidingia Gaon, P.O. -Aibheti, P.S.- Jagori, Dist. - Nagaon, Assam, Present address - Jyotinagar, P.S.-Chandmari, Guwahati-21, Adviser of MASS, Chief Coordinator of PCPIA & Coordinator of PCG is presently in judicial custody in Central Jail, Guwahati in connection with Noonmati P.S. Case No. 46/08 u/s 120(B)/122/124 IPC R/W Section 4 ES Act R/W Section 25(1) Arms Act, R/W Section 10/13 UA(P) Act and Senior Superintendent of Police, City has prayed for his detention under the National Security Act (NSA), 1980, I am satisfied that his detention is necessary since once he comes out of the judicial custody, there is every possibility that he may indulge in activities prejudicial to the maintenance of public order and security of the Nation and hence the overwhelming compelling necessity to keep him under continued detention.

Therefore, I Shri Prateek Hajela, IAS, District Magistrate, Kamrup Metropolitan District, Guwahati in exercise of powers conferred upon me under Sub-section (2) of Section 3 of the National Security Act, 1980 do hereby order that the said Shri Lachit Bordoloi, son of Late Charitra Bordoloi of Village - Bor-Raidingia Gaon, P.O. -Aibheti, P.S.- Jagori, Dist. - Nagaon, Assam, Present address - Jyotinagar, P.S.-Chandmari, Guwahati -21, Adviser of MASS, Chief Coordinator of PCPIA & Coordinator of PCG, who is presently detained in Central Jail, Guwahati, Assam be detained for a period of 3(three) months from the date of issue on this order.

Given under my hand and seal on this 29th Day of March, 2008.

Sd/Illigible (Prateek Hajela, IAS) District Magistrate, Kamrup Metropolitan District, Guwahati

4. An undated document showing to be the grounds of detention of the detenu (Annexure-B to the Habeas Corpus Petition) has also been served upon the detenu.

5. The pleaded case of the detenu as has been contended by Mr. Mahajan, is that although in the impugned detention order dated 29.3.08 at the time of the impugned detention the detenu was shown to be presently in judicial custody in Central Jail, Guwahati, virtually at the relevant period i.e. on 29.3.08 he was in Nalbari Jail and such factum has been proved by the order dated 31.3.08 passed by the learned Chief Judicial Magistrate, Kamrup at Guwahati (for short, "the C.J.M.") annexed to this Habeas Corpus Petition as Annexure -E series, wherein it

was specifically reflected that "Accused Shri Lachit Bordoloi aged about 45 years is produced by Chandmari Police from Nalbari District Jail on the strength of P/W issued on 29.3.08" and moreover the copy of the impugned detention order was served upon him admittedly on 31.3.08 while he was at Guwahati. It is also contended by the learned Counsel that being aggrieved by the impugned detention order, while the detenu was in incarceration in Central Jail, Guwahati, he has preferred two representations, one to the State Government and other to the Central Government and the receipt of such representations was duly acknowledged by the jail authority on 11.04.08 through the Assistant Jailor, Central Jail, Guwahati. However, according to him, both the appropriate authorities i.e. the State as well as the Central Government deliberately caused an unexplained inordinate delay in disposal/rejection of those representations. The representation dated 11.4.08 was received by the State Government on 17.4.08 as revealed from the affidavit filed on behalf of the State Government after six days of such submission and thereafter the same was rejected only on 25.4.08 and in the process there was a total delay of 14 days in disposal of the representation by the State Government without explaining any reason whatsoever for such delay. On the other hand, representation dated 11.4.08 sent to the Central Government by the State Government on 18.4.08 after having received the same on 17.4.08 was received by the Central Government on 29.4.08. However, since no parawise comments were appended thereto with the representation, the Central Government sought for parawise comments on 30.4.08. Parawise comments received on 12.5.08 and on careful consideration the said representation dated 11.4.08 was rejected by the Central Government on 13.5.08. In disposing/rejecting the representation dated 11.4.08 by the Central Government, it took 32 days time from the date of preferring the representation dated 11.4.08. It has also been pointed out that although in the impugned detention order it was reflected that the authority perused the report submitted by the Senior Superintendent of Police, along with the enclosed dossier, being the source of reliance by the detaining authority in arriving at his subjective satisfaction, no such report was ever served upon the detenu save and except the dossier. In so far as the grounds of detention is concerned, those were verbatim reproduction of the dossier with the only substitution of the word "subject" occurred in the dossier by the word "you" in the grounds of detention. It has also been pleaded that the detaining authority in passing the impugned detention order emphasized that he was satisfied that his detention was necessary because once he came out from the judicial custody there would be every possibility that he might indulge in activities prejudicial to the maintenance of public order and security of the Nation and hence the overwhelming compelling necessity to keep him under continued detention and the same has no basis. Further it is submitted by Mr. Mahajan that the detaining authority in the grounds of detention stressed that as per the confidential report received so far, it was learnt that hectic process was going to get the detenu released on bail and as soon as he got bail he would rejoin anti national subversive propaganda through MASS, PCPIA, PCG etc. which would ultimately lead to disruption of public order

