
(1955) 09 GAU CK 0002
In the Gauhati High Court

Shamsul Islam

APPELLANT

Vs

Government of Tripura

RESPONDENT

Date of Decision : 10-09-1955

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 220, 226

Citation : AIR 1956 Guw 1 : (1956) CriLJ 118

Hon'ble Judges : Brij Narain, J

Bench : Single Bench

Judgement

Brij Narain, J.—This is a habeas corpus petition on behalf of Shamsul Islam under Article 220 of the Constitution of India praying for immediate release as he was arrested on 3-6-1955 but upto now he has not been tried by any Court.

2. The petitioner has alleged that he is serving in the Royal Pakistan Air Force and he came home in Comilla during his annual leave of 45 days to see some of his relations in Agartala and Digboi. He reached Agartala on 1-6-1955 in the evening through the border check post and he went straight to the house of his brother-in-law Mr. Badiozamma (house of his cousin) at Khyerpur. He had to encash the traveller's cheque in the United Bank of India at Agartala and so he went to the Bank on 2-6-1955 with a relation of his as he did not know where the office of the Bank was situated.

As he was late that day he had to go there again on 3-6-1955 with his nephew Hiran Meah and he submitted the cheque and Pass-port to the Bank and got token No. 7 from the Bank. He was asked to reach the Bank at 4 P.M. for collecting the money. When he had come out of the Bank he was arrested by the police and since then he has been kept under detention. On 2-8-1955 the detention order No. F. 15(78)-PD/55 under Sub-sections (1)(a)(i) and (ii) of Section 3, Preventive Detention Act, 1950 (4 of 1950) as amended and also read with Chief Commissioner's general order No. 4-P/XVTII-3/50, dated 7-9-1950 was served on the petitioner and along with this detention order grounds of detention were also duly supplied to him.

The learned Government Advocate has today produced a copy of the order by which the petitioner was detained and this order was signed by the Chief Commissioner on 2-8-1955. A copy of the grounds of detention has also been filed in this case on behalf of the opposite party. Lastly a copy of the letter dated 27-8-1955 addressed to the Government of Tripura by the office of the Advisory Board has also been produced and this shows that the petitioner's case is going to be considered by the Advisory Board on 23-9-1955 at 10-30 A. M.

3. It has been argued on behalf of the petitioner that as the latter has been detained for a considerably long time illegally and on insufficient grounds he should be released by this Court under Article 226 of the Constitution. There is no doubt that the writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful detention whether in prison or in private custody.

The writ is intended for the protection of personal liberty which is a Fundamental Right under the Constitution and, considering the object for which the power has been conferred, it is conceived that whenever the case of unlawful deprivation of personal liberty is brought to the notice of the Court, the Court will not hesitate to issue the writ but as the writ of habeas corpus ad subjiciendum is a writ of right & as it is not a writ of course, it can be issued only on probable cause & so the writ may be refused where there is an alternative remedy available and also on the ground that there has been delay on the part of the applicant in seeking his remedy.

4. Under Article 21 of the Constitution it has been provided:

No person shall be deprived of his life or personal liberty except according to procedure established by law.

5. And under Article 22 further safeguards are guaranteed as Fundamental Rights to all persons in the matter of their personal liberty. Article 22 is in the following terms:

22 (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall 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 shall be detained in custody beyond the said period without the authority of a Magistrate.

(3) Nothing in Clauses (1) and (2) shall apply

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for

preventive detention.

4. No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless:

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention -.

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under Sub-clause (b) of Clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under Sub-clause (a) and (b) of Clause (7).

5. When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

6. Nothing in Clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

7. Parliament may by law prescribe:

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance, with the provisions of Sub-clause (a) of Clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under Sub-clause (a) of Clause (4).

6. The present petitioner has been detained under the provisions of the Preventive Detention Act, 1950, as amended by Act 61 of 1952 and so the provisions of Clauses (1) and (2) of Article 22 will not apply to his case. The prosecution has produced documentary evidence already referred to above in this case which proves that an Advisory Board has been duly constituted to go through the case of the present petitioner on 23-9-1955 at 10-30 A. M. and so this Court cannot go through the sufficiency or otherwise of the grounds on which the petitioner has been detained under the Preventive Detention Act as the detention of the petitioner cannot be deemed to be "not in accordance with law" or "not according to procedure established by law" within the meaning of Article

21 of the Constitution vide A.K. Gopalan Vs. The State of Madras, . It was for the detaining authority to be satisfied that sufficient grounds existed as this Court would not be legally justified in substituting its own satisfaction in place of the satisfaction of the Authority which took action under the Preventive Detention Act.

7. The present petition has not been supported by any affidavit and as it has been presented after considerable delay and as the petitioner has been detained under the Preventive Detention Act and as the procedure laid down under the Preventive Detention Act appears to have been duly followed and the Preventive Proceedings against him appear to be bona fide and not a fraud on law, his arrest and detention must be held to be according to procedure established by law and so the present petition has no force.

8. The present petition is, therefore, rejected.