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HEM LALL BHANDARI

v.

STATE OF SIKKIM AND OTHERS

JANUARY 28, 1987

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[O. CHINNAPPA REDDY & V. KHALID, JJ.]

National Security Act 1980—s.8(1) Detenu—Necessity for communication of grounds of detention within 5 days of making order—Detaining authority to record reasons why grounds of detention could not be communicated within five days.

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The Order of detention of the petitioner under s.3 of the National Security Act, 1980 was made on 25.9.1986 and the grounds of detention were prepared on the same date. The petitioner was detained and served with the detention order on 29.9.1986 at 10.15 P.M. In a habeas corpus petition filed on behalf of the petitioner on 30.9.1986 the High

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Court passed an order at 7.30 P.M. staying the detention order. However, the stay order could not be served on the detaining officer as the plane carrying the petitioner left Bombay for Delhi at 8.30 P.M. The detaining officers were informed of the order of the High Court on 1.10.1986 at 5 P.M. On the same day a petition was filed in this Court and at 3.30 P.M. this Court passed an order directing that the peti-

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tioner shall not be taken out of Delhi. On 2.10.1986 the petitioner was released on bail by the Chief Metropolitan Magistrate, Delhi. On 14.10.1986 the petitioner was served with grounds of detention.

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On behalf of the petitioner it was contended that the delay caused in serving the grounds of detention from 2.10.1986 to 14.10.1986 clearly violates the mandatory requirements, contained in s.8(1) of the Act and, therefore, the order of detention was liable to be quashed.

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On behalf of the respondents it was contended: (1) that the petitioner made all efforts of the police officer to serve the grounds of detention futile by taking advantage of the orders of the High Court and this Court, and (2) that the delay in communicating the grounds of detention caused in this case should be condoned and rigour of the section relaxed since the detenu had been released on 2.10.1986, and hence not in detention.

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Allowing the petition,

HELD: (1) Section 8(1) of the Act shows that it is obligatory on the detaining officer to communicate to the detenu, the grounds on which the order of detention has been made. This has to be done as soon as possible and ordinarily not later than 5 days. The limitation of 5 days can be exceeded in exceptional circumstances. The grounds of detention under exceptional circumstances can be communicated to the detenu within a period not later than 15 days from the date of detention but when the detaining authority takes time longer than 5 days he has to record reasons why the grounds of detention could not be communicated within 5 days.

(2) The mandate enacted in the section is a safety valve for a citizen who is robbed of his liberty from manipulating the grounds of detention. The section has to be interpreted literally. No relaxation is permissible. If the original time of 5 days is to be extended, such extension must be supported by an order recording reasons. If reasons are not so recorded the order of detention will automatically fail. Even if reasons are recorded they have to inspire confidence in the Court and are subject to legal scrutiny. If the reasons are unsatisfactory, Courts will still quash the order of detention.

(3) In the instant case, the grounds of detention were communicated to the petitioner long after 10 days. There is no record evidencing any reason for this long delay. The contention that the delay in communicating the grounds of detention caused in this case has to be condoned and the rigour of the section relaxed since the detenu had been released on 2. 10. 1986, and hence not in detention, is a specious plea which cannot stand legal scrutiny. If this contention is to be extended to its logical conclusion it would be clothing the authorities with powers to delay communication of the grounds of detention indefinitely, whenever a detenu secures from a Court of law either bail or parole. To accept this contention would be to destroy the effect of the mandate of the section.

(4) In the case there is no acceptable or satisfactory explanation as to what the officer or the officers did after 6. 10. 1986. This inaction after 6. 10. 1986 till 14. 10. 1986, by itself is sufficient to hold that s.8(1) has been violated by the officer concerned. The order of detention is bad and, therefore, quashed.

(5) It is not necessary in all cases to call upon persons placed in high positions to controvert allegations made against them by filing

- A affidavits unless the allegations are specific, pointed and necessary to be controverted.

ORIGINAL JURISDICTION: Writ Petition (Original) No. 567 of 1986.

- B (Under Article 32 of the Constitution of India).

Dr. Raxna Swamy and P.H. Parekh for the Petitioner.

