
(2017) 09 MAN CK 0003
In the Manipur High Court
Case No : 5 of 2017

Ningthoujam Yamba Singh

APPELLANT

Vs

The State of Manipur & Ors

RESPONDENT

Date of Decision : 08-09-2017

Acts Referred:

[National Security Act, 1980](#), [Section 3\(2\)](#),
[Section 34](#), [Section 364-A](#) - Power
to make orders detaining certain persons

Citation : (2017) 09 MAN CK 0003

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : A. Suresh, Y. Ashang, S. Rupachandra, K.R. Pamei

Final Decision : Allowed

Judgement

1.] Heard Shri A. Suresh, the learned counsel appearing for the petitioner; Shri Y. Ashang, the learned Additional Government Advocate appearing for the State respondents and Shri S. FR/NFR Rupachandra, the learned ASG assisted by Shri K.R. Pamei, the learned counsels appearing for the Union of India.

2.] The order of detention dated 06-02-2017, passed by the District Magistrate, Bishnupur, by which the detenu has been detained under the provisions of Section 3(2) of the National Security Act, 1980 is under challenge in this writ petition.

3. 1. The grounds on which the said order of detention dated 10-02-2017 was passed, are that the detenu is a resident of Keirao Awang Leikai, P.S. Irilbung, District Imphal East, Manipur and after having passed the HSLC examination in the year 1997 in 2nd Division, the detenu had given up his studies. Thereafter, he was appointed as a Rifleman of Army Supply Corps (ASC) in the month of July, 2002 and was given Tactical training at Gaya, Bihar and after having completed the said training, he was posted at 527 ASC Bn., Udampur (J & K) from April, 2004 to Feb., 2007 and thereafter, he was posted at ASC Centre,

Bangalore-07 Training Wing Bn. from Feb., 2007 till April, 2009. In the meantime i.e., in the year 2007, while he was at home on leave, he thought of earning quick and easy money through extortion from the general public and accordingly, he came into contact with some leaders of the armed underground organisation called, Kangleipak Communist Party-Military Council (hereafter referred to as "the KCP-MC") including Shri Lamyamba Khuman @ L. Mangoljao Singh and started extortion of money from the Government Offices, Private Hospitals etc. located at Imphal in the name of the KCP(MC). On 28-04-2009 at 8:15 a.m. the detenu was arrested by a police team of CDO-Imphal West from Yaiskul Krishna Oil Pump in connection with a case and was remanded to police custody till 02-05-2009. While he was in police custody, he was detained under the NSA vide order dated 02-05-2009 passed by the District Magistrate, Imphal West. However, the said detention order was subsequently revoked pursuant to an advice dated 19-06-2009 given by the Advisory Board and thereafter, on 15-07-2009 he was released on bail. [3.2] After the detenu being released on bail, he went to his place of posting in Bangalore and continued his service till January, 2016 when he was transferred to 557 ASC Bn., Leimakhong, Manipur. Taking advantage of his being posted at Leimakhong, he came home quite often and started contacting the leaders of the KCP (MC) including one Shri Ingo @ Dango of Sugnu and continued to work for the organization under his command including activities like extortion of money, recruitment of new members like Shri S. Daho Singh @ Shantikumar Singh of Tangjeng Ahallup. In order to achieve the objectives of the KCP(MC), the detenu carried out propaganda works by contacting the secretaries of different organisations including Meira Paibis and convinced them to join the struggle for restoration of liberation in the State of Manipur by waging war against the lawfully established Government of India as well as the Government of Manipur. In the month of October, 2016, he recruited some more members including Shri Nameirakpam Ingocha @ Naocha Singh of Ithai Kompu, Md. Junet of Mayang Imphal Bengoon Maning and Shri Kiyam Lalit Singh of Tangjeng Ahallup.

