
(1984) 11 GAU CK 0004

Gauhati High Court

Case No: Civil Rule (HC) No. 92 of 1984

Shri Duni Ram Rava

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Nov. 20, 1984

Acts Referred:

- Assam Detention Rules - Rule 10

Citation: (1985) 1 GLR 55

Hon'ble Judges: T.C. Das, J; K.N. Saikia, J

Bench: Division Bench

Advocate: Srimati Kuntala Deka, for the Appellant; P. Prasad and Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. In this application, the Petitioner, a detenu under the National Security Act, now in the District Jail at Mangaldai, submits that even though under the rules relatives of a detenu should be permitted to interview him two days in a week, yet the Deputy Commissioner, Darrang District has deprived him of that privilege and has instead allowed visits only as per his permission. The Petitioner states that as it is not possible to obtain such permission from the Deputy Commissioner at all times, he has been deprived of interviews with his relatives. He accordingly prays that necessary steps may be taken for allowing interview as per the (sic),

2. The Superintendent, District Jail, Mangaldai in his comment set along with the petition states that the Deputy Commissioner Darrang, at Mangaldai, instructed him by letter No. MCD. 997 dated 26.10.84 not to allow interview to any relatives of N.S.A, detenu without the presence of S.I. of Police. When the Superintendent forwarded Petitioner for interview to Superintendent of Police, Darrang, Mangaldai to depute Police Officer to conduct the interview, he flatly refused to comply with stating that except on the permission given by the D.C./A.D.C./S.D.O. (Sadar) be

would not send any Police Officer, to vattend at the time of interview. The Deputy Commissioner, Darrang, in the same letter strongly instructed the Superintendent of District Jail that if in the absence of a Police Officer the latter allowed interview to any N.S.A. detenu, then disciplinary action shall be taken against him. Hence the Superintendent asked every Petitioner to go to the Deputy Commissioner to obtain permission for interview with the detenu. As regards the submission that a detenu could get two interviews in a week, he says that as per Rule 10 of the Assam Detention Order, 1980 interview is allowed only once a week.

3. Clause 10 of the Assam Detention Order, 1980 deals with interview by relatives and legal adviser. The original Clause 10 was substituted by Notification No. PLA. 1232/80/54 dated 12.6.81 published in the Assam Gazette, Extraordinary, dated 12.6.81 Sub-clause (1) was again amended by Notification dated 20.10.82. Sub-clause (1) of Clause 10, before amendments, provided that the Superintendent shall allow a detenu to be interviewed by his family members and near relations once a week on the conditions laid down therein. Interviews could be granted on application for interview made to toe District Magistrate or the Superintended of the prison concerned. Under Sub-clause (7) interviews of detenus was to take place in the presence of an officer not below the rank of an Assistant Jailor, deputed by the Superintendent and a Police Officer, deputed by the Supe-rintendent of Police. The officers so deputed might terminate an interview at any time if in their opinion the conversation was detrimental to the public interest or safety. Clause 10 was amended vide Notification dated 12.6.81 and 20.10.92 as stated above. Under the amended Sub-clause (1) of Clause 10 the Superintendent may now allow a detenu to be interviewed by his family members such as wife, children, parents and near relations and friends not exceeding twice a week, provided that not more than four person in case of family members and not more than two persons in case of near relations and friends stall be allowed to interview a detenu at a time. Under Sub-clause (2) applications for interview with a detenu under Sub-clause (1) shall be made to the Superintendent in the form annexed to the Order. The original Sub-clause (7) of Clause 10, which provided that interviews by detenus shall take place in the presence of an offices not below the rank of an Assistant Jailor, deputed by the Superintendent and a Police Officer, deputed by the Superintendent of Police etc, does not find place in the amended Clause 10. Instead under Sub-clause (4) of Clause 10 it is provided that the Superintendent may for special reasons refuse to allow an interview with a detenu on any particular day or for such period as he considers fit. Under Sub-clause (5) a detenu may, with permission of the detaining authority, be granted not more than two special interviews in each month during the entire period of detention for the settlement of his business or professional affairs. Under the amended Sub-clause (6) a detenu may be allowed additional interviews with bis family members, relations and/or friends under prior orders of the Government or the District Magistrate making the detention order or the District Magistrate under whose jurisdiction the detention takes place. Under Sub-clause (7),

as amended, the Superintendent shall appoint time, place and duration of each interview, and shall not ordinarily allow an interview to continue for more than one hour with his family members and near relatives and half-in hour with persons other than family members and relatives. Under Sub-clause (8) all interviews with a detenu shall take place in the presence, but put of hearing, of a Prison Officer not below the rank of Assistant Jailor and a Special Branch Police Officer deputed for the purpose, and may be terminated by such officers at any moment if in their opinion sufficient cause exists for such termination; provided that if the securing of the presence of a Police Officer as aforesaid involves postponement of an interview, then the Superintendent may allow the interview to take place in the presence of a Prison Offices as aforesaid alone. Under Sub-clause (10) no detenu shall be allowed an interview with any person except an authored Police Officer as provided under Clause II or a visitor of the prison in which be it detained.

4. The validity of the instruction given by the Deputy Commissioner to the Superintendent, District jail, Mangaldai, has, therefore, to be judged in the light of the aforesaid provisions of Clause 10 of the Assam Detention Order, as amended. It does not envisage interview only at per permission of the Deputy Commissioner. Such instruction is therefore not in conformity with the above provisions. It is accordingly order d that the Petitioner shall be allowed such interviews at such time and place as permissible under Clause 10.

5. With the above direction this application is disposed of. Let a copy of this order be sent to the District Magistrate, Darrang at Mangaldai and also to the Superintendent of the District Jail, Mangaldai for necessary action.