

(2020) 10 MAN CK 0003
In the Manipur High Court
Case No : Writ Petition (c) No. 7 Of 2020

Lourembam Shyamjai Singh

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 08-10-2020

Acts Referred:

National Security Act, 1980 — Section 3(2), 3(3)
Constitution Of India, 1950 — Article 22(5)
Unlawful Activities (Prevention) Act, 1967 — Section 20
Indian Penal Code, 1860 — Section 34, 188, 307, 325, 326, 427

Citation : (2020) 10 MAN CK 0003

Hon'ble Judges : Kh. Nobin Singh, J; Ahanthem Bimol Singh, J

Bench : Division Bench

Advocate : Ph. Sanajaoba, L. Monomala, S. Suresh

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri Ph. Sanajaoba, learned counsel appearing for the petitioner; Smt. L. Monomala, learned Government Advocate appearing for the respondent Nos. 1 and 2 and Shri S. Suresh, learned ASG appearing for the respondent No. 3.

[2] The order of detention dated 18-05-2018 issued by the District Magistrate, Imphal East is under challenge in this writ petition filed by the petitioner who is the father of the detenu. The order of detention dated 18-05-2018 reads as under:

"IN THE COURT OF

THE DISTRICT MAGISTRATE, IMPHAL EAST DISTRICT, MANIPUR

ORDERS

Imphal, the 18th May, 2018

No. Cril/NSA/No.1 of 2020: Whereas, a police report has been laid before me that Shri Lourembam Sanjoy Singh (38 years) S/o L. Shyamjai Singh of Yairipok Yambem Mathak Leikai, A/p Khurai Ahongei Tongbram Leirak, P.S.Porompat, Imphal East District, Manipur is acting in a manner prejudicial to the maintenance of public order;

Whereas, I, Dr. Rangitabali Waikhom, District Magistrate, Imphal East District, Manipur am satisfied that his activities are prejudicial to the maintenance of public order under Section 3(2) of the National Security Act, 1980;

Whereas, it is considered necessary to detain Shri Lourembam Sanjoy Singh (38 years) S/o L. Shyamjai Singh of Yairipok Yambem Mathak Leikai, A/p Khurai Ahongei Tongbram Leirak, P.S.Porompat, Imphal East District, Manipur with a view to preventing him from acting in a manner prejudicial to the maintenance of public order under Section 3(2) of the National Security Act, 1980;

Now, Therefore, I, Dr. Rangitabally Waikhom, District Magistrate, Imphal East District, Manipur, in exercise of the power conferred upon me by Sub-Section 3 of Section 3 of the National Security Act, 1980 read with Home Department order No.17(1)/49/80- H(pt) dated 25th April, 2020 makes this order directing that the above said person who is now in police custody be detained under Section 3(2) of the National Security Act, 1980 until further order.

Given under my Hand and Seal of this Court on this 18th day of May, 2020.

Copy to:

(Dr.Rangitabali Waikhom)

District Magistrate, Imphal East District.

1. Secretary to Governor of Manipur, Imphal.
2. Secretary of Chief Minister, Manipur, Imphal.
3. S.O to Chief Secretary, Government of Manipur.
4. Special Secretary (Home), Govt. of Manipur.
5. Superintendent of Police, Imphal East District for execution of the order of detention along with copy of order of detention for the person concerned.
6. Superintendent, Manipur Central Jail, Sajiwa- he is requested to keep the detenu in the Manipur Central Jail, Sajiwa in "B" Class category.
7. Shri Lourembam Sanjoy Singh (38 years) S/o L. Shyamjai Singh of Yairipok Yambem Mathak Leikai, A/p Khurai ahongei Tongbram Leirak, P.S.Pormpat, Imphal East District, Manipur
8. Relevant file."

[3.1] The allegations as contained in the grounds of detention, are that the

detenu being the son of an underground organisation leader, namely Kanglei Yaol Kanna Lup (KYKL, in short) came to know a number of activists of different UG organisations. On 10-09-2009, the detenu was arrested by a column of 34th AR as a member of UNLF for carrying out prejudicial activities such as publicity and propaganda works, extortion of money by delivering demand letters and recruitment of new volunteers in connection with a case under FIR No.103(9)2009 Yairipok PS U/s 20 UA(P) A Act and was remanded to police custody till 15-09-2009 on which he was released on bail. After the detenu being released on bail, he stayed at home along with family members.

