

(1997) 09 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule (HC) No. 18 of 1997

Lottongbam Dhiren

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 10-09-1997

Acts Referred:

Arms Act, 1959 — Section 25(1B)
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 167
National Security Act, 1980 — Section 3(2), 3(3), 3(4), 9
Penal Code, 1860 (IPC) — Section 121, 121A
Unlawful Activities (Prevention) Act, 1967 — Section 13

Citation : (1998) 4 GLT 70

Hon'ble Judges : W.A. Shishak, J;P.K. Ghosh, J

Bench : Division Bench

Advocate : Kh. Nimaichand, for the Appellant; A. Jagat Chandra and Ibotombi Singh, C.G.S.C., for the Respondent

Judgement

W.A. Shishak, J.—The Petitioner is a detainee held currently in Manipur Central Jail at Imphal under the provisions of National Security Act. Order of detention was issued by District Magistrate, Imphal District on 1st March, 1997 under Sub-Section 3 of Section 3 read with Section 3(2) of the National Security Act, 1980. The said order of detention was approved by order dated 10th March, 1997 under by the Government of Manipur u/s 3(4) of the said Act, By another order dated 4th April, 1997 issued by the Government, the order of detention was confirmed and the Government was pleased to fix the period of detention for 12 (twelve) months from the date of detention. The order of Confirmation was issued on receipt of report from the Advisory Board Constituted u/s 9 of the said Act Grounds of detention were furnished to the detainee on 5th March, 1997.

2. On receipt of grounds of detention the petitioner filed representation to the State Government as well as to the Central Government on 14.3.1997. It may be stated that the State Government rejected the representation and it was communicated to the Petitioner on 19.3.1997. This petition was filed in the

month of May, 1997. It is contended that at the time of filing of this petition the representation filed before the Central Government not been disposed of inasmuch as the Petitioner was not informed of his representation at that ti(sic) It may, however, be stated that in terms of the counter affidavit filed on behalf of the Union of India, the representation filed before the Central Government was disposed of and in fact communicated to the detenue through the State Government on 9.5.97.

3. Para 1 of the grounds of detention states that the Petitioner joined banned Organisation known as United National Liberation Front, UNLF, some time in the last part of June, 1993. He was given assignment in finance section of the said Organisation under the command of Mr. Dinesh Singh from November, 1993 to second week of October, 1994. It is also stated that the Petitioner also received military training some-were in Myanmar territory along with other persons. It is further mentioned that statements of some persons were recorded as regards the activities of the Petitioner, particularly statements of two persons viz, statements of Loitongbam Nanao Singh @ Birjit and Ningthoujam Suresh Singh Naocha. Statement of Loitongbam Nanao Singh was recorded on 22.11.1996 whereas the statement of Ningthoujam Suresh Singh Naocha. Statement of Loitongbam Nanao Singh was recorded on 22.11.96 where as the statement of Ningthoujam Suresh Singh was recorded on 16.2.1996. The said two persons were arrested along with the Petitioner. Hence they were co-accused in connection with the same activities of which the Petitioner is accused. Para 3 of the grounds of detention further states.

That, on 16.2.1996 at about 9 a.m. you were arrested by a team of RAPF, Imphal District Police led by ASI Th. Krishnatombi Singh from Lilong Chajing Bazar along with Mr. Ningthoujam Suresh Singh @ Naocha (23) S/O N. Nabakumar Singh of Keishamthong Elangbam Leikai. Some incriminating documents of UNLF were recovered from your possession. This refers to FIR No. 55.(2) 96.SJM P.S u/s 121/121-A IPC and 13 UA.(P) Act. You were arrested in connection with the above noted FIR case on 16.2.1996 and released on bail on 27.2.1996 by the Ld. Chief Judicial Magistrate/Imphal (copy of release order is enclosed).

At this stage we may state that this incident relates to the first arrest in February, 1996. As is apparent from the statement recorded above, the Petitioner was arrested along with some other persons in February, 1996. Mr. Nimaichand, learned Counsel for the Petitioner states that release was obtained in respect of arrest made in February, 1996 on the ground of illness of the present Petitioner. Para 4 further states that while on bail the Petitioner was involved in activities prejudicial to the interest of State inasmuch as he contacted some members of the banned Organisation and that he was involved in the collection of money from Lottery Agents. He was also accused of possessing one "38 Revolver loaded with six rounds of ammunition (USA made) to be used when needed "in the mission". The Petitioner was again arrested on 22.11.1996 in connection with FIR No. 619(11)96 Imphal R S. u/s 121/121AIPC, Section

13UA(P) Act and 25(1-B) Arms Act. We may here state that when the order of detention as stated above was issued by the learned District Magistrate on 1.3.1997, the Petitioner was in Judicial custody.

