

---

**(2007) 10 GAU CK 0027**  
**In the Gauhati High Court**

Nasir Khan @ Boi

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

---

**Date of Decision :** 04-10-2007

**Acts Referred:**

Arms Act, 1959 — Section 25  
Criminal Procedure Code, 1973 (CrPC) — Section 161, 167  
Explosive Substances Act, 1908 — Section 3, 4, 5  
National Security Act, 1980 — Section 3, 8  
Penal Code, 1860 (IPC) — Section 121, 121A, 25, 302, 307

**Citation :** (2007) 4 GLT 512

**Hon'ble Judges :** Mutum B.K. Singh, J;K. Meruno, J

**Bench :** Division Bench

**Final Decision :** Allowed

---

## Judgement

Mutum B.K. Singh, J.—Heard Mr. Dolen Ph., learned Counsel appearing for the petitioner. Also heard Md. Jalaluddin, learned Addl. Govt. Advocate appearing for the respondent Nos. 1, 2 & 3 and Mr. N. Ibotombi Singh, learned CGC appearing on behalf of the respondent No. 4.

2. By this petition, the petitioner prays for setting aside the detention order of the petitioner dated 4th May, 2007 issued by the respondent No. 2 u/s 3 of the National Security Act, 1980 (Annexure-N/1 to the writ petition).

3. That, the facts, briefly, for adjudication of this petition, are that on 11.04.2007, the petitioner was apprehended at Guwahati and registered a case being FIR No. 238 (10)/2006 IPS under Sections 307, 326, 427, 34 IPC and Section 3 of the Explosive Substance Act against him and one another. The petitioner was produced before the learned Deputy Magistrate, Imphal on 14.04.2007 in connection with the said FIR case and remanded him to police custody till 23.4.2007. On 24.4.2007, i.e. petitioner was enlarged on bail in connection with the said FIR case by the learned Chief Judicial Magistrate, however, he was formally arrested in connection with (i) FIR No. 163 (10) 06

SJM. PS. u/s 302/34 IPC & 25 Arms Act, (ii) FIR No. 129 (9) 06 City PS. u/s 5 Expl. Subs. Act and (iii) FIR No. 195 (12) 06 City PS. u/s 400 IPC & 15/20 UA(P) A. Act, 2004 & 4 Expl. Subs. Act. respectively. On 5.5. 2007, while the petitioner was at the court premises of the learned Judicial Magistrate 1st Class, Imphal, furnished with a copy of the impugned detention order dated 4th May, 2007, detaining him under the National Security Act.

4. The petitioner was furnished with the grounds of detention on 9.5.2007 and on 11.5.2007 the petitioner submitted a representation to the respondent No. 2 i.e. the District Magistrate, Imphal West, Manipur, through the Additional Superintendent of Manipur Central Jail, Sajiwa, requesting to furnish him with other relevant and necessary documents, on which the respondent No. 2 relied upon in forming grounds of detention coupled with a prayer to set at liberty by revoking the impugned detention order. The documents, sought for, were not furnished till the date of filing the present writ petition i.e. 29.6.2007. The representation was rejected on 14.5.2007.

5. On 15.5.2007, the Government of Manipur approved the detention order and a copy of which was served on him on the same day. On 16.5.2007, the petitioner submitted representations to the respondent Nos. 1 & 4, through the Additional Superintendent of Manipur Central Jail, Sajiwa, to quash the impugned detention order on the ground that he has been falsely arrested and detained and also or allowing him to be represented by a friend of his choice before the Advisory Board at its sitting. On 24.5.2007, the petitioner was informed that his representation dated 16.5.2007 was rejected by the respondent No. 1 vide order dated 19.5.2007.

6. The representation dated 16.5.2007 submitted to the Secretary to the Government of India (respondent No. 4) has not been considered because of inaction, indifference and callousness on the part of the respondent No. 4 till the date of filing the writ petition. On 23.6.2007, the petitioner was served with a copy of the order dated 21.6.2007 issued by the Joint Secretary (Home) to the Govt. of Manipur, confirming the detention order dated 4.5.2007.

