
(2008) 08 GAU CK 0077
In the Gauhati High Court

Oinam Dineshwor Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Arms Act, 1959 — Section 25(1C)
Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2), 8
Penal Code, 1860 (IPC) — Section 302, 34
Unlawful Activities (Prevention) Amendment Act, 2004 — Section 17, 18, 20

Citation : (2009) 6 GLR 381 : (2008) GLT 549 Supp

Hon'ble Judges : Maibam Binoy kumar Singh, J; Asok Potsangbam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Maibam Binoykumar Singh, J.—Heard Mr. Ph. Sanajaoba, Learned Counsel appearing for the petitioner, Md. Jallaluddin, learned Addl. Government Advocate appearing on behalf of the respondent Nos. 1, 2 and 3 and Mr. C. Komol, Learned Counsel appearing for the respondent No. 4.

2. This writ petition has been filed challenging the legality of the detention of one Oinam Mainu Devi under National Security Act, 1980. There is no dispute in respect of the following facts:

While the said Mainu Devi was in custody in connection with FIR Case No. 36(3) 2008 MI PS u/s 302/34, IPC and 25(1C) A. Act, 17/18/20 UA(P)A. Act, 2004, the District Magistrate, Imphal West passed an order being No. Cril. NSA/7 No. 15 of 2008 on 25th March, 2008 for detention of the said Mainu Devi u/s 3(2) of the National Security Act, 1980. The said detention order was passed purportedly with a view to prevent the detainee from acting in any manner prejudicial to the security of the State and maintenance of public order. The detainee was furnished with the grounds of detention u/s 8 of the National Security Act, 1980 vide letter No. Cril/NSA/No. 15 of 2008 dated 27th March, 2007. The detainee submitted her

representations addressed to the Chief Secretary, Government of Manipur and the Secretary to the Union of India, Ministry of Home Affairs (Department of Internal Security), North Block, New Delhi on 16th April, 2008 through the Addl. Superintendent of Manipur Central Jail, Sajiwa. The said representation addressed to the Chief Secretary, Government of Manipur was disposed of by the State Government on 19th April, 2008 and the same was communicated to the detainee on 28.4.2008. The order of detention was approved and confirmed by the State Government on 4th April, 2008 and 13th May, 2008 respectively.

3. One of the grounds submitted by the Learned Counsel appearing on behalf of the petitioner is that the detaining authority passed the impugned detention order without application of his mind in this connection, Learned Counsel of the petitioner submits that since the detainee was in custody in connection with the investigation of FIR Case No. 36(3) 2008 MI PS u/s 302/34, IPC and 25(1C) A. Act, 17/18/20 UA(P)A. Act, 2004 at the relevant time of passing the detention order, there was no necessity of passing the detention order while the detainee was in fact in custody. Learned Counsel of the petitioner further submits that though the detaining authority was apparently satisfied from police report about the likelihood of the detainee being released on bail in near future, there was nothing in the police report indicating or showing the said likelihood of the detainee being released on bail.

4. Learned Counsel appearing on behalf of the State respondents submits that though the detainee was in custody in connection with the investigation of a criminal case, the detaining authority was having jurisdiction to pass the detention order under National Security Act, 1980 for preventing the detainee from acting in any manner prejudicial to the security of the State and maintenance of public order. Learned Counsel of the State respondents further draws our attention, to the para No. 4 of the grounds of detention wherein it is stated that in view of the tendencies and inclinations of the detainee as reflected in the offences committed by her in the proximate past as a hard-core member of a banned organization, the detaining authority was satisfied that after having availed of bail facility and becoming a free person, she being a hard-core member, would continue to indulge in the same activities which were prejudicial to the security of the State and maintenance of public order. It is also stated that application of normal criminal law against her would not at all be effective to prevent her from commission of further prejudicial activities and as such, an alternative preventative measure was immediately called for.