[3.2] In the year, 2010 the detenu joined politics under the guidance of Hon'ble Ex-MLA, Shri Th. Shyamkumar Singh and remained with him as his PRO till the early part of the year, 2019. By taking advantage of being the PRO, he did various contract works and got himself registered as 4th Class Civil Contractor, PWD. In the middle of the year, 2019, the detenu had controversy with Shri Th. Shyamkumar Singh and accordingly, he decided to contest the up-coming by-election of Andro Constituency. The detenu and his associates holding deadly weapons and firearms started carrying out violent activities by attempting the lives of the workers of Shri Th. Shyamkumar Singh, some of which mentioned may be made are that on 30-03-2020, they assaulted Shri Th. Rajendro Singh of Yambem Mayai Leikai and others near the transformer damaging one Honda activa and one M/Baleno Car. On 12-05-2020, they assaulted and attempted the life of Shri Chingakham Imocha Singh of Andro Khunou damaging one Gypsy, Baleno Car by using iron rod, hockey sticks, stones etc. On 13-05-2020 they attacked Shri Th. Shyamkumar Singh at his residence Yairipok Yambem Mathak Leikai by using fire arms and stones. Various FIRs have been registered in connection with the alleged incidents. Such acts of the detenu gave panic, terror waves and perils to the lives of the general public which is prejudicial to the maintenance of public order. The detenu had already got ad-interim bail in connection with the case under FIR No.18(3)2020- Andro PS U/s 188/325/326/427/34 IPC from the Court of Sessions Judge, Imphal East.

[3.3] On 14-05-2020 the detenu was arrested from his residence at Khurai Ahongei Tongbram Leirak in connection with FIR No.30(5)2020- APS U/s 188/325/307/34 IPC & 25(I-C) A. Act and was remanded to police custody till 18-05-2020. While in police custody, the District Magistrate, Imphal-East District issued the order of detention dated 18- 05-2020 detaining him.

[3.4] The detenu was served with the grounds of detention on 23-05- 2020 along with copies of the documents as mentioned therein and was informed that he had the right to make representations to the Government of Manipur as well as the Central Government against the order of detention. It has also been stated therein that the District Magistrate was satisfied that the detenu was likely to be released on bail in the near future or otherwise by the competent Court, at the end of the period of judicial custody, because there have been instances of similar release by the competent Court in such cases.

[3.5] Being aggrieved by the order of detention, the instant writ petition has been filed by the petitioner questioning it. According to the petitioner, on 14-05-2020, the detenu was arrested and the next day when he was produced before the Judicial Magistrate, he was remanded to police custody for four days. On 18-05-2020 when he was again produced before the Judicial Magistrate, he was granted bail. The detenu came out of the court room after furnishing the relevant bail and surety bonds to the satisfaction of the Judicial Magistrate, he was apprehended by the police in the court premises itself and he was served with a detention order at around 3 pm. Thereafter, he was taken from the court premises forcefully for lodging him in the jail. On 23-05-2020, a letter dated 20-05-2020 purported to be the grounds of detention was served upon the detenu with some documents. It has been stated therein that the detaining authority had arrived at the subjective satisfaction that the detenu was likely to be released on bail because there have been instances of similar release by the competent Court in such cases. However, the detaining authority failed to furnish the particulars of the instances of similar release of those cases as mentioned in the grounds of detention. Being aggrieved by non-furnishing of particulars, the detenu submitted a joint representation to the detaining authority & the State Government for furnishing the same which they failed to do so which was followed by four representations dated 27-05-2020 submitted to the respondents.

[4] In the affidavit-in-opposition filed on behalf of the State of Manipur, the grounds mentioned in the grounds of detention have been reiterated and in addition thereto, it has been stated that the order of detention dated 18-05-2020 was approved by the State Government after considering the grounds of detention and the same were communicated to the Central Government as well as the Chairman, Advisory Board along with the relevant documents. The representation dated 27-05-2020 was duly considered and it being devoid of merit, the request for revocation order of detention was not acceded by the State Government. Accordingly, the order of detention was confirmed by the State Government on 09-06-2020. An affidavit-in-opposition has been filed by the District Magistrate stating that the order of detention was issued based on the reports submitted by the Superintendent of Police, Imphal- East District vide its letter dated 17-05-2020 and on proper application of mind. It has further been stated that the order of detention was issued by her after perusal and carefully examination of the supporting materials/ documents produced before her by the sponsoring authority and that normal criminal laws would not be sufficient to prevent the detenu from further commission of prejudicial activities. The detaining authority was satisfied that the detenu was likely to be released on bail, as he had been granted anticipatory bail on 02-04-2020. So far as the instances of similar release by the competent Court in such case are concerned, the same had been sought for from the sponsoring authority vide her letter dated 16-06-2020 but the same are being awaited. It has also been stated that all relevant supporting materials/ documents are furnished to the detenu while submitting the grounds of detention.

