
(2016) 08 MAN CK 0002
In the Manipur High Court
Case No : W.P. (Cri.) No. 5 of 2016

Khumlo Abi Anal @ Ambison

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(2)

Citation : (2017) CriLJ 804

Hon'ble Judges : Mr. N. Kotiswar Singh and Mr. Kh. Nobin Singh, JJ.

Bench : Division Bench

Advocate : Shri K.R. Pamei, Advocate on behalf of Shri S. Rupachandra, ASG & Ms. L. Monomala, Govt. Advocate, for the Respondent; Shri P. Praveen Kumar, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J. - Heard Shri P. Praveen Kumar, the learned counsel appearing for the petitioner; Shri K.R. Pamei, the learned counsel appearing on behalf of Shri S. Rupachandra, the learned ASG for FR/NFR the respondent No. 3 and Ms. L. Monomala, the learned Government Advocate appearing for the State respondents.

2. By the instant writ petition, the petitioner has questioned and challenged the validity and correctness of the impugned order dated 19-10-2015 detaining him under Section 3(2) of the National Security Act, 1980.

3.1. In the grounds of detention, it is alleged that the petitioner joined the armed underground organisation namely, National Socialist Council of Nagalim-Khaplang (herein referred to as the "NSCN-K") in the month of October, 1999 through Mr. Joseph Anal @ Tenhring of Lamphou Chiru and after having joined the said organisation, he started working with other members of the NSCN-K and indulged in extortion of huge amount of money from the Government Offices, Schools, Colleges, DRDA, Mini Secretariat and house tax mainly in the areas of

Chandel District and the public in general from Imphal area as well. In the year 2006, the petitioner extorted Rs. 2 lakhs from United College, Chandel and Rs. 80,000/- from the DMO, Chandel which were handed over to Mr. Joseph Anal. Since the early part of 2007, the petitioner started doing contract works for the NSCN-K in order to raise funds for the organisation. On 12-05-2008 at about 4:30 p.m., the petitioner was arrested by a police team of CDO / Thoubal from Langol Housing Complex which handed over him to the OC, Lamphel P.S. in connection with an FIR No. 57(5)2008 Lamphel P.S. under Section 400/384 IPC and on 17-05-2008 when he was produced for judicial remand, he was released on bail by the court.

3.2. After the petitioner being released on bail, he stayed at Lambung Village, Chandel District for few days and thereafter, in the 2nd week of June, 2008, he went to Mon Town, Nagaland where he, at the instance of Mr. Nokchem Konyak of Nagaland, S/S Dy. Secretary of NSCN-K, started working again for the organisation. After the petitioner being promoted to the post of S/S Under Secretary, he came to Imphal in the 1st week of September, 2009 and looking after the activities of his cadre, he started demanding money from different departments of the Government of Manipur. In the month of November, 2009, the petitioner demanded Rs. 2 crores from the Director of Food & Civil Supply, Government of Manipur from its budget for the year 2009-2010 for which a case under FIR No.179(12)2009 Lamphel P.S. under Section 387/400 IPC was registered by the police.

3.3. In the month of March, 2011, the petitioner was appointed as S/S Chairman of Amamcht Region, Chandel and S/S Sgt. Rocken Anal and S/S Sgt. Joseph Anal of Chakpikarong who were working under his command, extorted money from Colleges, District Council and house tax etc. in the Chandel District. By the last part of 2014, the petitioner along with his subordinates extorted about Rs. 28,40,000/- (Rupees twenty eight lakhs and forty thousand) only which had been paid to S/S Finance Kilonser, Mr. Hokado Sema. Over and above, the petitioner took active and important role in the attack / ambush upon the 6th Bn. Dogra Regiment carried out by a combined team of NSCN-K, KYKL and KCP-Noyon faction on 04-06-2015 at 8:15 a.m. in the general area of Parlon, Chandel for which a case under FIR No.14(6)2015, Tengnoupal P.S. under Section 302/307/120-B/121/121-A IPC, 25(1- C)A. Act, 5 Expl. Sub-section Act & 16/20 UA(P)A Act was registered. During the course of the investigation, the said case was transferred to National Investigation Agency (hereinafter referred to as the "NIA") and after the investigation having been taken over by the NIA, the case was registered as No.RC.03/2015-NIA-GUW under Section 302/307/120-B/121/121-A IPC, 25(1-C)A. Act, 5 Expl. Sub-section Act & 16/20 UA(P) A. Act.