B. Datta, Additional Solicitor General, V.J. Rao, Y.P. Rao, Ms. K. Kumaramanglam and Ms. S. Relhan for the Respondents.

- C The Judgment of the Court was delivered by

KHALID, J: Shorn of details regarding allegations of malafides unsupported by acceptable evidence, the only question that falls for consideration in this writ petition is whether the order of detention is liable to be quashed on the ground that the mandatory requirements, contained in Section 8(1) of the National Security Act, 1980 (hereinafter referred to as the 'Act') have not been complied with.

- The facts: The petitioner is one Hem Lall Bhandari residing in Bombay, practising 'law' there. The first respondent is the State of Sikkim through its Home Secretary, the second respondent, the Delhi Administration, Police Department and the third respondent, the Union of India through the Home Secretary. The petitioner states that he had a humble beginning and that he by dint of hard labour qualified himself in law and secured significant success academically. It is alleged that the Chief Minister of Sikkim wanted him to join politics and that he incurred the wrath of the Chief Minister because of his disinclination to accept this suggestion and that the order of detention was passed against him consequently.
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- On 29.9.1986, at 10.15 P.M. three officers of the Sikkim Police Service accompanied by two officers of the Bombay Police went to the residence of the petitioner and took him to the office of the C.I.D., Bombay where he was served with a copy of the detention order. He was detained in the police lock-up at the C.I.D. office and his request to contact a lawyer was not granted. He was kept in custody till 5.30 P.M. on 30-9-1986. At 6 P.M. on that day, he was permitted to go to his office to collect some papers. There he contacted Shri T.R. Andhyarugina, Senior Counsel and informed him that he was being
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taken to the Bombay Airport to be flown by flight IC-183, to Delhi. The Senior Counsel requested the police officers to permit him to approach the Bombay High Court before taking the petitioner to Delhi. This request was not granted. However, he filed a habeas corpus petition for the release of the petitioner in the Bombay High Court on the same day and P.B. Sawant, J. stayed the order of detention as per the following order; at 7.30 P.M.

"There are no grounds of detention furnished, nor any documents, along with the order. The grounds for detention have to be served alongwith the order. The order is prima facie illegal. It is, therefore, stayed till further orders from this Court."

This order could not be served on the detaining officer as the Plane carrying the petitioner took off to Delhi at 8.30 P.M. Meanwhile at 11.30 P.M. Shri Andhyarujina telephonically informed a Delhi Advocate, Dr. Mrs. Swamy, of the order passed by the Bombay High Court. On receipt of this information, she informed the officer on duty at the Airport, of the order of Bombay High Court. Nothing happened. Therefore, a petition was filed before this Court on 1st October, 1986 at 2.30 P.M. on which this Court passed an order directing that the petitioner be detained in Delhi and should not be removed from Delhi by the respondents and further that he should be produced before the Chief Metropolitan Magistrate who might release him on bail if he thought it fit. On 2-10-1986, the petitioner was brought before the Chief Metropolitan Magistrate who after hearing the parties granted bail to the petitioner. The petitioner was released the same evening at 4.30 P.M. on furnishing a bond of a sum of Rs. 10,000 with a surety in the like sum. The petitioner returned to Bombay the next day.

The address of the petitioner is well known to the respondents. No serious attempt was made by them between 2-10-1986, and 14-10-1986 to serve the petitioner with the grounds of detention. On 6th October, 1986, the petitioner attended the Bombay High Court in connection with the writ petition filed there and has been regularly attending his office and carrying on his professional duties both in the office and in the High Court. On 14-10-1986, the petitioner was served with the impugned order of detention, the grounds of detention and the supporting documents. The case put forward by the petitioner's counsel is that the delay caused in serving the grounds of detention, from 2-10-1986 to 14-10-1986, clearly violates Section 8(1) of the Act

A and on that ground the order of detention has to be quashed.

To meet the case of the petitioner that the grounds of detention were served on him only 15 days after the order of detention a Counter Affidavit is filed, sworn to by the Home Secretary, Government of Sikkim. We extract below the relevant portion of the Counter Affidavit.

"On 2-10-1986, the petitioner was produced in the Court of the Chief Metropolitan Magistrate. The petitioner was released on bail in pursuance of the order of this Hon'ble Court.