7. According to the petitioner, there were no materials before the respondent No. 2 for passing the impugned detention order. The respondent No. 2 had also rejected the representation of the petitioner mechanically without application of judicial mind, the impugned detention order and the subsequent orders pre-judicially affected to the life and liberty of the petitioner.

8. That, the respondent No. 2, while denying all the allegations made by the petitioner, stated in his counter-affidavit that the detention under the general law is for a limited period and, therefore, no effective measures could be taken up unless the petitioner is detained under the special law, whatever the documents relied upon by the detaining authority have already been furnished to the detenu and that the detention order was made after due application of mind based on the relevant documents in order to prevent him from indulging in any order pre-

judicial activities in future.

9. The respondent No. 1 i.e. the State Government, in its counter-affidavit, stated that the Government after considering the relevant documents with due application of mind, approved the detention order of the petitioner on 15.5.2007 and a copy of which was served to the petitioner on 18.5.2007. The matter was placed before the Advisory Board as well as to the Central Government with all relevant documents for consideration on 21.5.2007. The representation of the petitioner was received on 15.5.2007 and it was rejected on 19.5.2007 after due consideration. The parawise comments of the representation was forwarded to the Central Government on 7.6.2007 and a copy of the same was again forwarded on 17.7.2007. The detenu was heard in person by the Advisory Board and on consideration of the report of the Advisory Board as well as the relevant documents, the detention order was confirmed on 21.6.2007.

10. The respondent No. 4, in paragraph No. 6 of the counter-affidavit, stated that the representation of the petitioner dated 16.5.2007 was received without the parawise comments of the detaining authority on 4.6.2007. By the Ministry's wireless message dated 5.6.2007 followed by a reminder letter dated 20.6.2007, requested the State Government to send the parawise comments on the representation. On 25.6.2007, the respondent No. 4 received the parawise comments but it was found to be sketchy and repetitive in nature and thus, requested the State Government vide Ministry's letter dated 27.6.2007 and subsequent reminder wireless message dated 20.7.2007 to furnish a detailed parawise comments on the points/contentions raised by the detenu. On 1.8.2007, the respondent No. 4 received the reply from the State Government vide its letter No. 17(1)/1092/2007-H dated 17.7.2007. On receipt of the reply from the State Government, the matter was exhaustively considered and rejected the representation on 2.8.2007 and the File has received back by the concerned Section on 6.8.2007. Thus there was no delay on the part of the respondent No. 4 in the disposal of the representation of the petitioner.

11. That, on the above backdrop, the point for consideration, in the case at hand, is as follows:

Whether there were sufficient materials before the detaining authority for his subjective satisfaction in passing the impugned detention order, if not, its effect?

12. That, the detention order dated 04.05.2007 runs as follows:

ORDER Imphal, the 4th may, 2007

No. Crill/NSA/No. 14 of 2007. Whereas, a police report has been laid before me that Md. Nasir Khan @ Boy @ Thadoi @ Chandro @Kashorjit @ Nawab-Chesti (33 yrs.) S/o Md. Salamat Ali of Hiyangthang Tarahei Konjin Awang Leikai, P.S. Wangoi, District-Imphal West, Manipur is acting in a manner prejudicial to the maintenance of public order;

Whereas, I, A. Ibocha Singh, District Magistrate, Imphal West, Manipur am

satisfied that his activities are prejudicial to the maintenance of public order u/s 3 of National Security Act, 1980;

Whereas, it is considered necessary to detain Md. Nasir Khan @ Boy @ Thadoi @ Chandra (a) Keshorjit @ Nawab-Chesti (33 yrs.), S/o Md. Salamat Ali of Hiyangthang Tarahei Konjin Awang Leikai, P.S. Wangoi, District-Imphal West, Manipur with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

And whereas, I am satisfied from the police report that Md. Nasir Khan @ Boy @ Thadoi (a) Chandra @ Keshorjit @ Nawab-Chesti (33 yrs.), S/o Md. Salamat Ali of Hiyangthang Tarahei Konjin Awang Leikai, P.S. Wangoi, District- Imphal West, Manipur is likely to be released on bail in the near future.

