

**HIGH COURT OF TRIPURA
AGARTALA**

W.P(C)(HC) No.02/2019

Sri Shyam Manik Debnath, son of late Dinabandhu Debnath, resident of Bishramganj, Amtali, P.S-Bishramganj, District-Sepahijala, Tripura.

---- Detenu-Petitioner(s).

Versus

1. The State of Tripura, represented by the Secretary ,Department of Home, Government of Tripura, New Secretariat Building, P.O. Kunjaban, P.S. NCC, Dist.-West Tripura.
2. The Additional Secretary, Department of Home, Government of Tripura, New Secretariat Building, P.O-Kunjaban. P.S-New Capital Complex, Dist.-West Tripura.
3. The Director General of Police, West Tripura.
4. The Union of India, Represented by the Secretary, Department of Home, Government of India, Jai Singh Marg, Connaught Palace, New Delhi-110001.

---- Respondent(s).

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL
HON'BLE MR. JUSTICE ARINDAM LODH**

For the petitioner(s) : Mr. P. K. Biswas, Sr. Advocate,
Mr. P. Majumder, Advocate.

For the respondent(s) : Mr. A. K. Bhowmik, Adv. Gen.
Mr. K. De, Addl. G. A.

Date of hearing : 1st October, 2019.

Date of judgment : **3rd October, 2019.**

Whether fit for reporting :

Yes	No
√	X

J U D G M E N T

(SANJAY KAROL, C.J)

The short point arising for consideration is as to whether the order of detention, as prayed for, needs to be quashed on the ground of non-supply of document relied upon by the detaining authority in passing the order of detention or not.

2. It is not in dispute that petitioner is a resident of Tripura.

3. Allegedly, he engages himself in the illicit traffic of narcotic drugs and psychotropic substances, which activities the authorities have found to be prejudicial to public interest and, as such, his detention in the attending facts and circumstances is warranted. Consequently, vide order dated 26.12.2018 the appropriate authority under the provision of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 issued an order under Section 3 directing detention of the petitioner. The relevant portion of the order with respect to the record relied upon is reproduced as under:

"Whereas, on perusal of records as submitted by the Director General of Police, Tripura it appears that Shri Shri Shyam Manik Debnath S/o. Lt. Denabandhu Debnath of Bishramganj, Amtali, PS-Bishramganj, Sepahijala, Tripura was involved in the following cases:-

(i) P.R. Bari PS case No. 143/18 dated 12/10/2018 u/s 20(b)(ii)(c).08/25/29 of NDPS Act, 1985.

(ii) Ranirbazar PS case No. 2018RNB065 dated 15.10.2018 u/s 468/471/198 of IPC read with section 8/22©/29 of NDPS Act, 1985"

This order dated 26.12.2018 passed by Addl. Secretary to the Government of Tripura was served upon the petitioner on 15.01.2019. It is a matter of record that document whatsoever forming part of the opinion leading to the detention was ever

supplied to the petitioner, despite his written request dated 18.01.2019 specifically praying for supply of copy of the FIRs, for the petitioner had denied his involvement or any connection with respect thereto. The petitioner's representation stands rejected by one word using an expression "reject the prayer" without assigning any reason(s) or dealing with anyone of the contentions raised by him.

4. In **John Martin Vrs. State of West Bengal : (1975) 3 SCC 836** the Apex Court held that "it is not necessary that the order of the State Government rejecting the representation of the detenu should be a reasoned order", relevant portion of which is reproduced as under:

"4. It was then contended on behalf of the petitioner that the order passed by the State Government rejecting the representation of the detenu should be a reasoned order and since in the present case the order of the State Government did not disclose any reasons for rejecting the representation of the petitioner, the detention of the petitioner was invalid, The argument of the petitioner was that unless reasons were given by the State Government, how could it be ensured that there was real and proper consideration of the representation of the detenu. This contention, attractive though it may seem, is, in our opinion, not well founded. It stands concluded by the decision in Haradhan Saha's case (supra) to which we have just referred. It was pointed out in that case by Ray, C.J., speaking on behalf of the Court : "There need not be a speaking order. There is also no failure of justice by the order not being a speaking order, All that is necessary is that there should be a real and proper consideration by the Government". These observations must give a quietus to the contention that the order of the State Government must be a reasoned order. It is true that in Bhut Nath Mete v. State of West Bengal Krishna Iyer. J., speaking on behalf of a Division Bench of this Court observed that : "It must be self-evident from the order that the substance of the charge and the essential answers in the representation have been impartially considered", but if we read the judgment as a whole there can be no doubt that these observations were not meant to

lay down a legal requirement that the order of the State Government must be a speaking order but they were intended to convey an admonition to the State Government that it would be eminently desirable if the order disclosed that "the substance of the charge and the essential answers in the representation" had been impartially considered. The learned Judge in fact started the discussion of this point by stating : "We are not persuaded that a speaking order should be passed by the Government or by the Advisory Board while approving or advising contain of Detention". In any event, the decision in Haradlian Saha's case (supra) being a decision rendered by a Bench of five Judges must prevail with us. We, therefore, reject the present contention of the petitioner."

5. It is a matter of record that post consideration of the matter and opinion dated 27.03.2019 that of the Advisory Board set up under the Act, the order of detention stands confirmed vide order passing of yet another order dated 30.03.2019.

6. We are concerned with Section 3 of the Act which reads as under:

"3. Power to make orders detaining certain persons.--(1) *The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.*

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and

for reasons to be recorded in writing not later than fifteen days, from the date of detention."

Sub Clause (5) of Article 22 of the Constitution of India reads as under:

"(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."

7. There is no gainsaying in stating that there is nothing more precious than personal freedom and liberty of an individual. Krishna Iyer, J; in ***Bhut Nath Mete vs. The State of West Bengal, (1974) 1 SCC 645*** has crystallized the fundamentals of the constitutional mandate contained under Article 22, in the following term:

"10.The fundamental Constitutional mandates are that the authority (a) shall communicate to the detainee 'the grounds on which the order has been made' nothing less than all the material grounds which operate to create that subjective satisfaction in the authority which spells suspension of the citizen's liberty and (b) shall afford him the earliest opportunity of making a representation against the order no avoidable delay, no shortfall in the material communicated shall disable the prisoner making an early, yet comprehensive say on every particular or fact which has influenced the detainer or other body to order, approve or advice the deprivation of an individual's freedom. Such is the fairness and justice 'untouchably' entrenched in Article 22(5) when administrative action preventively drowns a sacred human right in the name of public good and organised society....."

(emphasis supplied)

8. C.K. Thakker, J; in ***State of Maharashtra and Ors. Vs. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613*** opined for the Bench that:

"23. There can be no doubt that personal liberty is a precious right. So did the Founding Fathers believe

because, while their first object was to give unto the people a Constitution whereby a Government was established, their second object, equally important, was to protect the people against the Government. That is why, while conferring extensive powers on the Government like the power to declare an emergency, the power to suspend the enforcement of Fundamental Rights or the power to issue Ordinances, they assured to the people a Bill of Rights by Part III of the Constitution, protecting against executive and legislative despotism those human rights which they regarded as 'fundamental'. The imperative necessity to protect those rights is a lesson taught by all history and all human experience. Our Constitution makers had lived through bitter years and seen an alien government trample upon human rights which the country had fought hard to preserve. They believed like Jefferson that "an elective despotism was not the government we fought for." And therefore, while arming the Government with large powers to prevent anarchy from within and conquest from without, they took care to ensure that those powers were not abused to mutilate the liberties of the people [vide A.K. Roy v. Union of India, (1982) 1 SCC 271; and Attorney General for India v. Amritlal Pranjivandas, (1994) 5 SCC 54].