[3.3] In the first week of December, 2016, the detenu, without the knowledge of Shri Ingo @ Dango but in association with Shri S. Daho Singh @ Shantikumar, K. Lalit Singh, Nameirakpam Ingo @ Naocha Singh and Md. Junet hatched a conspiracy for earning a huge amount of money in the name of the KCP (MC) and therefore, he decided to kidnap one Shri Rajesh Thiyam @ Khomei of Pombikhok Awang Leikai on 03-01-2017 for a heavy ransom, for which he had to arrange arms as well as conveyance and accordingly, he purchased two country made pistols from Mr. Papao of Churachandpur and Md. Abdul Hussain @ Japan of Tera Khongshangbi on 20-12-2016 and 02-01-2017 respectively. As per the said plan, he along with Shri N. Ingocha @ Naocha, Md. Junet, Shri S. Daho and Shri K.Lalit kidnapped Shri Rajesh Thiyam for a ransom of Rs. 50,00,000/- (rupees fifty lakhs) and a demand notice thereof was conveyed to his family members over the phone. Shri Rajesh Thiyam was kept confined in a nearby jungle of Sangaikot escorted by Md. Junet, Shri K. Lalit and Shri Ingocha holding

the said country made pistols. The detenu collected a sum of Rs. 4,38,000/-, after a negotiation, from the family members of Shri Rajesh Thiyam on 07-01-2017 at Ningomthongjao, Imphal which was distributed amongst them with the detenu getting a lion's share of Rs. 2,50,000/- and released him thereafter.

[3.4] On 10-01-2017 at about 2:40 p.m. the detenu was arrested from Keirao Awang Leikai in front of community hall by a Police Team of CDO-Imhpal East led by Jem. K. Ibungobi Singh and one mobile phone along with one Airtel SIM was recovered from his possession and the same was seized by observing the prescribed formalities. On the same day at about 6:40 p.m. he was handed over to the OC-Irilibung P.S. with a written report and seized articles and on the strength of the said report, the OC. Irilibung PS registered a regular case under FIR No. 04(01)2017 Irilibung PS u/s 17/20 UA(P) A. Act and the detenu was remanded to police custody till 17-01-2017 and in the meantime, he was formally arrested in connection with the FIR No. 02(01)2017 Kumbi PS u/s 364-A/34 IPC & 25(1-C)A. Act and was remanded to police custody till 23-01-2017. While in custody, the detenu was detained under the provisions of the NSA vide detention order dated 06-02-2017 passed by the District Magistrate, Bishnupur, Manipur.

4. Being aggrieved by the detention order passed by the District Magistrate, the instant writ petition has been filed by the detenu on the inter-alia grounds that the detention order has been passed mechanically without any material and in other words, the detention order has been passed without application of mind and that the sponsoring authority has not placed before the detaining authority sufficient materials on the basis of which he could arrive at his subjective satisfaction that the detenu was likely to be released on bail. The stand of the District Magistrate as reflected in his affidavit, is that the detention order was passed by him on the basis of materials and documents furnished by the Superintendent of Police, Bishnupur. It has also been stated in his affidavit that after applying his judicious mind and after having arrived at his subjective satisfaction based on the said materials, he passed the detention order to the effect that there was a high possibility of releasing the detenu on bail in the near future and in that event, he was likely to continue to indulge in activities prejudicial to the security of the State and maintenance of public order as well. An affidavit-in-opposition has been filed on behalf of the Union of India wherein it has been stated that since no allegation is made against it, there is no need of giving any reply thereto.

5. In exercise of power conferred under the provisions of the National Security Act, 1980, the order of detention has been passed by the detaining authority on the basis of his subjective satisfaction. It is well settled that the court cannot go into the correctness of the decision of the detaining authority but can look into the decision-making process. In other words, the court can scrutinise the materials relied upon by the detaining authority in coming to his conclusion.