Now, therefore, I, A. Ibocha 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) dated 1.3.2007 make this order directing that the above said person who is now in police custody be detained u/s 3 of National Security Act, 1980 until further orders.

Given under my Hand and Seal of the Court on this fourth day of May, 2007.

Sd/- (A. Ibocha Singh) District Magistrate, Imphal West.

13. The documents on the basis of which the grounds of detention were made u/s 8 of the National Security Act, 1980 are as follows:

(i) Your statement given before the I.O. on 13.4.2007.

(ii) Statements of Inspector M. Rameshor Singh, OC/Imphal Police Station, SI P. John Singh of CDO/Imphal West, ASI, Kamal Chandra Sarmah of City Police Reserve, Guwahati and C/No. 9801070 P. Lokendro Singh of CDO/Imphal West recorded u/s 161 Cr.P.C. in connection with FIR No. 238 (10) 2006 Imphal P.S. u/s 307/326/427/34 IPC & 3 Expl. Subs. Act.

(iii) Copy of the seizure memo dated 11.4.2007.

(iv) Copy of the arrest memo dated 11.4.2007.

(v) Copy of the prayer dated 12.4.2007.

(vi) Copy of the order dated 12.4.2007 issued by the Hon''ble CJM, Kamrup, Guwahati.

(vii) Copies of the FIR Nos.

(a) FIR No. 104(6)95 SJM PS u/s 121/121A/384/34 IPC 25(1-A)A Act & 13 UA (P) Act.

(b) FIR No. 276 (12) 97 SJM PS u/s 13 UA (P) Act.

(c) FIR No. 163 (10) 2006 SJM PS u/s 307/34 IPC & 25. Act.

(d) FIR No. 195(12) 2006 City PS u/s 400 IPC, 15/20 UA (P) Act & 4 Expl. Subs. Act.

(e) FIR No. 129(9) 2006 City PS u/s 4 Expl. Subs. Act.

(f) FIR No. 238(10) 2006 Imphal P.S. u/s 307/326/427/34 IPC & 3 Expl. subs. Act.

14. That, it may be pointed out that by the representation dated 11.5.2007 addressed to the respondent No. 2, the petitioner specifically prays for furnishing him with the relevant documents of the 6 (six) police cases mentioned above but the relevant documents, except the copies of the FIRs, were not supplied to him.

15. That, from a plain reading of the impugned detention order, it is abundantly clear that the detaining authority formed his satisfaction for passing the impugned order of detention from the police report that the petitioner was likely to be released on bail in near future. We have, carefully, examined the original file produced by the learned Additional Govt. Advocate as well as the documents furnished to the detenu. In this respect, the Hon''ble Apex Court in Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, , observed that if a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In Rajesh Gulati Vs. Govt. of N.C.T. of Delhi and Another, , the Hon''ble Apex Court had also observed that the detention authority''s satisfaction consisted of 2(two) parts-(1) that the appellant was likely to be released on bail and (2) that after he was so released, the appellant would indulge in smuggling activities. In Kamarunnissa and Others Vs. Union of India and another, , the Hon''ble Apex Court discussed exhaustively the factors to be taken into consideration for detaining a person who was already in judicial/police custody in connection with other criminal cases. The Hon''ble Apex Court at paragraph No. 13 observed as follows:

13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher court.

In T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, , the Hon''ble Apex Court in para No. 11 observed that the principle has been well settled and all has to be seen is

whether in the facts and circumstances of the case the tests laid down by this court are satisfied.

16. That, from the above decisions of the Supreme Court, it is clear that (i) in order to sustain an order of detention against the petitioner, the detaining authority should be aware and satisfied that the petitioner was actually in custody; (ii) he must have reason to believe that on the basis of the materials before him the petitioner was likely to be released on bail; and (iii) the petitioner, on being released on bail, would in all probability indulge in pre-judicial activities and it was essential to detain him in order to prevent him from indulging in any pre-judicial activities which may effect to the maintenance of public order.