4. Mr. Kh. Nimaichand, learned Counsel for the Petitioner submits that the order of detention is not sustainable inasmuch as it was passed without any application of mind on the part of the District Magistrate while issuing the impugned order of detention. It is submitted by the learned Counsel that although the Petitioner was in judicial custody, there is nothing to show in the order that the detaining authority was aware that the detainee was in jail custody. It is further submitted that the Petitioner had not made any application for bail. Therefore, there was no apprehension that the Petitioner would be enlarged on bail and if the Petitioner was to remain in jail, there was no likelihood of the Petitioner involving in any activity prejudicial to the interest of the State. It is also submitted that no other person had made any application for bail on behalf of the detainee. In AIR 1989 Supreme Court 2265 it was held that there must be awareness in the mind of detaining authority that the detainee is in custody at the time of service of the order of detention on him and cogent relevant materials and fresh facts have been disclosed which necessitate the making of an order of detention. It was further held in that case that the detainee was in jail custody in connection with a criminal case and the order of detention was served on him in jail and that it was also evident that the application for bail filed by the detainee was rejected by the designated Court. It was also further held that no application for bail was made thereafter before the order of detention was served on him. Therefore, the detaining authority was completely unaware of the fact that no application for bail was made on behalf of the detainee for his release before the designated Court and as such the possibility of his coming out on bail was non-existent. In Ahmedhussain Shaikhhussain @ Ahmed Kalio Vs. Commissioner of Police, Ahmedabad and Another, it was held that unless some fresh facts are disclosed, simply because detainee may go on bail would not justify order of detention. In an affidavit filed on behalf of the District Magistrate, it is stated that if order of detention was not issued, the Petitioner might be released on bail under the provisions of Section 167 Code of Criminal Procedure. It may be stated that the said statement made in the affidavit was nowhere found in the grounds of detention when the learned Magistrate issued the order of detention against the Petitioner. It is submitted by the learned counsel for the Petitioner that the operation of law has nothing to do with any act of the Petitioner. According to Mr. Nimaichand it is enough for the Petitioner to say that while in custody after arrest on 22.11.96, the Petitioner had not made any application for bail and as such there was no question of his involving in any activity prejudicial to the interest of the state. In AIR 1986 Supreme Court 315 it was held that the order of detention issued only on the ground that detainee in detention as under trial was likely to get bail was not proper. In the said case the order of detention was passed because the detaining authority was apprehensive that in case the detainee was released on bail he would again carry on his criminal activities in

the area and yet the same was held to be improper. It was further stated that if the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Therefore, it was held that merely on the ground that an accused in detention as an under trial prisoner was likely to get bail, an order of detention under the said act should not ordinarily be made.

5. Second submission of Mr. Nimaichand is that the order of detention should be held to be bad inasmuch as the material on which the detention order is based is mainly the statements made by two co-accused persons as stated earlier. It is submitted that Shri Loitongbam Nanao Singh @ Birjit was arrested along with Petitioner and his statement is stated to have been recorded on 22.11.1996. Apparently the said person was arrested along with the Petitioner when he was arrested for the second time in November, 1996. The other person whose statement was recorded is Suresh Singh. As stated above his statement was recorded in connection with an earlier arrest made on 16.2.96. It is the submission of Mr. Nimaichand that there is no other material to substantiate the allegation that the Petitioner was involved in the collection of money from various Departments of the Government of Manipur. It is the contention that any statement recorded u/s 161 Code Criminal Procedure from co -accused cannot at all form the basis for detention of the Petitioner. It is further submitted that if the statement of co-accused have been recorded u/s 164 Code of Criminal Procedure it would have been a different matter. As against this Mr. A. Jagatchandra who appears on behalf of the Government states that it is a question of likelihood of the Petitioner carrying out activity prejudicial to the interest of the state in view of the fact that after release from his arrest made in February, 1996 the Petitioner was involved in activities prejudicial to the interest of the state. Mr. Nimaichand once again submits that such mere submissions based on mere allegations cannot be sustained.