While examining the correctness of the decision-making process, two issues are required to be considered by the court - one, whether there are materials on which reliance was placed by the detaining authority in passing the detention order and two, the detaining authority was justified in arriving at a finding based on the said materials that the detenu be detained without any trial. Since a person can be detained on suspicion, the procedural safeguards are to be strictly observed in order to prevent misuse of the law of preventive detention. It is also well settled that a person while in custody can also be detained under the provisions of the National Security Act, 1980. But the principle laid down by the Hon"ble Supreme Court in this regard is no longer *res integra*. In *Union of India Vs. Paul Manickam*, reported in (2003) 8 SCC 342, the Hon"ble Supreme Court recorded the requirements to be made by the detaining authority while passing the order of detention when the detenu is in custody, the relevant para of which is reproduced herein below: "14. So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. 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. (See *N. Meera Rani v. Govt. of T.N. and Dharmendra Suganchand Chelawat v. Union of India*.) The point was gone into detail in *Kamarunnissa v. Union of India*. 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.

6. Keeping in mind the aforesaid principle, this court proposes to examine as to whether the procedural safeguards have been observed by the detaining authority while passing the order of detention or not. In the order of detention, it is stated that the District Magistrate, after examining the police report with supporting documents, was satisfied that the detenu had carried out prejudicial activities in the proximate past and was likely to continue to indulge in such activities and was further satisfied that the detenu was likely to be released on bail in the near future unless the provisions of Section 3. (2) of the National Security Act, 1980 were invoked by him. The satisfaction of the detaining authority is based on the materials furnished by the Superintending Officer vide its letter dated 01-02-2017 and on perusal thereof, it is clearly seen that no material was placed before the detaining authority by the police to show that the detenu was likely to be released on bail nor was a copy of the bail application supplied by the police. Although the detenu himself has stated in his petition that he has moved an application for bail, the details thereof have not been placed on record as to whether the same was filed prior to the passing of the order of detention or not and what was the outcome thereof. But the fact remains that the detaining authority while passing the order of detention was not aware of the fact that the detenu had filed an application for bail. Therefore, the detention order which was not based on materials, is not sustainable in law and is liable to be quashed and set aside.

7. Moreover, in an identical case which arose from the State of Manipur, the Hon"ble Supreme Court had the occasion to go into the materials which are similar to that of the present case and are relied upon by the detaining authority, to determine the validity of the order of detention. The Hon"ble Supreme Court, after the perusal of the grounds of detention and the documents relied upon by the detaining authority, came to the conclusion that they were not sufficient to form the subjective satisfaction by the detaining authority. The said decision has been rendered by the Hon"ble Supreme Court in Pabam Ningol Mikoi Devi Vs. State of Manipur & ors., reported in (2010) 9 SCC 618 and para 27 thereof wherein the materials have been enumerated, is as under:- "27. In light of these decisions, to determine the validity of the detention order, it is necessary to go into the materials relied on by the detaining authority in passing the detention order. The documents relied upon by the District Magistrate, West Imphal, as mentioned in the grounds of detention dated 28-9-2009 are:

(a) The statement of the detenu given before the IO on 18-9-2009.

(b) Statement of SI T. Khogen Singh of CDO/IW recorded under Section 161 CrPC in connection with FIR No. 183 (9) 09 SJM-PS under Sections 17/20 of the Unlawful Activities (Prevention) Act, 1967.

(c) Statement of Rfm. No. 15007038 L. Rajen Singh of CDO/IW recorded under Section 161 CrPC in connection with FIR No. 183 (9) 09 SJM-PS under Sections

17/20 of the Unlawful Activities (Prevention) Act, 1967.

(d) Statement of Constable No. 0601193 S. Khomei Singh recorded under Section 161 CrPC in connection with FIR No. 183 (9) 09 SJM-PS under Sections 17/20 of the Unlawful Activities (Prevention) Act, 1967.

(e) Copy of arrest memo dated 17-9-2009.

(f) Copy of seizure memo dated 17-9-2009.

(g) Copy of Manipur local daily The Poknapham dated 8-3-1999.

(h) Copy of Notification under No. S.O. 1922 (E) dated 13-11-2007.

After examining the aforesaid materials, the Hon"ble Supreme Court held:-

"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.

