

(2016) 03 MAN CK 0005
In the Manipur High Court
Case No : Writ Petition (Cril) No. 20 of 2015

Md. Iliyash Khan

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Constitution of India, 1950 — Article 22, Article 22(5)
National Security Act, 1980 — Section 14(1), Section 3(2)
Unlawful Activities (Prevention) Act, 1967 — Section 17, Section 20

Citation : (2016) 03 MAN CK 0005

Hon'ble Judges : Rakesh Ranjan Prasad and N. Kotiswar Singh, JJ.

Bench : Division Bench

Advocate : Sth Chishti, Advocate, for the Appellant; A. Vasum, GA and S. Rupachandra, ASG, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—1. Heard learned counsel for the petitioner, learned counsel appearing for the State as well as learned counsel appearing for the Union of India.

2. This application has been filed for quashing of the order dated 23.6.2015 passed by the District Magistrate, Imphal West (Respondent No. 2) whereby and whereunder the respondent No. 2 by exercising power under Section 3(2) of the National Security Act, 1980 passed the order of detention of the petitioner till further order.

3. The facts giving rise to this case are that the detenu at the instance of one Sh. Chinglensana Singh @ Chinglen, an important member of the (PREPAK-PRO) joined the banned organisation known as Peoples Revolutionary Party of Kangleipak-Progressive faction (PREPAK-PRO), object of which is to secede the State of Manipur from the Union of India and to create an independent and sovereign State of Manipur. For this purpose, the said organisation started procuring arms and ammunition from foreign countries and recruited youngsters

from various communities in Manipur. In fulfilling their objectives, the members of the organisation committed series of heinous crimes such as murder, dacoity, robbery, extortion and kidnapping for ransom from different parts of Manipur. In course of time, a general declaration was signed by the top leaders of seven underground organisations including (PREPAK-PRO) whereby a united front of armed organisation known as Co-ordinating Committee (CORCOM) was formed. However, those organisations were declared unlawful organisation by the Government of India. The further material which was collected against the detenu is that the detenu after joining the said organisation started working under the command of S/S Capt. Sagar @ Nungshiba @ Mangang, whereby they indulged in carrying out extortion of money from the general public, government officials and businessmen etc. In the second week of February, 2015 the detenu went to Myanmar alongwith Sh. Chinglensana Singh, Md. Abas and Shri Prem @ Sanjit and contacted S/S Capt Sagar, who directed the detenu to extort money from the officers of different departments of Manipur. The detenu always remained in contact with the said Capt. Sagar through mobile whereby the detenu, at the instance of the said Capt. Sagar indulged himself along with others to extort money and to deposit it with Capt. Sagar, which was being used in procuring arms and ammunition from foreign countries for using the same for waging war against the Government of India as well as the Manipur Government. Such act of extortion of money by the detenu and his associate created panic and terror among the general public particularly Government officers, which was prejudicial to the security of the State and maintenance of public order.

4. Further case is that on 4.5.2015 the detenu was arrested alongwith one Th. Suresh by a team of CDO-Imphal West led by Jem. S. Birla Singh from a place in front of Chingamakha Model Club and from their possession SIM Cards were recovered. Thereupon, the detenu was produced before the Officer-in-charge, Singjamei P.S., with a written report and seized articles. On the basis of which a case was registered as FIR No. 78(5)2015 Singjamei P.S under Section 17/20 UA(P) A Act. The detenu was remanded to jail custody. While the detenu was lodged in jail, an order of detention dated 23.6.2015 was served upon him. Subsequently, grounds of detention were also served whereby he was called upon to submit his representation.

5. On 28.7.2015, the detenu submitted his representations, three copies in original as well as true copies addressed to the respondent Nos. 1, 2 and 3 setting out the true state of affairs and requested to set him at liberty. However, the said representation was rejected by the respondent No. 2, which was communicated to the detenu by the respondent No. 2 vide letter dated 31.07.2015. The representation was also rejected by the State Government as well as by the Central Government. The Central Government vide wireless message dated 1.9.2015 communicated about the rejection of the representation of the detenu. Meanwhile the order of detention being approved and even was confirmed by the State Government. That order of detention dated 25.6.2015, its approval and confirmation have been challenged.

6. The sole point which was urged is that there has been a considerable delay in rejecting the representation of the detenu by the respondent No. 3, the Union of India. In this regard, it was submitted that the petitioner had submitted his representation on 28.7.2015 whereas it was rejected on 28.8.2015, communication of which was given to the detenu on 1.9.2015 and thus, respondent No. 3 took a month's time in rejecting the representation for which no reasonable explanation has been given and thereby constitutional right of the detenu has been infringed and on this ground alone the order of detention is fit to be set aside.

