
(1983) 11 GAU CK 0010
In the Gauhati High Court

Sorokhaibam Ningol Thokchom Onggi Pakpi Devi	APPELLANT
Vs	
State of Manipur and Others	RESPONDENT

Date of Decision : 23-11-1983

Acts Referred:

Citation : (1985) CriLJ 1308

Hon'ble Judges : N.I. Singh, J;B.L. Hansaria, J

Bench : Division Bench

Judgement

B.L. Hansaria, J.—The petitioner's son Thokchom Ajit Singh alias Ibunco alias Nobo alias Bimol has been under detention since 3-6-83 in pursuance of an order passed by the learned District Magistrate, (Imphal), Manipur, under the provisions of the National Security Act, 1980. Earlier to that he had been arrested on 27-1-82. Indeed, that was the second arrest of the detenu inasmuch as he has been first arrested on 23-3-81 whereafter it is alleged that he escaped from the jail on 9-8-81 and took part in an ambush on 1 : 9-81. The legality of the present detention has been assailed by Shri Priyananda Singh on a number of grounds. We do not, however, propose to traverse all the grounds as we are satisfied that the order has to be set aside on the score of non-furnishing of documents which were relied on while passing the order. .

2. This would be apparent from a perusal of the dossier made available to us and the statements made in the counter filed by the District Magistrate. The dossier shows that after the detenu had been arrested by the Army on 27-1-82, he was handed over to the police with a report dt. 27-2-82, whereupon a case being FIR No. 65(2)82 was registered against the detenu. There is, however, no mention of this fact in the ground as furnished to the detenu though in the affidavit-in-opposition of the detaining authority it has been stated that the arrest of the detenu was in connection with FIR No. 65(2)82 which was registered on 27-2-82 "on the basis of reports submitted by the Army Officer". But while furnishing the grounds, apart from not mentioning the fact of the detenu's arrest in connection with the aforesaid case on 27-2-82, a copy of the report was also not furnished.

A perusal of the dossier, however, shows that the report was sent to the District Magistrate whereafter he had passed the impugned order. It is thus apparent that the report was borne in mind while arriving at the subjective satisfaction, but copy of the same was not given to the detenu.

3. It is submitted by the learned Government Advocate, Manipur, that this grievance has not been raised by the petitioner. That, however, is not material as the question of either not raising this point, or not demanding the document is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the document relied on in the order of detention, *pari passu* the grounds of detention in order to enable the detenu to make an effective representation as stated in *Mohd. Zakir Vs. Delhi Administration and Others*, by relying on *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, and *Kamla Kanyalal Khushalani Vs. State of Maharashtra and another*,

4. Not only that a copy of the aforesaid, report was not given, but a copy of the seizure memo by which certain articles were allegedly seized from the possession of the detenu on 27-1-82, was also not made available. This also has introduced a serious infirmity in the order. In this connection we may refer to *Thakor Mulchandani Vs. Assistant Secretary to the Government of Maharashtra and Others*, where in the contention that copy of the document in question, which was in the nature of a slip, was not necessary as in the statement of the detenu the details of the same were there, was not accepted inasmuch as the statement was not admitted and in absence of the detailed account, which was incorporated in the document, the statement itself was not quite intelligible. On those facts, the slip containing the accounts was held to be a material document because of which it was held that it must have been supplied to the detenu. In the present case as well the seizure is not admitted, but as the fact of seizure was taken into consideration which was evidenced by the seizure memo, the same was a document relied on by the detaining authority and must have been supplied to the detenu *pari passu* the grounds of detention.

5. In view of the above, we are not in a position to sustain the impugned order and the same is, therefore, set aside. The petitioner is ordered to be released forthwith unless wanted in connection with any other case.

6. In the result, the petition is allowed, as aforesaid.