A UNION OF INDIA

v.

YUMNAM ANAND M. @ BOCHA @ KORA @ SURAJ AND ANR.

APRIL 12, 2007

B [DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Preventive Detention:

Detenu making representation against order of detention—Considering
C *authority justified in obtaining views of sponsoring authority before disposal of the representation—National Security Act, 1980—s.3(3).*

Representation by detenu against detention—Considering Authority to deal with same with utmost expedition and in its right perspective keeping
D *in view the fact that the detention is based on subjective satisfaction of the authority concerned, and any infringement of the constitutional right conferred under Art.22(5) invalidates the detention order—Obligation of the detaining authority to show that the detention order meticulously accords with the procedure established by law—Constitution of India, 1950—Articles 22(5) & 21.*

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Constitution of India, 1950—Article 226—Writ of habeas corpus—Is a writ of right which is grantable **ex debito justitae,** but is *not a writ of course—The applicant must show a Prima facie case of his unlawful detention—Preventive Detention.*

F **An order of detention was served on Respondent no. 1 in exercise of powers conferred under Section 3(3) of the National Security Act, 1980 read with the Home Department's Order No. 17(1)/49/80-S(pt) dated 31.05.2005. The detention was approved by the State Governor. Detenu made representation before the Ministry of Home Affairs which immediately called for parawise comments from the sponsoring authority. The comments were**
G **received whereafter the representation was rejected. Detenu filed writ petition before High Court for quashing of the order of detention contending that there was unexplained delay in disposing of his representation. A counter affidavit was filed explaining that some time was taken to obtain the view of the sponsoring authority. High Court held that the views of the Sponsoring**

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Authority were not necessary to be taken and therefore the delay in disposing of the representation had not been properly explained. Accordingly the order of detention was quashed. Hence the present appeal. A

Allowing the appeal, the Court

HELD: 1. The question as to whether there was delay in disposal of the representation has to be considered in the background of Article 22(5) of the Constitution. A constitutional protection is given to every detenu which mandates the grant of liberty to the detenu to make a representation against detention, as imperated in Article 22(5) of the Constitution. It also imperates the authority to whom the representation is addressed to deal with the same with utmost expedition. The representation is to be considered in its right perspective keeping in view the fact that the detention of the detenu is based on subjective satisfaction of the authority concerned, and infringement of the constitutional right conferred under Article 22(5) invalidates the detention order. 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. [Para 6] [64-A-C] B C D

Thomas Pacham Dales' case (1881) 6 QBD 376, referred to.

2. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. The writ has been described as a writ of right which is grantable ex debito justitae. Though a writ of right, it is not a writ of course. The applicant must show a *Prima facie* case of his unlawful detention. [Para 7] [64-F] E F

3. In case of preventive detention no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. But at the same time, a person's greatest of human freedoms, i.e., personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however, technical is mandatory. The compulsions of the primordial need to maintain order in society, without which G H

A enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. No law is an end itself and the curtailment of liberty for reasons of State's security B and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matter. [Para 8] [64-H; 65-A-C]

Rex v. *Nallidev* [1971] AC 260; *Mr. Kubic Dariusz* v. *Union of India* C *and Ors.*, AIR [1990] SC 605 and *Ayya alias Ayub* v. *State of U.P. and Anr.*, AIR [1989] SC 364, referred to.

4.1. The contention that the views of the sponsoring authority were totally unnecessary and time taken by that authority could have been saved does not appeal because consulting the authority which initiated the proposal can never D be said to be an unwarranted exercise. [Para 10] [66-B-C]

4.2. It is normal under the rules of business for the Government to seek the remarks of the officer against whose order a representation is made to the Government. As a matter of fact, if such remarks are not called for and statutory representations are rejected summarily by the Government it would E be considered as a rejection without application of mind. Therefore, in cases where the considering authority feels that the remarks of the officer who made the original order are necessary then such superior authority must call for such remarks. [Para 11] [67-A-C]

4.3. In the circumstances, the High Court's impugned order is clearly F indefensible. However, the detaining authority shall decide within a period of two months if it would be desirable to take back the respondent no. 1 to custody. [Para 12] [67-F]

Kamarunnissa v. *Union of India and Anr.*, [1991] 1 SCC 128 and *Dr.* G *Prakash* v. *State of Tamil Nadu and Ors.*, [2002] 7 SCC 759, relied on.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 546 of 2007.