and the jeopardisation of the internal security system of the State. However, prior to passing of such order, according to Mr. Mahajan, the detenu was all along injudicial custody in connection with various cases so mentioned in paragraph -13 itself of the writ petition and his subsequent bail petitions so occasionally moved before the competent Court have also been rejected. In such circumstances, there is no likelihood of releasing him on bail keeping in view the apprehension of the detaining authority as reflected in the impugned order that the detenu at the relevant time was in Central Jail at Guwahati, and on being released on bail he would rejoin anti national subversive propoganda against the State.

6. Both the State Government and the Central Government, refuting and denying all the contentions and submissions as indicated above, as projected in the Habeas Corpus Petition, filed their respective responses.

7. The State of Assam through Respondent No. 2 in their affidavit filed on 11.6.08 by the Joint Secretary to the Government of Assam, Political (A) Department in paragraphs-4, 5 and 6 has averred that though the representation dated 11.4.08 was received from the District Magistrate, Kamrup (Metro) on 17.04.2008, the Government requested the detaining authority to send the parawise comments and on receipt of the same on 19.4.2008 the representation was disposed of on 25.4.2008. The relevant portions of paragraphs 4, 5 and 6 may be quoted as under:

4. That the representation dated 11.04.2008 of Shri Lachit Bordoloi has been received from the District Magistrate, Kamrup (Metro) on 17.04.2008. The Govt. has forwarded the representation to the Central Govt. as well as Advisory Board, NSA on 28.04.2008 with a request to the District Magistrate, Kamrup (Metro) to furnish the parawise comments on the Representation as the Govt. feels it necessary, the parawise comments to call for the just decision.

5. The parawise comments on the representation received from the District Magistrate, Kamrup (Metro) on 19.04.2008 vide their Order No. X/08/NSA/13/CA dated 18.04.2008. The same was forwarded to Central Govt. as well as Advisory Board on 21.04.2008. 6. That the Govt. rejected his representation of the detenu on 25.04.2008 vide Order No. PLA. 195/08/304 dated 25.04.2008 after considering all aspects.

8. An another affidavit has been filed on 12.6.2008 on behalf of the detaining authority by one Shri Kumud Chandra Kalita, Addl. District Magistrate, Kamrup (Metro) Guwahati claiming in paragraph-1 thereof that he was authorized to swear the said affidavit on behalf of Respondent No. 4, the District Magistrate.

9. The Central Government has also filed an affidavit on 17.06.08. In paragraph-6 it has been stated that though they received the representation dated 11.4.08 on 29.04.08, the State Government was requested on 30.04.08 to send parawise comments which they received on 12.05.08 and immediately on 13.05.08 they rejected the representation of the detenu.

10. The basic challenge to the impugned detention order, as emerged from the extensive arguments of Mr. Mahajan, learned Counsel is three fold:

1. The impugned detention order was passed mechanically and in total non-application of mind;
2. There is an inordinate unexplained delay in disposing/rejecting the representation dated 11.4.08 by both the State and the Central Governments; and
3. The affidavit filed on behalf of the detaining authority was filed by an Officer not authorized under the law and was an incompetent authority to do so.

