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(1999) 09 GAU CK 0019

Gauhati High Court

Case No: Writ Petition (Criminal) No. 33 of 1999

Gobinda Deka @ Sarugovinda @ Bullet	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision: Sept. 23, 1999

Acts Referred:

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

Citation: (1999) 3 GLJ 399

Hon'ble Judges: Brijesh Kumar, C.J. and D.Biswas, J

Bench: Division Bench

Advocate: T.J.Mahanta, B.C.Das, N.Dutta, K.K.Mahanta, Advocates appearing for Parties

Judgement

Brijesh Kumar, C.J.

1. This petition has been preferred by the petitioner

detenu for his release from detention under the orders of the District Magistrate, Kamrup dated 18th January, 1999 passed under subsections (2) and (3) of Section 3 of the National Security Act, 1980. The order of detention has been served upon the petitionerdetenu on 22.1.99 along with the grounds of detention. An affidavitinopposition has also been filed by the State.

2. We have heard Shri TJ Mahanta, learned counsel for the petitioner, Shri

BC Das, learned senior counsel for the State of Assam and Shri KK Mahanta, learned Senior Central Govt Standing Counsel.

3. Learned counsel appearing for the petitioner submits that along with the grounds of detention the material and the documents in support of the grounds have not been

furnished to the petitioner. In that connection, we find that averments have been made in paragraph 5 of the writ petition wherein it has been specifically stated that the basic facts and the material particular including the documents and the statements supporting each ground have not been furnished to the detenu so as to enable him to make an effective representation against the order of detention. The reply to paragraph 5 of the writ petition is given in paragraph 6 of the affidavitinopposition. A bare statement has been made that all basic facts and materials constituting the grounds of detention were supplied to the detenu which make the grounds very clear and specific. We tried to find out from the grounds of detention itself as well as the order of detention whether there was endorsement indicating that the material documents were enclosed along with the order of detention or the grounds of detention or not. The order of detention bears three endorsements. Endorsement No. 1 reads as under : ï¿½Copy to: 1. The Secretary to the Govt of Assam, Home and Political Department, Dispur Guwahati. The grounds of detention in English and Assamese (in triplicate) along with two copies pf the order are sent herewith for favour of information and necessary action.ï¿½

Endorsement No. 2 is to the Superintendent of Police, Kamrup, Guwahati which reads as under:

ï¿½2. The Superintendent of Police, Kamrup, Guwahati for immediate execution of the order. Three copies of the order are sent herewith, one for service on the detenu, one for return with signature of the detenu as a token of receipt of the order and one for your record.ï¿½

The 3rd endorsement is to the Superintendent, District Jail, Nalbari which says :

ï¿½3. The Superintendent, District Jail, Nalbari. A copy of this order is sent herewith for his record. He will receive the detenu for detention at the Jail. If there is any case pending against the detenu, the fact of his detention should be brought.to c the notice of the Court concerned.ï¿½

None of the endorsements, more particularly endorsement Nos. 1 and 2

indicated that the grounds were sent along with the documents in support of such grounds. We have also seen the grounds a copy of which has been annexed as Annexure B along with the writ petition. There is no endorsement or mention in the grounds indicating that the material in support of the grounds accompanied the grounds of detention served upon the petitioner. The grounds of detention indicate that in respect of few of them some cases were registered, but there is no mention of the FIRs. Only a reference of a few case numbers has been made. In respect of certain, incidents it has been indicated that no report has been made to the police. The dossier or any other report or material on the basis of which grounds numbered as 3 to 5 have been mentioned in the grounds of detention, much less about such supporting material. In these circumstances, if any receipt was obtained as usually done by the authorities while

serving the copy of the grounds of detention as well as that of the supporting material thereof,

it could easily be mentioned in paragraph 6 of the affidavitinopposition or a copy of the receipt could be filed along with the same. Except bare denial we find nothing else and no reply is forthcoming from the respondents. In these circumstances, there is no option left but to accept the averments made by the detenu that no copy of the supporting material has been supplied along with the grounds of detention as correct. That being the position, it has been rightly submitted on behalf of the detenu that the detenu did not get an opportunity to make an effective representation against the order of detention.

4. While parting with the case, we would like to observe that it surprises us to find that not a whisper has been made in any of the documents, namely the order of detention or the grounds of detention that it accompanies the supporting material. In the grounds of detention, as observed earlier, there is a mention of case numbers registered at the police station. But there is no mention about the first information report in connection with those cases, much less that the copies of the same were attached with the grounds. As indicated earlier, the endorsement No. 1 made in the order detention to the Secretary to the Govt, mentions only about forwarding of the copy of the order of detention and the grounds of detention, but nothing about the supporting material. We also feel that since it has been mentioned in respect of some of the grounds that no reports wore lodged, it was necessary to supply the material on the basis of which the grounds were constituted, may be if the shape of report of any police officer or others or the copy of the dossier prepared by the officials concerned recommending detention of the petitioner. There seems to be barely the order and the bare grounds devoid of any supporting material. The necessity to supply such materials has been emphasized in innumerable cases, which it is difficult to suppose that they would not be within the knowledge of the officers exercising such powers of detention. The least which can be expected, in case such orders are passed seriously that these necessary facts are mentioned at the appropriate places in the grounds of detention. We refrain from making any further observation at this stage on being persuaded by the learned State counsel that it may be by some accidental slip or chance that materials may not have been furnished along with the grounds of detention. The learned State counsel further submits that in the affidavitinopposition, the allegation that the supporting material of the grounds of detention has not been supplied to the detenu, has been denied. We have already dealt with the said point in the discussions held above. It is a bare denial and nothing has been furnished in support of the denial or to show that the supporting material was also furnished to the detenu. As also indicated earlier, a perusal of the order of detention and the grounds furnished for detention also do not indicate any such material accompanied the order or the grounds of detention. It may be observed that an order of detention must base on relevant material. It is not very clear as to whether any such material was before the detaining authority or not while passing the order of detention. In any case, copies of such documents have not been furnished to the detenu.

5. In view of the discussions held above, we allow the writ petition and quash the order of detention dated 18.1.99 (Annexure A) and direct the respondents to set the detenu at liberty forthwith unless wanted in any other case.