From the Judgment and Order dated 05.04.2006 of the High Court of H Gauhati, Imphal Bench at Manipur in W.P. (Crl.) No. 50 of 2005.

A. Sharan, ASG., Sushma Suri and Amit Anand Tiwari for the Appellant. A

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of B the Gauhati High Court, Imphal Bench, allowing the habeas corpus petition filed by respondent no.1. In the writ petition before the High Court the order of the District Magistrate Tamenglong passed in exercise of powers conferred under sub-section (3) of Section 3 of the National Security Act, 1980 (in short the 'Act') read with Home Department's Order No.17(1)/49/80-S(Pt) dated C 31.5.2005 was challenged. Though several grounds were urged in support of the application, the High Court accepted the stand that there was unexplained delay in disposing of the representation made. It is to be noted that counter affidavit had been filed giving details of the steps taken after the receipt of the representation. It was explained that some time was taken to obtain the view of the sponsoring authority. The High Court held that the views of the D sponsoring authority were not necessary to be taken and, therefore, the delay had not been properly explained. Accordingly the order of detention was quashed.

3. Learned counsel for the appellant submitted that the view expressed E by the High Court is clearly contrary to the views expressed by this Court in several cases.

4. There is no appearance on behalf of respondent no.1 in spite of the service of the notice.

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5. The factual position needs to be noted before dealing with the contention as to desirability of obtaining views of sponsoring authority. The order of detention dated 3.9.2005 was served on respondent no.1 (hereinafter referred to as the 'detenu') on 14.9.2005. The detention was approved by the Governor of Manipur on 26.9.2005. The Ministry of Home Affairs received the representation made by the detenu against the detention on 3.11.2005. G Immediately the parawise comments were called for from the sponsoring authority. The comments were received on 19.12.2005 and on 20.12.2005 the representation was rejected. On 7.11.2005 detenu filed a Writ Petition (Crl.) No. 50 of 2005 before the Gauhati High Court Imphal Bench for quashing the order of detention. It was submitted that there was unusual delay in disposing of H the writ petition filed by the detenu.

A 6. So far as the pivotal question whether there was delay in disposal of the representation is concerned, same has to be considered in the background of Article 22(5) of the Constitution. A constitutional protection is given to every detenu which mandates the grant of liberty to the detenu to make a representation against detention, as imperated in Article 22(5) of the B Constitution. It also imperates the authority to whom the representation is addressed to deal with the same with utmost expedition. The representation is to be considered in its right perspective keeping in view the fact that the detention of the detenu is based on subjective satisfaction of the authority concerned, and infringement of the constitutional right conferred under Article 22(5) invalidates the detention order. Personal liberty protected under Article C 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 the judicial vigilance that is needed was aptly described in the following words in *Thomas Pacham Dales'* case: (1881 (6) QBD 376):

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> "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 E Court will not allow the imprisonment to continue."

7. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a F device of this nature. Blackstone called it "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable *ex dobito justitae*. Though a writ of right, it is not a writ of course. The applicant must show a *Prima facie* case of his unlawful detention. Once, however, he shows such a cause and the return is not good G and sufficient, he is entitled to this writ as of right.

8. In case of preventive detention no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent H apprehended objectionable activities. (See *Rex* v. *Nallidev,* (1917) AC 260; *Mr.*

Kubic Dariusz v. *Union of India and Ors.*, AIR (1990) SC 605. But at the same time, a person's greatest of human freedoms, i.e., personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however, technical is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. (See *Ayya alias Ayub* v. *State of U.P. and Anr.*, AIR (1989) SC 364). To lose our country by a scrupulous adherence to the written law, said Thomas Jafferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end itself and the curtailment of liberty for reasons of State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters.

9. The High Court was of the view that parawise comments were not required to be called for and it was held that the same was fatal to the detention.

