

Sapmawia

Vs

Deputy Commissioner, Aijal

Writ Petition No. 269 of 1970

(I. D. Dua JJ)

30.07.1970

JUDGMENT

DUA, J. -

1. Sapmawia, son of Tivuala, has forwarded from the Dibrugarh Jail his petition for a writ of habeas corpus. According to the averments made in this petition he claims to be a loyal citizen of Indian hailing from Bairabi (Bairangal) village, Mizo District. On the 14th August, 1960, he was taken by the Security Forces from his house in Bairabi, Mizo District to work as a porter for carrying their luggage to the next village. The petitioner was, however, not allowed to return home. He was kept under military guard for about three months without any interrogation. On November 23, 1968, he was sent to Silchar District Jail where he was interrogated by a Sub-Inspector of Police. He was thus kept as an under-trial prisoner since his arrest. On enquiry from Jail authorities he learnt that he was charged with offences under Section 121, I.P.C. and under Rules 41(5) and 32(5) of the Defence of India Rules and also under Sections 10, 11 and 13 of the Unlawful Activities (Prevention) Act. The petitioner was transferred from Silchar Jail to Nawgong Jail and from there to the District Jail, Dibrugarh. Later the charges under Section 121, I.P.C. and under Rules 41(5) and 32(5), Defence of India Rules were withdrawn leaving only charges under Sections 10, 11 and 13 of the Unlawful Activities (Prevention) Act. The petitioner on an earlier occasion applied to the Assam High Court for a writ of habeas corpus. That court on January 22, 1970, directed the State to complete investigation of the cases against him within two months. The petitioner complains that no further action has so far been taken in this connection.

2. On July 9, 1970, Shri B. R. Aggarwal, an Advocate of this Court appeared as amicus curiae in support of this petition. Rule nisi was issued returnable on July 16, 1970. The State was directed to produce in court all relevant previous records. An application, dated July 14, 1970, was filed in this Court by the State through Shri Naunit Lal, Advocate, seeking adjournment for two weeks for producing the petitioner and for filing the counter-affidavit. On July 16, 1970, however, though the petitioner was produced in this Court no return was filed on the plea that the relevant papers had not yet been received by the counsel. The case was accordingly adjourned to the following day as prayed by the State counsel.

3. In the return, dated July 15, 1970, it is stated that the petitioner was produced at the Kolasib Police Station on November 23, 1968 and a case under Sections 10, 11 and 13 of the Unlawful Activities (Prevention) Act was registered against him. During the investigation evidence for prosecution under Sections 10 and 13 of the said Act as well as under Section 11 of the Assam Maintenance of Public Order (Autonomous Districts) Act was also forthcoming. The exact words of the return on this aspect are :

"During investigation sufficient evidence for prosecution under Sections 10/13 of the Unlawful Activities (Prevention) Act as well as under Section 11 of the Assam Maintenance of Public Order (Autonomous Districts) Act, were found against the accused. The accused-petitioner has been charge-sheeted on 20-3-70 under Section 11 of the Assam Maintenance of Public Order (Autonomous Districts) Act and the Commissioner for Cachar and Mizo District was required to accord sanction for prosecution of the accused petitioner under Sections 10/13 of the Unlawful Activities (Prevention) Act. Sanction of the Commissioner was received on 12-5-70 and the relevant sections have been added to the charge-sheet. Production warrant has been issued by the Additional District Magistrate, Aijal, for appearance of the accused before the Aijal Court on 5-8-70 for trial.

On the habeas corpus petition filed by the accused petitioner, the Hon'ble High Court, Gauhati, allowed two months' time to complete investigation, vide order, dated 22-1-70. Investigation was completed within the time allowed by the Hon'ble High Court and the accused petitioner has been charge-sheeted under Section 11 of the Assam Maintenance of Public Order (Autonomous District) Act on 20-3-70 and under Sections 10/13 of the Unlawful Activities (Prevention) Act."

4. In the supplementary affidavit, dated July 17, 1970, sworn at Delhi by Shri Bhupendra Sharma, Assistant in the Political Department, Assam Government, it is explained that the original case papers, charge-sheet and order of remand are at Aijal, Mizo District, in the Court of the A.D.M., Aijal, where the next date fixed is August 5, 1970. The reasons for non-production of these documents are stated thus :

"That the political department have been trying to contact on phone Aijal for further facts, but the telephone line between Shillong and Aijal was out of order for three days, and till my departure from Shillong on 15th, A.D.N., Aijal, had not been contacted."

5. The warrant for intermediate custody produced in this Court shows that the last order of remand entered therein is dated February 2, 1970. No other warrant or order committing the petitioner to the custody of the jail authorities at Dibrugarh has been forwarded to this Court along with the petitioner. The supplementary affidavit of Shri Bhupendra Sharma undoubtedly states that the papers relating to the petitioner's remand are at Aijal, but it is not easy to understand how the Dibrugarh Jail authorities kept the petitioner in their custody without being in possession of a valid warrant of commitment authorising them to keep him in jail custody.

6. The position as it emerges from the material produced in this Court is that the petitioner is accused of a criminal offence and is at present in jail custody awaiting his trial. He had applied to the Assam High Court for a writ of habeas corpus. On January 22, 1970 a Bench of that Court held that petition not to be maintainable because the petitioner was an under-trial prisoner awaiting his trial in more cases than one. The habeas corpus was accordingly dismissed. That Court, however, directed investigation against the petitioner to be completed within two months. No appeal was preferred by the petitioner against the order of the High Court. The legality of that order having not been questioned, the petitioner's detention up to the date of that order has to be assumed to be unlawful.

