
(1991) 06 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 1709 of 1991

Md. Fazir Ali

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 06-06-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 34, 385, 505
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3, 4

Citation : (1991) 2 GLR 35

Hon'ble Judges : S.N. Phukan, J; M. Sharma, J

Bench : Division Bench

Advocate : P.G. Barua and A. Sarma, for the Appellant; M.A. Laskar, Add. A.G. Assam, for the Respondent

Final Decision : Allowed

Judgement

1. This is a Habeas Corpus petition under Article 226 of the constitution, by the Petitioner who has been detained in connection with Nagaon Police Station Case No. 617/90 (G.R. Case No. 1733/90). Petitioner has stated that he is a permanent resident of Morigaon within the district of Nagaon Assam and he is aged about 18 year and is a regular student of 1st year Pre-Degree Course of Nagaon college. According to Petitioner, he is no way connected with any anti-social activities at any point of time and he has not participated at any agitational activities. A certificate from the Principal of Nagaon College has been annexed at Annexure-I. He is a boarder of College Hostel and on 31.10.90 at about 8 P.M. without any rhyme or reason the Petitioner was picked up by police of Nagaon Police Station and thereafter he was arrested and detained. He was not informed of the ground of arrest and after enquiry he could ascertain about the FIR dated 20.11.90 a copy of which has been annexed at Annexure-3. The certificate issued by the Hostel Superintendent is at Annexure-2. From the FIR It appears that the case was registered u/s 385/505/34 IPC read with Section 3/4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. According to Petitioner there is

no ground for his detention and hence the present petition.

2. Rule was issued on 21.3.91 returnable within 2 weeks and notice was accepted by the learned Govt. Advocate. But no counter was filed on behalf of the Respondents. Only at the time of hearing Mr. Laskar, learned Addl. Advocate General has stated that the original case diary would be handed over to this Court which has been done. At the time of hearing learned Counsel for the Petitioner also filed a copy of the W.T. Message stating that the Petitioner has not been arrested in any case. The W.T. Message was sent by Officer-in Charge, Nagaon Police Station to the Superintendent of Police, Guwahati.

3. A Division Bench of this Court by judgment dated 18.3.91 passed in Civil Rule (H.C) No. 7 of 1991 held that the High Court has got jurisdiction under Article 226 of the Constitution to grant appropriate relief even if a person is detained under the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987. In that case Petitioner was released forthwith. In Commissioner of Sales Tax, U.P., Lucknow Vs. Super Cotton Bowl Refilling Works, the apex court observed as follows:

Before dealing with the contention advanced it is well to remember that the legislation is limited in its scope and effect. The Act is an extreme measure to be resorted to when the police cannot tackle the situation under the ordinary penal law. The intendment is to provide special machinery to (sic) the growing menace of terrorism in different parts of the Country. Since, however, the Act is a drastic measure, it should not ordinarily be resorted to unless the Government's law enforcing machinery fails.

In Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, the same principle was reiterated and the court observed as follows:

To put it differently the ratio of the provision is that the Act need not be resorted to if the nature of the activities of the accused can be checked and controlled under the ordinary law of the land. It is only in those cases where the law enforcing machinery finds the ordinary law to be inadequate or not sufficiently effective for tackling the menace of terrorist and disruptive activities the resort should be had to the drastic provisions of the Act. While invoking a criminal statute such as the Act, the prosecution is duty bound to show from the records of the case and the documents collected in the course of investigation that facts emerging therefrom *prima facie* constitute an offence within the letter of the law, when a statute provides special or enhanced punishment as compared to the punishments prescribed for similar offences under the ordinary penal laws of the Country, a higher responsibility and duty is cast on the Judge to make sure there exist a *prima facie* evidence for supporting the charge levelled by the prosecution, Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law....

4. We have perused the case diary thoroughly and we find there is absolutely no material whatsoever to show that allegation against the Petitioner cannot be dealt with under the ordinary law of the land. In fact we do not find any prima facie case against the present Petitioner under any other law. We cannot state more than this as in this case other persons are also involved and investigation against them is still proceeding. We may, however, mention that the FIR is absolutely vague and from reading the same we are of the opinion that the ingredients of Section 3 & 4 of the Terrorist Disruptive Activities (Prevention) Act, 1987 are not available.

For the reasons stated above we direct that the Petitioner Md. Fazir who is in custody in connection with Nagaon Police Station No. 617/90 (G.R. Case No. 1833) shall be released forthwith.

Writ Petitioner has also claimed compensation. We have given our due consideration regarding compensation and in view of our finding that not to speak of prima facie case under the Act, even under other law also there are no material, and accordingly his detention was unlawful. We, therefore, hold that the Petitioner is entitled to get compensation which we quantify at Rs. 15,000/- (Rupees fifteen thousand) only. This will be in addition to any other claim that Petitioner may put forward in the appropriate court of law.

In the result, petition is allowed with the above direction.