

(2014) 02 MAN CK 0012
In the Manipur High Court
Case No : Writ Petition (Cril) No. 22 of 2013

Hidangmayum Dhananjay Sharma @ Eigyamacha	APPELLANT
Vs	
District Magistrate, State of Manipur and Union of India	RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

National Security Act, 1980 — Section 17, 3
Penal Code, 1860 (IPC) — Section 121, 121A

Citation : (2014) CriLJ 1712

Hon'ble Judges : Laxmi Kanta Mohapatra, Acting C.J.; N. Kotiswar Singh, J

Bench : Division Bench

Advocate : Ch. Ngongo, for the Appellant; R.S. Reisang, Sr. G.A. Mr. Amarjit Naorem, CGSC, for the Respondent

Final Decision : Allowed

Judgement

Mohapatra, Actg. C.J.

1. The petitioner, who has been detained under sub section 3 of Section 3 of the National Security Act, 1980 (hereafter refers to as "NSA") by order of the District Magistrate, Thoubal dated 29.4.2013, challenges the legality of the said order of detention in this writ petition. On 18.10.2012 the petitioner was arrested by a team of CDO, Thoubal from his residential house and was handed over to Officer in- Charge Lilong P.S. on 19.10.2012. A case was registered against him and since then he has been in custody. Again he was formally arrested in connection with another case on 14.12.2012 and had been remanded to judicial custody. While the matter stood thus, the District Magistrate, Thoubal District passed the order of detention on 29.4.2013 when the petitioner was in judicial custody in connection with the aforesaid cases. On the very same day, grounds of detention were served on him. The representations submitted by the petitioner to respondents- 2, 4 and the Chairman, Advisory Board, NSA dated 4.5.2013 were also rejected and his detention was approved on 9.5.2013. The State Govt. confirmed the order of detention on 17.6.2013.

2. The only challenge to the order is that when the petitioner was in custody and had not moved any application for bail, there was no necessity for issuing the order of detention and subjective satisfaction recorded by the District Magistrate nowhere indicates that the petitioner had either moved application for bail or was there any likelihood of he being released on bail.

3. From the counter affidavit filed on behalf of the respondent No. 1, it appears that the petitioner was taken to custody on 14.12.2012 in connection with FIR Case No. 391 (11) 2012 TBL PS u/s. 121/121A IPC for commission of offence u/s & 17/20UA(P) A. Act and had been detained in police custody till 20.12.2012. Thereafter, he was remanded to judicial custody and he had been lodged in Manipur Central Jail, Sajiwa. Admittedly, no application for bail had been moved by the petitioner for being released in the said case. While the petitioner was continuing in judicial custody, impugned order of detention was passed on 29.4.2013 by the District Magistrate, Thoubal. Relevant portion of the subjective satisfaction recorded by the District Magistrate is quoted below:

And whereas, I am satisfied from the police report that Shri Hidangmayum Dhananjay Sharma @ Eigyamacha (37 yrs) s/o H. Kalachand Sharma of Kongba Laishram Leikai PS Porompat, District Imphal East, Manipur who is now in Manipur Central Jail, Sajiwa and also since he is likely to continue to act in the manner prejudicial to the security of the State and maintenance of public order and also that an alternative preventive measure is called for;

It is evident from the above paragraph that the District, Thoubal District had not even verified as to whether petitioner had moved a petition for bail or not. He has also not recorded his satisfaction to the effect that if the petitioner is released from bail, he would indulge in similar activities.

4. In this connection reference may be made to a decision of the Apex Court in the case of Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another, The relevant two paragraphs of the above judgment are quoted below:

26. It was held in Union of India V. Paul Manickam that if the detaining authority is aware of the fact that the detenu is in custody and the detaining authority is reasonably satisfied with cogent material that there is likelihood of his release and in view of his antecedent activities he must be detained to prevent him from indulging in such prejudicial activities, the detention order can validly be made.

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 stands on the same footing had 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.

5. The above judgment of the Apex Court has also been followed by this Court in several cases, such as WP(Cril) No. 21 of 2013 (Mrs. Betty Chingsuankim vs. Union of India & Ors) and WP(Cril) No. 30 of 2013 (Md. Yumkhaibam Basir vs. District Magistrate, Thoubal & Ors) and WP(Cril) No. 27 of 2013 (Shri Nameirakpam Robi Singh Vs. District Magistrate, Imphal West & Ors). Applying the ratio laid down by the Apex Court in case of Rekha (supra) followed by several decisions of this Court, we are of the view that when the petitioner was in judicial custody and had not moved any application for bail, there was no reason on the part of the District Magistrate, Thoubal to issue the order of detention in exercise of powers under sub section 3 of Section 3 of the NSA, 1980. We, therefore, have no other option except to allow the writ petition and set aside the order of detention. We, accordingly, allow the writ petition, set aside the order of detention dated 29.4.2013 in Annexure-A/1 to the writ petition as well as the order of approval and confirmation and further direct that the petitioner, Hidangmayum Dhananjoy Sharma @ Eigyamacha, be released forthwith unless his detention is required in any other case.