
(1995) 08 GAU CK 0035

In the Gauhati High Court

Case No : Civil Rule (HC) Nos. 29 and 31 of 1995

Oinam David Singh ; Ningthoujam Loken Singh

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 21, 226, 226

Citation : (1996) 1 GLJ 537

Hon'ble Judges : J.N.Sarma, J and P.K.Ghosh, J

Bench : Division Bench

**Advocate : T.Nandakumar Singh , R.S.Reisang , N.Ibotombi Singh, Advocates
appearing for Parties**

Judgement

J.N. Sarma, J.—In both these applications, common questions of law and facts are involved and as such they are taken up for disposal together.

2. In CR (HC) No.29 of 1995, the application has been filed by one Sri Oinam David Singh challenging the legality and validity of the order dated 3.2.95 in Criminal NSA No.4/94 issued by the District Magistrate, Imphal. This order was passed under section 3, subsection (2) and (3) of the National Security Act. The order of detention was approved by the State Government under section 3 (4) of the Act. Thereafter, the order was approved by the Advisory Board on 4th March, 1995 and the same was accepted by the Government on 8th March, 1995. The order of detention and the grounds of detention are Annexure A2 and A3 respectively. They are quoted below: (not quoted: Editor)

3. In CR (HC) No.31 of 1995, the person detained is Shri Ningthoujam Loken Singh. He was detained under the Act in Criminal NSA No. 10/95 vide order dated 30th March, 1995. The order Was approved by the Governor under section 3 (4) of the Act. A representation was filed and that was rejected on 24.4.95. In this case also the detention order was approved by the Advisory Board vide order dated 19.4.95 and the Govt. passed the necessary order on 24.4.95. The detention order and the grounds are at Annexure A2 and A3 respectively. They

are quoted below: (not quoted : Editor)

4. We have heard Sri RS Reisang, learned Advocate for the petitioner Sri Oinam David Singh in CR (HC) No.29 of 1995 and Shri T. Nandakumar Singh, learned Advocate for the petitioner Shri N.Loken Singh, petitioner in CR (HC) No.31 of 1995 and Shri Jagat Chandra Singh, learned Advocate for the respondent Nos.1, 2 and 3 and Sri N. Ibotombi Singh, learned Advocate for the Union of India. An affidavit in opposition has been filed on behalf of the respondents and the record also was produced at the time of hearing.

5. In CR (HC) No.29 of 1995, the learned Advocate for the petitioner raises only one question i.e. that earlier there was a criminal case as against the petitioner and he was arrested on 26.12.93 at about 2 PM from Kwakeithel Thounaojam and he was in police custody for a period of 24 days in connection with the FIR Case No.313/(12)/93 LPS under section 121/121A IPC, 25 (IB) of the Arms Act and under other provisions. Ultimately, the petitioner was released on bail on 2.2.95 and that order which is Annexure A1 to the writ application is quoted below: (not quoted : Editor)

6. That soon after the petitioner was released on bail, he was rearrested by the police from the jail premises and on the next day on 3.2.95, the impugned order of detention was passed. It is contended that his bail order was not considered by the authority at the time of passing the order of detention is to be quashed for non application of mind.

7. This question regarding passing of the order of detention came up for consideration before the Apex Court in a number of cases (i) AIR 1964 SC 334, Rameswar Shaw vs. Chief Magistrate, Burdawan; (ii) AIR 1974 SC 2149, Kartik Chandra Guha vs. State of West Bengal; (iii) AIR 1975 SC 90, Dr. Ramkrishna Rawat vs. District Magistrate, Jabalpur; (iv) AIR 1982 SC 1543, Mr. Saryanarayana vs. State of Andhra Pradesh; (v) AIR 1986 SC 2177 Surjapal Sahu vs. State of Madhya Pradesh; and (vi) AIR 1987 SC 2098, Punamrata vs. ML Wadan). The following principle emerges from these cases:

(i) As an abstract proposition of law, there may not be any doubt that the provisions of the Act does not preclude the authority from passing an order of detention against a person while he is in detention or in jail or in bail, but the relevant facts in connection with making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed as against such person.

(ii) The authority i.e. the District Magistrate on an information received by him, if it minks that the petitioner was likely to be released on bail in such case, having regard to his past activities, it was open to the District Magistrate to come to the reasonable conclusion that having regard to the desperate nature of the activities of the petitioner, his enlargement on bail would be no deterrent to his desperate activity. Hence, the District Magistrate was entitled to pass the order of detention, if that was necessary to prevent the petitioner from acting in a

manner prejudicial to the maintenance of public order.

(iii) On the basis of the antecedent activities of the petitioner in the proximate past, the detaining authority should reasonably reach its subjective satisfaction about his tendency or inclination to act in a manner prejudicial to the maintenance of public order after his release on bail.

(iv) The detaining authority being aware of the fact that the petitioner is in bail, yet on the basis of fact may arrive at a subjective satisfaction, may pass an order of detention. & (v) Each case has to be decided on its own facts. It is not, a matter of jurisdiction but had to be decided on the facts of each case.