7. Now, in this Court the only right the petitioner can enforce in these proceedings in a fundamental

right guaranteed by Part III of our Constitution. In view of the order of the Assam High Court there can be no question of any violation of Article 22(1) of the Constitution and indeed no such violation has been canvassed in this Court. The solitary question which requires consideration would thus be if the petitioner had been deprived of his personal liberty contrary of procedure established by law.

8. As observed earlier, up to the date of the order of the High Court, the petitioner's custody was not considered by that Court to be unlawful. The order of the High Court, did not itself authorise further custody; it merely ruled out the maintainability of the habeas corpus petition and added a further direction that the investigation against him should be completed within two months. The petitioner's custody was thus governed by the ordinary law.

9. The last order of remand as disclosed to this Court is dated February 2, 1970, but that order is silent as to for how many days the petitioner was remanded and it also does not in terms authorise the authorities of Dibrugarh Jail to keep the petitioner in their custody. Reasons for keeping him in jail custody are also not stand. I am, however, prepared to assume that the remand was to be in the custody of the Superintendent, Dibrugarh Jail. The question, however, arises under which process of law was the order of remand made ? The State counsel was unable to throw any light in this connection and he admitted that he was not in a position to make any positive statement. Further assuming that the order of remand was by a Magistrate during the course of the investigation it could not, under the Code of Criminal Procedure, extend beyond a term of 15 days. There was no suggestion on behalf of the State counsel that any special law authorised a remand for a longer period in this case. Even the order of the High Court directed the investigation to be completed within two months. These two months expired a long time ago. In the return though it is asserted that the investigation was complete by March 20, 1970 and sanction is also stated to have obtained on May 12, 1970, no order by a Magistrate authorising the petitioner's detention in custody has been produced. In these circumstances I am constrained to hold that the petitioner's present custody in Dibrugarh Jail has not been shown to be in accordance with the procedure established by law.

10. It was contended that the petitioner is an accused person and that he was duly committed to Dibrugarh Jail by the Additional District Magistrate Aijal and that the papers relating to the remand are in that court. It was added that the said Magistrate being seized of the case against the petitioner who is going to be produced in that court on August 5, 1970, that court must be deemed to have full jurisdiction to remand the petitioner to whichever custody that court deems proper and this Court should not interfere in these proceedings. Mere irregularity in the order of remand, said the counsel, cannot render unlawful the petitioner's custody in jail justifying his release. Any grievance on that score, according to the submission, appropriately be made to the court of the Magistrate or to the Assam High Court which exercises a power of superintendence over the court of the Magistrate.

11. The writ of habeas corpus is a prerogative writ by which the causes and validity of detention of a person are investigated by summary procedure and if the authority having his custody does not satisfy the court that the deprivation of his personal liberty is according to the procedure established by law, the person is entitled to his liberty. The order of release in the case of a person suspected of or charged with the commission of an offence does not per se amount to his acquittal or discharge and the authorities are not, by virtue of the release only on habeas corpus, deprived of the power to arrest and keep him in custody in accordance with law for this writ is not designed to interrupt the ordinary administration of criminal law. This Court has been entrusted by the Constitution with a duty and obligation to enforce the fundamental rights of the parties approaching it for such relief. Our Constitution is the supreme law framed by the selected representatives of the entire nation after years of deep thought and deliberation. The fundamental principles embodied therein were designed

to inspire our governmental set up. It is from this source that all authorities including the Parliament, the President and this Court derive their respective powers. Such powers are circumscribed by the language of the Constitution itself. It is impermissible to go against the Constitution mandate or to over-ride it. If therefore, a person has been deprived of his personal liberty in violation of the procedure established by law and no cogent ground for declining relief in habeas corpus proceedings is made out, then this Court has no option except to order his release, for a personal liberty of the individual is highly cherished in our set-up giving priority only to the interest of the nation and the security of the State. It is undoubtedly true that in our eastern and north-eastern borders there are some unfriendly foreign powers which, with evil and hostile designs, are constantly seducing political adventurers and gullible inhabitants of that area and aiding and encouraging their unlawful activities prejudicial to our democratic set-up. Such a situation, posing as it does a serious threat to orderly life and security of the State demands drastic measures for meeting it. It is also correct that the charge against the petitioner pertains to security of the State. But these consideration do not afford sufficient justification for by-passing or violating the provisions of the Constitution. Executive expediency should not prevail over the rule of law as envisaged therein. For meeting with emergencies the Constitution it may be pointed out, contains adequate provisions.

12. Holding as I do that the petitioner's custody in Dibrugarh Jail has not been shown to be in accordance with the procedure established by law I am constrained to direct his release. But this does not mean that the case against him is not to proceed. It also does not debar the authorities concerned from arresting the petitioner and keeping him in custody in accordance with law.

13. Before closing I must record my disapproval of the laxity with which the papers relating to the petitioner's custody in Dibrugarh Jail were sought to be secured by the authorities from Aijal for production in this Court. The explanation that the telephone connection remained out of order for three days is hardly convincing. A special messenger could have been sent to Aijal or a telegram could have been sent requiring the relevant papers to be made available to the authorities for production in this Court. Rule nisi in habeas corpus proceedings demands immediate attention and urgent compliance as it concerns the question of liberty of a subject. I may also point out that the warrant of commitment should normally remain with the jail authorities directed to keep the person committed to their custody so that they can always satisfy the court enquiring into the legality of such custody, that he has been deprived of his personal liberty according to the procedure established by law.

</html