
(2016) 04 MAN CK 0009
In the Manipur High Court
Case No : Writ Petition (Cri) No. 1 of 2016

Shri Khundrakpam Tomba Singh	Vs	APPELLANT
District Magistrate, Imphal West, Manipur and others		RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(3)

Citation : (2016) 162 AIC 816

Hon'ble Judges : Rakesh Ranjan Prasad and Songkhupchung Serto, JJ.

Bench : Division Bench

Advocate : A. Ashok Sharma, Advocate, for the Appellant; L. Monomala, Addl. G.A., S. Rupachandra, ASG and K.R. Pamei, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J. (Oral) - This application has been filed for quashing of the order dated 16.11.2015 passed by the District Magistrate, Imphal West, respondent No.1 whereby and where under respondent No.1, in exercise of power conferred under sub Section (3) of Section 3 of the National Security Act, 1980 passed the order of detention against the petitioner after being satisfied that in order to prevent the detenu from acting in any manner prejudicial to the security of the State and to the maintenance of public order, it has become necessary to do so.

2. The grounds on which the order of detention was passed are that the detenu, at the instance of one L. Mangoljao Singh, S/S Commander in-chief of KCP Lamyamba Khuman, joined the underground organisation namely, Kangleipak Communist Party, Lamyamba Khuman faction, a banned organisation. The aim and objective of the said organisation is to secede the State of Manipur from the Union of India and to create an independent sovereign State of Manipur. For the said purpose, the members of the said organisation started procuring arms and ammunition through foreign countries and recruited youngsters from various

communities in Manipur. In that pursuit, the members of the organisation committed a series of heinous crimes such as murder, dacoity, robbery, extortion and kidnapping for ransom in different parts of Manipur. The ring leaders have even sought for foreign assistance and have established links with the countries like Bangladesh, Myanmar, Pakistan etc.

After joining the organisation the detenu along with other members of KCP (MC) Lamyamba Khuman faction started working for the said outfit whereby the detenu and his associates carried out mobilisation work in the area of Imphal West District by contacting different persons, organisations to convince them to join the struggle of KCP for liberation of Manipur State by waging war against the Government. The detenu at the instance of L. Mangoljao Singh, started extorting money from general public, particularly non-Manipuris located at Imphal area. After extorting huge amount of money from general public, particularly, non-Manipuris it were deposited to the leaders of KCP Lamyamba Khuman. Further ground is that in the last week of November, 2015, the detenu extorted Rs.8,000/- from one betel seller and threatened not to report to security force/police otherwise he would be killed.

Such acts of extortion of money from general public and extending threat to the lives of innocent people by the detenu and his associates created panic and terror wave which are prejudicial to the security of the State and maintenance of public order. Further case is that on 7.11.2015 the detenu was arrested by a police team of CDO Imphal West from in front of Tampha Hotel, North AOC, Imphal. Thereupon, the detenu was handed over to O/C Imphal P.S with a written report on the basis of which the a case was registered as FIR No.455(11)2015 Imphal PS under Section 17/20 of UA (P) Arms Act. In connection with the said case the detenu was remanded to police custody as well as judicial custody. On such grounds, the respondent No.1, after recording that the detenu after availing bail facilities would continue to indulge in the same activities which are prejudicial to the security of the State and maintenance of public order, passed the order of detention on 16.11.2015.

3. A copy of the said detention order was served along with the grounds of detention upon the detenu while he was lodged Jail. The order of detention was approved by the State Government on 27.11.2015. Having receipt of the detention order, the detenu submitted his representation on 17.12.2015, which was rejected by the District Magistrate. Subsequently, the order of detention was confirmed by the State Government on 26.12.2015. The aforesaid orders of detention, its approval as well as confirmation have been challenged on several grounds.

4. Mr. A. Ashok Sharma, learned counsel appearing for the petitioner did confine his argument with respect to only one ground, which is with respect to non-recording of the satisfaction by the Detaining Authority of possibility being there of the accused of releasing on bail. In this regard, learned counsel submitted that the order of detention was passed while the detenu was in custody but the

Detaining Authority while passing the order of detention never recorded its satisfaction that the detenu, an accused of a case in which bail application had been filed, is likely to be released on bail; rather, the Detaining Authority has only recorded that the detenu has filed bail application and wherever such satisfaction of the Detaining Authority of the detenu being likely to be released on bail, is not there that order of detention, in view of the decision rendered in the case of *Union of India v. Paul Manickam & Anr*, reported in (2003) 8 SCC 342 and also in a case of *Kamarunissa v. Union of India & Anr*: (1991) 1 SCC 128 and therefore order of detention is fit to be set aside on this ground alone.

5. As against it Ms. L. Monomala, learned counsel appearing for the State submitted that from the order of detention it would appear that the Detaining Authority after having taken notice of the facts that the detenu, an accused in the case, has filed an application, has recorded in the grounds of detention that the detenu having availed bail facilities would continue to indulge in the same activities which are prejudicial to the maintenance of the public order and only after recording such satisfaction the order of detention has been passed which never warrants to be interfered with by this Court.

