

(2011) 12 GAU CK 0037
In the Gauhati High Court
Case No : Writ Petition (Cri.) No. 87 of 2011

Mrs. Veineikim Haokip

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 22(3)
Criminal Procedure Code, 1973 (CrPC) — Section 437
National Security Act, 1980 — Section 3(2), 3(3), 8
Unlawful Activities (Prevention) Act, 1967 — Section 20, 43D

Citation : (2012) CriLJ 1336

Hon'ble Judges : T. Nandakumar Singh, J; N. Kotiswar Singh, J

Bench : Division Bench

Advocate : N. Mahendra, for the Appellant; R. S. Reisang, G. A. and C. Kamal, CGSC, for the Respondent

Final Decision : Allowed

Judgement

T. NK. Singh, J.—The challenge in this writ petition is to (1) the order of the learned District Judge, Imphal West dated 30.05.2011 for detaining the petitioner-detenu under the National Security Act, 1980 (hereinafter referred to as the NSA) and (2) the order of the State Government dated 08.07.2011 for approving the detention order dated 30.05.2011 and also (3) the order of Government of Manipur dated 18.07.2011 for confirming the detention order and fixing the period of detention for 12 months from the date of detention. Heard Mr. N. Mahendra, learned counsel for the petitioner, Mr. R. S. Reisang, learned GA appearing for respondent Nos. 1 and 2 as well as Mr. C. Kamal, learned CGSC for respondent No. 3.

2. The two grounds for assailing the detention order are that (1) there is no material for coming to the subjective satisfaction that the petitioner-detenu, who is already in custody is likely to be released on bail; in other words, there is no subjective-satisfaction that the petitioner-detenu is likely to be released on bail and (2) the case of the petitioner-detenu can effectively be dealt with by

normal criminal courts and, therefore, there is no requirement of detaining the petitioner-detenu under the NSA.

3. For deciding the above two core questions, the only material fact is noted in brief.

On 23.05.2011 the petitioner-detenu was arrested along with others by the Police personnel of Lamphel Police Station in connection with FIR No. 100 (5) 2011 LPS u/S. 20 UA (O) Act, 25 (1-B) A Act & 5 Expl. Subs. Act and remanded to police custody till 30.05.2011.

4. It is the case of the petitioner-detenu that the petitioner-detenu was arrested for the first time in connection with the criminal case; and it is also the clear submission of Mr. Mahendra, learned counsel for the petitioner that the petitioner was never arrested in connection with any criminal case save and except the above criminal case i.e. FIR No.100 (5) 2011 LPS. On 24.05.2011 when the petitioner was produced before the learned Chief Judicial Magistrate, Imphal West, with a prayer for remanding the petitioner-detenu to the police custody in connection with investigation of the said case, the petitioner-detenu was furnished with copy of the impugned detention order dated 30.05.2011. As it is the case of the petitioner-detenu that there is no indication regarding the subjective satisfaction of the petitioner-detenu that the petitioner is likely to be released on bail, in the impugned detention order dated 30.05.2011, it is required to look into the impugned detention order and hence, the impugned detention order is quoted hereunder :

ORDERS

Imphal, the 30th May, 2011

No. Cril/NSA/No.71 of 2011 : Whereas, a police has been laid before me that Mrs. Veineikim Haokip alias Akim (40 years) W/o Mr. Ngamkholet Haokip alias Ngamlet alias Alet of Dongsum Village, P.S. Saikul, District-Senapati, A/P Kangchup Chingkhong, P.S.G. Sapermeina, District-Senapati, Manipur is acting in a manner prejudicial to the security of the State and maintenance of public order.