(vi) That the detenu is already in bail or in, detention, does not take away the jurisdiction of the detaining authority in making an order of preventive detention. What is necessary in a case of that type is to satisfy the Court when the detention is challenged on the ground that the detaining authority was aware of the fact order of detention is necessary.

8. On the basis of this law, let us now have a look at the record of the present case. When the order of detention was passed in case of Oinam David Singh, the History Sheet was placed before the authority wherein detail nature of the activities of this person was given and it was further stated as follows :

"It is reliably learnt that bail has been given in favour of Shri Oinam David Singh. In view of his prejudicial activities in the proximate past, it is very likely that Shri Oinam David Singh has shown his tendency and inclination of his being continued to act in the manner prejudicial to the security of the State and maintenance of public order as and when he be released on bail. Thus, the application of normal criminal laws against Shri Oinam David Singh is not at all effective to prevent him from his prejudicial activities."

9. That the question of bail was taken for consideration by the authority will appear from paragraph 6 of the ground of detention which has been quoted above. So, the contention that there was non application of mind by the detaining authority to the question of release on bail of this person is not correct.

10. In the other case i.e. in the case of Sri Ningthoujam Loken Singh in the ground of detention in paragraph 3 it was stated that earlier when he was released on bail he used to take part in prejudicial activities and in paragraph 8, the question of granting bail in the present case was considered by the detaining authority. In the History Sheet also this question of bail was pointed out and it appears that the bail order was sent to the detaining authority. So, the argument that there was non application of mind in this case also cannot be accepted.

11. In the case of CR (HC) No.31 of 1995, the learned Advocate contended that during the custody the bail order was passed which is Annexure A1 dated 17.2.95. That is quoted below:

"Copy .of the order passed on 17.2.95

Heard the learned counsel moving and also the Ld. PP (D/C);

The accused N.Sanjeev @ Mangoljao was arrested on 1:2.95. The accused is reported to be critically ill as per the report of the SP Central Jail supported by the certificate of the Medical Officer. To enable the accused to receive proper treatment outside the Jail Hospital he is released on bail on his execution a PR Bond of Rs. 10,000/with a surety of the like amount.

Announced in the open Court."

12. Non consideration of this bail order at the time of passing an order of detention is urged to be fatal for the order of detention. The other ground urged by the learned Advocate is that he was not supplied with the extract of the interrogation statement of the detenu recorded on 8.9.91 which was mentioned in the order of detention quoted above.

13. In support of the first contention, non consideration of the bail order, reliance is placed on the following decision, 1990 (Crimes) 20 (Sita Ram Mahantha vs. State of Bihar). It is from Patna High Court where in paragraph 5, it was urged before the Patna High Court as follows:

"Mr. Braj Kishore Prasad, learned counsel appearing on behalf of the petitioner, has challenged the order of detention by a writ of habeas corpus before this Court on the ground, inter alia, that there is complete non application of mind by the detaining authority in coming to his subjective satisfaction, that is to say, that the detaining authority was not made aware of the fact at the time of making detention order that the detenu has already been granted bail in those two criminal cases which are the basis of the impugned detention, which itself amounted to non application of mind. The other ground of attack was that the grounds of detention are absolutely vague and the cases which are mentioned in the ground are not related to the public order."

14. Section 3(1) and (2) of the National Security Act provides as follows:

"3. Power, to make orders detaining certain persons (1) The Central Government or the State Government may

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India.

It is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any

manner prejudicial to the security of the State or from acting in any manner prejudicial to maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained."

14A. Preventive detention law, how to be construed has been settled and it is that Preventive detention for the social protection of the community is a hard law but, it is a necessary evil in the modern society and must be pragmatically construed, so that it works, does not endanger social defence or the defence of the community and at the same time does not infringe the liberties of the citizens. A balance should always be struck. Court's approach should be pragmatic and not technical.

Preventive detention unlike punitive detention which is to punish for the wrong done, is to protect the society by preventing wrong being done. Though such powers must be very cautiously exercised so as not to undermine the fundamental freedoms guaranteed to our people, the procedural safeguards are to ensure that yet these must be looked at from a pragmatic and common sense point of view. An understanding between those who exercise powers and the people over whom or in respect of whom such power is exercised is necessary. The law of self preservation and protection of the country and national security may claim in certain circumstances higher priority.

A Court of law is not competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu. The only limited jurisdiction possessed by a Court is to examine whether the subjective satisfaction reached by the detaining authority was based on no material at all or was such as no reasonable person would arrive at on the basis of the material which was before the detaining authority.

15. In the Patna Case as it will appear, the District Magistrate passed the order on basis of the two criminal cases in respect of two incident mentioned therein and as bail was granted in those two cases, non consideration of the same was considered to be. a fatal and the detention order was quashed.

16. In the present cases as will be evident, the criminal cases are not the only basis to pass the order of detention. Accordingly, this case does not help the petitioners.

