

(2015) 04 MAN CK 0006

In the Manipur High Court

Case No : Writ Petition (Cril.) No. 42 of 2014

Nongmaithem (O) Romi Devi

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Arms Act, 1959 — Section 25(1-C)
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 302, 307, 34
Unlawful Activities (Prevention) Act, 1967 — Section 17, 20

Citation : (2015) 2 GLT 411

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J.; Kh. Nobin Singh, J.

Bench : Division Bench

Advocate : Serto T. Kom, for the Appellant; L. Monomala, Govt. Advocate and S. Rupachandra, A.S.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.—Heard Shri S. Serto T. Kom, learned counsel appearing for the petitioner and Ms. L. Monomala, learned Govt. Advocate appearing for the State respondents as well as Shri S. Rupachandra, learned ASG appearing for the Union of India.

2. The present writ petition has been filed by the petitioner challenging the detention order dated 16-06-2014, issued by the District Magistrate, detaining her husband under Section 3(2) of the National Security Act, 1980.

3. In the grounds of detention, it is alleged that the petitioner's husband was born and brought up at Wangoo Sabal Mamang Leikai, Bishnupur District. As he failed in his class - X examination in the year 2011, he gave up his further studies. In the month of March, 2012, the petitioner's husband joined the banned organisation namely, Peoples' Revolutionary Party of Kangleipak, Progressive faction (PREPAK - Pro) as a member through Shri Sagolshem Ibomcha Singh @ Rakesh @ Thawailemba of Kakwa Laishram Selungba Leikai,

an important leader of PREPAK - Pro and started working in the Finance section of the said banned organisation. In the middle part of 2013, Shri S. Ibomcha Singh @ Rakesh directed the petitioner's husband to extort money from the general public, government employees, businessmen, contractors, etc. located at Bishnupur District by delivering demand letters and for that purpose, he issued one 9 mm Pistol made in Italy with 2 rounds to the petitioner's husband. Accordingly, the petitioner's husband started extorting money from the general public, government employees, businessmen, contractors, etc. by delivering demand letters and the extorted money was handed over to Shri S. Ibomcha Singh. Thereafter, the petitioner's husband started delivering demand letters to the contractors located at Wangoo also and on one occasion, the petitioner's husband fired 2 rounds from the said 9 mm Pistol towards the house of Shri Chaoba Singh, PRO of Shri S. Bira Singh, Hon'ble MLA of Kumbi Assembly Constituency on 18-05-2014 at 11:00 p.m. for ignoring the payment of the demand money for which an FIR No. 5(5)2014 KUB-PS u/s. 307/34 IPC and 25(1-C)A. Act was registered.

4. On 01-06-2014 at 07:45 p.m., the petitioner's husband was arrested by a Police team of CDO/BPR led by S.I.A. Premjit Singh from his house and one 9 mm Pistol B/No. 111 made in Italy with magazine and one Nokia mobile hand set with SIM No. 9862477540 were recovered from his possession and seized by observing necessary formalities. He was handed over to O.C - Bishnupur - P.S. with a written report and seized articles. On the strength of the said report, the O.C- BPR - P.S. registered a regular case under FIR No. 39(6)2014 BPR-PS u/s. 20/17 UA (P)A. Act and 25(1-C)A. Act and commenced investigation. The petitioner's husband was formally arrested on 09-06-2014 in connection with FIR No. 5(5)2014 KUB-PS u/s. 307/34 IPC and 25(1-C)A. Act and remanded to Police custody till 13-06-2014. While in judicial custody, the impugned order of detention was passed on 16-06-2014.

5. Being aggrieved by the said detention order, the present writ petition has been filed by the petitioner on various grounds. However, during the course of hearing, the counsel appearing for the petitioner has confined his argument only on one ground that the detaining authority has failed to mention in the detention order the material or materials based on which he has drawn his subjective satisfaction that the petitioner is likely to be released on bail. It has been submitted by the learned counsel appearing for the petitioner that the case of the petitioner is squarely covered by the decision rendered by the Hon'ble Supreme Court in Huidrom Konungjao Singh Vs. State of Manipur and Others, .

