

(1993) 10 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 1820 of 1992

Niloy Dutta

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 14-10-1993

Acts Referred:

Assam Police Manual — Rule 265, 266, 267, 268, 269
Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : (1994) 1 GLR 90

Hon'ble Judges : S.K. Homchaudhuri, J

Bench : Single Bench

Advocate : N.M. Lahiri, Amicus Curiae and B.K. Das, for the Appellant; S.N. Bhuyan, General, for the Respondent

Judgement

S.K. Homchaudhuri, J.—Petitioner while under detention under National Security Act (NSA) made an application on 9.3.92 before the Hon'ble the Chief Justice, Gauhati High Court alleging about humiliating treatment meted out to him under detention which trampled his dignity and prestige in the eyes of the public and prayed for instituting an appropriate enquiry so as to identify the guilty officials and award appropriate punishment to such officials.

2. As per the order of the Hon'ble Chief Justice the application was registered as Civil Rule No. 58 (HC) of 1992 and was put up before a Division Bench on 20.3.92. The Division Bench of this Court by order dated 20.3.92 directed to treat the application as writ petition, issued Rule and called for the records, By the said order the Division Bench also directed to treat the Chief Secretary to the Govt. of Assam, The Director General of Police, Assam, the Superintendent of Police, Kamrup, and Officer-in-charge, Panbazar Police Station as Respondents No. 1, 2, 3 and 4 respectively.

3. In this application, the Petitioner has stated that he is a practising Advocate of the Gauhati High Court and also the Convenor of the leading Human Rights Organisation of the State of Assam, known as "Manab Adhikar Sangram Samity",

in short MASS. In para. 2, 3 and 4 of the said application, the Petitioner has made the allegations as follows:

2. The convenors of MASS had therefore become quite unpopular in the eyes of the police and the army. I was arrested on 2.3.92 by a team of police officials from Panbazar P.S. at about 11.00 P.M. at night, after being woken up. I was served with the order of detention dated 2.3.92 under National Security Act. I was thereafter taken to the Paubazar P.S. At that point of time, no handcuffs were used. In the Police Station, I was originally kept in the chamber of a Senior Police Officer. But at about 1.30 A.M. Police S.I. one Sri Talukdar came and regretfully informed that much as he would have liked to keep me outside, he had specific orders from the S.P. Gauhati City to keep me within the lock-up. There were three other criminals in the lock up when I was sent into the lock up at about 1.45 A.M. The lock-up was stinking and unbelievably dirty. The latrine was totally strinking hell. Possibly it was never washed. The stench of urine and human filth made me feel like vomiting. Though a blanket was laid on the floor, where I was expected to sleep with swirls of mosquito earring for blood, I decided to keep standing

(3). I was taken out from the lock-up in the morning. I was given tea and biscuits. My wife, brother and Advocate Sri B.P. Katokey met me and in their presence, I was handcuffed and taken to a bus waiting outside the police station in the public road, so handcuffed. Thus I was taken to the Missa subsidiary jail. Throughout the journey the handcuffs were kept tied and the same was ultimately taken off in the Missa Jail. When the handcuffs were put on me, I demanded to know why is it necessary since I am an Advocate of the city practising in the High Court. The police personnel said that normally they would not have done so, but there were orders from the Government (Sarkarar Aadesh) and as such they said that they had to handcuff me in public.

(4). I am at a loss as to why I was dumped in the police lock-up or as to why I was handcuffed, I was detained under NSA and there were no Criminal charges against me. Why was such humiliation, pain and suffering inflicted on me? Did I do anything to be so cruelly treated? The grounds of detention have been served on me which reveal that the main thrust of detention is to stop the functioning of the Manav Adhikar Sangram Samity (MASS). I shall file an appropriate writ application against my detention. I am addressing this appeal to your Lordship to draw the attention of the Hon'ble Gauhati High Court to the humiliation pain and suffering caused to me as an act of sheer political vendetta by the Government.

4. Respondents after receipt of notice filed affidavit-in-opposition. The affidavit-in-opposition has been sworn in by a Under Secretary to the Government of Assam, Political Department, Dispu. In the said affidavit-in-opposition, in reply to the allegations made in paragraph 2, 3 and 4 of the application, the Respondent in paragraphs 4, 5 and 6 of their affidavit have contended as follows:

(4) That as regards the statements made in para 2 of the writ petition are

denied. The deponent begs to say that the Panbazar P.S. the original Gauhati Police Station is the most secure police station where the lock up is more spacious than any other police station in the city and so may gracious gentlemen had to pass the night in the same lock-up in the same charges, besides which the authority had no other species in the city for the Petitioner.

(5) That with regard to the statements made in para 3 of the writ petition, the deponent begs to say that while transporting the detainee, the escort party kept the vehicle at Jagiroad on the said date i.e. on 3.3.92 at 11 A.M. and when the escort party constables kept the detainee under handcuff for the security reasons. There was no malafide intention on the part of the escort party in escorting the Petitioner and as such the allegations against the administration are baseless and no merit at all.

