

GAHC040007172023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : W.P.(Crl.)/3/2023

Toi Sora
Wife of Yomka Sora,
Permanent Resident of Village Dari, PS Basar, Dist. Leparada, Arunachal Pradesh.

VERSUS

THE STATE OF AP and 2 Ors.
to be represented by the Principal Secretary (Home), Govt. of Arunachal Pradesh,
Itanagar. 2:the Deputy Commissioner cum District Magistrate
Age: 0
Occupation :
Capital
Itanagar
Arunachal Pradesh

3:the Superintendent of Police
Age: 0
Occupation :
Capital
Itanagar
Arunachal Pradesh.

4:the Superintendent of Police (Jail)
Age: 0
Occupation :
Jully
Arunachal Pradesh

Advocate for the Petitioner : A Sarma

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 30.05.2024
(K.R. Surana, J)

Heard Mr. T. Gyadi, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Senior Govt. Advocate for the respondents.

2. This criminal writ petition has been filed by the mother of the detainee, who was taken into preventive custody vide order dated 12.05.2023, passed by the District Magistrate, Capital Complex, Itanagar under Section 3(1) of the Arunachal Pradesh Unlawful Activities (Prevention) Act, 2014 ("2014 Act" for short).

3. Accordingly, on the ground that there was a non-compliance of the mandatory requirement of Clause-5 of the Article 22 of the Constitution of India as well as the provision of Section 8 and 10 of the 2014 Act, by filing this criminal writ petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the impugned detention order dated 12.05.2023 with further prayer in the nature of habeas corpus for directing the respondent authorities to release the detainee at liberty.

4. The learned counsel for the petitioner has submitted that during the pendency of this writ petition, the Principal Secretary (Home), Govt. of Arunachal Pradesh, by an order dated 07.06.2023, in exercise of power under Section 14(1) of the 2014 Act, had revoked the detention order passed by the District Magistrate, Capital Complex, Itanagar and direction was issued to release the detainee forthwith. Accordingly, on 08.06.2023, the detainee was set

at liberty.

5. It is submitted that the detenue had not participated in the *bandh* or nor she had indulged in any criminal activity and moreover, she was also not involved with any organization who had made the *bandh* call. Accordingly, it is submitted that as per the mandatory provisions of Section 8 and 10 of the 2014 Act, the preventive detention of the petitioner was illegal and the detenue was entitled to compensation. Elaborating the nature of illegality, the learned counsel for the petitioner has submitted that the detention order was not served either on the detenue or any of her close relative and moreover, the ground of detention was also not furnished and therefore, the detenue was prevented from submitting her representation against the detention order at the earlier available opportunity. Hence, it is submitted that this is a fit case for grant of monetary compensation to the detenue.

6. The learned Senior Govt. Advocate, apart from making his submissions, denied any liability for compensation and has submitted that as the petitioner is already released, nothing survives in this writ petition and this writ petition has become infructuous.

7. Upon verbal direction issued to the learned Senior Govt. Advocate to produce a proof of detention order being served on the detenue when the matter was first called, the learned Senior Govt. Advocate had asked for a short time and at the next call of the matter, he has produced a scanned copy of General Diary Details in respect of G.D. Entry dated 12.05.2023, which contains, amongst others, a note to the effect that the copy of detention order was served to the detenue and that her sister was called to receive the said order, but she refused to do so and accordingly, the copy of the said order was pasted at Barapani, near her residence and photographs were taken for the same and

the serving copy was conveyed to SDPO, Itanagar and Dy. S.P. (HQ). Moreover, the scanned copy of the photographs of the detention order pasted near the locality of the residence of the detainee have also been produced, which is retained as a part of record.

8. From the statement made in paragraph-23 of the writ petition, the petitioner, who is the mother of the detainee has clearly admitted that the order of detention passed against the detainee has been communicated to the family members. The only grievance is that no communication has been made to the detainee or her family members regarding the grounds on which the detention order was passed.