3.4. On 11-06-2015 at 11:30 a.m. the petitioner was arrested by a Police team of CDO, Imphal West led by S.I. Th. Samarjit Singh from the house of Shri Nabachandra Singh, Lamphel Super Market and from his possession, one Blackberry mobile handset with an Airtel SIM card was recovered and seized by

observing formality. Thereafter, the petitioner was handed over to the O.C, Lamphel P.S. with a written report along with the seized articles and on the strength of the said report, a regular case under FIR No.203(6)2015 Lamphel P.S. under Section 17/20 UA(P) Act was registered by the police. During the course of investigation, the petitioner was formally arrested on 20-06-2015 in connection with an FIR No.179(12)2009 Lamphel P.S. under Section 387/400 IPC and remanded to judicial custody till 24-06-2015 and further, he was formally arrested in connection with NIA case No. RC. 03/2015-NIA-GUW under Section 302/307/120-B/121/121-A IPC, 25(1- C)A. Act, 5 Expl. Sub-section Act & 16/20 UA(P) A. Act on 29-06-2015 with the permission from the concerned court and was remanded to judicial custody till 07-07-2015. On 05-10-2015, a bail application was moved in the court of CJM, Imphal West for releasing him on bail in connection with the FIR No.203(6)2015 Lamphel P.S. under Section 17/20 UA(P) Act. In the event of the petitioner being released on bail, he would continue to indulge in the same activities and with a view to prevent him from acting in a manner prejudicial to the security of the State and maintenance of public order, the petitioner was detained under National Security Act, 1980 vide order dated 19-10-2015 passed by the District Magistrate, Imphal West. Accordingly, the petitioner was informed that he has the right to make representation to the Government of Manipur as well as the Central Government against the order of detention and an opportunity for making such representation was afforded to him.

4. Assailing the said order of detention and being aggrieved by it, the instant writ petition has been filed by the petitioner taking as many as 18 grounds therein but during the course of hearing, Shri P. Praveen Kumar, the learned counsel appearing for the petitioner has confined his argument only in respect of one ground as regards the delay in the disposal of the petitioner's representation. In fact, this ground is not there at all in the petition and the only justification given by him as to why it has not been taken in the petition is that at the time of filing the petition, the petitioner was not aware of the fact that his representations had already been considered and rejected and came to know about it only after the affidavits on behalf of the respondents being filed in this court. That may probably be the reason why the petitioner, in ground (e) of his petition, has contended that his representations have not been considered by the State Government as well as the Union of India till then. But in any case, since this ground being taken by the learned counsel appearing for the petitioner in the course of hearing, has not been objected to by any of the counsels appearing for the respondents, this court proposes to consider it.

5. Relying upon the decisions rendered by the Hon'ble Supreme Court and the Hon'ble Gauhati High Court, it has been submitted by the learned counsel appearing for the petitioner that since there is no explanation for the delay in the disposal of his representations, the order of detention is not sustainable in law and is liable to be quashed and set aside. In *Kundanbhai Dulabhai Shaikh v. District Magistrate, Ahmedabad & ors.*, reported in (1996) 3 SCC 194 wherein the

petitioners were detained in jail in pursuance of the orders passed by the District Magistrate, Ahmedabad under Section 3(2) of the Prevention of Black Marketing and Maintenance of Essential Commodities Act, 1980 and the main contention raised by the counsel for the petitioners was that the representation made by the petitioners against the order of detention was not dealt with expeditiously and were not disposed of by the State Government at the earliest, the Hon''ble Supreme Court held:

"14. From the above, it will be seen that the right to make representation against the order of detention is not only a constitutional right but a statutory right as well. Since the Constitution as also the Act specifically provide that the detenu shall be given the earliest opportunity of making a representation against the order of detention, it is implicit that there is a corresponding duty on the authorities to whom the representation is made to dispose of the representation at the earliest or else the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning.

18. Turning now to the main question relating to the early disposal of the representation, we may immediately observe that this Court, in a large number of cases, has already laid down the principle in clear and specific terms that the representation has to be disposed of at the earliest and if there has been any delay in the disposal of the representation, the reasons for the delay must be indicated to the court or else the unexplained delay or unsatisfactory explanation in the disposal of the representation would fatally affect the order of the detention, and in that situation, continued detention would become bad. This has been the consistent view of this Court all along from its decision in *Sk. Abdul Karim v. State of W.B.*; *Durga Show, in re*; *Jayanarayan Sukul v. State of W.B.*; *Raisuddin v. State of U.P.*; *Frances Coralie Mullin v. W.C. Khambra*; *Mohinuddin v. District Magistrate*; *Rama Dhondur Borade v. V.K. Saraf, Commr. of Police*; *Aslam Ahmed Zahire Ahmed Shaik v. Union of India*; *Mahesh Kumar Chauhan v. Union of India*, right upto its reiteration in *Gazi Khan v. State of Rajasthan*.