29. Keeping in view these well-settled legal principles, we have perused the grounds of detention and the documents relied on by the detaining authority while passing the order of detention. In our considered view, the grounds on which the detention order is passed has no probative value and were extraneous to the scope, purpose and the object of the National Security Act. This Court in Mohd. Yousuf Rather v. State of J&K has observed that under Article 22(5), a detenu has two rights

(1) To be informed, as soon as may be, of the grounds on which his detention is based and

(2) To be afforded the earliest opportunity of making a representation against his detention.

The inclusion of an irrelevant or non-existent ground among other relevant grounds is an infringement of the first right and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second right. No distinction can be made between introductory facts, background facts and "grounds" as such; if the actual allegations were vague and irrelevant, detention would be rendered invalid. 30. Insofar as the documents on which reliance is placed, in our opinion, none of these documents provide any reasonable basis for passing the detention order. The primary reliance has been on the accused"s own statement made to an investigating officer. This cannot be said to be sufficient to form the subjective satisfaction of the detaining authority. Statements under Section 161, Code of Criminal Procedure, 1973 (hereinafter CrPC) cannot be taken as sufficient grounds in the absence of any supportive or corroborating grounds. Section 161 statements are not considered substantive

evidence, but can only be used to contradict the witness in the course of a trial. The same is clear from the wording of Section 162(1) CrPC and has been so held time and again by this Court.

8. As seen hereinabove, the materials relied by the detaining authority in the both the cases, are almost identical and since the Hon'ble Supreme Court has already held that such materials are not sufficient to form the subjective satisfaction, this court is bound by it and therefore, the instant writ petition is allowed and consequently, the detention order dated 06-02-2017 is quashed and set aside with the direction that the detenu, Shri Ningthoujam Yamba Singh, S/o, Shri N. Deven Singh of Keirao Awang Leikai, P.S Irilbung, Imphal East, Manipur shall be released forthwith, in case he is not required by the police in connection with any other case.

9. Before parting from the present case, this court deems it necessary and appropriate to make some observations as regards the insensitiveness of the Army Supply Corps or their carelessness as the case may be, so far as the detenu is concerned. As seen from the grounds of detention, the detenu was arrested on 28-04-2009 in connection with an FIR registered by the Imphal Police Station and while in custody, he was detained vide detention order dated 02-05-2009 of the detaining authority which was later revoked pursuant to the advice given by the Advisory Board on 19-06-2009. Despite the fact that the detenu was in custody for about 50 days in connection with the aforesaid case, he was allowed to re-join his service in Bangalore, probably, without any proceeding being initiated against him in accordance with law, may be, for the reason that the Army Supply Corps, Bangalore was unaware of it or for any other reason best known to them. It is unfortunate that such thing has happened without any proper check. A copy of this judgment and order may be sent to the Army Supply Corps, Leimakhong for their perusal and necessary action, if any. (Justice Kh.Nobin Singh)

(ACTING CJ)

10. I have gone through the judgment written by my esteem Brother Hon'ble, Mr. Justice Kh. Nobin Singh and I entirely agree with the observations and conclusion arrived at. However, I would like to add on certain aspects of the case which have caused serious concern to us.

11. It is a case where this Court had quashed the detention order passed under the National Security Act, 1980 primarily on the ground that there was no sufficient material before the detaining authority to arrive at the conclusion that the detenu is likely to be released on bail in the near future. In the present case, the detaining authority while passing the detention order was not aware of the fact that the detenu had filed an application for bail and no material was placed before the detaining authority by the police to show that the detenu was likely to be released on bail in the near future. Though the detenu had moved the application for bail, the details there of had not been placed on record as to

whether the same was filed prior to the passing of the detention order and what was the outcome thereof as mentioned in para No. 6 of the judgment authored by my Brother.