As against this, the learned counsel appearing for the State submits that the representation submitted by the detenu on 28.7.2015 before the jail authority was made available to the Home Department only on 3.8.2015 which was sent to respondent No. 3 on 10.8.2015 and that as soon as the representation was received by the respondent No. 1 it was rejected immediately after taking into account the facts and circumstances of the case and under the circumstance, the detention order never warrants to be interfered with by this Court.

7. The stand which has been taken on behalf of respondent No. 3 is that the representation of the detenu dated 28.7.2015 was forwarded by the Government of Manipur through its letter dated 10.8.2015 and the same was received by the Central Government in the concerned section of the Ministry of Home Affairs on 20.8.2015 without parawise comments, and therefore, parawise comments to the representation were asked to be furnished by the Government of Manipur, which was received on 25.8.2015 and thereafter after observing necessary paraphernalia which consumed some time, order was passed on 1.9.2015 whereby the representation of the petitioner was rejected.

8. After having heard learned counsel for the parties and taking into account the stands of each of the parties, it is evident that the representation of the detenu dated 28.7.2015 was received in the Home Department of the State on 3.8.2015 which was sent to the Government of India on 10.8.2015. There has been absolutely no explanation for the delay occurred in between 3.8.2015 and 10.8.2015. Such unexplained delay in disposal of the representation by the respondent No. 3 certainly amount to breach of constitutional mandate which would render order of detention illegal. In this regard, I may refer to a decision rendered in a case of *Rajammal Vs State of T.N.* and Anr. : , (1999) 1 SCC 417, wherein their Lordships, in para 7 and 8 have observed as follows.

"7. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to

permissible reasons or unavoidable causes. This position has been well delineated by a constitution Bench of this Court in K.M. Abdulla Kunhi and B.L. Abdul Khader vs. Union of India and others (, 1991 (1) SCC 476). The following observations of the Bench can profitably be extracted here:

"It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

8. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

We may also refer to a case reported in *Pebam Ningol Mikoi Devi Vs State of Manipur & Ors.* : , (2010) 9 SCC 618 wherein their Lordships, after finding seven days delay in forwarding the representation of a detenu to the Central Government has held the detention order to be bad and unconstitutional after observing as follows.

"33. The second issue is that of delay. There has been a delay of 7 days, i.e. from 09/10/2009 to 16/10/2009, in forwarding the representation of the detenu to the Central Government. There has been no explanation of the reasons for this delay given by the respondents.

34. Article 22(5) of the Constitution of India mandates in preventive detention matters. The detenu should be afforded the earliest possible opportunity to make a representation against the order. With regard to the importance of delay in preventive detention matters under the National Security Act, it has been held by this Court in *Union of India v. Laishram Lincola Singh* : , (2008) 5 SCC 490, that: (SCC p.492, para 6)

"6...."6....There can be no hard and fast rule as to the measure of reasonable time and each case has to be considered from the facts of the case and if there is no negligence or callous inaction or avoidable red-tapism on the facts of a case,

the Court would not interfere. It needs no reiteration that it is the duty of the Court to see that the efficacy of the limited, yet crucial, 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 entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention becomes vulnerable."

(emphasis supplied).

35. On the specific ground of delay in forwarding the representation under the National Security Act, it has been observed by this Court in *Haji Mohd. Akhlaq v. District Magistrate*, 1988 Supp (1) SCC 538, that: (SCC p.540, para 3)

"3....There can be no doubt whatever that there was unexplained delay on the part of the State Government in forwarding the representation to the Central Government with the result that the said representation was not considered by the Central Government till October 16, 1987 i.e. for a period of more than two months. Section 14(1) of the Act confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must imply a right in a detenu to make representation to the Central Government against the order of detention. Thus, the failure of the State Government to comply with the request of the detenu for the onward transmission of the representation to the Central Government has deprived the detenu of his valuable right to have his detention revoked by that Government."

(emphasis supplied)

36. In the matter before us, a delay of 7 days has occurred in the forwarding of the representation. This may not be inordinate; however, at no stage has there been an explanation given for this delay. The State Government or Central Government has not clarified the same and thus the delay remains unexplained.

37. In light of the fact that none of the documents relied on by the detaining Authority in passing the detention order can be deemed to be pertinent, and the fact that the delay has remained unexplained, there is sufficient ground made out in order to quash the order of preventive detention made against the detenu."

9. So far as this case is concerned, we have already stated that there has been no explanation at all regarding delay occurred in between 3.8.2015 and 10.8.2015 in sending the representation by the State Government to the Central Government, which, in view of the decision referred to above, infringes constitutional mandate of expeditious disposal of the representation in a case of detention and, thereby the order of detention dated 25.6.2015, its approval and confirmation warrants to be set aside. Consequently, the detenu namely, Md. Iliyash Khan @ Illiyash (40 yrs) s/o (L) Md. Jahir Ali of Yiripok Shinga Idiga Maya, PS. Yaiaripok, District Thoubal, Manipur is directed to be released forthwith, if not wanted in any other case.

Thus, this case stands allowed.