

(2017) 01 MAN CK 0010
In the Manipur High Court
Case No : 48 of 2016

Md. Farukh Khan

APPELLANT

Vs

The District Magistrate, Imphal West District, Govt. of
Manipur, & Anr.

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Indian Penal Code, 1860, Section 400 -
Punishment for belonging to gang of dacoits
Explosive Substances Act, 1908, Section 5
- Punishment for making or possessing explosives under suspicious circumstances
National Security Act, 1980, Section 3(3) -
Power to make orders detaining certain persons

Citation : (2017) 01 MAN CK 0010

Hon'ble Judges : Rr Prasad, Kh. Nobin Singh

Bench : Division Bench

Advocate : S.Rajeetchandra, L. Manomala

Final Decision : Disposed

Judgement

1. This application has been filed for quashing the order dated 16.6.2016 passed by the District Magistrate, Imphal West, respondent No.1, whereby and whereunder the respondent No.1, in exercise of power conferred under sub section (3) of section 3 of the National Security Act, 1980, passed the order of detention in No. Cril/NSA/ No. 5 of 2016 against the detenu namely Md. Farukh Khan after recording that, in order to prevent the detenu from acting in any manner prejudicial to the security of the State and maintenance of public order, it has become necessary to do so.

2. The grounds on which order of detention was passed are that the detenu at the instance of one Yumnam Sunil @ Babusana joined armed underground organization Kanglei Yawol Kanba Lup (KYKL) as a member, the aim and object of said organization is to secede State of Manipur from the Union of India and to create a sovereign, independent State of Manipur. For the said purpose the

members of the organization had been procuring arms and ammunitions and had been recruiting youngsters from various communities. In order to achieve objective the members of the organization did commit series of heinous crimes such as murder, dacoity, robbery, extortion, kidnapping for ransom etc. in different parts of Manipur. After joining the organization the detenu and also his other associates demanded money at the instance of self styled Capt. S. Gune Singh from schools, individuals, firms, coaching centre etc. In fact, they extorted money and deposited it with said Capt. S. Gune Singh who subsequently directed the detenu and his associates to hurl hand-grenade at the place of the person who ignore to pay them money. Accordingly, the detenu and others hurled a hand-grenade at Mayai Lambi Service station for which a case was registered as FIR Case No.35(5)16 WGI PS u/s 400 of IPC and also u/s 5 of Expl.Subs. Act. On 1.5.2016 one Yumnam Sunil @ Babusana and some other were arrested and on disclosure being made by them the detenu was arrested from his house on 2.5.2016 and was handed over to OC Wangoi PS with a written report upon which a case was registered as FIR case No.37(5) 16 Wangoi PS u/s 17/20 of UA(P) A Act and also u/s 25(I-C) A Act as well as u/s 5 of the Expl. Substance Act. The detenu was remanded in that case and also in other cases in which he was accused.

3. On such ground, the respondent No.1, after recording that the detenu will go on indulging himself in the activities prejudicial to the maintenance of public order, passed order of detention on 16.6.2016 which was affirmed on 27.6.2016 and was confirmed on 17.8.2016. The aforesaid orders have been challenged on several grounds.

4. However, S. Rajeetchandra, learned counsel appearing for the petitioner did confine his argument with respect to only one ground which is with regard to materials being absent for recording satisfaction by the detaining authority that there is every possibility of detenu being released on bail. In this regard, it was submitted that though such satisfaction has been recorded but it appears to be without any basis as the detaining authority while recording such satisfaction has not mentioned the basis upon which he reached to that satisfaction and thereby the order of detention can be said to have been passed on ipse dixit ground and thereby it is fit to be quashed.

5. As against this Ms. L. Manolama, learned counsel appearing for the respondents submitted that from the order of detention it would appear that the detaining authority after having taken notice of the fact recorded in the grounds of detention, did satisfy himself that detenu after being released on bail would indulge in the same activities which are prejudicial to the maintenance of public order and only after recording such satisfaction the order of detention has been passed which never warrant to be interfered with by this Court.

6. It be stated that Hon"ble Supreme Court has been pleased to lay down the proposition that detaining authority while passing order of detention in a case of detenu being in custody needs to observe following safeguard meticulously:

"(i) If the authority passing the order is aware of the fact that he is actually in custody;

(ii) If there is reason to believe on the basis of available materials placed before him-

(a) that there is every possibility of being released; and

(b) that on being released he would be in all probability to indulge in prejudicial activities;

(iii) If it is felt essential to detain him to prevent him from doing so.

The said proposition has been laid down by the Hon'ble Supreme Court in a case of Union of India vs. Paul Manickam : (2003) 8 SCC 342 wherein it has been observed as follows:

"14.....Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability, etc. Ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated..... The point was gone into detail in Kamarunissa v. Union of India: (1991) 1 SCC 128: 1991 SCC (Cri.) 88. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail."

7. The same principle was reiterated subsequently by the Hon"ble Supreme Court in case of Huidrom Konungjao Vs. State of Manipur & Ors (2012) 7 SCC 181 wherein it was held that if such detention order is challenged, detaining authority ought to satisfy the court following facts:

"(i) the authority was fully aware of the fact that detenu was actually in custody;

(ii) there was reliable materials before the said authority on the basis of which it could have reasons to believe that there is reliable possibility of release on bail and further on being released, he would probably indulge in activities which are prejudicial to the public order.

Further, it has been observed that in cases where this fact does not exist, the detention order would stand vitiated."

8. In the light of the decisions, if we examine legality of the detention order, we would find that the detaining authority has recorded its satisfaction that there is likelihood of detenu being released on bail but for arriving at to such satisfaction, no material seems to be there before the detaining authority and thereby the grounds upon which satisfaction has been recorded can be said to be ipse dixit and thereby order of detention is fit to be set aside in view of the decisions referred to above. Accordingly, order of detention, its approval and confirmation are hereby set aside.

9. Consequently, detenu namely Md. Faruk Khan, s/o Md. Nasir Khan of Lilong Turel Aanbi, PS Lilong, is directed to be released forthwith if not wanted in any other case. This writ petition stands disposed of.