11. The learned Counsel representing the detenu has relied upon on the following judicial decisions as regards the question of non- application of mind:

1. Pranab Bora @ Swapnil Dekaraja v. State of Assam and Ors. reported in 1997 (3) GLT 164.
2. Puma Bora @ Dilip Bora v. State of Assam and Ors. reported in 1999 (1) GLT 370.
3. Rajesh Vashdev Adnani v. State of Maharashtra and Ors. reported in (2005) 8 SCC 390.

12. As regards the delay in disposal of the representation, strong reliance has been placed on the following judicial authorities:

1. Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others, .
2. Lala Paite v. State of Manipur and Ors. reported in 1999 (3) GLT 236.
3. Lipika Roy v. State of Assam and Ors. reported in 1999 (3) GLT 173. A. Toijam (O) Memcha Devi (Smti.) v. State of Manipur and Ors. reported in 2000 (2) GLT 328.
5. Yumnam Brojen Singh @ Kunjo @ Boss v. District Magistrate, Bishnupur and Ors. reported in 2003 (3) GLT 60. Kshetrimayum Prakash Singh @ Paka v. District Magistrate and Ors. reported in 2006 (Supl.) GLT 453.

13. In so far as the filing of affidavit by detaining authority/competent person is concerned, the following judicial pronouncements have been referred to :-

1. Jagdish Prasad Vs. The State of Bihar and Another, .
2. Phukan Daimary @ Fungjarang v. State of Assam and Ors. reported in 1998 (4) GLT 40.

14. Supporting the impugned detention order, Mr. Deka, learned State Counsel has submitted that the communication dated 20.3.08 appended to this Habeas Corpus Petition as Annexure-F was itself the report mentioned in the impugned detention order though the same had been shown as a forwarding letter of the

dossier and as such the question of non-furnishing of the report, as alleged, does not arise. In support of the affidavit filed by the Additional District Magistrate, Mr. Deka, relying on the office order dated 18.4.08, has submitted that the concerned official was duly authorised by the detaining authority to swear the affidavit in question on his behalf.

15. The office order dated 18.4.2008 referred to be the authorization to the concerned Additional Deputy Commissioner who filed the affidavit on behalf of the detaining authority may be, for the sake of convenience, noticed as under:

Government of Assam Office of the Deputy Commissioner Kamrup Metropolitan District, Guwahati (Confidential Branch) Order

I will be leaving headquarter on 19th April, 2008 for attending Phase-IV of Mandatory Mid-career Training Programme of IAS Officers to be conducted at Lalbahadur Shastri National Academy Administration, Mussoorie with effect from 21st April, 2008 to 11th June, 2008. During the period of my absence from headquarter Shri Kumud Chandra Kalita, ACS, Addl. Deputy Commissioner, Kamrup Metropolitan District, Guwahati (Telephone Nos. 0351-2514187 (O), 2234886 (R) and 94351-06399 (M) will remain in-charge of my current duties till to my return to the HQ.

This has the approval of the Government vide No. AAI. 62/2006/85 dated 28th March, 2008.

Sd/Illigible, (Prateek Hajela, IAS) Deputy Commissioner, Kamrup Metropolitan District, Guwahati. Memo No. DCK(M)/PER/2008/05/CA Dated Guwahati, the 18th April, 2008.

16. So far the delay is concerned, the stand of the State Government is that the time taken for disposal of the representation was a reasonable time and there is no such inordinate and unintentional delay, as pleaded.

17. As regards passing of the impugned order mechanically and with non-application of mind, it is strenuously argued on behalf of the State that although the detenu was at Nalbari Jail at the relevant time he was served upon the detention order at Guwahati on 31.3.08 and the same will not stand in the way to vitiate the entire detention order.

18. According to the State Counsel, since there is likelihood of the detenu to be released on bail and on such release there is every possibility of the detenu to rejoin anti national subversive propoganda against the State, the impugned detention of the detenu is necessary and the same has been passed legally and within the permissive competence of the statute. In such premises, the impugned dentition deserves no interference from this Court.

19. We have given our anxious and thoughtful consideration to the submissions and arguments so advanced on behalf of the par ties. We have also scrupulously scanned and analyzed the entire materials available on record. Carefully perused

the pleading exchanged by and between the parties specifically the responses filed on behalf of the detaining authority, by the State Government as well as the Central Government.