12. This is not the first occasion where this Court had dealt with such habeas corpus petitions challenging detention orders passed under the National Security Act, 1980 based on non application of mind as regards the satisfaction of the detaining authority that the detenu is likely to be released on bail in near future. In the past, on similar ground, the detention orders had been set aside and the Court directed release of the detenues. In many petitions, similar issue was raised by the detenu that there was no material before the detaining authority to arrive at the satisfaction that the detenu who was already in custody is likely to be released on bail in the near future. Some of such petitions where the detention orders were set aside on the aforesaid ground are listed here below (the list is not exhaustive) :

SL. NO CASE NO. Party name Date of Judgment and Order

- 1 WP(CRL) 1/2013 SANATOMBI BIBI VS STATE OF MANIPUR 13/3/2013
- 2 WP(CRL) 2/2013 N(N) M(O) GAMBHINI DEVI VS DM, THOUBAL MANIPUR AND 3 OTHERS 16/4/2013
- 3 WP(CRL) 3/2013 TH.(O) MEMCHA DEVI VS STATE OF MANIPUR AND 2 OTHERS 2/5/2013
- 4 WP(CRL) 4/2013 CHONGSEI BAITE VS STATE OF MANIPUR AND 2 ORS 2/5/2013
- 5 WP(CRL) 5/2013 L. BALA DEVI VS STATE OF MANIPUR 25/4/2013
- 6 WP(CRL) 6/2013 S. KAILUN VAIPHEI VS STATE OF MANIPUR AND ORS 03/12/2013
- 7 WP(CRL) 7/2013 M(N) N(O) MEMACHA DEVI @OMITA VS STATE OF MANIPUR AND 3 ORS 05/08/2013
- 8 WP(CRL) 8/2013 RK.MARY VS STATE OF MANIPUR AND ANOTHER 29/04/2013
- 9 WP(CRL) 9/2013 Y.RONIBALA DEVI VS STATE OF MANIPUR AND ANOTHER 21/05/2013
- 10 WP(CRL) 10/2013 E. MANGIJAO SINGH VS STATE OF MANIPUR AND ANOTHER 24/06/2013
- 11 WP(CRL) 11/2013 Md. ABDUL RAJAK KHAN VS DM.THOUNBAL AND 3 OTHERS 11/07/2013
- 12 WP(CRL) 12/2013 S.TOMBA SINGH VS DM.THOUNBAL AND 3 OTHERS 11/07/2013
- 13 WP(CRL) 13/2013 AIHOME REMOI @ AIHOME INPUI VS DM. THOUNBAL AND 3

