

(2014) 04 MAN CK 0013

In the Manipur High Court

Case No : Writ Petition (Crl) No. 5 of 2014

Shri Naoroibam Joyshankar Singh @ Bungochou @ Khougang
@ Loyumba @ John

APPELLANT

Vs

The District Magistrate, Imphal, The State of Manipur
represented by the Special Secretary (Home) and The
Superintendent of Jail, Manipur Central Jail

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (2014) CriLJ 2763

Hon'ble Judges : Laxmi Kanta Mohapatra, Acting C.J.; N. Kotiswar Singh, J

Bench : Division Bench

**Advocate : S. Rajeetchandra, Advocate for the Appellant; A. Vashum, G.A,
Advocate for the Respondent**

Judgement

Laxmi Kanta Mohapatra, Actg. C.J.

1. The petitioner in this writ application challenges his detention under Sub-section (3) of Section 3 of the National Security Act, 1980 in pursuance of an order passed by the District Magistrate, Imphal West on 03.10.2013. From the grounds of detention, it appears that the petitioner is a member of Peoples' Revolutionary Party of Kangleipak (for short "PREPAK") and after obtaining military training along with his associates, committed offence of explosion of a bomb on 10.08.2013 and explosion of another bomb on 17.08.2013.

1.1. He was arrested on 22.08.2013 by a team of CDO/IW Bazar Unit and remanded to custody. Presently he is in judicial custody. While he was continuing in judicial custody, the impugned order of detention had been passed by the District Magistrate, Imphal West on 03.10.2013.

2. Shri S. Rajeetchandra Singh, learned counsel appearing for the petitioner drew the attention of the Court to the order of detention and submitted that the subjective satisfaction recorded by the District Magistrate to the effect that the

petitioner may be released on bail in the near future by the normal criminal court as bails are granted in similar cases is based on no material specially when no application for bail has been filed by the petitioner for being released in connection with the case for which he had been arrested on 22.08.2013. It was further submitted that in view of the above, the order of detention is invalid.

2.1. Shri A. Vasum, learned state counsel appearing on behalf of the state respondents referring to the grounds of detention submitted that the petitioner was involved in explosions of two bombs within Imphal-one on 10.08.2013 and other on 17.08.2013. He further submitted that the petitioner is a member of PREPAK and in connection with explosion of the above two bombs, he was arrested on 22.08.2013. Since in similar cases other arrestees had been released on bail, the District Magistrate was of the view that in the event of the petitioner moves an application for bail, he shall also be released. Accordingly, in order to prevent him from committing similar offences, the impugned order of detention was passed for detaining the petitioner under Subsection (3) of Section 3 of the National Security Act, 1980.

2.2. From the grounds of detention, as stated earlier, it appears that the State respondents suspected the petitioner to be a member of PREPAK and also involved in explosion of the two bombs. After he was arrested on 22.08.2013, he had not applied for bail. Admittedly, as on 03.10.2013, when the order of detention was passed, no bail application on behalf of the petitioner was pending. In the relevant paragraph of the order of detention, the District Magistrate has recorded his subjective satisfaction to the effect that the petitioner who is now in jail is likely to be released on bail in the near future by the normal criminal court as bails are granted in similar cases. In this connection reference may be made to a decision of the Apex Court in the case of Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another, . In paragraphs 26 and 27 of the judgment therein, the Apex Court made the following observations:

26. It was held in Union of India V. Paul Manickam that if the detaining authority is aware of the fact that the detenu is in custody and the detaining authority is reasonably satisfied with cogent material that there is likelihood of his release and in view of his antecedent activities he must be detained to prevent him from indulging in such prejudicial activities, the detention order can validly be made.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement

of the authority cannot be believed.

3. Therefore, in absence of bail application, there was no scope for the court to grant bail to the petitioner. The apprehension expressed by the District Magistrate in the impugned order of detention is only based on the fact that in similar other cases bail had been granted by the court.

4. From the documents produced before the District Magistrate, we do not find a single document which supports such an observation of the District Magistrate that in similar case bail has been granted by the Court. Not a single copy of such bail order had been produced before the District Magistrate to record such a subjective satisfaction. We are, therefore, of the view that in absence of a bail application when the petitioner was continuing in jail custody, there could not be any apprehension in the mind of the District Magistrate that the petitioner may be released on bail.

5. In view of the above, the order of detention becomes invalid. For the above reasons, we allow the writ application, set aside the impugned order of detention dated 03.10.2013 as well as the order of confirmation dated 29.10.2013 and direct that the petitioner, namely Shri Naoroibam Joyshankar Singh @ Bungochou @ Khougang @ Loyumba @John (27 yrs) S/o. N. Inaocha Singh of Lairikyengbam Makha Leikai, Imphal East District, Manipur, be set at liberty forthwith unless his detention is required in other case(s).