

(1996) 12 GAU CK 0009

In the Gauhati High Court

Case No : Civil Rule (HC) No's. 59, 60, 61 and 62 of 1996

Ringmi Raising and Others

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 16-12-1996

Acts Referred:

Arms Act, 1959 — Section 25(1)(C)
National Security Act, 1980 — Section 11, 3, 3(1), 3(2), 7
Penal Code, 1860 (IPC) — Section 121, 121(A), 122, 124(A)
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13

Citation : (1997) 1 GLR 243

Hon'ble Judges : V.K. Khanna, C.J.; A.K. Patnaik, J

Bench : Division Bench

Advocate : D.K. Misra, H. Roy and N. Sinha, for the Appellant; A.R. Barthakur, A.G. and Pradip Khataniar, Addl. Sr. G.A., for the Respondent

Final Decision : Allowed

Judgement

V.K. Khanna, C.J.—These four habeas corpus petitions have been filed in the matter of detenu R.H. Raising alias Joshua Raising in Civil Rule (HC) 59/96, detenu Thumba Anal in Civil Rule (HC) No. 60/96, detenu Johan Thapa in Civil Rule (HC) No. 61/96 and detenu James Pul Chetri in Civil Rule (HC) No. 62/96, challenging the four detention orders dated 1.6.96 (contained in Annexure "A" to all the Civil Rules) passed under Sub-sections (1) and (2) of Section 3 of the National Security Act, 1980, (hereinafter referred to as "the Act").

2. At the very outset, it may be mentioned that these cases were filed at Kohima Bench of this Court but they were transferred to the Principal Seal at Gauhati. On 27.11.96, Mr. D.K. Misra who has appeared as counsel for the Petitioner and the detenus in all the four cases, made a statement that the question arising in all these four Civil Rules are similar to the questions which have been raised in Civil Rule; (HC) 53/96 which was being heard by this Bench and, therefore, a prayer was made that he would be leading arguments, in Civil Rule No. (HC) 53/96 and these four Civil Rules be heard along with the leading Civil Rule (HC) 53/96. It is

in these circumstances that we heard those four Civil Rules along with the leading Civil Rule (HC) No. 53/96 on 28.11.96 and 5.12.96.

3. At the time of hearing of the Civil Rules, we found that on one of the main questions which was being argued, which will be dealt with later on in this judgment, there was a distinction between the main Civil Rule (HC) 53/96 and the present four Civil Rules even though the basic legal question was same. It is in these circumstances that the judgment in Civil Rule (HC) No. 53/96 was delivered by us separately on 13.12.96 and the reasons have also been detailed in the aforesaid judgment for not delivering a common judgment in all the five Civil Rules.

4. The relevant facts pertaining to these four Civil Rules are that the detenu R.H. Raising alias Joshua (in Civil Rule No. (HC) 59/96) was arrested by the Army on 19th May, 1996 and handed over to Dimapur East Police Station where Case No. 0149/96 under Sections 7/8 NSR, 10/13 UA(P) Act, 121/122/124(A), IPC, r/w 25(1)(C) Arms Act was registered; detenu Thumba Anal alias Micheal Turin (in Civil Rule No. (HC) 60/96) was arrested by the Army on 19th May, 1996 and handed over to (F) P.S. Dimapur where case No. 0150/96 under Sections 7/8 NSR, 10/13, UA (P) Act, 121 (A)/122/124 (A), IPC, r/w 25(1)(C), Arms Act was registered; detenu Johan Thapa (in Civil Rule (HC) 61/96) was arrested by the Army on 19th May, 1996 and handed over to Dimapur (E) PS where case No. 0146/96 under Sections 7/8 NSR, 10/13 UA(P) Act 121/121(A)/122/124(A), IPC, r/w 25(1)(C) Arms Act was registered and the detenu James Pul Chetri (CR)(HC) 62/96) was arrested on 19th May, 1996 by the Army and handed over to Police where Dimapur (E) PS Case No. 0148/96 under Sections 7/8 NSR, 10/13, UA(P) Act 121/121 A/122/124(A), IPC, r/w 25(1)(C) Arms Act was registered. While the above-named detenus were in judicial custody in connection with the aforesaid cases, according to the Petitioner, orders of detention dated 1.6.96 issued by Sri L. Colney, Additional Chief Secretary, Government of Nagaland, were served on the detenus.

5. It may be pertinent to mention here that the original records of all the four cases have been produced by the State of Nagaland and we have heard Mr. D.K. Misra, learned Counsel appearing for the Petitioner and the detenus in all the Civil Rules and Mr. A.R. Barthakur, learned Advocate General, assisted by Mr. Pradip Khataniar, learned Additional Senior Government Advocate, appearing for the State of Nagaland.

