

**Zenito Vs. District Magistrate, North Goa and Others**

**Zenito Vs. District Magistrate, North Goa and Others**

**SooperKanoon Citation :** [sooperkanoon.com/1104595](http://sooperkanoon.com/1104595)

**Court :** Mumbai Goa

**Decided On :** Jul-16-2013

**Judge :** A.P. Lavande & U.V. Bakre

**Appeal No. :** Criminal Writ Petition No.41 of 2013

**Appellant :** Zenito

**Respondent :** District Magistrate, North Goa and Others

**Judgement :**

Oral Judgment: (A.P. Lavande, J.)

Heard Mr. S.G. Dessai, learned Senior Counsel for the petitioner, Mr. S.R. Rivonkar, learned Public Prosecutor appearing for respondents No.1, 2 and 3 and Mr. C.A. Ferreira, Asst. Solicitor General for respondent No.4.

2. By this petition, the petitioner has challenged the order dated 13th February, 2013 passed by respondent No.1 in exercise of the powers conferred under Section 3(2) of the National Security Act, 1980 ("the Act" for short). In terms of the said order, the petitioner was detained and kept in the Central Jail, Aguada in order to prevent him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order. The petitioner in the petition has urged several grounds in support of the contention that the impugned detention order is liable to be quashed. The petitioner filed an application for his release on bail, which was granted by order

dated 6th May, 2013.

3. Replies have been filed on behalf of respondents No.1, 2 and 3 and respondent No.4.

4. Mr. Dessai, learned Senior Counsel appearing on behalf of the petitioner submitted that the replies filed on behalf of the respondents disclose that there is a clear breach of Section 3(5) and Section 11(1) of the Act. According to learned Senior Counsel, in terms of sub-section (5) of Section 3, when an order is made or approved by the State Government, the State Government, within seven days, is bound to report the fact to the Central Government, together with the grounds on which the order has been made. In the present case, the report by the State Government was made on 16th April, 2013, which is much beyond seven days period as prescribed in sub-section (5) of Section 3 of the Act.

5. Learned Senior Counsel further submitted that there is also breach of sub-section (1) of Section 11 of the Act inasmuch as in terms of Section 11(1), the Advisory Board has to consider the materials placed before it, and after calling for further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention. In the present case, the impugned order is dated 13th February, 2013 and the Advisory Board did not submit the report to the appropriate Government within seven weeks from the date of detention, but, on the contrary, on 6th May, 2013, it submitted report stating, inter alia, that since no reference could be heard within seven weeks, the Board was refraining itself from expressing any opinion in the matter.

6. Learned Counsel appearing for the respondents do not seriously dispute the factual details submitted by Mr. Dessai, learned Senior Counsel appearing for the petitioner. There is also no serious dispute that sub-section (5) of Section 3 and sub-section (1) of Section 11 of the Act have not been complied with.

7. In view of the above, what emerges is that there is a clear breach of the provisions of Section 3(5) and Section 11(1) of the Act which are mandatory in nature. That being the position, in our considered opinion, the impugned order dated 13th February, 2013 passed by respondent No.1 is unsustainable in law and, as such, liable to be quashed and set aside and is, hereby, quashed and set aside.

8. The question of releasing the petitioner does not arise as he has already been granted bail. However, bail bonds executed by the petitioner, stand discharged.

9. Rule is made absolute in the above terms. There shall be no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**