
(2011) 02 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 91 of 2010

Khwairakpam Ongbi Jamuna Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
National Security Act, 1980 — Section 12(1), 3, 3(2)
Unlawful Activities (Prevention) Act, 1967 — Section 17, 18, 20

Citation : (2011) 4 GLT 581

Hon'ble Judges : T. Nand Akumar Singh, J; Mutum B.K. Singh, J

Bench : Division Bench

Advocate : A. Jagatchandra, for the Appellant; Th. Ibohal, Sr. GA and Mr. C. Kamal, CGSC, for the Respondent

Judgement

T. Nandakumar Singh, J.—The petitioner, the wife of the detenu namely, Kh. Joykumar Meitei @ Boy @ Jayantakumar @ Birjit @ Pacha, is assailing the detention order being No. Cril. 9/NSA/ DM-BPR/2010/416 Bishnupur dated 22.03.2010 passed by the District Magistrate, Bishnupur directing the detenu, who is now in Police custody be detained under the NS A in exercise of power conferred upon him by sub-section (2) of Section 3 of the National Security Act (for short "NSA") read with Government of Manipur, Home Department Order No. 17 (1) 49/80 (Pt-1) dated 11.02.2010; approval order of the Government of Manipur being No. 17(1)68/ 2010-H dated 31.03.2010 and also confirmation order of the Government of Manipur being No. 17 (1) 68/2010 -H dated 08.05.2010 for fixing the period of detention for a period of twelve months from the date of detention.

2. Heard Mr. A. Jagatchandra, learned counsel appearing for the petitioner and Mr. Th. Ibohal, learned senior GA appearing for respondent Nos. 2, 3 and 4 as well as Mr. C. Kamal, learned CGSC appearing for respondent No. 1.

3. FACTUAL BACKGROUND

On 08.03.2010 at about 6 P.M. when the detenu went out of his house along the Imphal-Churachandpur road he was picked up by security personnel and taken to the Bishnupur Police Station and for the whole night the detenu was kept in Police custody and on the next following day i.e. 09.03.2010, detenu was taken to Moirang Police Station by the security personnel and Moirang Police Station had registered a case being FIR No. 40 (3) 10 M.R.P.S. under Sections 17/18 UA(P) A Act on the written report made by those security personnel who arrested the detenu. The Officer-in-Charge of Moirang Police Station had shown the date of arrest of the detenu as 09.03.2010 instead of 08.03.2010 and detenu was produced before the Chief Judicial Magistrate, Bishnupur in connection with the said FIR Case No. 40 (3) 10 MRPS. The learned Judicial Magistrate remanded the detenu to Police custody in connection with the said FIR till 17.03.2010. On 17.03.2010 the detenu was produced before the Chief Judicial Magistrate, Bishnupur with the prayer for remanding the detenu to judicial custody. On that very day, i.e. 17.03.2010 the detenu was re-arrested in connection with FIR No. 40 (3) 10 MRPS under Sections 17/18 UA (P)A Act.

While the detenu was in the Manipur Central Jail, Sajiwa, he was furnished with the detention order being No. Cril. 9/NSA/ DM-BPR/2010/416 dated 22.03.2010 by the learned District Magistrate, Bishnupur along with the grounds of detention dated 26.03.2010. From the grounds of detention furnished by the Detaining Authority, the detenu came to know that he had been detained under the NS A on the ground that he has been acting in a manner prejudicial to the security of the State and maintenance of public order. For easy reference, the impugned detention order dated 22.03.2010 (Annexure-A/3 to the writ petition) is quoted hereunder

No. Cril. 9/NSA/DM-BPR/2010/416:

Whereas a police report has been laid before me that Shri Khwairakpam Joykumar Meitei @ Boy @ Jayentakumar @ Birjit @ Pacha (52) s/o (L) Kh. Mani Meitei of Phubala Makha Mamang Leikai, P. S., Moirang, District Bishnupur, Manipur has been acting in a manner prejudicial to the security of the State and maintenance of public tranquility vide S.P. Bishnupur letter No. C-5/27/SP BPR/07 (NSA)/1416 dated 20 March, 2010;