6. It is further submitted that even on humanitarian grounds this order of detention should not have been issued against the Petitioner inasmuch as even in connection with the first arrest in February, 1996 the Petitioner was allowed to go on bail on ground of sickness as the Petitioner has serious health problems. Medical reports have been produced before this Court in support of this contention. Another submission of Mr. Nimaichand is that the order of detention is liable to be set aside on the ground of delay in the disposal of the representation made before the State Government as well as before the Central Government. As far as this submission is concerned, it seems the representation made before the State Government was disposed of without delay and the order of rejection was communicated to the Petitioner in time. However, we shall examine as regards the allegation whether there was undue and unexplained delay as respects the representation filed before the Central Government.

7. Mr. A. Jagatchandra, learned Government Advocate appearing on behalf of the State Government draws our attention to para 5 of grounds of detention. It is

stated in that para:

That, from the above enumerated points, it is seen that you as a dangerous hard-core member of UNLF disturb public order affecting public tranquillities. In view of your pre-judicial activities in the proximate past, it is very likely that you would continue to act in the manner prejudicial to the security of the state and maintenance of public order as and when you be enlarged from detention as you resumed your activities in the UNLF Organisation in the past- after your release on bail. Thus, the application of normal criminal laws against you will not be effective to prevent you from commission of further prejudicial activities. An alternative preventive measure, is, therefore, immediately called for.

Mr. Jagatchandra submits that after he was released in February, 1996, the Petitioner was involved in some activities prejudicial to the security and maintenance of public order in Manipur. In AIR 1991 Supreme Court 1640 it was held that if there are materials on record to show that the Petitioner if released on bail is likely to indulge himself in activities prejudicial to the security and maintenance of public order, the detaining authority shall be justified to pass an order of detention even while the detainee is in judicial custody. Mr. Nimaichand submits that in the present case there are no materials on record to support the contention of the Government in this regard inasmuch as the materials which formed the basis of detention are mainly the statements recorded from co-accused persons u/s 161 Code of Criminal Procedure Accordingly it is submitted that the apprehension that the Petitioner might indulge in activities prejudicial to the interest of the State is only imaginary and not real on the present facts and circumstances of the case. Mr. Jagatchandra further submits that although no petition for bail had been made at the time of issuance of the order of detention, it could have been reasonably presumed by the detaining authority that in the course of time bail usually would be granted. It is further submitted by Mr. Jagatchandra that the question of admissibility or inadmissibility of material/evidence to be taken into consideration by the detaining authority while issuing order of detention should not be taken into consideration by this Court inasmuch as the satisfaction of the materials before the detaining authority can not be the subject matter for satisfaction of this Court. In other-words, the materials placed before the detaining authority cannot be examined as evidence strictly in terms of the Evidence Act in the matter of order of detention under the National Security Act.

8. As regards delay, counter affidavit filed on behalf of the State Government in para 2 states that representation made by the Petitioner on 14.3.1997 was forwarded by S.P.(J) on the same day and it was sent to the Central Government on 15.3.1997 by speed post. Thereafter a message was received on 21.3.1997 asking from the State Government to give further information. After collection of necessary informations the materials were forwarded on 7.4.1997 by speed post. The Central Government sent a message dated 8.5.1997 stating that the request of the detainee for revocation of the detention order was not acceded to and the

order of rejection was duly communicated to the detenu through Respondent No. 3 on 7.5.1997. The detenu signed on the order of rejection on 10.5.1997. As far as the representation to the State Government is concerned it was disposed of within five days of the making the representation and the order of rejection was communicated to the detenu on 19.3.1997. Hence Mr. Jagatbandra submits that there is no delay in disposal of the representation filed before the State Government.

9. Mr.N. Ibotombi Singh, learned Central Government Standing Counsel submits mainly as regards the allegation that there was undue and unexplained delay in the disposal of the representation made by the Petitioner. Para 6 of the affidavit filed on behalf of Union of India states that representation of the Petitioner dated 14.3.97 was received by the Central Government in the Ministry of Home Affairs on 20.3.97 through Government of Manipur. The matter was immediately processed for consideration and it was found that certain vital informations were not available for proper consideration of the said representation. Accordingly a Crash Wireless Message was sent to the Government of Manipur on 21.3.97, asking for certain informations to be furnished to the Central Government by the State Government. As there was no response to the said Wireless Message sent on 21.3.97 another Message was sent on 4.4.97. Still there was no response from the State Government. Hence a third Wireless Message was sent on 15.4.97. Para 7 states that:

the required information was received by the Central Government in the Ministry of Home Affairs on 17.4.97 and on 21.4.97 in the Concerned Desk vide the State Government's letter dated 7.4.97. On receiving the said information on 21.4.97, the case of the detenu was put up before the Joint Secretary, Ministry of Home Affairs on 22.4.97. The Joint Secretary considered the case and with his comments put up the same before the Minister of State for Home Affairs, Govt. of India on 22.4.97. The Minister of State for Home Affairs himself duly considered the case of the detenu and rejected the representation of the detenu on 6.5.97.