9. It may be mentioned that in support of his submissions, the learned counsel for the petitioner has cited the following cases: (1) *Tushar Thakker Vs. Union of India & Ors.*, AIR 1981 SC 436; (2) *Prabir Purkayastha Vs. State (NCT of Delhi)*, 2024 (0) INSC 414; and (3) *Konsam Brojen Singh @ Basan @ Sekhar @ Suraj @ Sainthel @ Basanta @ Inaotomba Vs. State of Manipur & Ors.*, (2006) 1 GLT 375.

10. On a perusal of the said cases, it can only be said that the detention order is bad if her constitutional rights are violated and that it has been made mandatory that the legal and fundamental rights of the petitioner as well as the requirement of compliance of Article 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Therefore, if it is proved and established that the detention order was not communicated to the detainee, the detention order was liable to be quashed.

11. The learned Senior Govt. Advocate has cited the following cases: (1) *Ramchandra A. Kamat Vs. Union of India & Ors.*, (1980) 2 SCC 270; (2) *Smt.*

Icchu Devi Choraria Vs. Union of India & Ors., (1980) 4 SCC 531; and (3) Lallubhai Jogibhai Patel Vs. Union of India & Ors. (1981) 2 SCC 427.

12. Paragraph 6 of the case of *Lallubhai Jogibhai Patel (supra)* is quoted below:

“6. The preliminary question, therefore, to be considered is, whether the doctrine of constructive res judicata applies to a subsequent petition for a writ of habeas corpus on a ground which he "might and ought" to have taken in his earlier petition for the same relief. In England, before the Judicature Act, 1873, an applicant for habeas corpus had a right to go from court to court, but not from one Bench of a court to another Bench of the same court. After the Judicature Act, 1873, this right was lost, and no second application for habeas corpus can be brought in the same Court, except on fresh evidence. In re. Hastings (No. 3), (1958) 3 All ER 625. Lord Parker, C. J., after surveying the history of the right of habeas corpus, arrived at the conclusion that it was never the law that in term time, successive writs of habeas corpus lay from Judge to Judge. In re Hastings (No. 4), (1959) 1 All, ER 698. Harman, J. pointed out that since the Judicature Act had abolished the three independent Courts, namely, the Court of Exchequer, the Kings Bench Division, and the Common Pleas, and had constituted one High Court, when an application for writ of habeas corpus has been disposed of by one Divisional Court, no second application on the same ground lies to another Divisional Court of the High Court. This position was given statutory recognition in the Administration of Justice Act, 1960.”

13. Notwithstanding that the cited case was passed on a case involving COFEPOSA Act, yet it appears that the law with regard to the furnishing of information relating to grounds of detention, it was held that the detainee was entitled to obtain information regarding the grounds of detention. In the case of *Lallubhai Jogibhai Patel (supra)*, by citing the case of *Smt. Icchu Devi Choraria (supra)*, it was held that the grounds of detention must be furnished to the detainee ordinarily within 5 (five) days from the date of detention.

14. In this case in hand, there is nothing on record to show that the detainee or the petitioner did demand a copy of the grounds of detention and

the same was not furnished. Moreover, the competent authority, during the pendency of this writ petition has already revoked the detention order. As the detention order is admitted to have been served on the family members of the petitioner in paragraph-23 of the writ petition, the Court is of the considered opinion that the matter has become infructuous.

15. Insofar as the oral prayer made by the learned counsel for the petitioner praying for direction upon the respondent authorities to pay monetary compensation to the detenue is concerned, the Court is of the considered opinion that such a prayer has not been made in the writ petition and therefore, without putting the State to notice, ordering grant of monetary compensation would not be appropriate and therefore the said verbal prayer is refused.

16. This writ petition stands dismissed having been rendered infructuous.

JUDGE

JUDGE

Comparing Assistant