

(2000) 09 GAU CK 0016

Gauhati High Court

Case No: Writ Petition (C) No. 36 of 2000

Bhaba Tahu @ Anjol Payeng @
Nibaran Gogoi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 18, 2000

Acts Referred:

- National Security Act, 1980 - Section 8

Citation: (2000) 3 GLT 208

Hon'ble Judges: Brijesh Kumar, C.J; N.C. Jain, J

Bench: Division Bench

Advocate: N. Zaman, B.D. Konwar, J.M. Konwar and J.M. Rahman, for the Appellant; B.C. Das and D. Sur, for the Respondent

Final Decision: Allowed

Judgement

1. By this petition, the petitioner has challenged the order of detention dated 29.12.1999 passed by the District Magistrate, Jorhat under Sub-section (2) of Section 3 of the National Security Act, 1980.
2. We have heard Mr. BD Konwar, learned counsel for the petitioner and Mr. BC Das, learned counsel for the respondents and Mr. D Sur, appearing on behalf of Union of India.
3. Learned counsel for the petitioner has made only submission before us, that the material in support of the grounds of detention have not been supplied to the detenu, therefore, the detention of the petitioner is vitiated and he is liable to be set at liberty.
4. In connection with the above submission, our attention has been drawn to Annexure-1, dated 29.12.1999 the order of detention passed by the District Magistrate, Jorhat and Annexure-III dated 31.12.1999 under which grounds of

detention was furnished to the detenu. In the end of the letter (Annexure-II) enclosure is indicated as, Grounds of detention were enclosed in English as well as in Assamese, no other document has been shown to have been furnished to the detenu.

5. Learned counsel for the petitioner submits that the order of detention itself shows that the Superintendent of Police had submitted a report which was used for the purpose of subjective satisfaction of the District Magistrate to pass order of detention of the detenu. It is also pointed out that in the ground No. 2 and 5 reference of cases registered at the police stations have been made. In paragraph 4 of the writ petition, it is stated that no material supporting the grounds or otherwise relied upon by the detaining authority was furnished to the detenu. The said averment has been denied in paragraph 3 of the affidavit-in-opposition filed on behalf of the State. It does not though make any clear cut denial but it has been stated in general that all the basic facts and materials constituting the grounds of detention were supplied to the detenu.

6. Shri BC Das, learned counsel for the State on the basis of the records with him submitted that, a dossier along with the FIR relating to ground No. 5 had been supplied to the detenu on 10.1.2000. It has further been submitted that endorsement of receipt of the said documents was also taken. On the basis of the admitted position, itself, it cannot be said that documents in support of ground No. 2 as well as the report of the Superintendent of Police have been furnished to the detenu which documents were taken into account by the District Magistrate while passing the order of detention. Yet, another question which requires consideration is that the dossier and the copy of the FIR relating to the ground No. 5 are said to have been furnished only on 10.1.2000, i.e. to say, after 12 days of the detention.

7. Section 8 of the National Security Act, 1980 provides that the authority shall communicate the grounds of detention to the detenu within 5 days and in exceptional circumstances, for reasons, to be recorded in writing, not later than 10 days from the date of detention. In the present case, the date of detention is 29.12.1999. Grounds of detention was served on 31-10-1999, but dossier along with one FIR according to respondents was supplied on 10.1.2000. It is obvious by beyond the period provided under the Act.

8. Ground means, its communication along with all the relevant material and facts constituting the ground and not mere narration of facts or conclusions. The continued detention of detenu is therefore clearly in violation of the provisions contained u/s 8 of the National Security Act, 1980 and Article 22 of the Constitution of India. Needless to burden this judgment with citation of cases for the proposition that copies of the documents in support of the grounds shall also be supplied to the detenu along with the other relevant materials and facts on the basis of which the detaining authority would form his subjective satisfaction. Failure to do so negates the right of the detenu to make representation which may be real and effective. This

having been not done in this case, the continued detention of the detenu is rendered illegal.

9. The petition is therefore allowed. The continued detention of the detenu is held to be vitiated. The detenu Bhaba Tahu @ Anjol Payeng @ Nibaran Gogoi be set at liberty forthwith, unless he is wanted in connection with any other case.