
(2014) 04 MAN CK 0021

In the Manipur High Court

Case No : Writ Petition (Cril) No. 3 of 2014

Leishangthem Ngouba Singh alias Cyprust

APPELLANT

Vs

The District Magistrate, The State of Manipur

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

National Security Act, 1980 — Section 3, 3(2)

Unlawful Activities (Prevention) Act, 1967 — Section 38, 39, 40

Citation : (2014) 04 MAN CK 0021

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

Bench : Division Bench

Advocate : S. Rajeetchandra, Advocate for the Appellant; A. Vashum, G.A, Advocate for the Respondent

Judgement

Laxmi Kanta Mohapatra, Actg. C.J.

1. The petitioner in this writ application challenges his detention in pursuance of the order passed by the District Magistrate, Imphal West on 26.7.13 under sub-section (3) of Section 3 of the National Security Act, 1980. From the order of detention, it appears that the petitioner was arrested on 30th April, 2007 in connection with a case of Imphal Police Station and was remanded to judicial custody. While in continuing in jail custody, he was detained under the NSA 1980 by order of the District Magistrate, Imphal West dated 16.5.2007. The said order of detention was revoked by the Advisory Board and he was set free. Thereafter, again on 31.8.2009, he was arrested from North AOC in connection with a case of Imphal Police Station and was remanded to custody. Subsequently, he was released on bail. On 21.7.2013, he was again arrested by a team of CDO/IW and a case (FIR No. 232(7)2013) was registered in the said Police Station for commission of offence U/s. 38/39/40 of UAP Act. After his arrest on 21.7.2013 when he was continuing in jail, the impugned order of detention was passed on 26.7.2013 on the ground that he is likely to be released on bail in the near future by the normal criminal court as bail is granted in similar case.

2. Shri S. Rajeetchandra Singh, learned counsel appearing for the petitioner assails the impugned order of detention on the ground that the subjective satisfaction recorded by the District Magistrate in the impugned order of detention is without any basis and specially in absence of bail application filed by the petitioner. When he was continuing in jail custody there could not be any apprehension in the mind of the District Magistrate that he would be released on bail in future and that after being released on bail he will indulge in similar activities. It was also contended by the learned counsel for the petitioner that the documents placed before the District Magistrate indicated in paragraph-5 of the grounds of detention did not contain the earlier orders of bail and therefore there was no occasion on the part of the District Magistrate to know as to whether the petitioner had been released on bail on two earlier occasions or not. Therefore, in absence of any document to show that the petitioner had been released on bail on earlier two occasions the District Magistrate could not have recorded his subjective satisfaction that the petitioner may be released on bail even in absence of a bail application.

2.1. Shri A. Vasum, learned state counsel appearing on behalf of the state respondents referring to the counter affidavits filed by both the State and the District Magistrate, submitted that the grounds of detention indicate the involvement of the petitioner in activities prejudicial to the security of the State of Manipur. Since he was released on bail earlier on two occasions even after commission of similar offences the apprehension of the District Magistrate that he may also be released on bail in connection with the case for which he had been arrested on 21.7.2013 is justified.

3. Undisputedly, the petitioner had been arrested on two occasions earlier and on both occasions he had been released on bail but such bail orders were not placed for perusal of the District Magistrate before the order of detention was passed. Therefore, the District Magistrate in the impugned order of detention has not referred to the earlier two cases in which the petitioner had been arrested and released on bail. It is also not in dispute that when the order of detention was passed on 26.7.2013 the petitioner was in jail custody and had not moved any bail application for being released on bail. When the petitioner was in jail custody and had not moved any application for bail, there could not be any apprehension in the mind of the District Magistrate that even in absence of bail application the petitioner would be released on bail. In this connection the order of detention passed on 26.7.2013 shall be relevant and is quoted below:

In The Court Of The District Magistrate: Imphal West, Manipur

Orders

Imphal, the 26th July, 2013

No. Cril./NSA/No. 16 of 2013: Whereas, a police report has been laid before me by the S.P. Imphal West, Manipur vide letter No. 22/Spl-Cell/2013(17)/2310 dated 25.07.2013 that Shri Leishangthem Ngouba Singh @ Cyprust @ Micheal @

2 i/c @ Chprus (30 yrs), S/o. L. Babu Singh of Khurai Sajor Leikai, P.S. Porompat, District-Imphal East, Manipur is acting in a manner prejudicial to the maintenance of public order;

Whereas, I, K. Radhakumar Singh, District Magistrate, Imphal West, Manipur, am satisfied that his activities are prejudicial to the maintenance of public order u/s 3(2) of the National Security Act, 1980;

Whereas, it is considered necessary to detain Shri Leishangthem Ngouba Singh @ Cyprust @ Micheal @ 2 i/c @ Chprus (30 yrs), S/o. L. Babu Singh of Khurai Sajor Leikai, P.S. Porompat, District-Imphal East, Manipur with a view to prevent him from acting in any manner prejudicial to the maintenance of public order;

And whereas, I am satisfied from the police report that Shri Leishangthem Ngouba Singh @ Cyprust @ Micheal @ 2 i/c @ Chprus (30 yrs), S/o. L. Babu Singh of Khurai Sajor Leikai, P.S. Porompat, District-Imphal East, 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;

Now, therefore, I K. Radhakumar Singh, District Magistrate, Imphal West, Manipur in exercise of the powers conferred under sub-section 3 of Section 3 of the National Security Act, 1980 read with Home Department's Order No. 17(1)/49/80-H(Pt-I) dated 13.05.2013 make this order directing that the above said person who is now in Police custody be detained u/s 3(2) of National Security Act, 1980 until further orders.

Given under my Hand and Seal of the Court on this twenty-sixth day of July, 2013.

Sd/-

(K. Radhakumar Singh)

District Magistrate, Imphal West.

4. From paragraph-4 of the order of detention, it is clear that the subjective satisfaction recorded by the District Magistrate that the petitioner is likely to be released on bail is not justified based on any record particularly when the petitioner had not moved the court for grant of bail. In this connection reference may also 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 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 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 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 said judgment of the Apex Court has been followed by this court in several cases and in spite of several judgments are passed on this issue the District Magistrates do not take care to see that such orders of detention are not passed.

6. Having come to a conclusion that the subjective satisfaction recorded by the District Magistrate in the order of detention is without any basis specially when the petitioner had not moved any application for bail, we have no other option except holding that the order of detention is invalid. Accordingly, we allow the writ petition, quash the order of detention in Annexure-A/1 dated 26.7.2013 and subsequent order of confirmation by the State Government. The petitioner, namely Leishangthem Ngouba Singh @ Cyprust @ Micheal @ 2 i/c @ Chprus (30 yrs), S/o. L. Babu Singh of Khurai Sajor Leikai, P.S. Porompat, District-Imphal East, Manipur, be set at liberty forthwith unless his detention is required in other case(s).