

HIGH COURT OF TRIPURA
AGARTALA
W.P.(C)(HC) 12/2022

Parimal Debbarma @ Phankrak, son of late Umesh Debbarma,
resident of Khangraibari, P.S. Khowai, District- Khowai

----Detenu-Petitioner

Versus

- 1. The State of Tripura**, represented by the Secretary, Department of Home, Government of Tripura, New Secretariat Building, P.O. Kunjaban P.S. New Capital Complex, Dist- West Tripura
- 2. The District Magistrate & Collector**, North Tripura, Dharmanagar
- 3. The Union of India**, represented by the Secretary, Department of Home, Government of India, Jai Singh Marg, Connaught Palace, New Delhi-110001

----Respondent

For Petitioner(s)	:	Mr. PK Biswas, Sr. Advocate Mr. P. Majumder, Advocate
For Respondent(s)	:	Mr. Ratan Datta, P.P. Mr. B. Majumder, CGC
Date of hearing	:	01.02.2023
Date of delivery of Judgment & Order	:	23.02.2023
Whether fit for reporting	:	Yes

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT

(Amarnath Goud, ACJ)

Heard Mr. PK Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the detenu-petitioner as well as Mr. Ratan Datta, learned PP appearing on behalf of the respondent-State and Mr. B. Majumder, learned CGC appearing for respondent-Union.

- 2.** Petitioner, Parimal Debbarma @ Phankrak has filed this habeas corpus writ petition assailing the detention order passed on 23.03.2022 under National Security Act by the District Magistrate & Collector, North Tripura,

Dharmanagar, and requested to issue direction for setting aside the impugned detention order.

3. The facts of the case are that, regarding several criminal cases lodged against the petitioner and apprehending disturbance in public order, communal harmony and development work, the respondent no. 2, herein in exercise of powers conferred under Section 3(3) of the National Security Act, 1980, issued an order of detention dated 23.03.2022 against the petitioner. It is the further case of the petitioner that though the detention order was served upon the him but, the copies of the FIRs, charge sheets were not furnished to the petitioner for which the petitioner was deprived of submitting effective representation. The petitioner earlier was detained in jail custody in exercise of power conferred under Section 3(3) of the said Act, 1980 vide order dated 27.07.2021 on the same ground as mentioned in the order dated 23.03.2022. Pursuant to the order dated 27.07.2021, the petitioner is detained in custody and against the said order of detention dated 27.07.2021, the petitioner submitted representation, and thereafter, the said order of detention was revoked, and the grounds as mentioned in the order of detention dated 27.07.2021 are also same and similar grounds as taken the order of detention dated 23.03.2022. It is the further case of the petitioner that though the order of detention dated 23.03.2022 was served upon him, but, the documents which form the basis of the ground of detention were not supplied to him due to which the petitioner was deprived of making any

effective reply against the said order of detention. Subsequently, on 26.03.2022 the petitioner submitted his representation and on receipt of the same, the petitioner was served with the copy of detention order dated 23.03.2022 alongwith the copies of FIRs issued by the Deputy Superintendent of Police, North Tripura, Dharmanagar. It is also the case of the petitioner that all the cases mentioned in the order of detention are punishable under Indian Penal code which can be dealt by the courts having jurisdiction, but, the petitioner has been illegally detained in custody.

4. During argument Mr. PK Biswas, learned senior counsel addressed us on the point of non-consideration of detenu's representation by the respondents and also violation of the mandatory provisions of National Security Act, 1980 [for short, the Act, 1980]. Mr. Biswas, learned senior counsel has also argued that though the petitioner had criminal antecedents but he had already been released on bail by various courts, and no application for cancellation of bail has been filed by the respondents. Learned senior counsel has also argued that as per section 8 of the Act, 1980, the order of detention ought to have been served upon the detenu within 5 days from the date of passing of the order but, the order of detention alongwith copies of FIRs and charge sheets was served upon the detenu after expiry of 5 days without any reasonable explanation, and the same vitiates the order of detention. Learned senior counsel has also submitted that in the order of detention dated 23.03.2022, the Superintendent

of Police, North Tripura has mentioned that the copies of FIRs and charge sheet which form the basis of grounds for detention has been served to the detenu but, in fact the detenu has not been served with the same, which according to learned senior counsel, is violation of mandatory provisions of the said Act, 1980. It has also been submitted by learned senior counsel that the detenu has submitted his representation from Kendriya Sansodhanagar pointing out the infirmities in the detention order and that he has been deprived of making effective representation before the detaining authority and also before the Advisory Board. Finally, learned senior counsel has submitted that Article 22(5) of the Constitution of India guarantees the right to the detenu to make effective representation questioning the correctness of the detention order because as per Article 22(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*”. In support of his submission, learned senior counsel has referred to some decisions rendered in ***WP(C)(HC)12 of 2019 [Sri Bidhan Roy vs. The State of Tripura and ors]; Criminal Appeal no. 561 of 2022 [Mallada K Sri Ram vs. The State of Telangana and ors]; Criminal Appeal no. 1301 of 2021 [Sarabjeet Singh Mokha vs. The***

District Magistrate, Jabalpur & ors] and ; Criminal Appeal no. 1708 of 2022 [Sushanta Kumar Banik vs. State of Tripura & ors].