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

Whereas, it is considered necessary to detain Mrs. Veineikim Haokip alias Akim (40 years) W/o Mr. Ngamkholet Haokip alias Ngamlet alias Alet of Dongsum Village, P.S. Saikul, District Senapati, A/P Kangchup Chingkhong, PS. G. Sapermeina, District -Senapati, Manipur with a view to prevent her from acting in any manner prejudicial to the security of the State and maintenance of public order;

And whereas, I am satisfied from the police report that Mrs. Veineikim Haokip alias Akim (40 years) w/o. Mr. Ngamkholet Haokip alias Ngamlet alias Alet of

Dongsum Village, P.S. Saikul, District-Senapati, A/P Kangchup Chingkhong, PS G Sapermeina, District- Senapati, Manipur who is now in Police custody, is likely to continue to act in the manner prejudicial to the security of the State and maintenance of public order, and also that an alternative preventive measure is called for.

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 09.05.2011 made 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 thirty day of May, 2011.

Sd/- (K. Radhakumar Singh) District Magistrate, Imphal West.

5. Pursuant to Section 8 of the NSA, the District Magistrate, Imphal West (Detaining Authority) under his letter dated 02.06.2011 furnished not only the grounds of detention but also copies of documents which formed the grounds of detention. For easy reference, the said letter of District Magistrate, Imphal West dated 02.06.2011 is quoted hereunder:

GOVERNMENT OF MANIPUR OFFICE OF THE DISTRICT MAGISTRATE IMPHAL WEST DISTRICT

No. Cril/NSA/No.71 of 2011

Imphal, the 2nd June,2011

To

Mrs. Veinikim Haokip alias Akim (40 years) w/o. Mr. Ngamkholet Haokip alias Ngamlet alias Alet of Dongsum Village, PS-Saikul, District-Senapati, A/P Kangchup Chingkhong, P.S.G. Sapermeina, District-Senapati, Manipur.

Subject: Grounds of detention u/s 8 of the National Security Act, 1980.

In pursuance of Section 8 of the National Security Act, 1980 you are hereby informed that the grounds of detention are as follows :

1. That, you joined the banned organization namely, Kangleipak Communist Party (KCP) MTF faction as a member in the middle part of 2010 through Shri W. Shyamkanhai Singh alias Tomba of Naranseina Maning Leikai, A/P Langol Ningthu Mathak, an important member of KCP (MTF) as arranged by Miss Aneng Khongsai of Molnom Village. The Red Army is its armed wing.

The avowed aim and objective of the Kangleipak Communist Party (KCP) is to secede the State of Manipur from the Union of India and to create an independent sovereign State of Manipur. For this purpose, the said organization started procuring of arms and ammunitions through foreign countries and

recruited youngsters from various communities in Manipur- In pursuance of their objectives, the members of this organization have committed series of heinous crimes like murder, dacoity, robbery, extortion, kidnapping for ransom in different parts of Manipur. The ring leaders have sought foreign assistance and established links with countries like Bangladesh, Myanmar (Burma), Pakistan and other countries inimical to Indian sovereignty and have committed series of prejudicial activities affecting the sovereignty and territory of India.

In consideration of the large scale prejudicial activities of the Kangleipak Communist Party (KCP) the Government of India, Ministry of Home Affairs declared the Kangleipak Communist Party (KCP) as Unlawful Association vide the Gazette of India, Notification under No. S.O. 2883 (E) dated 13.11.2009.

2. That, after joining the organization, you came to know Shri Tachou alias Ibai, S/S Commander of Finance of KCP (MTF), Smt Wangkhem Chaoba Devi alias Asharani of Langol Ningthou Mathak, and Mr. Thanglenmang Haokip alias Mangboi of Dongsum Village through Shri W. Shyamkanhai Singh alias Tomba. Thereafter Shri Tachou alias Ibai directed you to work under the command of Shri W. Shyamkanhai Singh alias Tomba in finance section and to extort money from the general public, government employees, contractors etc. along with Smt W. Chaoba Devi alias Asharani, and Mr. Thanglenmang Haokip alias Mang. Accordingly, since the middle part of 2010, you along with your associates noted above stated to extort money from the general public, government employees, contractors etc. in Imphal area by delivering KCP (MTF) demand letters holding one 9 mm pistol with 5 (five) rounds and 3 (three) Chinese hand grenade. Over and above you and your associates transported arms and ammunition from one place to another for use by the KCP (MTF) members. You carried out similar task till your arrest.

