

(1957) 03 GAU CK 0002
In the Gauhati High Court

Safiulla

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 08-03-1957

Acts Referred:

Constitution of India, 1950 — Article 22
Official Secrets Act, 1923 — Section 12, 13, 3, 4

Citation : AIR 1958 Guw 34 : (1958) CriLJ 1248

Hon'ble Judges : J.N. Datta, J.C.

Bench : Single Bench

Judgement

J.N. Datta, J.C.

1. This is a petition for bail u/s 498 Criminal Procedure Code and has been filed on behalf of Safiulla of Durgapur, Police station Begamgani, District Noakhali. East Pakistan who was arrested along with another person dt. 14-12-56 on suspicion u/s 54 of the Criminal Procedure Code within the jurisdiction of Teliamura Police station in Tripura. It is admitted that the Petitioner came to Agartala on a valid Passport.

2. Both the arrested persons were produced before the District Magistrate, Agartala on 15-12-56 with an application from the Inspector of Police (Special Branch, Agartala), in which it was stated that they were Pak nationals and were arrested while found loitering about in the jurisdiction of the Police station Teliamura with a request that a remand for a fortnight may be granted for further investigation. It was also mentioned in the application that they had been kept in the lock-up of Kotowali at Agartala for the night custody for necessary interrogation for the interest of the State.

The District Magistrate marked this application to the S.D.M., Sadar for necessary action, and it appears that they were produced the same day before the S.D.M. who remanded them to Jail custody till 28-12-56, obviously u/s 167 of the Criminal Procedure Code.

3. After this followed the following remands by the S.D.M.:

- i) on 28-12-56 up to 10-1-57.
- ii) on 10-1-57 up to 23-1-57.
- iii) on 23-1-57 up to 5-2-57.
- iv) on 5-2-57 up to 18-2-57.
- v) on 18-2-57 up to 3-3-57.

4. It is to be noticed that applications for further remand were filed by the prosecution on 28-12-56, 10-1-57 and 18-2-57, but none on 23-1-57 and 5-2-57. In the three applications filed for remand the reason given was the same, namely, that the investigation was not complete, except that in the application filed on 10-1-57 it was further stated that the Government contemplated prosecuting these persons u/s 4 (obviously a mistake for Section 3) and other relevant sections of the Indian Official Secrets Act 1923.

5. The following bail petitions were filed before the S.D.M.:

- i) on 28-12-56 on behalf of this Petitioner;
- ii) on 10-1-57 on behalf of both the arrested persons;
- iii) on 11-1-57 on behalf of this Petitioner;
- iv) on 22-1-57 on behalf of this Petitioner;
- v) on 24-1-57 separate for each;
- vi) on 25-1-57 separate for each.

6. The bail petition filed on 28-12-56 was rejected by the S.D.M. by an order in the order-sheet of the same date, on the ground that the investigation had not been completed and because the Petitioner was a Pak national.

7. No order appears to have been passed on the bail petition filed on 10-1-57. The petition filed on 11-1-57 was adjourned to 23-1-57 for consideration and the S.D.M. directed the Police Officer to submit a memo of evidence and the documents if any. This was not complied with and on 23-1-57 the S.D.M. again passed an order that the same be filed and adjourned the case to 5-2-57 for consideration of the question of bail.

8. On being again moved for bail on 24-1-57 the S.D.M. heard the bail petitions and adjourned the case for orders on 25-1-57. On that date he rejected the bail petitions on the ground that it was a case u/s 3 of the Official Secrets Act which is non-bailable and the security of this State is involved as per report of the Inspector of the Special Branch. No memo of evidence or documents had been filed by the Police and the report of the Inspector Special Branch is contained in the application dated 24-1-57 which is on record.

It was to the effect that further enquiries were going on and the State Government had called for relevant materials from the Government of India which had not been till then received, and so a memo of evidence could not be produced. The report further added that the Government had finally decided to take necessary action against these accused under the Official Secrets Act and they should be further remanded for a fortnight.

9. On 5-2-57 the S.D.M., again directed that the memo of evidence be submitted and remanded the accused till 18-2-57, on which date there was a further remand till 3-3-57 without any memo of evidence having been submitted.

10. Attention may also be drawn here to two applications by the Police for permission to interrogate the accused persons in the Central Jail, filed on 27-12-56 and 6-2-57. By each of these applications permission was sought to interrogate the arrested persons for a week, and the S.D.M. allowed those applications.

11. The bail petition moved on behalf of this Petitioner before the Sessions Judge on 2S-1-57 also failed because it appears that the learned Sessions Judge was informed by the Government Advocate during the course of argument that these persons were concerned in cognizable offence described in Section 4 read with Section 3 (most probably the Sessions Judge means Section 3 read with Section 4) of the Official Secrets Act 1923 and some invisible writings and code were found on the person of the other accused.