Whereas, after careful perusal of the police report as well as the supporting documents, I am satisfied that the person noted above carried out prejudicial activities in the proximate past and he is very likely to continue and act in a manner prejudicial to the security of the State and maintenance of public order. Also, it is not possible to prevent his activities by applying ordinary laws unless provision u/s 3(2) of the National Security Act, 1980 is applied; Whereas, it is necessary to detain the said Shri Khwairakpam Joykumar Meitei @ Boy @ Jayentakumar @ Birjit @ Pacha (52) s/o (L) Kh. Mani Meitei of Phubala Makha Mamang Leikai, P.S., Moirang, District Bishnupur, Manipur with a view to prevent him from acting in any manner prejudicial to the security of the State and maintenance of public order;

And whereas, I am satisfied with the police report that Shri Khwairakpam Joykumar Meitei @ Boy @ Jayantakumar @ Birjit @ Pacha (52) s/o (L) Kh. Mani Meitei of Phubala Makha Mamang Leikai, P.S., Moirang, District Bishnupur, Manipur is likely to be released on bail in the near future unless provision u/s 3(2) of the National Security Act. 1980 is applied.

Now, I, K. Panmei, District Magistrate, Bishnupur, Manipur, in exercise of powers conferred upon me by sub-section 2 of Section 3 of the National Security Act, 1980 read with Government of Manipur, Home Department's Order No.17(1)/49/80(Pt-I) Dated 11th Feb, 2010 make this order directing that the said person who is now in Police custody be detained under NSA in the Manipur Central Jail, Sajiwa until further orders.

Given under my hand and seal of this Court on 22nd March, 2010.

Sd/-

(K. Panmei)

District Magistrate,

Bishnupur, Manipur.

4. On perusal of the detention order, it appears that the Detaining Authority had come to the subjective satisfaction that the detenu is likely to be released on bail in the near future unless provisions u/s 3(2) of the NSA is applied. The detention order dated 22.03.2010 passed by the District Magistrate, Bishnupur was also approved by the State Government vide order No. 17 (1) 68/2010-H dated 31.03.2010. Subsequently, the State Government after consideration of the opinion expressed by the Advisory Board and in exercise of power conferred u/s 12(1) of the NSA, confirmed detention of detenu by the District Magistrate under his order No. Cril. 9/NSA/ DM-BPR/2010/416 dated 22.03.2010 and fixed the period of detention for twelve months from the date of detention vide order of the State Government dated 08.05.2010. The only ground for assailing the detention order is that there is non-application of mind in coming to the subjective satisfaction that the detenu is likely to be released on bail in near future unless provision u/s 3(2) of the NSA is applied inasmuch as there is no cogent materials for coming to the subjective satisfaction and not even a whisper was made by the Detaining Authority in the grounds of detention that the detenu is likely to be released on bail and also that in case of other accused who were arrested in connection with the criminal case similar with the criminal case for which the present detenu was arrested, had already been released on bail.

5. For deciding the grounds put up by the petitioner, a quick curiosity to the grounds of detention is required to be made. For easy reference, the grounds of detention dated 26.03.2010 furnished by the Detaining Authority is quoted hereunder:

No. Cril. 9/NSA/DM-BPR/2010:

Bishnupur, the 26th March, 2010

To,

Shri Khwairakpam Joykumar Meitei @ Boy @ Jayantakumar @ Birj it @ Pacha (52) S/O (L) Kh. Mani Meitei of Phubala Makha Mamang Leikai, P.S., Moirang, District Bishnupur, Manipur.

Subject: Ground of detention orders dated 22.03.2010 under sub-section 2 of Section 3 of the National Security Act. 1980.

In pursuance of Section 3 of the National Security Act, 1980 you are hereby informed that the grounds of your detention are as follows:-

(1) That, you were born and brought up at Phubala Makha Mamang Leikai, P.S. Moirang, District Bishnupur. You had done your primary education upto Class V at the Phubala Primary School, from Class VI to Class X at the Phubala High School. In the year 1978 you had appeared in the HSLC examination and passed in 3rd Division. Thereafter you admitted in P.U. 1st year at the Moirang College and studied there upto B.A. Before completion in the academic session of B.A. final year, you gave up your further studies due to poverty. Late Kh. Mani Meitei was your father and Smt. Tongbram (N) Tombi Leima (80) yrs. of Phubala is your mother. You have three elder sisters, one-younger brother and one younger sister. In the year 1985 you married Smt. Tongbram (N) Jamuna Leima (39) yrs. D/O (L) T. Biramani Singh of Ngankha Lawai and now you have 4 daughters and 2 sons. You eldest son namely, Kh. Kapil Meitei @ Manao @ Thembung (18) yrs. is an active member of KCP (MC) Lamyamba Khuman and now he is in the Manipur Central Jail, Sajiwa under the detention of NSA.