Such act of extortion of money and transportation of arms and ammunition carried out by you and your associates gave terror wave and peril to the lives of general public which is prejudicial to the security of the State and maintenance of public order.

3. That, on 23.5.2011 at 7.00 am you along with 2 (two) other KCP (MTF) members were by a term of DCO/IW led by JC No.606, Y. Raju Singh from Langol Housing Complex near Shija Hospital and seized

- i) One 9 mm pistol, with one magazine loaded with 5 (five) rounds.
- ii) Three Chinese hand grenade with detonators.
- iii) One mobile handset with AIRTEL SIM.
- iv) One grey coloured ladies bag

from your possession by observing formality. Then you were handed over to the OC/ Lamphel PS with a report and seized articles. On your disclosure, the Police party arrested W. Shyamkanhai Singh alias Tomba from Langol Ningthou Mathak

Crossing. Then you were arrested in connection with FIR No. 100(5)2011 LPS u/ S. 20 U&A(P) A Act, 25 (1-B) A Act & 5 Exp. Subs. Act and remanded to police custody till 30.5.2011.

4. That, in view of the tendencies and inclinations reflected in the offences committed by you in the proximate past being a member of the banned organization Kangleipak Communist Party, (KCP in short) MTF faction, and carrying out prejudicial activities such as extortion of money from general public, government employees, contractors etc. which gave a terror Wave and panic to the general public, disturbing public order affecting public tranquility, I am satisfied that after having availed of bail facilities and becoming a free person, you being a member of the Said organization would continue to indulge in the same activities which are prejudicial to the security of the State and maintenance of public order. Hence, the application of normal criminal law against you will not at all be effective to prevent you from the commission of further prejudicial activities. An alternative preventive measure is, therefore, immediately called for.

From the above grounds, I am satisfied that with a view to prevent you from acting in any manner prejudicial to the security of the State and maintenance of public order, I have made this order directing that you be detained under NSA, 1980.

5. That, the copies of the following documents which form the basis of grounds of your detention are enclosed herewith for your reference :

- a) Your statement given before the I.O. on 23.5.2011.
- b) Statement of J.C.No.606, Jem Y. Raju Singh of CDO/IW, recorded u/S. 161 Cr.P.C. in connection with FIR No. 100(5)2011 Lamphel P.S.
- c) Statement of J.C.No.610 Jem Binoy Irom of CDO/IW, recorded u/S. 161 Cr.P.C. in connection with FIR No.100(5)2011 Lamphel P.S.
- d) Statement of W/C No.861113 Kh. Bhanu Devi of Imphal West recorded u/S. 161 Cr.P.C. in connection with FIR No. 100(5) 2011 Lamphel P.S.
- e) Copy of Arrest Memo dated 23.5.2011.
- f) Copy of Seizure Memo dated 23.5.2011.
- g) Copy of Notification under No. S.O. 2883(E) dated 13.11.2009
- i) Copy of FIR No.100(5)2011 Lamphel P. S u/S. 20 UA(P)A Act, 25(1-B) A Act & 5 Expl. Subs. Act & 25 (1-B) A Act.
- j) Government of Manipur, Home Departments" Order No.17(1)/49/80-H(P-I) dated 09.05.2011.