24. It has been observed in *R. v. Secy. of State for the Home Deptt., ex p Stafford*, (1998) 1 WLR 503 (CA):

"The imposition of what is in effect a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with ordinary concepts of the rule of law."

(emphasis supplied)

9. Katju, J; in ***Rekha vs. State of Tamil Nadu through Secretary to Government and Another***, (2011) 5 SCC 244

observed that:

"39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in *Thomas Pelham Dale's case*, (1881) 6 QBD 376(CA):

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process

with extreme regularity the court will not allow the imprisonment to continue."

(emphasis supplied)

10. Further the Constitution Bench (5 Judge) in ***Rameshwar Shaw vs. District Magistrate, Burdwan and others, AIR 1964 SC 334*** has held that:

(a) In a case of preventive detention, the material provisions of the Act must be strictly construed and the safeguards provided therein, for the protection of citizens, must be liberally interpreted;

(b) The reasonableness of the satisfaction of the detaining authority cannot be questioned in a Court of law. The adequacy of the material on which the said satisfaction purports to rest also cannot be so examined;

(c) The grounds basing satisfaction of the detaining authority must be supplied to the detenu entitling him to make representation. However, this principle is flexible as each case establishing the action to be bona fide has to be examined independently;

(d) There is no bar preventing the authority from passing an order of detention against a person whilst in detention or in jail, but its validity would always have to be determined in the attending facts and circumstances.

11. It is also clear that the expression "as soon as may be" as provided under the Article 22 Clause(5) of the Constitution connotes reasonable dispatch and what is that reasonable dispatch

again has to be understood and weighed in the attending facts and circumstances. Of course, no arbitrary timeline can be set down in that regard.

12. That State has a right to issue an order of preventive detention cannot be disputed. But equally it is a settled position that exercise of such right has to be in accordance with law i.e. as per procedure established by law. The Apex Court, time and again has reminded that right to personal liberty is to be zealously guarded and enforced by the Court, for which certain minimum procedural safeguards are required to be taken.

13. Right to make a representation is a Constitutional right and exercise of such right is not a mere formality and cannot be rendered nugatory by not supplying the relevant and significant material, relied upon by the detaining authority while recording its satisfaction with regard to the necessity of passing the order. Subjective satisfaction, undoubtedly has to be that of the detaining authority but then what needs to be examined is as to whether the procedural safeguards stands complied with or not. Record reveals that at the time the order of detention was served upon the detenu, he was in jail. But that was in relation to the first case, referred to in the order of detention, in which, as we are informed, he stands discharged. The order of detention passed is in English and the detenu was served the said order after making him explain, in his vernacular language i.e. Bengali in the presence of police officials. The detenu made a representation in

English language, forwarded through the Sub-Jailor, Belonia sub-Jail, South Tripura. It appears that he had legal access and, the document though prepared in English, but he is not conversant with said language.

14. Be that as it may, the fact of the matter being that in his representation it stood categorically recorded that (a) he is neither involved nor associated in any activity of dealing with the contraband substance like Ganja, etc.; (b) he has no connection with the cases mentioned in the order; (c) he has not been supplied with the copy of the FIR which are required to be perused. Obviously, this has to be for the purposes of making an effective representation and that (d) he is "quite in dark" on the basis of what documents or evidence or allegations, the order of detention stands passed.

15. It is in this backdrop, this Court is constrained to form an opinion of the constitutional right of the petitioner to have been breached.

16. In support, the Court refers to and relies upon the decision rendered by the Apex Court in ***P.U. Abdul Rahiman Vrs. Union of India and others : 1991 Supp (2) SCC 274*** dealing with identical circumstances wherein purely on account of non supply of essential material, preventing effective representation, the Court quashed the order of preventive detention.

17. It is true that not each and every document is required to be supplied to the petitioner. But then the documents forming

genesis of the opinion of the competent authority in passing an order of preventive detention, necessarily have to be supplied, for it being, in the instant case, the only document leading to such an opinion. In ***Sunila Jain Vrs. Union of India and Another : (2006) 3 SCC 321*** the Court has emphasized that not all but only the relevant and vital documents are required to be supplied.