You are capable of reading and writing English very well as you read up to B.A.

(2) That, you had joined the banned organization namely, Kangleipak Communist Party (KCP in short) M/C Lamyamba Khuman faction in the last week of September, 2009 through Sri Nongdrenkhomba @ R. K. Momon (35) yrs. of Thanga, S/S District Finance Commander of KCP (M/C) Lamyamba Khuman, Bishnupur District. The red army is its armed wing.

The avowed aim and object of the banned organization namely, Kangleipak Communist Party (KCP in short) is to secede the State of Manipur from the Union of India and create an independent, sovereign state of Manipur. For this purpose, the said organization started procuring of arms and ammunitions through foreign countries and recruited youngsters from various communities in Manipur. In pursuance of your objectives, the members of this organization have committed a series of heinous crimes such as, murder, dacoity, robbery, extortion, kidnapping for ransom from different parts of Manipur. The ring leaders have sought foreign assistance and established links with countries like Bangladesh, Myanmar (Burma), Pakistan and other countries inimical to India's Sovereignty and committed series of prejudicial activities affecting the Sovereignty and territorial integrity of India.

In consideration of the large scale prejudicial activities of the Kangleipak Communist Party (KCP) the Government of India, Ministry of Home Affairs declared the Kangleipak Communist Party (KCP) as Unlawful Association vide Gazette of India, Notification under No. S.O.2883(E) dated 13.11.2009 (copy of the Notification is enclosed herewith for reference).

(3) That, after joining the organization you started to work in KCP (M/C) Lamyamba Khuman, Bishnupur District under the command of Nongdrenkhomba Singh aged about 35 yrs of Thanga, S/S District Finance Commander of KCP (M/C) Lamyamba Khuman along with S/ Shri. L. Biren Singh @ Amarjit (40) of Khurai Thangjam Leikai, Kunjabihari Singh (40) of-do-, Smt. Thoudam Bilashini Devi, W/o (L) Th. Deben Singh of Khurai Thoudam Leikai and Km. Gita Devi (35) yrs. of Moirang Mr. Nongdrenkhomba entrusted you and your associates mentioned above to extort money from General public, Government Employees, Schools, Colleges, Private Firms, Businessmen, Shop Keepers etc. located in Bishnupur District after delivery of demand letters of KCP (M/C) Lamyamba Khuman. Further Mr. Nongdrenkhomba handed over one 32 Pistol with 7 rounds of ammunition and two Magazine and some demand letters of KCP (M/C) Lamyamba Khuman to you and your party for using the same at the time of extortion of money. Accordingly, you and your associates holding one 32 Pistol with ammn. In your possessions started to extort money from General public, Government Employees, Schools, Colleges, Private Firms, Businessmen, Shop Keepers etc. located in Bishnupur District since the last part of 2009 after delivery of demand letters of KCP (M/C) Lamyamba Khuman. You extorted amount Rs. 3 lacs (three lacs) since the last part of 2009 till last week of February 2010. The extorted money has been deposited to Nongdrenkhomba Singh from time to time. Over and above, you and your associates transported arms and ammunition of KCP (M/C) Lamyamba Khuman from one place to another in Imphal West and Bishnupur District. You have full knowledge that the money so far you extorted would be used in procuring arms and ammns. From foreign countries in order to wagging war against the lawfully established Government of India and Manipur Government for the restoration of Liberty in the State of Manipur as done before holding arms. You continued the similar task till your arrest.

Such act of extortion of money holding arms carried out by you and your associated gave a terror wave and peril to the lives of innocent public which is prejudicial to the security of the State and maintenance of public order.

(4) That, on 09.03.2010 at 10. a.m. you along with L. Biren Singh and Smt. Th. Bilashini Devi were arrested from a place at Phubala by a team of CDO/BPR led by Jem J. C. No. 599 Mr. Jamkhongam Taothang. Thereafter, on the same day at 1.30 p.m. you were handed over to the OC/MRG PS with a written report. On the strength of the report, OC/MRG PS registered a regular case at Moirang Police Station under FIR No. 40(3) 2010 MRGP Su/s 17/18/20 UA(P) A Act & 25(1-C) A. Act and investigated into. During the course of the investigation of the case, you

were arrested in c/w the case noted above and remand to Police custody till 17.03.2010. On 17.03.2010 you were produced before the Court for judicial remand but you were formally arrested in c/w the following crime:-

(1)

FIR No. 24(3)2010 BPR -PSu/s 20/17 UA(P)A. Act." 04

Arrested on 17.03.2010 and remanded into Police custody till 22.03.2010. You are now in Police custody.

