
(2014) 09 GAU CK 0049
In the Gauhati High Court
Case No : W.P. (Crl.) No. 20 (K) of 2014

Avikho Angami

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2015) 1 GLT 135

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : V. Theyo and Keduvi Zhutso, Advocates for the Appellant; Moa Imchen, Addl. Sr. G.A, Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—Heard Mr. V. Theyo, learned counsel for the petitioner and Mr. Moa Imchen, learned Additional Senior Government Advocate, representing the State respondents. By means of this writ petition, the petitioner has challenged his order of detention dated 16th January, 2014, followed by the order of approval dated 23rd January, 2014 of the Government of Nagaland, signed by the Chief Secretary. The order of detention was confirmed by order dated 7th March, 2014. The representation made by the petitioner against his detention was rejected by the Government of Nagaland vide order dated 26th February, 2014. The Central Government also rejected his representation. The Advisory Board also found sufficient ground for detention of the detenu.

2. The ground on which the impugned order of detention has been assailed is in respect of the derivation of subjective satisfaction. In this connection, the learned counsel for the petitioner has referred to paragraphs 2 and 4 of the ground of detention, which are quoted below:-

2. The act committed by the subject carrying illegal arms and ammunition and threatening the public is a serious offence. Moreover carrying of illegal arms and ammunition and residing in civilian populated area thereby, endangering the safety and security of the public. The act is contrary to the wishes and

aspirations of the general public in violation of the cease fire ground rules and therefore endanger the safety and security of the State.

4. The subject is presently under judicial custody, but there is a likelihood of him being released on bail and in the event of his released he is likely to indulge in similar prejudicial activities unless an effective alternative measures is called for. On examination of the report forwarded by the sponsoring authority, the case of the subject is found fit to be booked under the National Security Act, 1980. Hence, in order to prevent him from further indulging in activities prejudicial to the security of the State and maintenance of public order, the undersigned has ordered the detention of the subject under the said Act.

3. The learned counsel for the petitioner has also contended since there is no material to show derivation of subjective satisfaction and in the writ petition a specific plea has been raised, it was incumbent on the part of the detaining authority to swear the affidavit filed instead of swearing the same by the Chief Secretary of the State. The learned counsel for the petitioner has placed reliance on some decisions, which are Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others, ; in Ringkahao Horam & Ors. Vs. State of Nagaland & Ors. reported in 1997 (2) GLT 419; in Jutika Chakraborty Vs. State of Nagaland & Ors. reported in 2013 (5) GLT 785 and the unreported judgment dated 9th September, 2014 passed in WP (Crl.) No. 15(K)/2014.

4. In the counter affidavit filed by the respondents, it has been stated that the order of detention has been passed upon deriving of the subjective satisfaction. In this connection, learned State counsel has referred to paragraph 17 of the said affidavit, which is quoted below:-

"17. That with regard to the averments made in paragraph 9(J) of the writ petition, the answering deponent respectfully states that the averment made in this paragraph is denied by the answering respondent. The FIR and investigation report are valid documents containing the actual facts of the case. The sponsoring authority had proposed the detention of the detainee to the District Magistrate, Kohima after careful investigation of the case of the detainee. It has been ascertained that the detainee was arrested on 08.01.2014 for possession of illegal arms and ammunitions by search column of 19th Assam Rifles from P.R. Hill area near Supply Department Office, Kohima besides possession of demand notes bearing letter head of NSCN (K). Here, it is pertinent to point that the illegal 9 mm pistol along with 7 (seven) live rounds seized from the possession of the detainee is deadly weapon which is capable of destructing lives and further the act committed by the detainee carrying illegal arms and ammunitions and residing in civilian populated area is not only a gross violation of the laid down ceasefire ground rules but also endangers the safety and security of the public. The Police found that the detainee was involved in prejudicial activities which pose grave threat to the security of the State and maintenance of public peace. Accordingly, the proposal substantiated by established facts and circumstances of the case were sent to the detaining authority and the detaining authority passed

the detention order against the detainee after careful examination of the case. The petitioner/detenué has been detained under the National Security Act as per merit of the case and not on any flimsy ground."

5. In *Revam Ningol Mikoi Devi (supra)*, the Apex Court held that in the matter of detention order it is open to judicial review relating to subjective satisfaction of the detaining authority. It was held that the Court is entitled to scrutinize the material relied upon by the authority in coming to its conclusion, and accordingly to determine if there is objective basis for subjective satisfaction. In the said case primary reliance on an accused's statement made to an Investigating Officer was the foundation as the ground of detention. It was held that the same was not sufficient to form subjective satisfaction by the detaining authority.

6. In *Ringkahao Horam (supra)*; a division Bench of this Court held that when the Court is primarily concerned with the subjective satisfaction of the detaining authority, with a rule of prudence, the affidavit is required to be filed by the detaining authority. Observing that the Court was primarily concerned with the subjective satisfaction of the detaining authority, it was held that it was incumbent on the part of the detaining authority to justify the same by swearing and filing an affidavit. In the said case, no affidavit was filed by the detaining authority. In the instant case also, no affidavit has been filed by the detaining authority but the same has been filed by the Chief Secretary.

7. Placing reliance on the said decision, this Court under similar circumstances interfered with the order of detention vide the aforesaid unreported judgment dated 9th September, 2014 in *Vikuto Awomi Vs. State of Nagaland & Ors.* In *Jutika Chakraborty (supra)*, recording the submission of the learned counsel for the petitioner involved in the said case held that while deriving the subjective satisfaction details of the case where bail was granted under similar circumstances had to be disclosed by the detaining authority to show that subjective opinion was arrived at basing on some materials.

8. In the instant case, the petitioner has been detained by the impugned order dated 16th January, 2014 by the District Magistrate, Kohima. As to what are the grounds of detention have been noted above. In ground No. 2, it has been stated that the act committed by the detainee in carrying illegal arms and ammunitions and threatening the public is a serious offence. However, no particulars have been disclosed relating to the same. Similarly while recording that there is likelihood of the detainee being released on bail, no reference has been made to any similar circumstances and/or as to on what basis such a satisfaction was arrived at.

9. As has been held in various decisions both of the Apex Court and this Court and even otherwise also there must be a reasonable basis for the detention order and there must be material to support the same. In the impugned order although the District Magistrate has recorded his purported satisfaction but there is no reference to any materials in support of that satisfaction. Even in the matter of

subjective satisfaction, the same must be based upon some pertinent material.

10. Preventive detention is a serious inroad into the freedom of individuals. Reasons, purposes and the manner of such detention must, therefore, be subject to closest scrutiny and examination by the Courts. As has been held in *Revam Ningol Mikoi Devi (supra)*, there must be a reasonable basis for the detention order and there must be material to support the same. The detaining authority must be satisfied that the person may be detained is likely to act in any manner prejudicial to the security of the State and the authority must be further satisfied that it is necessary to detain the said person in order to prevent from so acting.

11. In my considered view, the grounds on which the detention order has been passed has no probative value and are extraneous to the scope, purpose and the object of the National Security Act. For all the aforesaid reasons, this writ petition is allowed interfering with the impugned detention order dated 16th January, 2014 and all other consequential orders. The petitioner shall be released forthwith, if not wanted in connection with any other case.