[5] The order of detention has been challenged by the petitioner on various grounds but during the course of hearing, Shri Ph. Sanajaoba, the learned counsel appearing for the petitioner has confined his argument to only one ground that the copies of the materials, namely the particulars of the instances of similar release in such cases on which the District Magistrate had come to her subjective satisfaction, were not furnished to him with the result that the detenu was denied the opportunity to make an appropriate representation. Such a denial amounts to violation of the provisions of Article 22(5) of the Constitution of India. In order to support his contention, he has relied upon the decision rendered by the Hon'ble Supreme Court in *Kamla Kanyalal Khushlani Vs. State of Maharashtra & another*, (1981) 1 SCC 748 wherein the petitioner, the detenu was arrested on 20-10-1980, when the grounds of detention were served on him. On 05-11-1980, the documents and materials on the basis of which the order of detention was passed, were supplied to the detenu. The case of the detenu was that the grounds served on him were not accompanied by the documents and materials which formed the basis of the order of detention. On 18-11-1980 he submitted a representation to the State Government which was disposed as late as on 15-12-1980. While allowing the petition, the Hon'ble Supreme Court held:

"6. Thus, we are of the opinion that in view of what has been laid down in *Maneka Gandhi* case and in a number of other cases following the aforesaid decision, the law of preventive detention has now to satisfy a two-fold test: (1) that the protection and the guarantee afforded under Article 22 (5) is complied with, and (2) the the procedure is just and reasonable. In this view of the matter unless the materials and documents relied on in the order of detention are supplied to the detenu along with the grounds, the supply of grounds simpliciter would give him not a real but merely an illusory opportunity to make a representation to the detaining authority."

Reliance has been placed by the learned counsel appearing for the petitioner on some more decisions of the Hon'ble Supreme Court which are not referred to herein for the reason that there is no point of multiplying the decisions.

[6] On perusal of the order of detention, it is seen that it is nowhere mentioned therein that the detaining authority is satisfied that the detenu is likely to be released on bail in the near future, as there have been instances of similar release by the competent Court in such cases. Only in the grounds of detention, it has been stated that the detaining authority is satisfied that the detenu is likely to be released on bail in the near future or otherwise by the competent Court, at the end of the period of judicial custody, because there have been instances of similar release in such cases and that in view of the prejudicial activities in the immediate past, it is likely that he would continue to act in the manner prejudicial to the maintenance of public order as in the proximate past. The submission of the learned counsel appearing for the petitioner has some force and merit for the reason that the particulars of the instances of similar release on which the detaining authority has formed its satisfaction, were not

furnished to the detenu. There is no material on record to show the factum of having supplied the said particulars to the detenu and on the contrary, it has been stated by the District Magistrate in her affidavit that she asked for the particulars of the similar instances from the sponsoring authority but the same are being awaited. This averment made in her affidavit has clearly demonstrated that her satisfaction was not based on materials relating to instances of similar releases by the competent Court. In the absence of such material particulars being supplied to the detenu, it was impossible for him to make an appropriate representation to the State Government as well as the Central Government.

[7] Article 22(5) of the Constitution provides that when any person is detained under any law providing for detention, the detaining authority shall communicate to such person grounds of detention at soon as may be and shall afford him the earliest opportunity of making a representation against the order of detention. The provisions of this article are plain, unambiguous and need no interpretation at all. There are two safeguards to be provided at the earliest by the detaining authority which are mandatory-one, the communication of the grounds of detention and two, the affording of earliest opportunity for making representation. The failure on the part of the detaining authority to provide any of the same shall render the order of detention illegal being violative of Article 22(5) of the Constitution. In this regard, the decision rendered by the Hon'ble Supreme in *Tahira Haris & ors. Vs. Government of Karnataka & ors.*, (2009) 11 SCC 438 is relevant and important wherein the Hon'ble Supreme Court held:

"28. In *District Collector, Ananthapur v. V. Laxmanna* this Court again reiterated that the documents and materials relied upon by the detaining authority must be supplied to the detenu for affording him an opportunity to make effective representation.

29. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detenu becomes illegal and the detention order has to be quashed on that ground alone."

In the present case, a specific allegation made in the writ petition that the particulars of the instances of similar release on the basis of which the satisfaction was formed by the detaining authority have not been furnished, has not been categorically denied by the respondents in their affidavits and in particular, the detaining authority except stating that the copies of all documents have been furnished by it. Moreover, in her affidavit, the detaining authority has stated categorically that the particulars of the instances/ cases of similar release have been sought for from the sponsoring authority but the same are being awaited by her. It is quite evident from her aforesaid statement that the satisfaction of the detaining authority was not based on the particulars of the instances of similar releases by the competent Court in such cases. Therefore, this Court is of the view that the detenu was not given the opportunity to make

an appropriate representation thereby violating the provisions of Article 22(5) of the Constitution, as a result of which the order of detention is rendered bad in law.

[8] In view of the above, the instant writ petition is allowed and consequently, the order of detention dated 18-05-2018 is quashed and set aside with the direction that Shri Lourembam Sanjoy Singh (38 years), S/o Shri Lourembam Shyamjai Singh, Yairipok Yambem Mathak Leikai, A/p Khurai Ahongei Tongbram Leirak, PS Porompat, Imphal-East District, Manipur shall be released forthwith if he is not required for any other case.