6. The writ petition is contested by the State of Manipur, respondent No. 2 by filing an affidavit-in-opposition wherein it is stated that on the basis of the police report and after due consideration of the relevant documents and materials furnished by the S.P., Bishnupur, the District Magistrate, Bishnupur being satisfied that the petitioner's husband was acting in the manner prejudicial to the maintenance of the public order, has passed the detention order dated

16-06-2014 under the provisions of the National Security Act. It is further stated that the State Government after considering the grounds of detention has approved the detention of the petitioner's husband vide order dated 25-06-2014 and has confirmed it vide order dated 28-08-2014 in consonance with the opinion expressed by the Advisory Board. The Union of India has filed an affidavit wherein it is stated that the Union Home Secretary after duly considering the order of detention, grounds for the same and the representation of the petitioner's husband, rejected the representation dated 13-08-2014 and accordingly, a wireless message dated 19-08-2014 was sent to the Secretary (Home), Government of Manipur and the petitioner's husband informing that representation of petitioner's husband was considered and rejected by the Central Government.

7. Whether a person in jail can be detained under detention law has been settled by the Hon'ble Supreme Court. In Dharmendra Suganchand Chelawat and another Vs. Union of India and others, , the Hon'ble Supreme Court after reconsidering its earlier judgments came to the conclusion that-

"21. The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities." In Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another, , this court while dealing with the issue held that -

"7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused....

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the

normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail.... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

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 pending". 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 pending, since most courts normally grant bail on this ground."

The law laid down by the Hon"ble Supreme Court in the above cases, has been reiterated in Huidrom Konungjao Singh Vs. State of Manipur and Others, of which is as under:

"9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts:

(1) The authority was fully aware of the fact that the detenu was actually in custody.

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

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated. The present case requires to be examined in the light of the aforesaid settled legal proposition."

8. There is some force in the submission of the learned counsel appearing for the petitioner that the decision rendered by the Hon"ble Supreme Court in Huidrom Konungjao's case (Supra) would apply to the facts of the present case. In Huidrom Konungjao's case, the detenu was arrested on 19-06-2011 by Imphal Police under Section 302 IPC read with Section 25(1-C) of the Arms Act. The District Magistrate, Imphal West passed the detention order dated 30-06-2011 under the provisions of National Security Act on various grounds with an apprehension that as in similar case, the accused involved therein had been enlarged on bail, the detenu in this case would also be released on bail and he would indulge in activities prejudicial to public order. The Hon"ble Supreme Court

held -

"15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of the Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eye of law." 9. Coming to the facts of the present case, the petitioner's husband was arrested on 01-06-2014 and while in judicial custody, the District Magistrate, Bishnupur passed the detention order dated 16-06-2014 after allegedly satisfying that the activities carried by the petitioner's husband was prejudicial to the maintenance of public order and that he was likely to be released on bail in near future as bails had been granted in similar cases by the criminal courts. But admittedly the petitioner's husband had not filed any application for bail and the bails granted in some cases had nothing to do with the FIR case under which the petitioner's husband was arrested. From the grounds of detention itself, it is evident that the bail granted in favour of Shri Ningthoujam Angangtomba Singh was in respect of a case under FIR No. 56(6)2011 BPR PS u/s. 20 UA(P)A. Act and it was not a case of a co-accused being released on bail. It is clear that there was no material before the District Magistrate to come to his subjective satisfaction that the petitioner's husband was likely to be released on bail and therefore, the detention order is liable to be set aside.

10. We are therefore of the view that the decision rendered by the Hon"ble Supreme Court in Huidrom Konungjao's case would apply to the facts of the present case. Accordingly, we allow the writ petition and consequently, set aside the order of detention dated 16-06-2014 and direct that the petitioner's husband namely Nongmaithem Bocha Singh be set at liberty forthwith unless his detention is required in any other case.