Your statement given before the I/O on 09.03.2010, statement of Jem J.C. No. 599 Jamkhongam Touthang of CDO/BPR recorded u/s 161 Cr.PC in c/w 40 (3) 2010 MRG-PS u/s 17/18 UA (P) A. Act and copies of:-

(i) Arrest Memo dated 09.03.2010.

(ii) Notification No. S.O. 2883 (E) dated 13th Nov, 2009

(iii) FIR No. 40(3) 2010 MRG-PSu/s 17/18 UA (P)A.Act.

(iv) Copy of Home Deptt. Order No. 17 (1) 49/ 80-H(Pt-I)dt. 11.02.2010.

(5) That, from the points enumerated above, it is clearly seen that you are a dangerous hard core member of the banned organization namely, Kangleipak Communist Party (KCP in short) Lamyamba Khuman faction who carried out prejudicial activities which disturbs public order affecting public tranquility. In view of your prejudicial activities in the immediate past, it is very likely that you would continue to act in the manner prejudicial to the security of the state and the maintenance of public order, which will endanger the security of Manipur State. As it is evident from the facts mentioned above, normal criminal laws are not sufficient to prevent you from the commission of prejudicial activities. An alternative measures is, therefore, immediately called for.

The above grounds are based on the report of the SP/BPR vide his letter No. C-5/27/SP-BPR/ 07(NSA) 1416 dated 20.03.2010

(6) That, you are hereby informed that you have the right to make representation before the detaining authority within 12 (twelve) days from the issue of the ground of detention. You also have the right to make representation to the Government of Manipur against the order of detention passed against you and you are hereby afforded to do so. The representation is to be addressed to the Chief Secretary to the Government of Manipur through the Addl. Supdt., Manipur Central Jail, Sajiwa and should be submitted within 3 (three) weeks from the date of detention. The representation, if any, shall be placed before the Advisory Board within 3 (three) weeks from the date of detention and such order documents/papers connected with your detention as the Government is bound under the law to be produced before the Board for its consideration. It is also emphasized that, if you wish to make any representation to the Central Government you may send the same at the following address through the Addl.

Supdt., Manipur Central Jail, Sajiwa. The Secretary to the Government of India.

Ministry of Home Affairs

(Department of Internal Security)

North Block, New Delhi-110001

That, you are hereby informed that the Advisory Board may call for such information as may be deemed necessary from you and if you desire to be heard/hear in person, you may intimate about it and arrangement may be made to produce you before the Board on the date fixed by it for the purpose.

Sd/-

K. Panmei

District Magistrate:

Bishnupur, Manipur.

6. It is well settled that there is no hard and fast rule for coming to the subjective satisfaction of the Detaining Authority for detaining the detenu under the detention order. It is also equally well settled that subjective satisfaction of the Detaining Authority arrived at for detaining the detenu as a preventive measure under the preventive law cannot be sustained if such satisfaction is based on nonexistent or irrelevant grounds. The subjective satisfaction of the Detaining Authority arrived at while considering the materials on record was cumulative result of all the grounds of detention, there is no set standard laid down by the NSA for arriving at the subjective satisfaction of the Detaining Authority on the basis of all the materials placed before him by the Police.

7. This Court, incidentally one of us (Justice T. Nandakumar Singh) is a party, in Lourembam Sana Singh Vs. State of Manipur and Others, held that:

13. It is well settled law that subjective satisfaction of the detaining authority arrived at for detaining the detenu as a preventive measure under the preventive law is invalid if such satisfaction is based on non-existent or irrelevant ground only. Reference in Dwarika Prasad Sahu Vs. The State of Bihar and Others, . The subjective satisfaction of the detaining authority arrived at while considering the materials and records was the cumulative result of all the grounds of detention and the involvement of the detenu in different activities. Reference may be made in P. Saravanan Vs. State of T.N. and Others, . There is no set standards laid down by the NSA for arriving at subjective satisfaction of the detaining authority on the basis of all the materials, laced before it by the police. In the present case as stated above, the detaining authority had arrived at, on subjective satisfaction, for detaining the detenu under the NSA on the basis of the materials and the information placed by the Superintendent of Police, Imphal West. Therefore, the detention order cannot be said to be illegal on the ground of non application of mind. Reference in Gurdev Singh Vs. Union of India and ors, . The

Apex Court in Union of India (UOI) Vs. Paul Manickam and Another, held that:

Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced on the materials available and placed before it had such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law. The action of the executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authorities. It is not practicable to lay down objective rules of conduct, the failure to confirm to which alone should lead to detention.

