

(1998) 03 GAU CK 0036
In the Gauhati High Court
Case No : Civil Rule (HC) No. 110 of 1997

Sarthe Timung @ Purna Kanta Timung

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 07-03-1998

Acts Referred:

Constitution of India, 1950 — Article 22(5), 22(5)
National Security Act, 1980 — Section 8(1), 8(1)

Citation : (1998) 1 GLJ 454

Hon'ble Judges : V.Dutta Gyani, J and H.K.Kumar Singh, J

Bench : Division Bench

Advocate : T.J.Mahanta, R.P.S.Kakati, N.Dutta, A.C.Bora, Advocates appearing for Parties

Judgement

V. Dutta Gyani, J.—By this petition under Article 226 of the Constitution, the detenu petitioner prays for quashing the detention order dated 12.4.97 passed by the District Magistrate, Nagaon in exercise of his powers conferred by subsection (2) of section 3 of the National Security Act, 1980 (hereinafter referred to as the Act) and prays for issuance of a writ of Habeas Corpus.

2. Since the order as passed has a decisive impact on the fate of this petition, it is reproduced hereunder for ready reference.

?Government of Assam: Office of the Deputy Commissioner: Nagaon, Confidential Branch

ORDER

Perused the dossier and the report of the Superintendent of Police; Nagaon, Assam and whereas the undersigned is satisfied with respect of the person known as Shri Sarthe Timung @ Purna Kanta Timung @ Elvia Timung son of Shri Lantak Timung of village Balisora Doloni, Amsoi, PS Roha, District Nagaon, Assam that with a view to preventing him from acting in a manner prejudicial to the security to the State and maintenance of public order it is necessary to

detain him under the National Security Act, 1980 and to make the following order.

Now, I Shri S. Abbasi, IAS, District Magistrate, Nagaon, Assam, therefore, in exercise of the powers conferred by subsection (2) of section 3 of the National Security Act, 1980 direct that the said Shri Sarthe Timung @ Purna Kanta Timung @ Elvin Timung son of Shri Langtak Timung of village Balisora Doloni, Amsoi, PS Roha, District Nagaon, Assam be detained in the Special Jail, Nagaon.

The grounds of detention will be served on him within 5 (five) days.

District Magistrate, Nagaon?

3. Mr. Dutta, learned counsel appearing for the petitioner has challenged the impugned order on grounds of non application of mind, vitiating subjective satisfaction, non furnishing of grounds of detention along with the basic facts and materials including the documents that has been relied upon by the detaining authority while passing the order of detention, thereby depriving the detenu of the opportunity of making an effective representation, the inordinate undue unexplained delay in disposing of the representation as submitted by the detenu.

Mr. Bora, learned Additional Advocate General appearing for the respondent State argued that all the procedural safeguards as provided under the Act have been strictly complied with, and the grounds of detention are relevant, proximate and germane to the object sought to be achieved by passing the impugned order of detention, Annexure A. According to him, mere was no delay on the part of the State in disposing of the representation submitted by the detenu.

Learned Standing Counsel for Union of India also maintained that representation as submitted by the detenu was disposed of without any delay on the part of the Central Govt..

Before dealing with the rival contentions as advanced at the Bar, it would be pertinent to note that the grounds of detention as contained in Annexure B, as furnished to the detenu, if were really the grounds relied upon by the detaining authority for passing the detention order, we do not have the slightest hesitation in holding that they are not only relevant and germane but also proximate in point of time and do have a nexus to the object sought to be achieved by passing the detention order. We do hold so, but unfortunately the detention order does not refer to these grounds at all. The subjective satisfaction of the detaining authority is based on perusal of dossier and report from Police Superintendent of the district. Of course, Annexure B contains reference to detenu's activities commencing from November, 1990 which seemingly used it as appearance as if stale incidents have been relied upon for passing the order of detention, but that is not so. Annexure B also contains reference to incidents and activities of December, 1994, February, 1995 and March, 1996, they are quite proximate in point of time. The reference to earlier incidents is just by way of indicating the continuity of such illegal activities commencing right from 1990. These activities are undoubtedly seditious in nature, waging war against the Govt. of India and

challenging the sovereignty, extortion, unlawful activities and offences under the Arms Act. The cases registered were under section 384/121/121(A)/122 IPC read with, section 10/13 UA (P) Act and section 25(l)(a)/27 of the Arms Act.