6. That, you are hereby informed that you have the right to make representation to the Government of Manipur as well as to the Central Government against the order of detention passed against you and you are hereby afforded the earliest

opportunity for making such representation if you wish to do so. The representation if so be sent through Addl. Superintendent of Manipur Central Jail, Imphal to the Chief Secretary, Government of Manipur in respect of representation to the Government of Manipur and to "The Secretary to the Government of India Ministry of Home Affairs" (Department of Internal Security) North Block, New Delhi-110001 in respect of representation to the Central Government and should be submitted within 3 (three) weeks from the date of detention. Further, you are informed that you have right to make representation to the detaining authority within 12 (twelve) days from the date of detention or till the order is approved by the State Government whichever is earlier. The representation is to be sent to the District Magistrate, Imphal West. Representation if any, would be placed before the Advisory Board within 3 (three) weeks time from the date of your detention and such other documents/papers in connection with your detention, as the Government is bound under the law to produce before the Board for its consideration.

7. That, you are hereby informed that the Advisory Board may call for such information as it may deem necessary from you and if you desire to be heard, hear you in person. You may intimate about it and arrangement may be made to produce you before the Board on the date fixed by it for the purpose.

Sd/- (K. Radhakumar Singh) District Magistrate, Imphal West District.

6. Petitioner-detenu, also filed representation dated 09.06.2011 against the detention order through the Superintendent Jail, to 1) the District Magistrate, Imphal West, 2) the Chief Secretary, Government of Manipur and 3) Secretary to the Government of India, Ministry of Home Affairs, (Department of Internal Security) North Block, New Delhi. Those representations were rejected being devoid of merit. Hence the present writ petition.

7. Personal liberty protected under Art. 21 of the Constitution is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. However, Art. 22(3)(b) of the Constitution of India permits preventive detention. But still then, the right to liberty guaranteed by the Constitution of India, which was won after long arduous and historic-struggles cannot be neglected and sidelined.

8. As stated above, Mr. Mahendra, learned counsel for the petitioner strenuously contended that whenever an order under preventive detention is challenged, one core question must be asked in deciding the legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. He further contended that in the present case, the case of the petitioner can effectively deal with by normal criminal courts inasmuch as the petitioner-detenu was arrested by the police in connection with the said criminal case i.e. for an offence u/s 20 UA(P) A Act. Mr. Mahendra, by referring to Section 43D of the Unlawful Activities (Prevention) Act, 1967

strenuously contended that Section 43D of the Act, 1967 is opened with the non-obstante clause; "Notwithstanding anything contained in the Code, or any other law" and therefore the provision of Unlawful Activities (Prevention) Act, 1967 would have the overriding effect on the provision of Cr.P.C.

9. To the contra, Mr. Reisang, learned GA contended that since the petitioner-detenu is a lady and suffering from some ailment she is likely to be released on bail under proviso to Section 437 Cr.P.C.

10. For deciding the rival contentions of the parties we have given our anxious considerations of the facts and circumstances leading to the arrest of the petitioner-detenu. On perusal of the record and also from the submissions of learned counsel for the parties, it is crystal clear that the petitioner-detenu had been arrested for the said criminal case and from her custody also one 9 mm pistol with 5 (five) rounds and 3 (three) Chinese hand grenade were recovered. In the given facts what we require to see is, is there possibility of granting bail to the petitioner-detenu in connection with the offence u/s 20 UA (P) A Act.

11. As stated above, by looking into the stringencies in granting bail u/s 43 D of the Unlawful Activities (Prevention) Act, 1967 it appears that there is little chance of releasing the petitioner-detenu on bail. However, our observation is not final decision. Over and above, our observation should not be on the way of considering the application for bail filed by the petitioner-detenu by the competent authority.

12. A person who is already in custody can still be detained under the NSA. The Apex Court in Union of India (UOI) Vs. Paul Manickam and Another, held that only requirement in detaining a person who is already in custody is that the detaining authority should aware the fact that the detenu is in custody and the authority is required to satisfy that there are cogent materials that there is likelihood of releasing the detenu on bail in view of the antecedent activities of the detenu.

13. Mr. Mahendra, learned counsel for the petitioner contended that since there is no application for bail filed by the petitioner-detenu there is no possibility of releasing the petitioner-detenu on bail.

