
(2016) 07 MAN CK 0008
In the Manipur High Court
Case No : Writ Petition (Cril) No. 20 of 2016

Don Lam Ching Zou

APPELLANT

Vs

The District Magistrate

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

National Security Act, 1980 — Section 3(3)

Citation : (2016) 165 AIC 779

Hon'ble Judges : Mr. Rakesh Ranjan Prasad, ACJ and Mr. Songkhupchung Serto, J.

Bench : Division Bench

Advocate : Mr. T. Rajendra, Advocate, for the Petitioner; Mr. A. Vashum, Addl. G.A. Mr. S. Rupachandra, ASG and Mr. K.R. Pamei, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Rakesh Ranjan Prasad, A.C.J. and Mr. Songkhupchung Serto, J.—;This application has been filed for quashing the order dated 30.3.2016 passed by the District Magistrate, Bishnupur, respondent No. 1, whereby and where under respondent No. 1, in exercise of power conferred under sub Section (3) of Section of 3 of the National Security Act, 1980 passed the order of detention in Cril.1/NSA/DM-BPR/2016 against the detainee namely Mrs.Don Lam Ching Zou, after being satisfied that in order to prevent the detainee from acting in any manner prejudicial to the security of the State and maintenance of public order, it has become necessary to do so.

2. The grounds on which order of detention was passed are that the detainee along with Mrs. Chindeiching Zou, after coming into contact with one Lianpao Inpi Zou @ Papao of Myanmar started smuggling of arms and ammunition procured from Myanmar along with some other persons. Further it has been recorded that in the month of October, 2015 the detainee sold one Rifle along with magazine to a couple of Thadou at Rs. 2,40,000/- and that the detainee along with Chindeiching Zou, having procured two Rifles through Mr.Lianpao @

Papao planned to sell it to one Ngangam Kuki at Rs. 2.4 lakh per Rifle. On 19.2.2016 while the detenue along with Mrs.Chindeiching Zou and others were coming towards Kwakta to deliver the arms to the said Ngangam Kuki they were apprehended by the police who recovered the Rifles and magazines as well as other materials from their possession and lodged a case which was registered as Moirang P.S. Case No. 18 (2) 2016 under Section 400/34 IPC and 25(1-C) Arms Act. On such ground the respondent No. 2 after recording that the detenue (in custody) is acting in a manner prejudicial to the maintenance of public order passed the order of detention on 30.3.2016.

3. A copy of the detention order was served along with grounds of detention upon the detenue while she was lodged in jail. The order of detention was approved by the Government on 7.4.2016 and subsequently confirmed by the Government. The aforesaid orders of detention, its approval as well as confirmation, have been challenged on several grounds. However, Mr.T. Rajendra, learned counsel appearing for the petitioner pressed only one point that the Detaining Authority while passing order of detention though has recorded that there is every likelihood of detenue being released on bail but material upon which such satisfaction was recorded is not there and as such, order of detention cannot be sustained in law.

4. As against this, Mr.A. Vasum, learned counsel appearing for the State submits that from the order of detention it would appear that the Detaining Authority after having taken notice of the fact that the detenue, an accused, is in custody and has filed an application for grant of bail recorded its satisfaction that there is every likelihood of detenue being released on bail and that possibility of indulging in prejudicial activities is there and, therefore, detention order never warrants any interference by this Court. Learned counsel, in support of his submission that the Detaining Authority was absolutely justified in recording his satisfaction that there is every likelihood of detenue being released as he had filed bail application, referred to observation made in para 27 of the decision rendered in the case of *Rekha v. State of Tamil Nadu* through Secretary to Government and anr: (2011) 5 SCC 244.

5. It goes without saying that in a case of preventive detention no offence is proved and justification of such detention is suspicion or reasonable probability. There is no conviction which can only be warranted by legal evidence; whereas Article 21 of the Constitution of India declares that no person shall be deprived of life and liberty except in accordance with the procedure established by a law. In such situation machinery was definitely needed to examine the question of lawful detention with utmost promptitude. 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 and sufficient, he is entitled to be released by the High Court and Supreme Court upon issuance of writ of habeas corpus.