10. The question as to whether the views of the sponsoring authority are to be called for and whether they are necessary have been dealt with in several cases. In *Kamarunnissa* v. *Union of India and Anr.*, [1991] 1 SCC 128 it was observed as under:

> "The learned counsel for the petitioners raised several contentions including the contentions negatived by the High Court of Bombay. It was firstly contended that the detenu had made representations on December 18, 1989 which were rejected by the communication dated January 30, 1990 after an inordinate delay. The representations dated December 18, 1989 were delivered to the jail authorities on December 20, 1989. The jail authorities dispatched them by registered post. December 23, 24 and 25, 1989 were non-working days. The representations were received by the COFEPOSA Unit on December 28, 1989. On the very next day i.e. December 29, 1989 they were forwarded to the sponsoring authority for comments. December 30 and 31, 1989 were non-working days. Similarly, January 6 and 7, 1990 were non-working days. The comments of the sponsoring authority

A were forwarded to the COFEPOSA Unit on January 9, 1990. Thus it is obvious that the sponsoring authority could not have received the representation before January 1, 1990. Between January 1, 1990 and January 8, 1990 there were two non-working days, namely, January 6 and 7, 1990 and, therefore, the sponsoring authority can be said to have offered the comments within the four or five days available to it. It cannot, therefore, be said that the sponsoring authority was guilty of inordinate delay. The contention that the views of the sponsoring authority were totally unnecessary and the time taken by that authority could have been saved does not appeal to us because consulting the authority which initiated the proposal can never be said to be an unwarranted exercise. After the COFEPOSA Unit received the comments of the sponsoring authority it dealt with the representations and rejected them on January 16, 1990. The comments were dispatched on January 9, 1990 and were received by the COFEPOSA Unit on January 11, 1990. The file was promptly submitted to the Finance Minister on the 12th; 13th and 14th being non-working days, he took the decision to reject the representation on January 16, 1990 and the memo of rejection was dispatched by post on January 18, 1990. It appears that there was postal delay in the receipt of the communication by the detenus but for that the detaining authority cannot be blamed. It is, therefore, obvious from the explanation given in the counter that there was no delay on the part of the detaining authority in dealing with the representations of the detenus. Our attention was drawn to the case law in this behalf but we do not consider it necessary to refer to the same as the question of delay has to be answered in the facts and circumstances of each case. Whether or not the delay, if any, is properly explained would depend on the facts of each case and in the present case we are satisfied that there was no delay at all as is apparent from the facts narrated above. We, therefore, do not find any merit in this submission."

11. Again in *Dr. Prakash* v. *State of T.N. and Ors.*, [2002] 7 SC 759 it was held as follows:

"It is lastly contended that the State Government was prejudiced by the opinion rendered by the detaining authority. This argument is built around the fact that the State Government sought parawise remarks from the 2nd respondent while dealing with the petitioner's representation. In response to that the 2nd respondent while sending

his remarks in the last para stated that the petitioner's representation may be rejected. This recommendation according to the learned counsel has weighed in the mind of the confirming authority to reject the petitioner's representation. We are unable to accept this argument also. It is normal under the rules of business for the Government to seek the remarks of the officer against whose order a representation is made to the Government. As a matter of fact, if such remarks are not called for and statutory representations are rejected summarily by the Government it would be considered as a rejection without application of mind. Therefore, in cases where the considering authority feels that the remarks of the officer who made the original order are necessary then such superior authority must call for such remarks. In the instant case, the representation filed by the detenu did raise certain factual points which without the comment of the detaining authority might have been difficult to be dealt with. Therefore, in our opinion, the authority considering the representation had justly called for the remarks. The next limb of this argument that the State Government was influenced by the remarks of the detaining authority to dismiss the representation is too far-fetched. In the instant case, the Government of Tamil Nadu has been authorized to be the authority to consider the representation against the detention order made by the Commissioner of Police who is subordinate to it. Therefore, to presume that such higher authority would be influenced by an observation made by the subordinate to such an extent as to surrender its independent authority is to demean the independence of authority exercised by the State Government, hence this argument is recorded here only to be rejected."

12. In the circumstances, the High Court's impugned order is clearly indefensible and is set aside. However, the detaining authority shall decide within a period of two months if it would be desirable to take back the respondent no.1 to custody.

13. The appeal is allowed.

B.B.B. Appeal allowed.