

(2011) 10 GAU CK 0010
In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 3(K) of 2011

Roshan Rhi @ Rosu

APPELLANT

Vs

State of Nagaland & Ors.

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

National Security Act, 1980 — Section 3(3), 3(3)

Citation : (2011) 5 GLT 333

Hon'ble Judges : P.K.Musahary, J and A.K.Goswami, J

Bench : Division Bench

Advocate : Advocate appeared for the Petitioner: Mr. A. Zho, Advocates
appeared for the Respondents: Mr. Y. Longkumar, GA & Mr. T. B. Jamir, Advocates
appearing for Parties

Judgement

P. K. Musahary, J.—Heard Mr. A. Zho, learned counsel for the petitioner/detenu and Mrs. Longkumar, learned Government Advocate appearing for the respondents No. 1 and 2 and Mr. T. B. Jamir, learned C.GC. for the respondent No. 3.

2. The petitioner was arrested on 11.05.11 in connection with Dimapur East PS Case No. 00125/11 under Section 364//361 (A) IPC read with Section 7 of the NSR Act. The S.P., Dimapur, proposed to the District Magistrate, Dimapur on 07.05.11 for detention of the petitioner under Section 3(1) (2) of the National Security Act., 1980 (for short the Act). Accordingly, the District Magistrate, Dimapur passed the preventive detention order dated 19.05.2011. Thereafter the Respondent No. 2, District Magistrate, sent communication to the Government requesting to the Additional Chief Secretary to the Government of Nagaland for approval of the detention order. Accordingly, the detention order was approved by the Special Secretary to the Government of Nagaland (Home Department) vide order dated 26.05.11.

3. The aforesaid detention order dated 19.05.11 and the approval order dated 26.05.11 have been challenged in this writ petition.

4. Mr. Zho, learned counsel for the petitioner submits that the impugned detention order dated 19.05.11. has not specified the period for which the petitioner was detained under the Act. According to him, under Section 3(3) of the Act, the detaining authority i.e. the District Magistrate, is bound to specify the period of detention. He also submits that the initial detention order can be passed for a period of 3 months only. The said period must be mentioned in the detention order and if the period is not mentioned therein, the detention order renders invalid and illegal. He relies on the decision in *Amrit Ballav Goswami @ Mizu Phukan Vs. Union of India & Ors.* reported in 206" 2 (2) GLT 716, wherein it has been held that detention order without specifying the detenu's period of detention, is violative of Section 3(3) of the Act. The submission of the learned counsel for the petitioner is not acceptable to us in view of another decision of a Division Bench of this Court in *State of Manipur & Ors. Vs. Arambam Kameshwar Singh* reported in 2004 (2) GLT 718, wherein it has been held that it is not necessary to specify the period of detention in the detention order and the detention order on that ground does not become invalid merely because the period of detention has not been specified. The aforesaid position of law has been clarified on the basis of a decision of the Apex Court in *Mrs. T. Devaka Vs. Government of Tamil Nadu & Ors.*, reported in AIR 1990 SC 1086. In view of the above settled position of law, we do not accept the submission of the learned counsel for the petitioner.

5. The learned counsel for the petitioner further submits that the detaining authority, Respondent No. 2, has not filed any affidavit in response to the notice issued by the Court to testify that the impugned detention order was passed by him after careful perusal of the materials placed before him and on being satisfied himself that issuance of detention order was warranted. A comprehensive affidavit was (lied by the Special Secretary to the Government of Nagaland (Home Department) on behalf of the State respondents who has no personal knowlegde or had had any occasion to examine the materials placed before the Respondent No. 2 before issuing the impugned order. This, according to Mr. Zho, learned counsel for the petitioner, is contrary to the procedure laid down in the Act as well as the judicial pronouncements of the Apex Court as well as this Court. In support of his submission he refers to the decisions of this Court in *Ringkahao Horam, Mrs. Piskim Shimray & Ms. Rose Singme Vs. State of Nagaland*, reported in 1997 (11) GLT 419 and *Phukan Daimary @ Fungjarang Vs. State of Assam & Ors.*, reported in 1998 (4) GLT 40.

6. Mrs. Y. Longkumar, learned Government Advocate, as directed by this Court, has produced the relevant records obtained from the District Magistrate, Dimapur. She submits that the District Magistrate concerned who issued the impugned detention order has already been transferred. No affidavit has been filed by the concerned District Magistrate concerned.

7. We have gone through the records namely, File No.JUD/19/2001/DCD/PtII, as produced by the learned Government Advocate. The proposal of the

Superintendent of Police for detention of petitioner was put up before the District Magistrate concerned on 18.05.11. The relevant office Note can be read from the note sheet at Page 7 of the said file. The petitioner's case was put up along with 4 other accused/persons. From the above note we have found that the materials received from S.P., Dimapur, although the same were placed in the said file, were not brought to the notice of the learned District Magistrate. As it appears from office note, the District Magistrate also did not even bother to have a look at the said police report. The District Magistrate merely approved the office note and put his signature without mentioning therein that he has perused the police report or materials sent by the Superintendent of Police, not to speak of applying his mind to find out whether there were sufficient materials to his satisfaction for passing the detention order. In the impugned detention order (AnnexureB), the learned District Magistrate stated that he was "satisfied that with a view to prevent the above said accused persons from acting in any manner prejudicial to the defence of India security of the State of Nagaland and maintenance of public order it is necessary to detain them under subsections (1) and (2) of Section 3 of NS A, 1980". We do not find any material on record that the District Magistrate did really objectively verify and examine the materials placed before him for coming to a subjective satisfaction.

8. Without referring to various other decisions of the Apex Court in this regard we would choose to refer ourselves to a recent decision of the Apex Court in *Pebam Ningol Mikol Devi Vs. State of Manipur*, reported in (2010) 9 SCC 618 wherein it has been held that there must be a reasonable basis for the detention order and there must be material to support the same. The Court is entitled to scrutinise the material relied upon by the authority in coming to its conclusion and accordingly determine, if there is an objective basis for subjective satisfaction. It is also held therein that the subjective satisfaction must be twofold. Firstly, the detaining authority must be satisfied with the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order. Secondly, the authority must be satisfied that it is necessary to detain a person in order to prevent from so acting. The subjective satisfaction of the detaining authority i.e. the District Magistrate in the present case, on objective basis i.e. the material collected and placed before the detaining authority is the sine qua non of passing the detention order. The detention order passed otherwise should be treated as invalid and illegal. In the present case, the District Magistrate, as detaining authority, in our considered opinion, has not complied with the aforesaid requirements of law.

9. We have considered the submissions of the learned counsel for the petitioner with serious concern and we are of the firm opinion that the respondent authorities have not complied with the statutory procedures and established rules in passing the preventive detention order under the aforesaid Act. We are also of the opinion that by virtue of the impugned detention order, the personal liberty of the detenu has been curtailed and in the process the procedural safeguard

envisaged in the appropriate provisions of the Act have been violated.

10. Consequently, we are left with no other option but to interfere with the impugned detention orders dated 19.05,11 and the consequential approval order dated 26.05.11 issued by the Special Secretary to the Government of Nagaland (Home Department). The aforesaid impugned orders are hereby set aside and quashed, the respondent authorities are directed to release the petitioner/detenu Shri Rosan Rhi @ Rosu forthwith, if his further detention is not required in connection with any other case.

11. With the above observations and directions, this writ petition stands allowed.