That the accused persons had come to this territory on the strength of Passports for travelling to Gazaria under Police station Agartala, but were found in Teliamura which is 35 miles from Gazaria and writings etc., found concern the Union Territory of Tripura.

12. Before me an affidavit has been filed to the effect that the Petitioner came with Passport valid for visiting Gazaria village only but was found loitering about at Teliamura with the other accused who had no valid travel documents, and some documents were found in the possession of the other arrested person, which are supposed to be prejudicial to the safety of the interest of the Union, of India. It is significant to note that the word used in the affidavit as regards the documents is "supposed" and even at this late stage no positive assertion has been made about them.

13. Thus the position is this, that though. nearly 3 months have passed, the prosecution is not able to say as to what the Petitioner has done and what particular offence he has committed or is definitely suspected of, and though as far back as 24-1-57 it was stated in the report of the Inspector Special Branch that Government had finally decided to take action against those accused under the Official Secrets Act, no complaint has yet been filed before the Magistrate.

14. Section 3 of the Official Secrets Act is very wide and makes the offences punishable with imprisonment up to 14 years in certain cases, while in other

cases they are punishable with imprisonment up to 3 years only, and Section 12 of the Act makes only the offences u/s 3 or attempts for same, which are punishable with imprisonment for 14 years non-bailable, while the other offences under the Act are bailable. Thus in the present case there is even an absence of such particulars which would show whether the offence of which, the Petitioner is at present suspected is bailable or non-bailable much less, the evidence in support of it.

15. As held in so many cases remand u/s 344 should not ordinarily be ordered without some evidence to show that it was necessary to detain the accused in custody, and when after one remand the accused is again brought up, some direct evidence of the connection of the accused with the crime should be required to justify the refusal of bail and with each remand the necessity for production of implicating proof becomes more strong. It should be shown that sufficient evidence has been obtained to raise a suspicion that the accused is implicated in the offence and further evidence is to be likely to be obtained by a remand : Ahmadali v. Emperor AIR 1915 LAH 28(2)(A); Ponnusami Chetty v. Queen ILR Mad 69 (B); Supdt. & Remembrancer of Legal Affairs, Bengal v. Bidhindra Kumar Roy 50 Cri LJ 231 : AIR 1949 Cal 143 (C), and S. V. Ingle v. Emperor AIR 1944 Lah 149 (D). In the present case nothing of the sort has been done and no evidence has been placed before the Court and even the allegations made are so vague that the accused can hardly be expected to answer them or be confronted with them.

16. As already seen the prosecution has had nearly 3 months' time and still they are not able to place any definite evidence or anything tangible against this Petitioner and shelter is taken behind vague allegations. In these circumstances the only reasonable conclusion would be that such evidence is not forthcoming, and it is difficult to see how a 1st remand can still be gathered when this is the result after the grant of half a dozen remands.

17. Even Article 22 of the Constitution requires that no person shall be detained in custody without being informed, as soon as may be, of the ground for such arrest, but as has been seen it is evident that the Police is not in a position even today to do so, and that fact also would go against any further detention.

18. There is yet another aspect of the case which deserves to be noticed. There can be no doubt that the remands granted after the first remand were granted u/s 344 Cr.PC because the period of remand u/s 167 is limited to a total period of 15 days. While remand u/s 167 can be granted by a Magistrate having jurisdiction to try the case or not, a remand u/s 344 can be granted only by a Magistrate having jurisdiction to try the case.

Under Section 13 of the Official Secrets Act, offences under that Act cannot be tried by a Court which is inferior to that of a District or Presidency Magistrate except that a first class Magistrate especially empowered in that behalf by the appropriate Government may also try offences under the Act. On being

questioned the learned Government Advocate admitted that the S.D.M. in question who granted all these remands has not been SO empowered to try cases under the Official Secrets Act.

Clearly then, he had no power to grant the subsequent remands and the proper course for him was to have forwarded the accused to the District Magistrate. It is not known what view the District Magistrate would have taken had the S.D.M. followed this course.

19. There is thus no reason why bail should be refused to the Petitioner, but there appears to be some justification in the request of the learned Government Advocate that in case bail is allowed some safeguards may be imposed to prevent the Petitioner from quietly leaving this territory. In my opinion that can be done by imposing a sufficiently heavy bail and some condition as regards residence. I, therefore, order that the Petitioner shall be released on furnishing a bail of Rs. 5,000/- with two sureties in like sum, to the satisfaction of the District Magistrate, Agartala. The Petitioner is further ordered not to leave the Municipal bounds of Agartala without the written permission of the District Magistrate, Agartala, and the District Magistrate will be entitled to impose conditions when granting such permission.