8. This Court in Thongam (ONGBI) Sanatombi Devi Vs. District Magistrate and Others, also held that:

13. It is settled position of law that the nature of satisfaction of the detaining authority in issuing the detention order under National Security Act for preventing a detenu from indulging in such activities which are prejudicial to the maintenance of the public order and the security of the State is only a subjective satisfaction but subjective satisfaction should not be on no material.

14. The subjective satisfaction of the detaining authority arrived at while considering the materials and records was the cumulative result of all the grounds of detention in view of the decision of the Supreme Court in P. Saravanan Vs. State of T.N. and Others, . According to the learned counsel for the respondents no set standards have been laid down by the Act for arriving at subjective satisfaction of the detaining authority. The subjective satisfaction in the present case had been arrived at by the detaining authority on the basis of all the materials placed before him. Therefore, the detention order cannot be said to be illegal on the grounds of non-application of mind in view of the principles laid down in Gurdev Singh Vs. Union of India and ors,

19. As we have discussed above, satisfaction of the (sic) authority for issuing the detention order is only a subjective satisfaction. We, within the four corners of law laid down by the Apex Court in the cases discussed above, perused the materials available on record to see as to whether the relevant materials were placed before the detaining authority at the time of passing the detention order or not be effective to prevent him from the commission of further prejudicial activities.

9. The Apex Court in a case coming from this Bench; Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others, held that the grounds stated in the order of detention are sufficient or not is not within the ambit of the discretion of the Court. It is the subjective satisfaction of the Detaining Authority which is implied. The Apex Court in Mikoi Devi's Case (supra) further held that there must be a reasonable basis for the detention order, and there must be material to support

the same. The Court is entitled to scrutinise the material relied upon by the authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. Para 26 of the SCC in *Mikoi Devi's* case (supra) read as follows:

26. What emerges from these rulings is that, there must be a reasonable basis for the detention order, and there must be materials to support the same. The Court is entitled to scrutinise the material relied upon by the authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. The subjective satisfaction must be twofold. The detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent from so acting.

[Emphasis applied]

10. From the ratio laid down in *Mikoi Devi's* case (supra) it is clear that the Court is entitled to scrutinise the material relied upon by the authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. On perusal of the grounds of detention dated 26.03.2010 it is clear that there is no whisper in the grounds of detention that the detenu is likely to be released on bail. No doubt, for coming to the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail, there is no hard and fast rule that in the ground of detention, the detaining authority should mention that for the reasons mentioned in the ground of detention the detenu is likely to be released on bail. But it is also equally well settled that there must be some material for coming to the inference that the detenu is likely to be released on bail; e.g. for the cases of the type for which the detenu had been arrested the other accused had already been released on bail in the earlier instances or that other accused or co-accused of the detenu had already been released on bail and so on and so for.

11. The Apex Court in *Amritlal & Ors. Vs. Union Government through Secretary, Ministry of Finance & Ors.* : (2001) 1 SCC 341 held that for the detenu already in jail, the Detaining Authority must be satisfied on the basis of the available cogent materials about the likelihood of the detenu being released on bail and in the absence of materials, subjective satisfaction of the Detaining Authority about the likelihood of the detenu being released on bail cannot be sustained. The Apex Court further held that inference must be drawn from the available materials on record; must not be the ipse dixit of the officer passing the order of detention. Para 4 of the SCC in *Amritlal's* case (supra) read as follows:

4. In *Augustin decision Rivadeneyta Ricardo Agustin v. Government of the National Capital Territory of Delhi* this Court also placed strong reliance on an earlier but oft-cited decision of this Court in *Binod Singh Vs. District Magistrate,*

Dhanbad : (1986) 4 SCC 616 : 1986 SCC (Cri) 490 wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not be ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the officer concerned in the matter under reference ought to be noticed and the same reads as below:

Even though prosecution proceedings under the Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

[Emphasis supplied]