20. Having considered the facts and circumstances of the case in its entirety and upon hearing the extensive arguments placed on record by the learned Counsel for the parties as well as having regard to the judicial authorities cited above, we are of the considered view that the impugned detention order of the detenu is illegal and not tenable under the law and accordingly, the same stands quashed and set aside.

21. The reasons of setting aside the impugned detention order may be outlined as under:

(i) Basically on the face of the impugned detention order itself vis-a-vis the grounds of detention and the dossiers so served upon the detenu, it reflects that there was a total non-application of mind on the part of the official respondents and the impugned detention was ordered mechanically. It appears to have happened as under:

(a) A close perusal of the records made available particularly, the order dated 31.3.08 passed by the C.J.M. definitely go to indicate that on the relevant day of 29.3.08 i.e. the date of issuance of the impugned detention order, the detenu was not in Central Jail at Guwahati but he was in judicial custody in Nalbari Jail.

(b) The grounds of detention were served upon the detenu along with the impugned detention order would unerringly demonstrate that those were verbatim re production of the dossiers so furnished to the detenu. (Annexure-F to this Habeas Corpus Petition) where only difference is the substitution of word. The word "subject" occurred in the dossair is substituted by the word "you" used in the grounds of detention.

The Supreme Court in Rajesh Vashdeb Adnani 's case (supra) relying upon the decision of the same Court rendered in a case of Jai Singh v. State J & K., reported in (7955) 1 SCC 561 dealing with exactly a similar point of substitution of word "subject" applied in the dossier by the word "you" in the grounds of detention, in paragraphs 9, 10, 11 and 12 observed as under:

9. Perused of the proposal made by the sponsoring authority and the order of detention passed by the detaining authority would show that except by substituting word "he" by "you" no other change was effected.

10. But for the said change the proposal and the order of detention is verbatim the same.

11. Mr. Naphade, learned Senior Counsel appearing for the respondent submitted that from the records produced before us it would be evident that there had been due application of mind on the part of the Respondent 2 in passing the order of detention. This may be so but keeping in view the safeguards envisaged under

Article 22 of the Constitution it was absolutely essential for the second respondent herein to apply her mind not only at the time of grant of approval to the proposal for detention but also when the actual order of detention and grounds thereof are prepared. To the aforementioned extent there has been no application of mind on the part of the second respondent herein, and, thus, we are of the opinion that the impugned order of detention dated 3.11.2004 cannot be sustained.

12. The views we have taken derive support from the judgment of this Court in *Jai Singh v. State of J & K* wherein the Division Bench held-(SCC pp. 561-62 para 1).

We had called for the records and the learned Counsel for the State of Jammu & Kashmir has produced the same before us. First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as Village - Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of....Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate, has done is to change the first three words "the subject is" into "you Jai Singh, s/o Ram Singh, resident of Village - Bharakh, Tehsil Reasi. "Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner.

(C) The report submitted by the Senior Superintendent of Police DSB City, Guwahati (for short, "the sponsoring authority") basically relied upon by the detaining authority in passing the detention order under challenge, was, at no point of time, furnished to the detenu. The claim made on behalf of the State Government that Annexure-F i.e. the communication dated 20.3.08 made by the Sponsoring authority to the detaining authority itself is the report, cannot be sustained due to the simple reason that the said communication ex-facie appears to be a forwarding letter indicating the sending of dossier of the detenu to the detaining authority. The relevant portion of the said communication may be extracted as under:

Office of the Senior Superintendent of Police (DSB) City Guwahati. Memo No. DSB/City/XI(A)/SPC/08/2197/C

Dated 20.3.08

To The District Magistrate Kamrup (Metropolitan) Guwahati Sub :- Dossier of Shri Lachit Bordoloi @ Bhaity, son of Late Charitra Bordoloi of Village Bor-

Raidingia Gaon, P.O. - Aibheti, P.S.- Jagori, Dist. - Nagaon, Assam, Present address - Jyotinagar, P.S. - Chandmari, Guwahati-21, Adviser of MASS, Chief Coordinator of PCPIA & Coordinator of PCG