17. The next case relied on this point is AIR 1987 SC137 (Anant Sakhararam Raut vs. State of Maharashtra & others) where in paragraph 5, it was stated as follows:

"We do not think it necessary to go into all the grounds urged before us by the petitioner's counsel in support of his prayer to quash the order of detention. The one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time the detention order was made that the detenu had moved applications for bail in the three pending cases

and that he was enlarged on bail on 13.1.1986, 14.1.1986 and 15.1.1986. We have gone through the detention order carefully. There is absolutely no mention in the order about the fact that the petitioner was an under trial prisoner, that he was arrested in connection with the three cases, that applications, for bail were pending and that he was released on three successive days in the three cases. This indicates a total absence of application of mind on the part of detaining authority while passing the order of detention."

18. As indicated above, the present order of detention is not only connected with the criminal cases pending as against the petitioners. Even the bail order was taken into consideration as will be evident from the order of detention quoted above in Case No. CR (HC) No.31 of 1995.

19. The next case relied on this point is (1993) Snppl (1) GLR 235 1991 (2) GLJ 350] (KML Kunjalata Devi, Heirangoithong vs. State of Maaipur).

In that case in paragraph 11 and 12, the law has been laid down as follows :

"11. Another interesting point which cannot escape from our scrutiny is that the petitioned was in judicial custody in connection with a serious offence under Terrorist and "Disruptive Activities" (Prevention) Act. As the detention order was served on her when she was in judicial custody, the District Magistrate, Imphal was quite aware that she was in jail in connection with a serious offence and therefore he was to satisfy himself that the further detention of the petitioner was necessary. In the instant case, as stated above, when the detention order was served on the petitioner on 19.4.1991 there was. an order of the Designated Court passed on 18.4.199t granting bail to the petitioner on parole for one month for treatment in a well equipped hospital outside jail basing solely on the report submitted by the Medical Officer attached to Imphal Central Jail where the petitioner was lodged. It appears from the detention order Annexure A1 that the fact of releasing the petitioner on bail by the Designated Court on medical ground was not placed before die District Magistrate by the police. The District Magistrate also did not care to make an enquiry as to whether the further .detention of the petitioner was still necessary in the prevailing circumstances. He simply acted on the police report, which did not disclose the fact relating to the bail granted, to the petitioner by the Designated Court, mechanically without any application of his mind to the necessity of the further detention of the petitioner. This conduct of the District Magistrate is enough to hold that he was not aware of the requisite facts and die necessity of making the order of detention.

12. Further due to the non disclosure of the fact regarding the bail granted to her by the Designated Court on medical ground, the petitioner could not make adequate and effective representation against the order of detention and, therefore, the detention order is illegal. Again, if the police disclosed the fact of granting bail to the petitioner on medical ground by the Designated Court, the District Magistrate might not even passed the order of detention Annexure A1

inasmuch as me petitioned on account of her said illness, would not be able to act in any manner prejudicial to the security of the State."

20. The facts of the present case are absolutely different from the case cited above. A bare perusal of the record will show mat the authority was justified in not considering the present bail order i.e., in the case of CR (HC) No.31 of 1995 as sufficient inasmuch as when earlier he was released on bail he did not remain peaceful instead he started his unlawful activities again and mat finds mention in paragraph 3 of the ground. So, the first contention that non consideration of the bail order vitiates the order of detention cannot be accepted in the facts and circumstances of these cases. Mere grant of a bail cannot prevent the authority from passing an order of detention, if there are materials on record to show that the detenu released on bail was likely to commit activities prejudicial to the maintainability of the public order, the authority can issue an order of detention. The validity of the order of detection is to be judged in every individual case on its own facts: There may be material available to the detaining authority in each case that the person against whom an order of preventive detention is being made is already under .custody or on bail and yet his preventive detention is necessary. If there are materials to justify the detention, the Court cannot interfere in such .a matter.

21. It is settled law that possibility of detenus released from jail is not a bar for detention but if there are materials to show that the detenue, released on bail or already in bail but the authority is satisfied that there are materials necessitating an order of detention, the authority has a right to pass an order of detention. The materials placed before us satisfy us that the authority was justified in passing the order of detention.

22. Now let us have a look at the next ground urged by Shri T.Nandakumar, learned Advocate for the petitioner in other case that non furnishing of the copies of the statements stated to be made on 8.9.91 prevented him to make an effective representation and hence viola"ted Article 22 (5) of the Constitution. Regarding this contention let us have a look at the record produced by the authority. In the ground of detention it is stated that the extract of. interrogation dated 8th September, 1991 arid others are enclosed for reference. So, the ground itself states that the extract of the interrogation was enclosed.

23. Next let us have a look at the representation filed by the petitioner Sri N.Loken Singh in CR (HC) No.31 of 1995 to see whether that ground was taken. In the representation which is available in the record, this contention "was never taken up by the petitioner, (in the writ application it is Annexure A/7). In the affidavitinopposition, the allegation has been denied. So, this contention is an after thought, and it has caused no prejudice to the petitioner. In the report of the Advisory Board also it is stated inter alia as follows :

"The grounds for detention and the documents that were produced in support of the order of detention, copies of which were duly furnished to the detenu within

the statutory period."

24. Before the Advisory Board also this grievance was never made. Accordingly, this contention of Shri T. Nanda Kumar cannot be accepted.

25. For the aforesaid reasons, there is no merit in these two writ applications and both of them are dismissed.