7. Keeping the impugned order, Annexure A, and the grounds of detention as contained in Annexure B in juxtaposition and reading them together, a demonstrably glaring infirmity surfaces. The order of detention based on perusal of dossier and report of the Superintendent of Police was passed on 12.4.97, whereas the grounds of detention came into existence on 15.4.97, there is absolutely no reference, not even a whisper of the "dossier" and the "report" of the Superintendent of Police in the grounds of detention, Annexure B, which runs into four pages. Too obviously the grounds of detention were not in existence while passing the impugned order of detention on 12.4.97. What has been made foundation of the order of detention, namely, the "dossier" and the "report" of the Superintendent of Police, is not even referred to in the grounds of detention, let alone its being supplied to the detenu for which a grievance has been made by the learned counsel. These "dossier" and the "report" of the Superintendent of Police does not even find a mention in Annexure B and are conspicuously missing there from. This by itself is sufficient ground to strike down the impugned order of detention as passed by the learned District Magistrate, Nagaon. The detention order, Annexure A, is liable to be set aside on this short ground alone. It is inconceivable that a detention order could be passed without formulating the grounds of detention. Subjective satisfaction of the detaining authority cannot be reached in vacuum; the grounds must be in existence.

It was urged that grounds of detention can be supplied to the detenu within five days of passing the order of detention. No doubt, section 8 of the Act carves out such a scope for communication of grounds ordinarily within five days from the date of detention but this communicating the grounds within five days does not mean that a detention order can be passed by a detaining authority even in absence of grounds of detention which can be formulated within five days. What is made permissible under section 8 (1) of the Act is communication of grounds of detention to the detenu ordinarily within five days and in exceptional circumstances not later than ten days, from the date of detention, that too, for reasons to be recorded in writing by the detaining authority but no such reason has been recorded in Annexure B.

Communication of grounds presupposes existence and formulation of grounds, a sine qua non for passing a detention order. It is apparent from the record that no such formulation of grounds was in existence when the detention order Annexure A was passed on 12.4.97, whereas the grounds of detention Annexure B was prepared on 15.4.97. The order of detention Annexure A itself shows that it was passed on perusal of dossier and report submitted by Superintendent of Police, which has admittedly not been supplied or communicated to the detenu. What was communicated to the detenu was Annexure B as prepared on 15.4.97. It is an admitted position that the detenu was detained on 12.4.97, in pursuance to

the detention order, Annexure A, and on detaining authority's own showing the grounds of detention were communicated on 17.4.97. To quote from the affidavit sworn by the District Magistrate.

?That with regard to the statements made in para 2 of the writ petition the deponent states that detention order was passed vide this offie No.NC. 10/97/3669 dated 12.4.97 was served on the detenu on the same day i.e. on 12.4.97 which was duly acknowledged by the detenu, and the grounds of detention was issued vide this Memo No.NC. 10/97/3674 dated 15.4.97 which was duly acknowledged by the detenu on 17.4.97. The detention order and the grounds of detention were made as per the provisions of law.?

Now it is evident that the grounds of detention were communicated later than five days, from the date of detention, section 8 of the Act enjoins the detaining authority to record reasons for this belated communication of grounds of detention, and these reasons are woefully missing not only from Annexure B as supplied to the detenu but from the affidavit sworn and filed by the District Magistrate, respondent No.4.

The impugned order of detention Annexure A is liable to be quashed on this ground as well.

There are grounds such as nonsupply of basic material to enable the detenu to make an effective representation, undue inordinate unexplained delay in disposal of representation as submitted by the detenu on 8.5.97; admittedly received by the Central Govt. on 28.5.97 (delay of 20.days may be in transit or due to late forwarding by the State Govt.) and finally rejected on 12.6.97. Sixteen days delay caused at yet another stage even after receiving the representation, are but some of the grounds urged by learned counsel appearing for the petitioner. In view of the conclusions we have reached above, it is no longer necessary to go into other grounds as urged.

The Supreme Court in one of its recent judgment as reported in Kamalesh kumar Ishwardas Patel vs. Union of India, (1995) 4 SCC 51 has observed:

?While discharging the constitutional obligation to enforce the fundamental rights of the people, more especially, the right to personal liberty, the Court would not be influenced by the nature of the activities of the detenu. History of liberty is the history of procedural safeguards: The framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be ?zealously watched and enforced by the Court?. Their rigour cannot be modulated on the basis of the nature of the activities of a particular persons/"

14. The casual manner in which the impugned order of preventive detention, has been passed without any application of mind, is writ large through out the acts of

the respondents, the impugned order is liable to be quashed, it is accordingly quashed. The detenu be set at liberty forthwith without any loss of time unless he is otherwise wanted in some other case or cases.