5. It is well settled that an order of preventive detention may be passed as against a person while he is in custody. However, the detaining authority has to form a subjective satisfaction on the basis of materials that there is likelihood of the said person for release on bail in near future and that on being so released, the said person would in all probability indulge in prejudicial activities and as such it is felt essential to detain the person in order to prevent from so doing. In *Kamarunnissa and Others Vs. Union of India and another*, at page 140, para 13,

the hon''ble Apex Court observed:

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.

6. Normally, as held in various decisions of hon''ble Apex Court, this Court is not to interfere with the subjective satisfaction of the detaining authority if it has been formed on the basis of materials. At the same time, this Court is not to substitute its own view in place of the subjective satisfaction of the detaining authority. Now, the question is if the detaining authority formed a subjective satisfaction about the likelihood of the detainee being released on bail in the near future in respect of the said FIR Case No. 36(3)/2008 MI PS on the basis of materials or not. On the basis of the materials including police report, we have ascertained the said FIR case was registered on suo motu and that the detainee was not even named in the FIR. Apart from, the statement of the detainee said to have been given to the I.O., of the case while in custody of police and statement of one S.I. M. Raj en Singh of MI PS, there was nothing before the detaining authority to show the involvement of the detainee in the said FIR Case No. 36(3) 2008 MI PS. In view of the insufficiency or inadequacy of materials for showing the connection of the detainee with the said offencesMentioned in the FIR, as ascertained from the police report, the detaining authority could have formed an opinion about the said likelihood of the detainee being released on bail in near future that likelihood was further increased by the fact of the detainee being a woman about 60 years old and also being an infirm person. In the present case, since there were materials on the basis of which the detaining authority could have formed the said subjective satisfaction about the likelihood of the detainee being released on bail in the near future, we are not inclined to interfere with the said subjective satisfaction arrived at by the detaining authority, we are of the opinion that the subjective satisfaction about the likelihood of the detainee being released on bail in near future was not a mere ipse dixit of the detaining authority. The petitioner has failed to established from materials on record that the detaining authority could not possibly have arrived at the said satisfaction which he claimed to have done and that the satisfaction is colourable. In our opinion, the above said ground of challenge submitted by the Learned Counsel of the petitioner is not acceptable and as such, it is rejected. At the same time, the subjective satisfaction of the detaining authority that application of normal criminal law would not be effective to prevent the detainee from commission of

prejudicial activities has not been challenged and the said satisfaction is not also to be interfered with.

7. Another ground submitted by the Learned Counsel of the petitioner challenging the legality of the impugned detention order, the approval order and the confirmation order is that there was inordinate delay in communicating the disposal of the detainee's representation by the State Government. As per records, the representation addressed to the Chief Secretary, Government of Manipur dated 16.4.2008 was disposed of and the fact of rejection of the representation was informed to the detainee vide letter No. 17(1)/1261/2008-H dated 19.4.2008. Apparently, the said letter was received by the detainee on 28.4.2008. The 19th April, 2008 was Saturday, the 20th April, 2008 was Sunday, the 23rd April, 2008 was holiday on account of Khongjom Day, the 26th April, 2008 was Saturday and 27th April, 2008 was Sunday. Taking into consideration of holidays in between 19th April, 2008 and 28th April, 2008 and also having regard to the fact that the concerned authorities were not obviously dealing with the case of the detainee only, we do not accept the view of the Learned Counsel of the petitioner that there was inordinate delay in making communication about the disposal of the detainee's representation. We cannot agree with the view of the Learned Counsel of the petitioner that there has been violation of the right of the detainee under Article 22(5) of the Constitution of India. The second ground submitted on behalf of the petitioner is rejected.

8. No other ground is submitted on behalf of the petitioner. In the result, we do not find any infirmity or illegality in the impugned detention order, the impugned approval order and the impugned confirmation order. Accordingly, this writ petition is rejected as having no merit, No order as to costs.