Sir,

I have the honour to forward herewith the dossier in respect of Shri Lachit Bordoloi @ Bhaity, son of Late Charitra Bordoloi of Village - Bor-Raidingia Gaon, P.O. -Aibheti, P.S. - Jagori, Dist. - Nagaon, Assam, Present address -Jyotinagar, P.S. - Chandmari, Guwahati - 21, Adviser of MASS, PCPIA, PCG activist who was arrested in connection with Noonmati P.S. Case No. 46/08 u/s 120(B)/121(A)/122/124 IPC R/W Section 4 ES Act, R/W Section 25(1) Arms Act, R/W Section 10/13 UA (P) Act for hi detention under the National Security Act (NSA) 1980. The subject is now lodged in Nalbari Jail. There is every likelihood of his going out on bail. If released, the subject will become a threat to the security of the Nation as well as for public order.

I, therefore, strongly recommend his early detention under National Security Act. 1980

...

...

Yours faithfully, Sd/Illigible (R. Vijays Krishna, IPS) Senior Superintendent of Police (DSB) City, Guwahati.

In Pranab Bora's case (supra) and Purna Bora's case (supra), this Court has already settled the law on the point of non-application of mind demonstrated by non-furnishing the report on the basis of which the grounds of detention were formulated to the detenu. Once the detention order is being passed on perusal of the dossier and report of the Sponsoring authority, the formulation of grounds of detention by the detaining authority needs to be made on due and proper application of mind. It would be incumbent on the part of the detaining authority to have supplied both the dossier and report to the detenu. Apparently the same was not done in the instant case as evident from the fact that no report was ever sent to the detenu. It is well settled that the formulation of grounds from the basketful of facts is essentially a mental exercise and as such the detaining authority is required under the law to undertake such mental exercise to get his subjective satisfaction for issuance of the impugned detention order. In the case at hand the report itself does not find place anywhere in the documents so furnished to the detenu and the same is conspicuously missing therefrom. It is, therefore, to be held that subjective satisfaction of the detaining authority cannot be reached in vacuum, the grounds must be in existence. The subjective satisfaction is based on dossier and report and as such, if report is not furnished, the detention itself is vitiated.

(d) The another stand taken by the detaining authority in his grounds for detention is that it is learnt that hectic process was going on to get the detenu

released on bail and as soon as he got bail he would rejoin anti-national subversive propaganda through MASS, PCPIA, PCG etc. which would ultimately lead to disruption of public order and the jeopardisation of the internal security, system, of the State. However, under the facts and circumstances of the case, such plea has no leg to stand as from the perusal of the records it appears that the detenu's intermittent bail applications have been rejected by the competent Court and as such, there has been no likelihood of release of the detenu on bail.

(ii) There was an inordinate Unexplained delay in disposal of the representation dated 11.4.08. It is to be noted that although the Jail authority admittedly received the representation dated 11.4.08, the same was sent to the State Government only on 17.4.08 after six days of filing the said representation. However, interestingly there is no whisper in the affidavits so filed by the Detaining authority and/or the State Government as to why such six days delay occurred in sending the representation from Central Jail, Guwahati to Dispur Secretariat which is a distance of 5 K.M. only within Guwahati Municipal Corporation Area.

(b) In a catena of judicial decisions in cases namely--

1. Aslam Ahmed Zahire Ahmed Shaik's case (supra)
2. Lala Paite's case (supra)
3. Lipika Roy's case (supra)
4. Toijam (0) Memcha Devi (Smti)'s case (supra)
5. Yumnam Brojen Singh @ Kunjo @ Boss's case (supra) and
6. Kshetrimayum Prakash Singh @ Paka's case (supra)

It is emphasized and re-emphasized that a representation submitted by the detenu detained in preventive detention law should be considered with reasonable expedition. It is true that the Constitution has not indicated as to any time frame for transmission of such representation and its disposal by the competent authority but an obligation is cast on the competent authority to provide opportunity to such person for representing against the detention order at earliest instance followed by the early disposal of the same because the authority is, in a case of preventive detention, always aware of the fact that it is dealing with the liberty of a citizen. There may be valid grounds for non-disposal of the representation at the earliest possible date but those must be adequately and properly explained and inaction in this regard without any reason or valid reason resulting in the delay of disposal of the representation would certainly invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution.