(6) That with regard to the statements made in para 4 of the writ petition, the deponent begs to say that the Petitioner was detained under N.S.A. in the interest of maintaining peace in the State and for the interest of the administration. Save and except, the matter of detention there was nothing for such humiliation pain inflicted on the Petitioner. The deponent further begs to say that the subordinate officer of the police Deptt. executed their duties honestly and politely and dignity was shown to the writ Petitioner while they are in duty in escorting the writ Petitioner.

5. I have heard Mr. N.M. Lahiri, learned Advocate General, Meghalaya who has appeared as Amicus Curiae, Mr. B.K. Das, learned Counsel on behalf of the Petitioner and Mr. S.N. Bhuyan, learned Advocate General, Assam on behalf of the Respondents.

6. Undisputed facts are-

Following an order of detention under the NSA, Petitioner was arrested from his residence at Guwahati at around 11 PM on 2.3.92 by a team of police officials of Pan Bazar Police Station. Petitioner was kept in lock up in the Pan Bazar Police Station at around 1-45 AM. In the morning of 3.3.92, Petitioner was taken to Missa Subsidiary Jail, Nagaon and while he was taken from Pan Bazar Police Station to Missa Subsidiary Jail, Nagaon he was hand-cuffed.

7. Mr. N.M. Lahiri, learned Advocate General, Meghalaya has drawn my attention to Rule 265 to 281 A of the Pan-III Chapter of Assam Police Manual which deals with prisoners' escorts and under which circumstances an under-trial prisoners should generally be hand-cuffed while in transit. Mr. Lahiri has submitted that the Hon'ble Supreme Court in a series of decisions held that no person should be hand-cuffed routinely merely for the convenience of custody of the escort and there must be material sufficiently stringent to satisfy a reasonable mind that there is clear apprehension and danger of escape of the prisoner who is being taken away by escort of his breaking out from the Police control.

Mr. B.K. Das, learned Counsel for the Petitioner has submitted that the Petitioner

is a practising Advocate and there is nothing on record to show that when the police arrested the Petitioner from his house at night there was not even a shadow of chance far less danger of escape from the custody of the police and/or of his being breaking away from the control of the police/escort while he was taken away from Panbazar Police Station to the Missa Subsidiary Jail. On the contrary, when the police went to his house to arrest the Petitioner he co-operated with the police to the Panbazar Police Station without any resistance. As such, the act of police in keeping the Petitioner in the lock-up and handcuffing him while he was taken from Panbazar to Missa Subsidiary Jail was unjustified and was done deliberately to humiliate, torture and trample the dignity of the Petitioner.

Placing reliance on the decisions of the Apex Court in the cases of (i) Sunil Batra v. Delhi Administration and Ors. reported in 7975 (4) SCC 494 (ii) Prem Sankar Sukla v. Delhi Administration reported in AIR 1980 SC 7535 , (iii) Rudul Sah Vs. State of Bihar and Another, (iv) Sunil Gupta and Others Vs. State of Madhya Pradesh and Others, and (v) The State of Maharashtra and Others Vs. Ravikant S. Patil, Mr. Das has submitted handcuffing the Petitioner was violative of Petitioner's fundamental right guaranteed under Article 14, 19 and 21 of the Constitution of India and the Petitioner having been subjected to great humiliation and having suffered irreparable loss, Respondents are liable to be directed to compensate the Petitioner adequately and the Govt. may be directed to take action against the erring officials.

Mr. S.N. Bhuyan, learned Advocate General, Assam has been unable to place any materials justifying the action of the police officials in handcuffing the Petitioner while he was taken from Pan Bazar to Missa Subsidiary Jail. Mr. Advocate General has, however, submitted at this Court in exercise of power under Article 226 of the Constitution may not award any compensation and the Petitioner may file a suit for damages against the officials in accordance with law. In support of the contention Mr. Advocate General, Assam has placed reliance on a decision of this Court in the case of Ashish Gupta v. State of Assam registered as Civil Rule No. (HC) 52/92.

9. I have considered the submission made on behalf of the Petitioner by Mr. B.K. Das. Mr. N.M. Lahiri, learned Advocate General, Meghalaya, appeared as Amicus Curiae and Mr. S.N. Bhuyan, learned Advocate General Assam and perused the contents of the application and the affidavit-in-opposition.

10. It is not disputed by the learned Advocate General, Assam that it is well settled by a catena of decisions of the Apex Court that hand-cuffing a prisoner or detenu in transit without any valid or compelling reason, is violative of his, fundamental rights guaranteed under Article 14, 19 and 21 of the Constitution. In the case of Sunil Bhatra (Supra) the Hon''ble Supreme Court held:

It is no more open to debate that convicts are not wholly denuded of their fundamental rights. Prisoners are entitled to all constitutional rights unless their

liberty has been constitutionally curtailed. However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of this confinement.

