
(2014) 01 MAN CK 0013
In the Manipur High Court
Case No : W.P. (Cril) No. 35 of 2013

Khongbantabam Robin Singh

APPELLANT

Vs

The District Magistrate, Imphal West District, The State of Manipur represented by the Special Secretary (Home) and The Superintendent of Jail, Manipur Central Jail

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2014) 01 MAN CK 0013

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

Bench : Division Bench

Advocate : S. Rajeetchandra, Advocate for the Appellant; R.S. Reishang, Sr. Govt. Advocate, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner in this writ petition questions the legality of the order of detention dated 6th July, 2013 passed by the District Magistrate, Imphal West directing his detention u/s 3(2) of National Security Act, 1980.

2. It is the case of the petitioner that on the date the impugned order of detention was passed, he was in police custody having been arrested in connection with a Criminal Case and his application for grant of bail had been rejected. There was no further application pending on behalf of the petitioner for grant of bail. Therefore, in absence of any application for grant bail when the petitioner was in police custody, there was no necessity of passing the order of detention and that the subjective satisfaction of the District Magistrate, Imphal West that the petitioner is likely to be released on bail in the near future as bails are granted in similar cases is based on no material.

3. A counter affidavit has been filed on behalf of the respondent No. 1. It is stated in the counter affidavit that the petitioner was running a tea stall to maintain his family. Most of the people of the locality and members of different

underground organizations who were operating in Manipur valley used to also visit the stall frequently and used to take shelter in his house. The underground members also utilized the services of the petitioner to collect information about location of non-Manipuris who were staying in different rented houses and to watch movement of the security forces. On the basis of the information given by the petitioner, a powerful bomb was planted by the petitioner along with two PLA members in the rented house of N.P. Devi of Uripok as a part of supporting the agitation launched by general public for implementation of "Inner Line Permit System" in the state of Manipur. Due to such bomb blast, 5(five) non-Manipuris along with some other local men sustained injury and two of them ultimately succumbed to the injury. The petitioner was arrested and was detained in custody and while continuing in custody, the impugned order of detention was passed as the District Magistrate, Imphal West was satisfied that in such cases bail is granted to accused persons and there is every likelihood that the petitioner shall also be released on bail and after being released on bail, he shall indulge in such activities.

4. Undisputedly, the petitioner was in custody on 06.07.2013 when the order of detention was passed by the District Magistrate, Imphal West. The relevant part of the impugned order of detention is quoted below:-

And whereas, I am satisfied from the police report that Shri Khongbantabam Robin Singh (56 years) S/o. (L) Kh. Henouba Singh of Uripok Tourangbam Leikai, P.S.--Imphal, District - Imphal West, Manipur who is now in Police custody, is likely to be released on bail in the near future by the normal criminal court as bails are granted in similar cases by the criminal courts;

5. The submission of the learned counsel for the petitioner is that an application for grant of bail had been filed by the petitioner in the case in which he was arrested and that application grant of bail was rejected. This submission is not disputed by the state respondents. It is also not in dispute that on 6th July, 2013 when the order of detention was passed, no application for grant of bail on behalf of the petitioner was pending in any court. Under these circumstances, question that arises for consideration is as to whether order of detention is valid or not. 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, . Paragraph 26 and 27 of the said judgment which are relevant for the purpose of this case are quoted below:-

26. It was held in Union of India V. Paul Manicham 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 case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detinue 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.

6. The above judgment of the Apex Court has also been followed by this Court in several other cases. Such cases being that of Shri Shamurailatpam Bijen Sharma--Vrs.--State of Manipur & Ors. vide W.P. (Cril.) No. 15 of 2013 disposed on 12.11.2013 and Shri Nameirakpam Robi Singh--Vrs.--District Magistrate, Imphal West and Ors. vide W.P. (Cril.) No. 27 of 2013 disposed on 05.12.2013.

7. On consideration of the above judgments, we are of the view that when earlier application for grant of bail filed by the petitioner had been rejected and there was no application for grant of bail was pending before any Court of law in respect of the criminal case in which the petitioner had been arrested and detained in custody, there could not be any apprehension in the mind of the District Magistrate that the petitioner may be released on bail. Merely because in similar cases, some accused person had been released does not necessarily mean that the petitioner would also be released on bail in absence of any application for grant of bail. We are therefore, of the view that in absence of any application for grant of bail, order of detention passed by the District Magistrate, Imphal West becomes invalid.

8. For the reasons stated above, we allow the writ petition and set aside the impugned order of detention dated 6th July, 2013, the order of Approval dated 17.7.2013 as well as the order of confirmation dated 27.08.2013. The petitioner namely Shri Khongbantabam Robin Singh, s/o. Late Kh. Heinouba Singh of Uripok Tourangbam Leikai be released forthwith unless his detention is required in any other case.