It is further stated that in para 5 of the Government of India affidavit that the final decision on the representation of the detenu was taken within twelve days excluding 26th, 27th, April, 3rd and 4th May, 1997, being closed holidays. Mr. Ibotombi Singh submits that even assuming that there was some delay in the disposal of the representation of the detenu, it cannot be said that there was undue delay. It is also submitted that delay, if any, has satisfactorily been explained on behalf of the Central Government. Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others, has been relied upon by Mr. A. Jagatbandra as well as Mr. Ibotombi appearing on behalf of the State of Manipur and Union of India respectively to say that delay in the present case cannot be fatal and in the present circumstances the State Government and the Union Government cannot be faulted on this score. In the aforesaid case representation was received by the Central Government on July 15, 1991. The Central Government sought

information from the State Government though their wireless message dated July 16,1991. The State Government intum sought the information from the detaining authority on July 24,1991. The comments and the material were forwarded by the detaining authority to the State Government and on receipt of those materials the State Government submitted the parawise comments to the Central Government and the Central Government received information on August 6, 1991. Final order rejecting the Petitioner's representation was passed on 24 August, 1991 and it was duly communicated to the detainee on August 27,1991. In the aforesaid case in the circumstances explained by the Central Government the Court held that there was no delay. It is submitted by Mr. Ibotombi as well as Mr. Jagatchandra that the present case is similar to the one referred to above.

10. We have heard Mr. Kh. Nimaichand, learned Counsel for the Petitioner, Mr. A. Jagatchandra, learned Government Advocate and Mr. N. Ibotombi Singh, learned Central Government Standing Counsel at length. We have also perused relevant documents filed in the present case. Learned Counsel appearing for the parties have taken us through the entire grounds of detention. On careful perusal of the grounds of detention, it appears to us that the material on which the order of detention is based are mainly the statements said to have been recorded from accused persons, mainly two co-accused persons. Although it is stated in the grounds of detention that there were allegations that the Petitioner was involved in collection of money from various offices of the Government Departments, we do not find any material to show that some statements in this regard were recorded from any of the offices/departments as regards such collection of money. It appears to us that as regards seizure of one Revolver, the Petitioner can be dealt with effectively under the ordinary law of the land.

11. It is true that there was no delay in the disposal of representation filed before State Government inasmuch as representation dated 14.3.97 was disposed of and order of rejection was communicated to the detainee on 19.3.97. However, while considering the submission that there was delay in the disposal of the representation made before the Central Government, we noticed in terms of para 6 of the affidavit filed on behalf of the Union of India that there was unexplained delay in furnishing the required materials on the part of the detaining authority to the Central Government. As we have stated above further information was sought from State Government through a Crash wireless Message on 21.3.97. Normally relevant materials/ documents would have been available in the hands of one or two authorities only and the State Government would not have to look for materials from place to place, particularly after the order of detention was issued on the basis of the materials already placed before the detaining authority. As mentioned above the Central Government had to send another message on 4.4.97. The said message was to be followed by a third message on 15.4.97. It is nowhere explained in the affidavit as to why the State Government was not able to send the required materials on receipt of the first message on 21.3.97 from the Central Government. We are of the view that although there was some delay in the disposal of the representation on receipt of the required

materials from the State Government, in view of the explanations given by the Union Government and also in view of the submission made by the learned Central Government Standing Counsel that there is only one Joint- Secretary dealing with the matter concerning National Security Act for the entire country, we may not attribute laches or malafide on the part of the Central Government. We are of the view that the State Government seems to have acted leisurely and not with promptitude that is expected in the matter of furnishing the relevant information sought by the Central Government. In the facts and circumstances of the present case we hold that the delay in furnishing the relevant materials to the Central Government has not been satisfactorily explained. Therefore, we hold that there was undue delay in furnishing informations to the Central Government thereby further delay was caused in the disposal of the representation made before the Central Government. We must always keep in view that in the matter of detention of a citizen of this country under the provisions of National Security Act, the detaining authority is expected to act with promptitude and there should be no casualness at any stage.

12. In the light of the circumstances that we have stated above, this petition is allowed.sThe detenue shall be set at liberty forthwith.

This petition is disposed of.