6. It be stated that the Detaining Authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the

applicability of clause (1) and (2), the detenu is not entitled to a lawyer and the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this deterrent law, the law of preventive detention is to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is mandatory and vital. These procedural safeguards are required to be zealously watched and enforced by the Court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. In this regard, we may refer to a decision rendered in a case of Rattan Singh v. State of Punjab reported in (1981) 4 SCC 481 : 1981 SCC (Cri.) 853, wherein Their Lordships has observed:

"4..... May be that the detenu is a smuggler whose tribe (and how their numbers increased) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus."

In this context, we may refer to another decision rendered in the case of Abdul Latif Abdul Wahab Sheikh v. B.K. Jha, reported in (1987) 2 SCC 22: 1987 SCC (Cri.) 244 wherein it has been held:

"5.. . . The procedural requirements are the only safeguards available to a detenu since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard."

7. Keeping in view the said principle, the Hon^{ble} Supreme Court subsequently in the case of Union of India v. Paul Manickam, (2003) 8 SCC 342 : 2004 SCC (Cri.) 239 recorded about the compliance of certain safeguards by the Detaining Authority passing order of detention when the detenu is in custody, which reads as follows:

"14.....Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability, etc. Ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is

reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated..... The point was gone into detail in *Kamarunnissa v. Union of India*: (1991) 1 SCC 128 : 1991 SCC (Cri.) 88. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail."

8. Thus, at the cost of repetition, we may record that Detaining Authority in a case of detenu being in custody, needs to observe following safeguards meticulously:

- (i) If the authority passing the order is aware of the fact that he is actually in custody;
- (ii) If there is reason to believe on the basis of available materials placed before him -
 - (a) that there is every possibility of being released; and
 - (b) that on being so released he would be in all probability to indulge in prejudicial activities;
- (iii) If it is felt essential to detain him to prevent him from doing so.

9. Thus, in the context of the law laid down by the Hon^{ble} Supreme Court, we have to examine as to whether aforesaid safeguards have been observed meticulously by the Detaining Authority who did pass the order of detention when the detenu was in custody.

10. As we have said earlier that the detenu had filed an application for grant of bail and only on account of that it was recorded that there is every likelihood of detenu being released on bail. There has been no denial of the proposition of law that the order of detention can be passed even in respect of a person lodged in custody in respect of criminal case. However, Hon^{ble} Supreme Court in the case of *Huidrom Konungjao Singh v. State of Manipur and ors* : (2012) 7 SCC 181 was pleased to hold that if such detention order is challenged the Detaining Authority has to satisfy the court about the following facts:

(i) the authority was fully aware of the fact that the detenu was actually in custody;

(ii) there was reliable material before the said authority on the basis of which it could have reason to believe that there was reliable possibility of his release on bail and further of being released, he would probably indulged in activities which are prejudicial to public order;

(iii) in view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore detention order was necessary. However, it has been observed that in case where these fact do not exist detention order would stand vitiated.

11. In the light of the aforesaid decision, if we examine the legality of the detention order we do find that the Detaining Authority though has recorded that the detenu is likely to be released but no material is there which made the Detaining Authority to form an opinion that there is every likelihood of the detenu being released. The said material neither has been spelt out in the grounds of detention nor has been brought on record. Therefore, the order of detention can be said to have been passed on mere ipse dixit statement spelt out in the grounds of detention which is not sustainable in the eye of law.

12. Before we conclude it would be pertinent to refer to the observation made by their Lordships in para 27 of the decision rendered in the case of *Rekha v. State of T.N* (supra) which reads as follows:

"27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing and been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

On perusal of the judgment it is evident that whatever has been spelt out, that is discussion of the matter and not ratio laid down which would be evident from para 7, 10 and 11 of the said decision, which reads as follows:

"7. A perusal of the above statement in para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the concerned court. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on

the same footing as the case of the accused. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practise of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect. Hence, the detention order in question cannot be sustained."

The conjoint reading of these paragraphs do clearly indicate that if the Detaining Authority records its satisfaction that there is likelihood of detenue being released on bail it should be supported by necessary facts. If it is lacking, it can be said that such satisfaction is mere ipse dixit.

13. Thus, we do find that subjective satisfaction of the Detaining Authority of detenue being released on bail is not based on any factual aspect. Hence, order of detention being bad, is hereby quashed. Consequently, the petitioner namely, Mrs. Don Lam Ching Zou, (38 yrs), w/o Mr. Jamchinthang Zou of Hiangzou Churachandpur, PS Churachandpur, Churachandpur District, Manipur is directed to be released forthwith, if not wanted in any other case.