OTHERS 24/09/2013

14 WP(CRL) 14/2013 JONATHAN PHIAMPHU ZOU VS DM. THOUBAL AND 3 OTHERS 24/09/2013

15 WP(CRL) 15/2013 SH.BIJEN SHARMA VS STATE OF MANIPUR AND 2 OTHERS 12/11/2013

16 WP(CRL) 16/2013 MOIROUSANG GUTE VS DM CC PUR AND 2 ORS 24/09/2013

17 WP(CRL) 17/2013 NENGMUAN KHUPTONG VS DM CC PUR AND 2 ORS 24/09/2013

18 WP(CRL) 18/2013 TH. SAMBI SINGH@ KHAMBA VS DM THOUBAL,MANIPUR AND 3 ORS 24/09/2013

19 WP(CRL) 19/2013 TUANKHANSUAN VS UNION OF INDIA AND 2 ORS 12/11/2013

20 WP(CRL)20 /2013 CHINNUAMKIM VS UNION OF INDIA AND 2 ORS 12/11/2013

21 WP(CRL)21 /2013 MRS. BETTY CHINGSUANKIM VS UNION OF INDIA AND ORS 12/11/2013

22 WP(CRL)23 /2013 PH. MEGHACHANDRA MEITEI VS DM IMPHAL WEST MANIPUR AND 2 ORS 17/09/2013

23 WP(CRL)27 /2013 N.ROBI SINGH VS DM IMPHAL WEST AND 2 ORS 05/12/2013

24 WP(CRL)28 /2013 MD.ABDULA CHAOBA VS THE STATE OF MANIPUR AND ORS 24/07/2013

25 WP(CRL)30/2013 Y.BASIR VS DM THOUBAL,MANIPUR AND 2 ORS 05/12/2013

26 WP(CRL)31/2013 M (O) SANDHAYA LEIMA VS STATE OF MANIPUR AND 2 ORS 05/12/2013

27 WP(CrI) 25/2014 TH (O) AKASHINI DEVI v. STATE OF MANIPUR AND 4 ORS. 27/09/2016

28 WP(CrI)27/2014 L.BUSHAN SINGH v.DM, IMPHAL WEST AND 2 ORS 14/10/2014

29 WP(CrI)15/2015 Md. NASIR HUSSAIN v. STATE OF MANIPUR AND 2 ORS 18/04/2016

30 WP(CrI)16/2015 Md.YAHIYA KHAN v. STATE OF MANIPUR AND 2 ORS 18/04/2016

31 WP(CrI)17/2015 SHANTIKUMAR@SHANTI v. DISTRICT MAGISTRATE AND 2

ORS 01/03/2016

32 WP(CrI)18/2015 LANGHU TANGLUN ANAL v. STATE OF MANIPUR AND 6 ORS
25/01/2016

33 WP(CrI)19/2015 I.RAKESH SINGH v. DM,IMPHAL WEST AND 2 ORS
05/02/2016

34 WP(CrI)20/2015 MD.ILLIYASH KHAN@ ILLIYASH v. STATE OF MANIPUR AND 2
ORS 31/03/2016

3535 WP(CrI)21/2015 AJIANA GANGMEI v. STATE OF MANIPUR AND 2 ORS
18/04/2016

36 WP(CrI)23/2015 MD.FIROZ KHAN v.DM and 3 ORS 21/04/2016

37 WP(CrI)24/2015 NGAMSINLUNG PANMEI v. DISTRICT MAGISTRATE AND 3
ORS 18/04/2016

38 WP(CrI)25/2015 N.MENAOBI DEVI V. STATE OF MANIPUR AND 2 ORS
30/03/2016

39 WP(CrI)01/2016 KH.TOMBA SINGH v. DISTRICT MAGISTRATE AND 3 ORS
25/04/2016

13. It may be noted that most of the decisions for quashing the detention orders were based on the decisions of the Hon'ble Supreme Court rendered in Union of India -vs- Paul Manickam, (2003) 8 SCC 342; 2004 SCC (Cril.) 239. In the case of Paul Manickam (supra), it has been held that "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 Kamarunnisasa 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 released on bail."

The aforesaid decision was followed in *Rekha -vs- State of Tamil Nadu & Ors.* reported in (2011) 4 SCC 260, in which the Hon"ble Supreme Court held that,

"26. It was held in *Union of India V. Paula Manickam* that if the detaining authority is aware of the fact that the detenu is in custody and the detaining authority is reasonably satisfied with cogent material that there is likelihood of his release and in view of his antecedent activities he must be detained to prevent him from indulging in such prejudicial activities, the detention order can validly be made.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pendig. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is ending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

The said principle was followed in the decision in *Huidrom Konungjao -vs- State of Manipur & Ors.*, (2012) 7 SCC 181.

In the case of *Huidrom Konungjao* (supra), it has been held that if such detention order is challenged, detaining authority ought to satisfy the Court the following facts :

(i) the detaining 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 released on bail and further on being released, he would probably indulge in activities which are prejudicial to the public order.

14. Accordingly, this Court, having observed that the detaining authority and the

other concerned authorities have not been properly applying the law as laid down in the aforesaid decisions of the Hon''ble Supreme Court, in W.P.(CRIL). No. 37 of 2013 which was disposed of on 01.4.2014, made the following observations and issued the direction as follows: "(6) We are, therefore, of the view that in absence of any bail application on behalf of the petitioner pending before the Court for being released on bail in the criminal case in which he had been taken to police custody, there could not be any apprehension in the mind of the District Magistrate that the petitioner may be released on bail merely because in similar cases some accused persons had been released on bail earlier. We are, therefore, further of the view that in absence of any bail application on behalf of the petitioner pending consideration by the Court, the order of detention passed by the District Magistrate, becomes invalid.