6. It goes without saying that in a case of preventive detention no offence is proved and justification of such detention is suspicion or reasonable probability. There is no conviction which can only be warranted by legal evidence; whereas Article 21 of the Constitution of India declares that no person shall be deprived of life and liberty except in accordance with the procedure established by a law. In such situation a machinery was definitely needed to examine the question of lawful detention with utmost promptitude. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to be released by the High Court and Supreme Court upon issuance of writ of habeas corpus.

7. It be stated that the Detaining Authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clause (1) & clause (2), the detenu is not entitled to a lawyer and the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this deterrent law, the law of preventive detention is to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is mandatory and vital. These procedural safeguards are required to be zealously watched and enforced by the Court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. In this regard, we may refer to a decision rendered in a case of *Rattan Singh v. State of Punjab* reported in (1981) 4 SCC 481, wherein Their Lordships has observed:

"4..... May be that the detenu is a smuggler whose tribe (and how their numbers increase) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to

have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus."

In this context, we may refer to another decision rendered in the case of Abdul Latif Abdul Wahab Sheikh v. B.K. Jha, reported in (1987) 2 SCC 22 wherein it has been held:

"5.. . . The procedural requirements are the only safeguards available to a detenu since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard."

8. Keeping in view of the said principle, the Hon'ble Supreme Court subsequently in the case of Union of India v. Paul Manickam, (2003) 8 SCC 342 recorded requirements to be made by the Detaining Authority passing order of detention when the detenu is in custody, which reads as follows:

"14.....Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability, etc. Ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated..... The point was gone into detail in Kamarunnissa v. Union of India: (1991) 1 SCC 128. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail."

9. Thus, at the cost of repetition, we may record that Detaining Authority in a case of detenu being in custody, needs to observe following safeguards meticulously:

(i) If the authority passing the order is aware of the fact that he is actually in custody;

(ii) If there is reason to believe on the basis of available materials placed before him ?

(a) that there is every possibility of being released; and

(b) that on being so released he would be in all probability to indulge in prejudicial activities;

(iii) If it is felt essential to detain him to prevent him from doing so.

10. Thus, in the context of the law laid down by the Hon"ble Supreme Court, we have to examine as to whether aforesaid safeguards have been observed meticulously by the Detaining Authority who passes the order of detention when the detenu was in custody.

11. As we have said earlier that the detention order was passed on 11.11.2015 by the District Magistrate, Imphal West after being satisfied that the activities of the detenu are prejudicial to the maintenance of public order under section 3(2) of National Security Act,1980. Such order was passed while the detenu was in custody which the Detaining Authority was aware which would be evident from the extract of the order which reads as follows:

* * * *

"Whereas, I am satisfied from the police report that Shri Khundrakpam Tomba Singh (46 yrs) S/o (L) Kh. Meipak Singh of Nambol Thiyam Makha Leikai, P.S Nambol, District-Bishnupur, Manipur who is now in police custody, should, in the likely event of his person being released on bail, be prevented from commission of prejudicial activities through an alternative preventive measure."

12. Satisfaction of the Detaining Authority of detenu committing the same activities prejudicial to the maintenance of public order is also there in para-4 of the grounds of detention, which reads as follows:

"4. That, in view of the tendencies and inclinations to commit criminal activities, and, considering the offences you have committed in the proximate past as a member of the banned organisation namely Kangleipak Communist Party Lamyamba Khuman faction (KCP-Lamyamba Khuman in short), which aims at establishing a sovereign independent State of Manipur by waging war against the lawfully established Government of India and Manipur by holding fire arms, I am satisfied that in case of your being set free on bail, you being a member of the said organisation, would continue to indulge in similar activities of extortion of money and would continue making attempts on the lives of innocent persons,

which are prejudicial to the security of the State and to the maintenance of the public order. Hence, the application of normal criminal law against you will not at all be effective to prevent you from the commission of further prejudicial activities. An alternative preventive measure is, therefore, immediately called for."

13. From the aforesaid paragraph extracted from the order of detention and also from the grounds of detention, it would appear that the Detaining Authority while passing the order of detention did satisfy himself with respect to the fact that the detenu on being availing facilities of bail would continue to indulge in the same activities, which are prejudicial to the maintenance of public order, but the Detaining Authority has never recorded on being satisfied that there is every possibility of being released. Thus, the safeguards as enunciated by the Hon'ble Supreme Court as indicated above have not been observed meticulously by the Detaining Authority as there appears to be observance of the safeguards as stipulated under clause 2(b) whereas the Detaining Authority is absolutely silent over clause 2(a) which relates to possibility of the accused being released.

14. Thus, we find that the Detaining Authority failed to record subjective satisfaction on the first link of the issue, namely that detenu was likely to be released on bail in near future in connection with the offence in which he was arrested and thereby order of detention being bad is hereby quashed. Consequently the detenu namely, Shri Khundrakpam Tomba Singh (46 yrs) S/o (L) Kh. Meipak Singh of Nambol Thiyam Makha Leikai, P.S Nambol, District-Bishnupur, Manipur is directed to be released forthwith if not wanted in another case(s).

15. Writ petition stands allowed.