(iii) The affidavit filed by Shri Kumud Chandra Kalita, Additional District Magistrate, Kamrup (Metro), Guwahati cannot be accepted as a response filed by the detaining authority himself. Shri Kalita, as it appears from the perusal of the

record particularly the office order dated 18.4.2008 as quoted hereinabove in paragraph 15 of the judgment, has neither been duly authorized nor is a competent Officer to swear and affirm the affidavit on behalf of the detaining authority who himself on his subjective satisfaction issued the impugned detention order. From the affidavit itself it appears that there was no such statement as to why and how the said Additional District Magistrate, Kamrup (Metro), Guwahati was authorized and made him competent to swear such affidavit. In cases of detention under the preventive detention laws, it is imperative on the part of the detaining authority to swear the affidavit by himself inasmuch as it is he/she to explain his/her subjective satisfaction. Passing the responsibility of the detaining authority in this context is not permissible under the Act.

In Jagdish Prasad's case (supra) the Apex Court in paragraph-5, held that where liberty to a citizen was concerned, the counter affidavit should be filed by the detaining authority himself because it was the detaining authority to explain his subjective satisfaction and the grounds therefor. Mechanical affidavits, miniaturizing the files into a few paragraphs by someone handy in the office of the District Magistrate could not be regarded as satisfactory.

In Phukan Daimary's case (supra) in paragraph-8, this Court held as under:

8.... the Detaining Authority has not filed any affidavit. The affidavit is filed by the successor in office. Ordinarily the affidavit-in-op-position must come from the Detaining Authority, moreso in a case where malafide is alleged and subjective satisfaction challenged as in the instant case. There is not even a whisper as to why the Detaining Authority who passed the impugned order, Annexure-A could not file an affidavit. Assuming he was transferred, yet he was very much available for filing an affidavit. The affidavit filed by the District Magistrate Shri Ashish Kumar Bhutani cannot say anything about the subjective satisfaction arrived at by the then District Magistrate, Nalbari Sri B. Bhattacharjee who passed the impugned order on 5.4.97. Now let us examine the affidavit as sworn and filed by Shri Ashish Kumar Bhutani. The verification appended to reads as follows:

That the statements made in this affidavit and in paragraphs 1, 2, 8, 10, 16, 17,18 and 19 are true to my knowledge while those made in paragraphs 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15 and 20 are true to my information derived from the records which I believe to be true and the rest are my humble submission before this Hon''ble Court.

The deponent Ashish Kumar in his affidavit in paragraph states:

The District Magistrate duly applied his mind to the facts of the case and was satisfied to pass the detention order on the basis of the grounds. The deponent denies that the order of detention is fraud on power and has been made for ulterior purpose.

How can he say about the subjective satisfaction of someone else ? There is a glaring discrepancy. The impugned order of detention speaks of the activities that are prejudicial to the maintenance of public order, whereas the ground of detention referred to Security of State and maintenance of public order. But the order does not refer to Security of State, but it could only be explained by the authority who passed the detention order. It is significant to note that the Successor in office is a step ahead. What the District Magistrate who passed the Detention Order does not even claim, is claimed by the successor in office as quoted above is speaks about the satisfaction of the Detaining Authority, the impugned order as quoted above merely states "whereas it has been made to appear to me". There is not remotest suggestion that the then District Magistrate was satisfied about the necessity of passing the detention order. The order does not anywhere say that the detaining authority was satisfied on the basis of materials placed before him, that a detention order should be passed. It was a compulsive necessity. This cannot be allowed to be substituted by proxy. The subjective satisfaction of B. Bhattacharjee cannot be approved by the affidavit of Ashish Kumar Bhutani, moreso in face of the discrepant nature of the impugned order which has been passed on mere appearance and not satisfaction....

22. In the result, this Habeas Corpus Petition succeeds and stands allowed. The detenu/petitioner be set at liberty forthwith, if he is not required in any other case.

23. However, there shall be no order as to costs.