(7) Before parting with the case, we should like to observe that similar cases had come up for consideration before us earlier and several judgments have been delivered quashing the detention solely on the above ground. The District Magistrate, while passing such orders of detention, are not taking note of the judgment of the Supreme Court rendered in the case of Rekha Vs. State of Tamil Nadu & Ors. (supra) as well as the judgments passed by this Court in several cases setting aside such orders of detention solely on the above ground. We, therefore, direct that the Chief Secretary, Government of Manipur shall circulate a copy of the judgment delivered in the case of Rekha Vs. State of Tamil Nadu & Ors. (supra) quoted above, along with a copy of this judgment to all the District Magistrates for their perusal and guidance in future. Copy of this judgment and copy of the judgment in the case of Rekha (supra) be communicated to the Chief Secretary forthwith."

(Emphasis is added)

15. Subsequently also, when this Court noted that a large number of detention orders passed under the National Security Act, 1980 had been quashed on the similar ground and felt that the law laid down by the Hon''ble Supreme Court as referred to above were not being adhered to by the detaining authorities, this Court again made the following observation and direction in W.P.(CRIL) No. 37 of 2016 which was disposed of on 03.10.2016:- "[14]. Thus, we find that subjective satisfaction of the detaining authority of likelihood of the accused being released on bail is not based on any factual aspect and thereby order of detention being bad, is hereby quashed. Consequently, the detenu Wahengbam Ramananda @ Luwangngamba @ Rousow s/o (L) W. Biren Singh of Kontha Ahallup Makha Leikai, PS Heingang, is hereby directed to be released forthwith, if not wanted in connection with any other case.

[15] Before parting with this order, it be recorded that earlier when we did find in another case that order of detention is being passed without having regard to the provisions of the Act and also of several decisions rendered by the Hon''ble Supreme Court indicating therein the manner in which the order of detention be passed, we, after discussing the issue in details in context of different decisions

of the Supreme Court, passed order of communicating the said order to the District Magistrates and Superintendents of Police for their guidelines to be observed while passing the order of detention, we are constrained to say that it is being not adhered to by the detaining authority and therefore the matter needs to be brought to the notice of the Chief Secretary for doing needful in the matter. Accordingly, copy of this order be communicated to the Chief Secretary, Govt. of Manipur.

Thus, this application stands allowed."

Similar directions were issued in W.P.(Crl) No. 35 of 2016 and W.P.(Crl) No. 36 of 2016.

16. However, we are constrained to say that in spite of such observations and directions issued by this Court on earlier occasions as mentioned above, the detaining authorities and other concerned authorities continue to issue detention orders with similar deficiencies indicating that they have not properly applied their mind in violation of the law laid down by the Hon''ble Supreme Court as referred to above, resulting in quashing of the detention orders by the Court.

17. It may be noted that most of the persons who have been detained under the National Security Act in Manipur have been accused of being members of or associated with various outlawed organizations and of having committed serious heinous crimes. Accordingly, while allowing this petition by setting aside the impugned detention order dated 06.02.2017, we direct that notice be issued to the Chief Secretary, Government of Manipur; Director General of Police, Manipur; Commissioner/Secretary (Home), Government of Manipur to explain before this Court as to what steps they had taken earlier in compliance of the earlier directions issued by this Court in W.P.(Crl) No. 37 of 2013 as well as in W.P.(Crl) No. 37 of 2016 by filing their respective affidavits before this Court within a period of one month from today with the copies of relevant instructions issued by the authorities in this regard, if any. We hereby reiterate that the copies of the judgments delivered in (1) Union of India -vs- Paul Manickam, (2003) 8 SCC 342; 2004 SCC (Crl.) 239, (2) Rekha -vs- State of Tamil Nadu & Ors. (2011) 4 SCC 260 and (3) Huidrom Konungjao -vs- State of Manipur & Ors. (2012) 7 SCC 181 be circulated to all the Superintendents of Police, Deputy Commissioner/ District Magistrates of all the Districts for strict compliance of the law laid down in the aforesaid judgments and if necessary, the Chief Secretary of the State may organize training programmes of the Deputy Commissioners and Superintendents of Police through the State Academy of Training (SAT) or any such body as it may be deemed fit.

