

(1998) 06 GAU CK 0011

In the Gauhati High Court

Case No : Civil Rule (HC) No. 49 of 1998

Phanindra Medhi alias Lebu

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-06-1998

Acts Referred:

Armed Forces (Special Powers) Act, 1958 — Section 4, 5
Constitution of India, 1950 — Article 22, 22(1), 22(2), 226
Criminal Procedure Code, 1973 (CrPC) — Section 41
Penal Code, 1860 (IPC) — Section 120, 120(B), 121, 121(A), 122R
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13

Citation : (1998) 2 GLT 550

Hon'ble Judges : V.D. Gyani, Acting C.J.; B. Biswas, J

Bench : Division Bench

Advocate : N. Dutta, B.K. Mahajan and R.K. Pradhan, for the Appellant; B.P. Bora, G.A. Assam and P.N. Choudhury, Addl. C.G.S.C., for the Respondent

Judgement

V.D. Gyani, Actg. C.J.

1. Heard Mr. N. Dutta, learned Counsel for the Petitioner. Mr. B.P. Bora, Senior Govt. Advocate for the State and Mr. P.N. Choudhury, Addl. Central Govt. Standing Counsel for the Union of India.

2. By this petition under Article 226 of the Constitution although it is registered as a petition for issuance of a writ of habeas corpus, the real nature and purpose of this petition is to obtain a protective order against apprehended illegal arrest. Few basic facts may now be noted.

3. The Writ Petitioner is dubbed and denounced as a member of a banned organisation. He was arrested on 23.8.97 at Santacruz airport, Mumbai. He was brought to Guwahati and produced before the Chief Judicial Magistrate, Kamrup, Guwahati. By now as many as 6 cases as detailed below have been registered against him:

1. Nowgong P.S. Case No. 368/96 u/s 120(B)/386 ICC R/W 10/13 UA(P) Act.

2. Jalukbari P.S. Case No. 186/97 u/s 10/13 UA(P)Act.
3. Panbazar P.S. Case No. 487/96 u/s 120/121 IPC R/W 10/13 UA(P) Act.
4. SOU-1/95 u/s 120(B)/121/121(A)/122R/ W 10/13 UA(P) Act.
5. Jalukbari P.S. Case No. 132/96 u/s 326/307/34/302 IPC.
6. Geeta Nagar P.S. Case No. 39/94 u/s 365 IPC R/W 3/4 TADA(P) Act.

4. It is the Petitioner's case that his preventive detention has been quashed and he has been granted bail in all the above cases and he has also furnished bail bonds so as to ensure his release from jail. It is only in the last case, namely, Geeta Nagar P.S. Case No. 39/94 that he is still to furnish his bail bonds in compliance with the bail order passed in this case. Petitioner's apprehension is that he may be picked up by the army personnel or police the moment he comes out from jail. It is for this reason that he prays for a protective order so as to ensure his release and safe landing at his home at Maligaon. Learned Standing Counsel for the Union of India has made a categorical statement at the Bar that the apprehensions entertained by the Petitioner was without any basis as the army personnel or security forces have no mind to pick him up on his way home on being released from jail. Mr. B.P. Bora, learned Senior Govt. Advocate also states that so far as unlisted cases are concerned he is not going to be arrested or taken into custody. If there be any other case registered and/or pending against the Petitioner, the investigating agency, the Police, should be free to act in accordance with law.

5. We are a society governed by rule of law. The State also proclaimed and professed to be governed by rule of law. The powers exercisable by armed forces u/s 4(a) read with Section 5 of the Armed Forces (Special Powers) Act, 1958 are subject to rider contained in Article 22(1) and 22(2) of the Constitution as has been recently held by the Supreme Court in Naga People's Movement of Human Rights v. Union of India 1997 (3) GLT 50 which is quoted below:

Under Clause (c) of Section 4 power has been conferred to arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and the concerned officer is empowered to use such force as may be necessary to effect the arrest. The said power is not very different from the power which has been conferred on a Police officer u/s 41, Code of Criminal Procedure Clause (c) has to be read with Section 5 of the Central Act which requires that any person arrested and taken into custody shall be made over to the office in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest. It has been urged that there is nothing in Section 5 to indicate that the officer exercising the power of arrest u/s 4(c) is obliged to comply with the requirements of Clauses (1) and (2) of Article 22 of the Constitution. There is no basis for this contention. The power conferred u/s 4(c) read with Section 5 has to be exercised in

consonance with the overriding requirements of Clauses (1) and (2) of Article 22 of the Constitution which means that the person who is arrested by an officer specified in Section 4 has to be made over to the Officer in charge of the nearest police station together with a report of the circumstances occasioning the arrest with the least possible delay so that the person can be produced before the nearest Magistrate within a period of twenty four 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 can be detained in custody beyond the said period without the authority of a Magistrate.

6. The Code of Criminal Procedure contains several provisions, such as, cancellation of bail, application for remanding an accused to police custody even while he is in jail custody or on bail. In face of all these provisions available there is no need for employing extra legal methods. Even if the Petitioner is wanted in connection with some other case, the Petitioner who is presently lodged in jail be apprised of the same by 12.6.98 so as to enable him to get appropriate legal measure to ensure his release. If he is not so apprised within the time specified above, the Petitioner may still be taken into custody if the investigating agency so desires, but by obtaining an appropriate order from a Court of competent Magistrate or Court of competent jurisdiction and the Petitioner shall be informed of any such move on the part of the investigating agency by 12.6.98. Thereafter as and when the Petitioner is released he shall be taken into custody by the police without a specific order from a competent Court.

7. Copy of this order be supplied to the learned Counsel appearing for the parties today itself.