18. In relation to the first document, it can be contended on behalf of the State that petitioner was aware thereof. However, there is no answer with regard to the second document, and even in relation to the case referred to in the first document he stands discharged.

19. We may notice that under similar circumstances that Court stepped in to quash the order is reported in ***Johney D' Couto Vrs. State of T.N :: 1988(1) SCC 116.***

20. In view of the aforesaid position, we need not discuss the following decisions cited by Sri P. K. Biswas, learned Sr. Counsel appearing for the detenu:- ***(i) Icchu Devi Choraria Vrs. Union of India(UOI) and Ors.: AIR 1980 SC 1983; (ii) Kamla Kanyalal Khushalani Vrs. State of Maharashtra and Ors.: AIR 1981 SC 814; (iii) Abdul Aziz Vrs. Delhi Administration and Ors. : AIR 1981 SC 1389. (iv) Gazi Khan Vrs. State of Rajasthan and Ors : AIR 1990 SC 1361 (v) P. U. Abdul Rahiman Vrs. Union of India and Others : AIR 1991 SC 336; (vi) Malar and Ors. Vrs. Secretary to Government, Govt. of Tamil Nadu and Ors.: 1994 Cri L.J 1407; (vii) Vinod K. Chawla Vrs. Union of India and Ors.: (2006) 7 SCC 337; (viii) Union of India Vrs. Ranu Bhandari :***

(2008) 17 SCC 348; (ix)Md. Masle Vrs. State of Manipur and Ors.: 2019 Cri.L.J 3276;(x) Union of India and another Vs. Dimple Happy Dhakad : AIR 2019 SC 3428;

21. Mr. A. K. Bhowmik, Ld. Advocate General in support of his submission relying upon the decision rendered by the Apex Court in **Union of India and another Vrs. Dimple Happy Dhakad(supra)**. The said decision in our considered view is clearly distinguishable on facts for documents, as the Court observed, more than 5000 pages in number, were supplied within the prescribed time.

22. His further submission that FIR being a public document under Section 74 of the Evidence Act, and in public domain need not be supplied does not find favour with the Court for the reason that (a) the detenu has a constitutional right of making representation for which he is entitled to receive such of those documents which are material and vital enabling the detaining authority to form an opinion; (b) it is the duty of the detaining officer to supply the same and (c) it has nowhere come on record that the detenu had access to the net in the jail where he was lodged or that the FIR in question were uploaded on the net or that his lawyer could obtain copy thereof.

23. The reference by the learned Advocate General to the decisions rendered in **Channappa Andanappa & Others Vrs. State:1980 Cri.L.J 1022; Munna Singh Tomar and Others Vrs. State of M.P and Ors;1989 Cri.L.J 580; Jayantibhai Lalubhai Patel Vrs. State of Gujarat: 1992 Cri. L.J.2377; Shyam Lal Vrs. State of U.P and Ors.: 1998 Cri.L.J 2879** is of

no consequence for the simple reason that they only deal with the issue of an FIR being a public document and not as to whether the contents thereof are required to be proven, in accordance with law; and that a public document is not to be supplied to the detenu under the provision of the Act with which we are dealing. All that is laid down in the said decisions is that an FIR, being a public document, cannot be withheld and not being a privileged document, copy thereof, on demand, is required to be supplied.

24. In this view of the matter, on this short ground alone, holding the detaining authority not to have supplied the vital and material documents, thus enabling the petitioner to make an effective representation and as such his constitutional right having been violated, impugned order of detention dated 26.12.2018 as affirmed vide order dated 30th March, 2019 stands quashed and set aside, reserving liberty to the detaining authority to pass a fresh order, in accordance with law, on the same or subsequent cause of action.

25. The petition stands disposed of in the above terms. Pending application, if any, also stands disposed of.

(ARINDAM LODH),J

(SANJAY KAROL),CJ.