C On 3-10-1986, the grounds of detention alongwith the materials were handed over to Shri K.P. Subba, for service on the petitioner. Shri K.P. Subba, having learnt from Mrs. Swami, who was his surety, that the petitioner left for Bombay on the same day. On 4-10-1986, the Police Officers could not contact the petitioner in his address. He waited on 5-10-1986 also but he did not find the petitioner at his house address or in the Court. He returned to New Delhi on 6-10-1986. The writ petition No.1015 of 1986 was heard by Hon'ble Mr. Justice Sawant and Justice Kolse Patil and by order dated 14-10-1986 discharged the rule.

E The grounds of detention could not be served within the period of 5 days or 10 days as per section 8 of the Act, because the petitioner was released on bail, by the Chief Metropolitan Magistrate on 2-10-1986 and the petitioner avoided the police officer. The petitioner received the grounds alongwith the material on 14-10-1986 at Bombay as per the orders of the High Court.

F Shri K.P. Subba, the Police Officer waited till 6th October, 1986 at Bombay and having found that he was not able to contact the petitioner returned to Gangtok. Thus the grounds could not be served on the petitioner within the stipulated period as the petitioner was not under detention from 2nd October, 86 onwards. Had the petitioner been in detention it would have been possible for me to get the grounds served on the petitioner on 3rd October, 1986 itself. I respectfully submit that it is the petitioner who rendered every effort on my part to serve the grounds futile

taking advantage of the various orders of the High Court of Bombay and this Hon'ble Court. I did not know that the Writ Petition filed by the petitioner was posted in the Bombay High Court on 6th October, 1986. No notice was served on me or on the State Government about the posting of the writ petition in the Bombay High Court on 6th October, 1986. The only communication received was that the said case was posted on 14th October, 1986. Our Advocate General appeared on the day in the High Court of Bombay. I respectfully submit that the petitioner cannot be allowed to contend that the provisions of Section 8 of the Act were violated by me in view of the fact that the petitioner was not in detention and was enlarged on bail by the Chief Metropolitan Magistrate, New Delhi under the orders of this Court. Therefore, I respectfully submit that there is no violation on my part of the provisions of Section 8 of the Act."

The petitioner has made various allegations of malafides against the Chief Minister of Sikkim. These allegations are not supported by any acceptable evidence. Therefore, we do not propose to consider them. Much was made of the fact that the Chief Minister has not filed a Counter Affidavit himself denying the allegations. According to us it is not necessary since the allegations are wide in nature and are bereft of details. We do not think it necessary in all cases to call upon persons placed in high positions to controvert allegations made against them by filing affidavits unless the allegations are specific, pointed and necessary to be controverted. We, therefore, propose to confine ourselves purely to the question whether there has been a violation of the mandatory provisions contained in Section 8 of the Act. or not.

The order of the Home Secretary directing the petitioner's detention under Section 3 of the Act was made on 25-9-1986 and grounds of detention were prepared on the same date. The petitioner was served with the detention order on 29-9-1986 at 10.15 P.M. He was taken to the Bombay Police lock-up that day. On 30-9-1986 at 6 P.M. he was taken to his office in Bombay. On the same day, the Bombay High Court passed an order at 7.30 P.M. staying the detention order. The Plane carrying the petitioner leaves Bombay for Delhi on the same day at 8.30 P.M. The detaining officers were informed of the order of the Bombay High Court on 1-10-1986 at 5 P.M. On the same day at 3.30 P.M. the Supreme Court directs that the petitioner shall not be taken out of Delhi. On 2-10-1986, the Chief Metropolitan

- A Magistrate directs the petitioner's release on bail. On 14-10-1986, the petitioner is served with grounds of detention. These facts are not disputed.

- B Let us see how the concerned officer explains the delay caused in serving the grounds of detention on the petitioner. But before doing so we will read Section 8(1) of the Act.

- C "8(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, 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, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government."