5. Controverting the submission of learned senior counsel, Mr. Ratan Datta, learned PP has submitted that the grounds for detention like copies of FIRs, charge sheets was served upon the detenu on 03.04.2022 and, as such, there is no unreasonable delay in supplying the copy of the detention order and none of the provisions of the Act, 1980 has been violated.

6. The main controversy that arose in this petition is as to whether the detention order dated 23.03.2022 has been served upon the detenu following the mandatory provisions of Section 8 of the National Security Act, 1980. We have perused the record as well as the detention order passed by the respondent no. 2.

7. In the detention order dated 23.03.2022 it has been stated that the documents which form the basis of the ground of detention are enclosed with the order but, no such documents were supplied to the detenu. Thereafter, on the basis of a letter dated 26.03.2022 submitted by the detenu, the copies of the documents were served upon the petitioner on 31.03.2022, but no plausible reason has been explained by the authority for the inordinate delay. Thus, the detenu has been seriously prejudiced of making effective representation before the authority concerned since he was not been communicated by the authority with any document which form the basis of detention and the same tantamounts to violation of clause (5) of

Article 22 of the Constitution of India. Clause (5) of Article 22 of the Constitution of India reads as follows:

“(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”

8. It is also evident from the record that the order of detention alongwith the relevant copies of FIRs and charge sheets which form the grounds for detention was not supplied to the detenu within the prescribed limit of the said Act, 1980 due to which the detenu was deprived of making early and effective representation. Section 8 of the National Security Act, 1980 reads as under:

“8. Grounds of order of detention to be disclosed to persons affected by the order.—(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than 1 [fifteen days] from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.”

9. The detenu was earlier detained in custody under Section 3(3) of the said Act, 1980 by order dated 27.07.2021 on the grounds similar to the grounds taken in the order of detention dated 23.03.2022. While we do agree that the facts and circumstances which have led to the recommendation by the sponsoring authority for preventing detention of petitioners remains the same on which satisfaction of the District Magistrate is to be based, but from the phraseology of the order and reference of material relied upon by the

District Magistrate in the order of detention the application of mind on the part of the District Magistrate must be reflected or else the satisfaction itself of the detaining authority would be vitiated. Page by page we are shown that the grounds of detention contained in the order of the District Magistrate dated 23.03.2022 is virtual copy of the recital contained in the recommendation of the sponsoring authority dated 27.07.2021. Language as well as the facts remained unaltered and clearly suggest lack of independent application of mind on the part of the District Magistrate. The detenu submitted representation, and thereafter, the said order of detention dated 27.07.2021 was revoked by the Government vide order dated 20.08.2021 on the ground that the detention order dated 27.07.2021 was approved by the government after expiry of 12 days which the government is required to approve within 12 days from the date of issuing the detention order. Subsequently, thereafter, after receipt of the detention order dated 23.03.2022 on 03.04.2022, the detenu had submitted his representation, but, till date the respondents did not respond to the said representation.

Furthermore, the detenu had been released on bail on different criminal cases, as referred by the respondents, but the respondents did not approach any forum for cancellation of bail of the detenu. The main ground for detention of the detenu, as taken by the respondent, is assumption of disturbance in peace and tranquility, harmony of the people at large. A mere apprehension of breach of law and order is not sufficient to affect the

maintenance of public order adversely. The apprehension of adverse impact to public order by the detenu is a mere surmise of the detaining authority, especially when there has been no report of any disturbance from the police officials after granting of bail of the detenu from other criminal cases. The FIRs registered against the detenu are capable of being dealt by the ordinary course of criminal law, and hence, the detention order passed against the detenu only on mere apprehension of breach of peace in the area is non-application of mind of the detenu-authority.

10. In light of the discussions aforesaid as also the law settled in the matter, we are of the considered opinion that the satisfaction of the detaining authority with regard to existence of reasons justifying the order of preventive detention against the petitioner suffers from lack of independent application of mind, which renders the subjective satisfaction of the authority vitiated in the eyes of law. The order of detention, therefore, cannot be sustained. Further, the failure in this case on the part either of the Jail Superintendent or the State Government to forward the detenu's representation to the Central Government has deprived the detenu of the valuable right to have his detention revoked by that Government. The continued detention of the detenu must therefore be held illegal and the detenu must be set free. Hence, there cannot be any hesitation to hold that the detention order dated 23.03.2022 has been passed without any basis which accordingly stands quashed.

11. In the result, this habeas corpus petition is allowed and the detenu is set free, unless required to be detained in any other case.

JUDGE

CHIEF JUSTICE (ACTING)

Saikat

HIGH COURT OF TRIPURA



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