14. The Apex Court in Senthamilselvi Vs. State of Tamil Nadu and Another, held that non filing of bail application could not be the deciding factor in deciding as to whether the petitioner is likely to be released on bail. However, the Apex Court in Senthamilselvi's case (supra) (2006 AIR SCW 4648 para 10) (in para 10 of the SCC) held as under:

10. It was also submitted that since the detenu had not filed any bail application, the detaining authority could not have inferred that there was possibility of his being released on bail. Strong reliance is placed on several decisions of this Court. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only

requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. The appellant has not disputed correctness of this statement. Strong reliance was placed by learned counsel for the appellant on *Rajesh Gulati Vs. Govt. of N.C.T. of Delhi and Another*, . The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant.

15. The Apex Court in *Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others*, held that the Court has still jurisdiction to decide as to whether there are sufficient ground for issuing detention order. Para 28 of the SCC in *Pebam Ningol Mikoi Devi's* case (supra) read as follows :

28. We are conscious of the fact that the grounds stated in the order of detention are sufficient or not, is not within the ambit of the discretion of the court and it is the subjective satisfaction of the detaining authority which is implied. However, if one of the grounds or reasons which lead to the subjective satisfaction of the detaining authority under the NS Act is non-existent or misconceived or irrelevant, the order of detention would be invalid.

16. From the ratio laid down by the Apex Court in *Pebam Ningol Mikoi Devi's* case (supra), *Union of India (UOI) Vs. Paul Manickam and Another*, case (supra) *Senthamilselvi's* case (2006 AIR SCW 4648) (supra) it appears that the Court can still see as to whether subjective satisfaction of the detaining authority that the detenu is likely to be released on bail is based on materials or not. We are conscious of our limitation in reviewing the detention order. We have given our anxious considerations to the grounds of detention which have been quoted above as well as the impugned detention order which is also quoted above. Neither in the grounds of detention nor in the impugned detention order, the detaining authority show the material for coming to the subjective satisfaction that the petitioner-detenu, who was arrested for the first time, is likely to be released on bail by the normal criminal courts. However, it is the submission of Mr. Reisang, learned GA that as the petitioner-detenu is a lady and suffering from some ailment, she is likely to be released on bail. But as stated above, this fact is not mentioned either in the grounds of detention or in the impugned detention order.

17. It is fairly well settled law that legality or otherwise of the order is to be

decided by looking into the very words mentioned in the order itself and not by basing on the affidavit of the concerned authority which is filed when the order itself is questioned in the judicial proceedings or in writ proceedings. Regarding the settled position of law, we need not burden ourselves by referring to a number of decisions of the Apex Court. It would be suffice to refer to a decisions of the Apex Court (Constitution Bench) : (1) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein the Apex Court held that "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out" and (2) Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR (39) 1952 Supreme Court 16.

18. Since it being the settled position of law we are afraid to accept the submission of Mr. Reisang, learned GA that there are materials for coming to the subjective satisfaction of the detaining authority that the petitioner is likely to be released on bail and it is based on materials that the petitioner-detenu is a lady who is suffering from some ailments.

19. As stated above, there is no material for coming to the subjective satisfaction that the petitioner is likely to be released on bail and also there is not even indication that the detaining authority has come to such subjective satisfaction either in the impugned detention order or in the grounds of detention. For the foregoing reasons, the impugned detention order, approval order and confirmation orders are required to be interfered with. In the result, the impugned detention order dated 30.05.2011, approval order dated 08.07.2011 and conformation order dated 18.07.2011 are hereby set aside. The petitioner-detenu namely, Mrs. Veineikim Haokip alias Akim (40 years) W/o Mr. Ngamkholet Haokip alias Ngamlet alias Alet of Dongsum Village, P.S.-Saikul, District-Senapati, A/P Kangchup Chingkhong, P.S.G. Sapermeina, District-Senapati be set at liberty, if she is not wanted in connection with any other case.

The writ petition is allowed.