- D A bare reading of the Section shows that it is obligatory on the detaining officer to communicate to the detenu, the grounds on which the order of detention has been made, promptly. This has to be done as soon as possible and ordinarily not later than 5 days. The detaining authority is permitted to exceed this limitation of 5 days in exceptional circumstances. The grounds of detention, under exceptional circumstances, can be communicated to the detenu within a period not later than 15 days from the date of detention but when the detaining authority takes time longer than 5 days he was to record reasons why the grounds of detention could not be communicated within 5 days. It is clear in this case that the grounds of detention were communicated to the petitioner long after 10 days. There is no record evidencing any reason for this long delay.

- G We have therefore to examine the reasons why the grounds of detention were given only on 14-10-1986. It is stated in the Counter Affidavit sworn to by the Home Secretary that the grounds of detention were handed over to Shri K.P. Subba for service on the petitioner on 3-10-1986. This K.P. Subba has not chosen to file an affidavit in this case to inform this Court as to what really happened with the grounds of detention given to him for service on the petitioner. It is stated in the Counter Affidavit that Shri Subba learnt from the petitioner's Advocate, Mrs. Swamy, that the petitioner had left for Bombay. The Counter Affidavit continues to say that on 4-10-1986, the 'police officers' could not contact the petitioner in his home address. It is not

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evident from this statement as to which officer tried to contact the petitioner in his home address on 4-10-1986. It is further stated that he waited on 5-10-1986 also but he did not find the petitioner at his house address or in the Court. The Counter Affidavit is not sufficiently communicative as to who this police officer was. The Counsel for the petitioner tried to impress upon us the fact that this statement cannot be true because 5-10-1986 happens to be a Sunday and that no police officer would try to contact an Advocate in Court on Sunday. This police officer is said to have returned to New Delhi on 6-10-1986. The Counter Affidavit is eloquently silent about what happened after 6-10-1986. The Counter Affidavit thereafter discloses the fact that Shri K.P. Subba, the police officer, waited till 6th October, 1986 in Bombay and returned to Gangtok since he was not able to contact the petitioner. The complaint of the officer is that the petitioner made it impossible for him to serve the grounds of detention. Every attempt on the part of the officer to serve the petitioner with grounds of detention were rendered futile by taking advantage of the orders of the High Court and the Supreme Court. It is further stated in the Counter Affidavit that the grounds of detention could not be served since the petitioner was released on bail and was not under detention from 2nd October, 1986 onwards.

We have considered the averments in the Counter Affidavit carefully. We have no hesitation to hold that there has been a flagrant violation of the mandatory provisions of Section 8 in this case. It is not permissible, in matters relating to the personal liberty and freedom of a citizen, to take either a liberal or a generous view of the lapses on the part of the officers. In matters where the liberty of the citizens is involved, it is necessary for the officers to act with utmost expedition and in strict compliance with the mandatory provisions of law. Expeditious action is insisted upon as a safeguard against the manipulation.

In this case there is no acceptable or satisfactory explanation as to what the officer or the officers did after 6-10-1986. This inaction after 6-10-1986 till 14-10-1986, by itself is sufficient for us to hold that Section 8(1) has been violated by the officer concerned and on that ground alone the order of detention has to be quashed.

An attempt was made by the counsel for the respondents to contend that the delay in communicating the grounds of detention caused in this case has to be condoned and the rigour of the Section relaxed since the detenu had been released on 2-10-1986, and hence

- A not in detention. This according to us is a specious plea which cannot stand legal scrutiny. If this contention is to be extended to its logical conclusion it would be clothing the authorities with powers to delay communication of the ground of detention indefinitely, whenever a detenu secures from a Court of law either bail or parole. To accept this contention would be to destroy the effect of the mandate of the
- B Section. As indicated earlier, the mandate enacted in the Section is a safety valve for a citizen who is robbed of his liberty and to disable the authorities from manipulating the grounds of detention. The Section has to be interpreted literally. No relaxation is permissible. If the original time of 5 days has to be extended, such extension must be supported by an order recording reasons. If reasons are not so re-
- C corded the order of detention will automatically fail. Even if reasons are recorded they have to inspire confidence in the Court and are subject to legal scrutiny. If the reasons are unsatisfactory, Courts would still quash the order of detention.

- D On a consideration of the materials placed before us we hold that the order of detention is bad and we quash the same. Since the petitioner is not in detention there is no need to pass any order to direct his release.

A.P.J.

Petition allowed.