6. Sri D.K. Misra, learned Counsel appearing for the detenus has urged before us three points. It has been first urged that there has been non-application of mind by the detaining authority while passing the detention orders under the Act inasmuch as the detenus were in judicial custody in connection with the afore mentioned police cases. It has been strenuously urged that the detenus were already in custody in connection with the criminal cases at the time of making detention orders and the detention orders read along with its Annexures nowhere indicated that the detaining authority apprehended the likelihood of the

detenus being released on bail in the criminal cases and considered the detention orders necessary. Reliance has been placed on the case of N. Meera Rani Vs. Government of Tamil Nadu and Another,

7. Secondly, it has been urged that the detention orders were neither prepared nor signed by the competent authority who is authorised on that behalf on behalf of the State Government under the Act and on that ground the impugned detention orders dated 1.6.96 are liable to be set aside as the Deputy Secretary who has communicated the orders is not the competent authority to communicate the order under, Section 3 of the Act unless the same is signed by the competent authority, i.e., Additional Chief Secretary, Govt. of Nagaland.

8. Thirdly, it has been urged that the representations to the Government against the detention orders were not disposed of within the reasonable time and there has been delay in disposal of the representation and on this ground also the detention orders are liable to be quashed as the delay in disposing of the representations has not been explained.

9. Lastly, it has been urged that the period of seven (7) weeks for submission of report by the Advisory Board as contemplated by Section 11 of the Act has expired and the report having not been submitted within the prescribed period, the detention orders are liable to be quashed on that ground also, In this connection, we may mention that the Advisory Board has submitted its report and given the opinion that there are good and sufficient reasons for continued detention of the detenus in order to prevent them from further indulging in activities prejudicial to the defence of India, security of the State of Nagaland and maintenance of public order.

10. As far as the first ground raised by the learned Counsel Mr. D.K. Misra, i.e., non-application of mind by the detaining authority as the detenus were already in jail and the detaining authority had not recorded its satisfaction about the likelihood of the detenus being released on bail is considered, it will be worthwhile to first note the admitted facts of these cases.

11. It has not been disputed that the detenus were in custody at the time of service of detention orders in connection with the criminal cases No. 0149/96, 0150/96, 0146/96 and 0148/96 under Sections 7/8 NSR, 10/13, U.A.(P) Act 121/121 A/122/124(A), IPC, r/w 25(1)(C) Arms Act. This fact is also borne out from the reports for detention sent by the Superintendent of Police to the Deputy Commissioner. Kohima, dated 29th May, 1996, which are annexed to the Civil Rules. The reports clearly mention that the detenus were apprehended by the Army on 19th May, 1996 and handed over to the police and criminal cases, as referred to above, have been registered against them, which are under investigation.

12. In these Civil Rules, it has been mentioned that neither the orders of detention nor the grounds of detention disclose as to whether the detaining authority applied its mind, to the fact that the detenus having already been m

custody why the orders of detention under the Act were required to be passed and the impugned detention orders are accordingly liable to be quashed.

13. Affidavit-in-opposition has been filed by Sr Sudhangshu Ranjan Dasgupta, officer on Special Duty, Home Department and Ex-Officio Secretary to the Government of Nagaland, Home Department in all the Civil Rules. The aforesaid officer is not the detaining authority. In the affidavits it has been stated that the detaining authority was aware of the fact that the detenus were under judicial custody and the detention orders were passed taking that factor into consideration. It has further been stated that the detaining authority was reasonably satisfied on cogent material that there was likelihood of the detenus release and in view of their antecedent activities which are proximate in point of time they must be detained in order to prevent the detenus from indulging in such prejudicial activities.

14. In these cases, Mr. D.K. Misra, learned Counsel appearing on behalf of the detenus, has admitted that on behalf of the detenus bail applications were moved before the Deputy Commissioner (Judicial), Dimapur and has produced before us the orders dated 31.5.96 which have been passed by the Deputy Commissioner (Judicial), Dimapur. This fact has not been disputed by Mr. A.R. Barthakur, learned Advocate General appearing on behalf of the State of Nagaland.

15. In the judgment given by us in the leading Civil Rule No. (HC) 53/96 dated 13.12.96, we have held that according to the law laid down by the Apex Court, it is clear that a detention order can be passed by the detaining authority while the detenu is in custody, but the detaining authority has to be - (i) aware of the fact of subsisting custody of the detenu (ii) in case it was aware, of the aforesaid fact it has into account that factor while making the detention order; and (iii) the detaining authority was reasonably satisfied on cogent material that there was likelihood of the detenu's release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent the detenu from indulging in such prejudicial activities.