17. That, in the case at hand, from the materials on record, it can be safely presumed that the detaining authority was quite aware of the fact that the petitioner was in custody at the time of passing the detention order. It is also admitted by the petitioner that he was arrested on 11.04.2007 in connection with the FIR Case No. 238(10) 06 IPS and remanded to the police custody up to 23.4.2007. On 24.4.2007, he was released on bail by the learned Chief Judicial Magistrate, Imphal. It is also admitted in para No. 8 of the representation dated 11.5.2007 that he joined an outlawed organization in 1994 and arrested on 23.6.1995 but after his release on bail, he was compelled to join the organization again. Thereafter, he was again arrested on 14.12.2007 in connection with the FIR Case No. 276 (12) 1997 in SJMPS u/s 13 UA(P) Act. From the above admitted facts, it is also clear that the petitioner, in the earlier instances, indulged in the pre-judicial activities after releasing on bail. These facts were also reflected in the grounds of detention served to the petitioner. The undisputed facts are that after the petitioner has been released on bail in connection with the FIR Case No. 238 (10) 06 IPS, he was formally arrested in connection with the FIR Case No. 153(10)06 SJM PS and remanded to police custody till 30.4.2007. On 30.4.2007, the petitioner was again formally arrested in connection with the FIR Case No. 129(9) 06 City PS and FIR Case No. 195 (12) 06 City PS and remanded to police custody till 5.5.2007. The detention order was passed on 4.5.2007 while the petitioner was in police custody in connection with the said criminal cases. However, nothing has been on record whether the petitioner moved any bail application in connection with the said criminal cases. The contention put forward by the learned Counsel appearing for the respondent No. 2 that the detention of the accused in jail under the general law is for a limited period as provided u/s 167 Cr.P.C. and, therefore, the detaining authority was satisfied that the petitioner was likely to be released on bail in near future appears to be non application of judicial mind and as such the same is not an acceptable one. An accused charged with for non-bailable offence may be released on bail only when the investigating agency failed to submit the charge-sheet within the period prescribed u/s 167 of the Criminal Procedure Code. It is well known and settled principle that the subjective satisfaction of the detaining authority must be based on cogent and sufficient materials on record. The mere dogmatic statement of the detaining authority that the petitioner is likely to be

released on bail in near future is not at all sufficient for passing the detention order, in our considered view. The satisfaction of the detaining authority for passing the detention order cannot be based on mere apprehension. The learned Counsel appearing for the respondent No. 2 further submits that the subjective satisfaction of the detaining authority is not questionable and in support of the above submission, the learned Counsel has placed reliance on a decision of the Hon''ble Apex Court in Ibrahim Nazeer Vs. State of Tamil Nadu and Another, . We are not inclined to accept the above submission of the learned Counsel. In para No. 7 of the said decision, the Hon''ble Apex Court observed as follows:

7. 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 detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with.

18. The ratio laid down in the said case is that the subjective satisfaction of the detaining authority formed basing on the materials placed before him should not, normally, be interfered with. What may be inferred from the said decision is that there should be materials before the detaining authority and his subjective satisfaction should be on the basis of such materials and in such circumstances, the subjective satisfaction of the detaining authority should not be interfered with. In the instant case, as pointed out above, there is no material on record on the basis of which the detaining authority may base his satisfaction that the petitioner was likely to be released on bail in near future. It is not the case that the petitioner applied for bail in connection with the said criminal cases and he was likely to be released on bail either on account of failure to submit charge-sheet by the investigating agency or for want of materials to substantiate the charges levelled against him. Hence, the above case did not support the submission made by the learned Counsel appearing for the respondent No. 2.

19. That, in view of what have been discussed and for the reasons given above, we are constrained to hold that there were no materials on record before the detaining authority for his satisfaction to the effect that the petitioner was likely to be released on bail in near future in connection with the said criminal cases. In the absence of such materials on record, the impugned order of detention is not sustainable. Resultantly, the impugned order of detention dated 4.5.2007 is hereby quashed and the petitioner be set at liberty forthwith unless wanted in connection with other criminal cases.

20. With the above observations and directions, this writ petition is allowed. No costs.