

SAPMAWIA

A

v.

DEPUTY COMMISSIONER, AIJAL

July 30, 1970

[I. D. DUA, J.]

B

Constitution of India Article 32—Habeas corpus—Commitment order neither stating the number of days of commitment, nor in terms authorising the jail authorities to keep the petitioner, nor giving reasons—Validity.

The petitioner, who was accused of certain criminal offences, was in jail custody awaiting his trial. He applied to the High Court for a writ of *habeas corpus*. On January 22, 1970 the High Court held that the petition was not maintainable because the petitioner was an undertrial prisoner awaiting his trial. Accordingly the High Court dismissed the plea for a writ of *habeas corpus*, but directed investigation against the petitioner to be completed within two months. The petitioner did not file appeal against this order, but much later filed a *habeas corpus* petition in the Supreme Court. In its return the State asserted that the investigation was completed by March 20, 1970 and sanction was obtained on May 12, 1970, but no order by a Magistrate authorising the petitioner's detention in custody was produced. The last order of remand disclosed to this Court was of February 2, 1970. But this order neither contained the period of remand nor did it, in terms, authorise the Dibrugarh Jail authorities to keep the petitioner in their custody: reasons for keeping him in jail custody was also not stated. Directing the petitioner's release, this Court:

C

D

E

HELD: The petitioner's custody in jail was not shown to be in accordance with the procedure established by law.

(i) If, 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 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. [695 G]

F

During the course of investigation, the order of the remand Magistrate under the Code of Criminal Procedure could not extend beyond a term of 15 days. The State did not show any special law which authorised a remand for 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. The fact that the charge against the petitioner pertains to security of the State and the fact that stringent measures may be necessary on our eastern and north-eastern borders does 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 contains adequate provisions. [694 F, 696 A-B]

G

H

(ii) The writ of *habeas corpus* is a prerogative writ by which the causes and validity of a detention of a person are investigated by summary procedure and if the authority having his custody does not satisfy the Court

A that the deprivation of his personal liberty is according to the procedure established by law the person is entitled to his liberty. [695 D]

(iii) 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.

B (iv) 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. [695 D]

C (v) Rule *nisi* in *habeas corpus* proceedings demands immediate attention and urgent compliance as it concerns the question of liberty of the custody, that he has been deprived of his personal liberty according to subject. [Delay in securing papers for production in this Court disapproved.] [696 E]

ORIGINAL JURISDICTION : Writ Petition No. 269 of 1970.

D Petition under Art. 32 of the Constitution for a writ in the nature of *habeas corpus*.

B. R. Agarwala, for the petitioner.

Naunit Lal, for the respondent.

The Judgment of the Court was delivered by

E **Dua, J.**—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 India hailing from Bairabi (Bairangal) village, Mizo District. On the 14th August, 1968 he was taken by the Security Forces from his house in Bairabi, Mizo Dist.

F 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

G arrest. On enquiry from jail authorities he learnt that he was charged with offences under s. 121, I.P.C. and under rules 41(5) and 32(5) of the Defence of India Rules and also under ss. 10, 11 and 13 of the Unlawful Activities (Prevention) Act. The petitioner was transferred from Silchar Jail to Nowgong Jail and from there to the District Jail, Dibrugarh.

H Later the charges under s. 121, I.P.C. and rr. 41(5), and 32(5), Defence of India Rules were withdrawn leaving only charges under ss. 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 complians that no further action has so far been taken in this connection.

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.

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 ss. 10, 11 and 13 of the Unlawful Activities (Prevention) Act was registered against him. During the investigation evidence for prosecution under ss. 10 and 13 of the said Act as well as under s. 11 of the Assam Maintenance of Public Order (Autonomous Districts) Act was also forthcoming. The exact words of the return of this aspect are :

"During investigation sufficient evidence for prosecution under s. 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 chargesheeted on 20-3-70 under s. 11 of the Assam Maintenance of Public Order (Autonomous Districts) Act and the Commissioner for Cachar & Mizo District was requested to accord sanction for prosecution of the accused petitioner under ss. 10 and 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 chargesheet. 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

- A two months' time to complete investigation *vide* order dated 22-1-1970. Investigation was completed within the time allowed by the Hon'ble High Court and the accused petitioner has been charge-sheeted under s. 11 of the Assam Maintenance of Public Order (Autonomous Districts) Act on 20-3-70 and u/s 10/13 of the Unlawful Activities (Prevention) Act."
- B

- C 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 :

- D "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.M. Aijal had not been contacted."

- E 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.
- F

- G 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 upto the date of that order has to be assumed to be lawful.
- H

Now, in this Court the only right the petitioner can enforce in these proceedings is 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 Art. 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.

As observed earlier, upto 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.

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 stated. 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 been 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.

It was contended that the petitioner is an accused person and that he was duly committed to Dibrugarh Jail by the

- A 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
- B 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.
- C

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 an 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 constitutional 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 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 on 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

D

E

F

G

H

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 considerations 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.

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.

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 am 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.

Y.P.