19. Almost all these decisions were again considered in *State of Tamil Nadu v. C. Subramani* and the above view was reiterated, which was repeated again in *K.M. Abdulla Kunhi v. Union of India* and *Julia Jose Mavelly v. Union of India*.

20. In *Mohinuddin and Ram Dhondur* cases, it was provided that inordinate and unexplained delay in the disposal of representation would make the continued detention of a person, illegal and unconstitutional. In *Devi Lal Mahto v. State of Bihar*, the continued detention was held to have become bad on account of the indifferent attitude of the Government in not attending to the representation for about 10 days."

The learned counsel appearing for the petitioner has placed reliance in *Anamul Haque v. State of Nagaland & ors.*, reported in 2003 (2) GLT 27 wherein the Hon''ble Gauhati High Court held:

"4. A Division Bench of this Court in W.P. (Crl) No. 22/2002 (Jubenoor Hussaini v. Union of India and others) 2003 (1) GLT 13 disposed of on 09-10-1992, after consideration of various judgments of the Apex Court has held that the delay if caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. It is for the authority concerned to explain the delay, if any, in disposing of the representation. And if such delay has not been explained and the detenu had to be in custody for unreasonable long period without his representation being decided the same shall vitiate the continued detention."

In the case of *Pebam Ningol Mikoi Devi v. State of Manipur & ors.*, reported in (2010) 9 SCC 618, 7 days unexplained delay in forwarding the detenu's representation to Central Government was held sufficient for setting aside the order of detention.

6. There can be no any dispute about the law being laid down by the Hon''ble Supreme Court and the Hon''ble Gauhati High Court as mentioned in the preceding para and therefore, the short question that arise for consideration by this court is as to whether the delay in the disposal of the representations has been properly explained or not. It is not in dispute that the petitioner was detained under Section 3(2) of the National Security Act, 1980 vide order dated 19-10-2015 passed by the District Magistrate, Imphal West and the grounds of detention were served upon him vide letter dated 22-10-2015 of the District Magistrate, Imphal West. The order of detention was approved by the State Government vide order dated 30-10-2015 issued by the Under Secretary (Home), Government of Manipur. Only on 24-11-2015 the petitioner submitted his representations to the concerned authorities through the Superintendent of Police, Central Jail, Sajiwa. In the affidavit filed by the District Magistrate, it is stated that on receipt of the representations of the petitioner on 24-11-2015, the same have been forwarded to the Principal Secretary (Home) vide its letter dated 26-11-2015. It is not known as to when the representation has been considered and disposed of by the State Government, as no affidavit has been filed on behalf it in spite of several opportunities being granted to it by this court. So far as the Union of India is concerned, it has been stated in the affidavit filed on its behalf that the representation of the petitioner and para wise comments thereon were received in the concerned section of the Ministry of Home affairs on 27-01-2016 and 06-01-2016 respectively along with two letters dated 16-01-2016 and 18-12-2015 of the State Government. The file was received by the Under Secretary (NSA) on 28-01-2016 who forwarded it to the Joint Secretary (Internal security-II) on the same day. The Joint Secretary (Internal Security-II) forwarded the file along with his comments to the Secretary (Home) on 29-01-2016 who after duly considering the order of detention, grounds of detention etc., rejected the representation of the petitioner on 03-02-2016. On perusal of the said affidavits filed by the District Magistrate and the Union of India, it is seen that although the representations of the petitioner were forwarded to the State Government by the District Magistrate on 26-11-2015,

there is no material on record which would demonstrate as to when the representation was disposed by the State Government. This is one aspect and the other aspect is that despite the representation of the petitioner being received by the State Government on 26-11-2015, the same was forwarded to the Union of India only on 16-01-2016 as is evident from the affidavit filed on behalf of the Union of India. Therefore, the conclusion that can be arrived at inevitably, is that there is an inordinate delay in forwarding the representation by the State Government to the Union of India without any explanation thereof and moreover, there is no explanation for the period from 29-01-2016 to 03-02-2016 also while disposing of the representation by the Union of India. Thus, the continued detention of the petitioner is rendered absolutely illegal. Considering the facts of the present case, this court is of the view that the order of detention is not sustainable in law and is liable to be quashed and set aside in terms of the decisions referred to herein above.

7. For the reasons stated herein above, the instant writ petition is allowed and consequently, the order of detention dated 19-10-2015 is quashed and set aside with the direction that the petitioner namely Shri Khumlo Abi Anal @ Ambison, aged about 40 years, son of Late Khumlo Khunjo of Lambung Village, Chandel District, Manipur shall be set at liberty forthwith, if he is not required in any other pending case. There shall be no order as to costs.