In the case of Rudul Sah v. State of Bihar and Anr. (Supra) the Hon'ble Supreme Court amongst other held:

Article 21 will be denuded of its significant content if the power of the Supreme Court were limited to passing orders of release from illegal detention. The only effective method open to the judiciary to prevent violation of that right and secure due compliance with the mandate of Article 21, is to mulct its violators in the payment of monetary compensation. The right to compensation is thus some palliative for the unlawful acts of instrumentalities of the State. Therefore, the State must repair the damage done by the officers...

In the case of Premsankar Sukla (Supra) the Hon'ble Supreme Court amongst other held that:

We lay down as necessarily implicit in Articles 14 and 19 that when there is no compulsive need to fetter a person's limbs, it is sadistic, capricious, despotic and demoralising to humble a man by manacling him. Such arbitrary conduct surely slaps Article 14 on the face. The minimal freedom of movement which even a detainee is entitled to under Article 19 (see Sunil Batra Vs. Delhi Administration and Others etc., cannot be cut down cruelly by application of handcuffs or other hoops. It will be unreasonable so to do unless the State is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe keeping.

In the case of Sunil Gupta and Others Vs. State of Madhya Pradesh and Others, the Supreme Court reiterated the principles laid down in Sunil Bhatra's case (supra) and had held that handcuffing is an act against all norms of decency and amounts to violation of principles underlying Article 21. In Sunil Gupta's case the Hon'ble Supreme court directed the State Govt. to take appropriate action against the erring official in handcuffing the arrested persons. In the case of State of Maharashtra and Others Vs. Ravikant S. Patil, the Hon'ble Supreme Court upheld the decision of the Bombay High Court awarding compensation of Rs. 10,000/- to the Petitioner of that case.

It is not the case of the Respondents that the Petitioner was being so dangerous and desperate and/or the circumstances was so hostile to safe keeping that no other practical way of forbidding escape of the Petitioner was available but to resorting to handcuffing him.

On perusal of the materials on records, I have no hesitation to hold that the handcuffing of the Petitioner while taking him from Panbazar Police Station to Missa Subsidiary Jail was not at all warranted and was wholly unjustified. Such arbitrary action of the police officials, subjected the Petitioner to great humiliation and mental torture and lowered his dignity in the eye of the public, and is violative of his fundamental rights guaranteed under Articles 14, 19 and

21 of the Constitution.

14. Another aspect of the matter which cannot escape notice is, keeping the Petitioner in the lockup in the night of arrest which was most unhygienic and not at all fit for human habitation, In reply to the Petitioner's allegation, the Respondents contended:- "The Pan Bazar Police Station and the lock up is more spacious than any other Police Station of the City and so many gracious gentlemen had to pass their night in the same lockup on the same charges. Besides, the authorities have no other space (sic) in the city for the petitions" I cannot but express my dissatisfaction over the manner in which the allegation has been taken casually. The treatment meted out to the Petitioner cannot be taken lightly. I find that there was no necessity to keep the Petitioner in the lock up when the Petitioner apparently co-operated with the police officials. The undisputed inhuman treatment meted out to the Petitioner is not only humiliating but also violative of his fundamental right guaranteed under Article 21 of the Constitution of India. Our Constitution guarantees dignity of individual. Such action of police in trampling the dignity for no valid reason is reprehensible. Respondents should have provided a proper place of spending night to the Petitioner after his detention and Government was not helpless in providing minimum amenity. Keeping of the Petitioner in the lock up in such unhygienic and inhumane condition, exposing him to mosquito bites throughout the night was apparently resorted to subject the Petitioner to humiliation and torture. This Court entrusted with the responsibility to enforce the Rule of law, cannot ignore such inhuman treatment, torture, both mental and physical and trample of dignity of a citizen under detention. The uncalled for actions of the Respondents particularly" the police officials - throwing the Petitioner into lock up and handcuffing him on the following morning while in transit, can be appropriately expressed in the language of the hon'ble Justice Iyer as - "Sedastic, capricious, despotic and demoralising to humble the Petitioner by manacting him."

15. The humiliation, indignity and mental torture suffered by the Petitioner in the hands of the police officials no doubt cannot be compensated in terms of money. However, as has been held by the Hon'ble Supreme Court in the case of Radul Sah (Supra), only effective method open to the judiciary to prevent such violation of fundamental rights of a citizen guaranteed under Article 21 of the Constitution is to mulct its violators in the payment of monetary compensation. On the undisputed facts of the case, I do not consider it expedient to dispose of the petition by keeping it open to the Petitioner to institute suit. For the unjust action in keeping the Petitioner in the lock up in an inhuman and unhygienic condition and later on hand-cuffing him while on transit, I direct that Respondents shall pay a sum of Rs. 15,000/- as compensation to the Petitioner.

The Respondents shall ensure payment of the amount to the Petitioner within 3 months from today.