16. From the report dated 29th May, 1996 sent by the Superintendent of Police, it is clear that as far as the detaining authority being aware of the fact of subsisting custody of the detenus is concerned, the materials were before the detaining authority and, therefore, we are of the opinion that the detaining authority was aware of the fact that the detenus were in custody at the time of passing of the detention orders.

17. The original records pertaining to these four Civil Rules have been produced before us along with the note-sheets and we have carefully perused the same. We do not find that the detaining authority has at all applied its mind for reaching the conclusion that it was reasonably satisfied on cogent material that there was likelihood of the detenus release and in view of their antecedent activities which are proximate in point of lime they must be detained in order to

prevent the detenus from indulging in such prejudicial activities as laid down in the case of N. Meera Rani (supra).

18. It will not be out of place of mention here that the bail applications moved on behalf of the detenus had been rejected by the Deputy Commissioner (Judicial), Dimapur by his order dated 31.5.96 which was prior in time from the date of passing of the detention order and that the criminal cases which had been registered against the detenus were pending and bail applications had in fact been rejected. From the perusal of the rejection orders which form part of the record, it is clear that the Deputy Commissioner (Judicial), Dimapur has recorded a finding that after perusal of the FIR and other connected papers, the allegations made against the accused are serious and the sections under which the accused are charged are non-bailable sections and, therefore, rejected the bail applications.

19. The Apex Court in the case of N. Meera Rani (supra) even had examined in that case the likelihood of the detenu being released on bail and it has been held in that case that the detenu's complicity in the Bank dacoity was evident from the material on record and was of the opinion that there was ample material to prove the detenu's complicity in the offences for which he has been charged. In these cases, we have looked into the sections for which the four detenus have been charged and the materials which are existing on the record and also the forwarding report of the Superintendent of Police and the FIR, and without expressing any opinion on the merit of the cases, prima facie, we are of the opinion that on the basis of materials which were existing in the original record before the detaining authority and as has been held by the D.C. (Judicial), Dimapur, that the allegations made against the detenus are serious and the sections under which the accused are charged are non-bailable and it is for that reason that the bail applications moved on behalf of the detenus have been rejected by the Deputy Commissioner (Judicial) by his order dated 31.5.96.

20. The position therefore emerges that the four detenus are in jail in connection with the aforesaid criminal cases in which serious charges have been levelled against them and the material existing on the original record shows that in connection with the detenus bail applications were in fact moved before the Deputy Commissioner (Judicial), Dimapur, which had been rejected after the Deputy Commissioner (Judicial) had recorded a finding that the charges levelled against the detenus were very serious and the offences were non-bailable and the application praying for bail had been rejected. If that be so, we are of the opinion that in the absence of any material on record to indicate that the detaining authority had at all applied its mind to the aforesaid question that there was possibility of the detenus release, the four detention orders dated 16.6.96 are invalid since the same were passed when the detenus were already in jail for the serious offences for which they were charged with no prospect of their release and we express no opinion on the merit about other grounds raised before us.

21. For the reasons stated above, the aforesaid four orders of detention dated 1.6.96 passed by the Additional Chief Secretary, Govt. of Nagaland are quashed. This order will however not affect the detenus' custody in connection with the Criminal cases No. 0149/96 (Civil Rule (HC) 59/96, 0150/96 (Civil Rule No. (HC) 60/96), 0146/96 (Civil Rule No. (HC) 61/96), and 0148/96 (Civil Rule No. (HC) 62/96, under Sections 7/8 NSR, 10/13, UA(P) Act, 121/121 A/122/124(A), IPC, r/w 25(1)(c) Arms Act. We would also clarify that in case at any point of time the detaining authority on the materials available it is reasonably satisfied on cogent material that there is likelihood of the detenus' release and in view of their antecedent activities which are proximate in point of time they must be detained in order to prevent the detenus from indulging in such prejudicial activities, it will be open for the detaining authority to pass fresh detention order in accordance with law, We may further clarify that in case the detenus are at any later point of time "released in those criminal cases, the question of preventive detention under the National Security Act on the above material may be reconsidered by the appropriate authority in accordance with law and this judgment passed by us shall not be construed as an impediment for that purpose.

22. Subject to the aforesaid observations, the writ petitions are allowed. However, looking to the entire facts and circumstances of the case, we leave the parties to bear their own costs.