It may be also noted that this Court may be constrained to pass appropriate orders in future against those persons responsible for issuing defective detention orders by way of imposing exemplary costs who continue to issue such defective orders as these defective orders may amount to illegally detaining persons and violating their Fundamental Right as guaranteed under Article 21 of the

Constitution.

18. Apart from the aforesaid aspect, this Court has also observed with concern that in this case, the detenu was appointed as a Rifleman in the Army Supply Corps (ASC) and transferred at 557 ASC Bn., Leimakhong, Manipur. The records in this petition show that after he joined as a Rifleman in the ASC in 2002 it has been alleged that he came in contact with certain leaders of an outlawed organization namely, Kangleipak Communist Party (Military Council) [KCP (MC)] in 2007 and started indulging in extortion of money from Government Offices, Private Hospitals located in Imphal in the name of KCP (MC) and was arrested on 28.04.2009 by police and thereafter, was detained under the National Security Act, 1980 vide order dated 02.05.2009. The said detention order was, however, revoked on the recommendation of the Advisory Authority vide order dated 19.06.2009 and was released on bail vide order dated 15.07.2009. After release of the petitioner on bail on 15.07.2009, he went to his place of posting in Bangalore and continued his service till January, 2016 when he was transferred to 557 ASC Bn. Leimakhong, Manipur and thereafter, continued to remain in contact with the members of the KCP (MC) and also continued to indulge in various illegal criminal activities as quoted in the grounds of detention and ultimately he was arrested on 10.01.2017 from Keirao Awang Leikai in front of community hall by a Police Team and was handed over to the police on the basis of which a regular case under FIR No. 04(01)2017 Irilbung PS u/s 17/20 UA(P) A. Act was registered. He was also arrested in connection with FIR No. 02(01)2017 Kumbi PS u/s 364-A/34 IPC & 25(1-C) A. Act and remained in police custody. Thereafter, he was detained under the National Security Act, 1980 and the detention order which has been challenged in this petition which this Court has set aside for the reasons already stated above. This Court is in no way suggesting that the petitioner is guilty of the illegal activities alleged against him, as these are charges which have to be proved in the Court of law after following the due process of law. Nevertheless, these are serious charges of which the employer must be cognizant of and accordingly take appropriate actions as required.

19. In this case, the employer of the petitioner is the Indian Army and against the said employee various serious charges have been leveled. As observed earlier, while it may be noted that the charges are yet to be proved, nevertheless, it becomes incumbent upon the employer to look into these allegations. We, accordingly, direct the Commanding Officer of the 557 ASC Bn., of which, the petitioner is an employee, to file an affidavit before this Court to explain as to whether army authorities were aware of the various allegations made against the petitioner on earlier occasions and of his arrest in 2009 and his release on bail and subsequent arrest in 2017 and his detentions under the National Security Act, 1980 and if so, what actions had been taken in this regard by the army authorities.

20. Accordingly, we direct the Registry of this Court to prepare a Note which will

be taken up suo-motu by this Court after closer of this petition in which the petitioner namely, Shri Ningthoujam Yamba Singh, the State of Manipur represented by the Chief Secretary, Government of Manipur, the Commissioner/Secretary (Home), the Director General of Police, Manipur, the Commanding Officer of 557 ASC Bn. Leimakhong, Manipur and the Union of India through Secretary (Defence), Government of India shall be arrayed as respondents to be taken up as a separate petition which is to be registered as a Suo-Motu Taken Up Matter and notice be served to them through their respective counsel by the Registry. Let the aforesaid respondents be directed to file their respective affidavits as indicated above within a period of one month from today. The said matter to be taken up on Suo-Motu will be listed after a month on 09.10.2017 after registering the same as Suo-Motu Taken Up Matter as directed above.

A copy of this order be placed on record in the aforesaid Suo-Motu Taken Up Matter.

21. The present petition, W.P.(Crl) No. 5 of 2017, however, stands closed as allowed by setting aside the impugned detention order dated 06.02.2017 and the petitioner, Shri Ningthoujam Yamba Singh shall be released immediately, if not required to be detained in connection with any other case.