12. It is the duty of the Court to see that efficacy of safeguards provided in the law of preventive detention is not lost in mechanical, routine, dull casualness and chill indifference, on the part of the authorities. The conclusion that there was likelihood of detenu being released on bail arrived at by the Detaining Authority, though no bail application filed by the detenu, being subjective satisfaction of the Detaining Authority, based on materials before the Detaining Authority is not normally interfered by the Court in exercise of its judicial power. The Apex Court in *Senthamilselvi Vs. State of Tamil Nadu and Another*, held that subjective satisfaction arrived at by the Detaining Authority that there was likelihood of detenu being released on bail even if no bail application filed by the detenu cannot be interfered with as there was material in the given fact of the case. The fact of that case is that in the cases similar with the cases for which the detenu had been arrested, bails were granted by various Courts and this fact was not disputed by the detenu and as such there had not been disputed correctness of the statement that the Detaining Authority had clearly stated in the ground of detention that in the similar cases order granting bails were passed by various Court; in such fact, the Apex Court held that the subjective satisfaction of the Detaining Authority arrived at that the detenu is likely to be released on bail is not called for interference.

13. In the present case, as stated above, even no whisper had been made in the ground of detention that in the similar cases bail order had been granted by various Courts. Relevant portion of para 10 of the SCC in *Senthamilselvi*'s case (supra) read as follows:

10.....That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining

authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various Courts. The appellant has not disputed correctness of this statement. Strong reliance was placed by learned counsel for the appellant on *Rajesh Gulati Vs. Govt. of N.C.T. of Delhi and Another*, The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant.

[Emphasis supplied]

14. The Apex Court in *Ibrahim Nazeer Vs. State of Tamil Nadu and Another*, held that subjective satisfaction of the Detaining Authority based on materials is not normally interfered by the Court, it depend upon case to case. In that case, there is clear indication of the Detaining Authority that in similar cases, orders granting bail are passed by various Courts and that fact was not disputed by the detenu. In that circumstance, the Apex Court held that subjective satisfaction of the retaining Authority about the likelihood of detenu being released on bail cannot be questioned. Para 7 of the SCC in *Ibrahim Nazeer's* case (supra) read as follows:

7. It has to be noted that whether prayer for bail would be accepted depends on the circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be an ipse dixit of the detaining authority. On the basis of materials before it. the detaining authority came (sic) the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases, orders granting bail are passed by various Courts. The appellant has not disputed the correctness of this statement. Strong reliance was placed by learned counsel for the appellant on *Rajesh Gulati Vs. Govt. of N.C.T. of Delhi and Another*, The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant.

[Emphasis supplied]

15. The Apex Court is of the view similar to that of *Ibrahim Nazeer's* case (supra) in *A. Geetha Vs. State of Tamil Nadu and Another*, Para 10 of the SCC in *A. Geetha's* case (supra) read as follows:

10. It has to be noted that whether prayer for bail would be accepted depends on

circumstances of each case and no hard-and-fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail-That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various Courts. The appellant has not disputed the correctness of this statement. Strong reliance was placed by learned counsel for the appellant on *Rajesh Gulati Vs. Govt. of N.C.T. of Delhi and Another*, The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant. (See *Ibrahim Nazeer Vs. State of Tamil Nadu and Another*, and *Senthamilselvi Vs. State of Tamil Nadu and Another*,

[Emphasis supplied]

16. From the above ratio laid down by the Apex Court it is clear that there is no hard-and-fast rule for coming to the subjective satisfaction by the Detaining Authority that the detenu is likely to be released on bail but the subjective satisfaction must be on the material fact. Inference must be drawn from the materials available on the record and must not be ipse dixit of the officer passing the order of detention. The Court is entitled to scrutinise the material relied upon by the authority in coming to its conclusion; accordingly, determine if there is an objective basis for the subjective satisfaction.

17. In the present case, there is absolutely no objective basis for the subjective satisfaction. This Court is interfering the subjective satisfaction of the Detaining Authority in the given case of the present writ petition only on the basis that there is absolutely no objective basis for the subjective satisfaction and it is only the ipse dixit of the Detaining Authority that the detenu is likely to be released on bail.

18. For the foregoing reasons the impugned detention order dated 22.03.2010, approval order dated 31.03.2010 and confirmation order dated 08.05.2010 are hereby quashed. The detenu, namely, Kh. Joykumar Meitei @ Bay @ Jayantakumar @ Birjit @ Pacha, be released forthwith unless he is required to be detained in connection with other cases.

The writ petition is disposed of.