

(2011) 05 GAU CK 0010
In the Gauhati High Court
Case No : Writ Petition (Cri) No. 131 of 2010

Shri Phanjoubam Indramani Meitei	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
National Security Act, 1980 — Section 14(2), 8
Unlawful Activities (Prevention) Act, 1967 — Section 17, 20

Citation : (2012) 1 GLD 260

Hon'ble Judges : T. Nandakumar Singh, J; Maibam B.K. Singh, J

Bench : Division Bench

Advocate : Ph. Dolen, for the Appellant; R.S. Reisang, Government Advocate and Mr. Amarjit N., CGSC, for the Respondent

Final Decision : Allowed

Judgement

Mutum Binoykumar Singh, J.—The detention order dated 21.09.2010 issued by the respondent No. 1 in No. Cri./NSA/No. 95 of 2010 detaining one, Shri Phanjoubam Abung Meitei @ Nabachandra @ Romesh @ Pungyeiba @ Sanajaoba @ Pabung Sanajaoba of Andro Mamang Leikai, until further orders under the National Security Act, 1980 (for short "NSA"), its approval order dated 1.10.2010 and confirmation order dated 05.11.2010 issued by the respondent No. 1 are under challenge in this habeas corpus petition filed by the younger brother of the detenu. Heard Mr. Ph. Dolen, learned counsel appearing for the petitioner and also Mr. R.S. Reisang, learned GA appearing for the respondents Nos. 1 & 2 and Mr. Amarjit Naorem, learned CGSC appearing for the respondent No. 3.

2. The sequence of factual events, in brief, leading to filing of the present habeas corpus petition are that the detenu was once detained under the NSA vide detention order dated 25.9.2007 but the detention order was interfered with by this Court vide order dated 23.7.2008 passed in W.P.(Cril.) No. 11 of 2008. Thereafter, on 14.9.2010 at about 10.30 a.m. the detenu was arrested by a team

of CDO/IW from Khwai Brahmapur Nagamapal Laimayum Leirak and handed over to the OC, Imphal P.S. with a report where a regular FIR Case No. 386(9)2010 IPS u/s 20 UA(P)A Act was registered against him. The detenu was remanded to Police custody till 21.09.2010 and then to judicial custody. On 22.9.2010 the detention order dated 21.9.2010 was served on him in the jail. On 25.9.2010 a copy of the grounds of detention dated 24.9.2010 together with the documents were furnished to the detenu inside the Central Jail, Sajiwa. The detention order was approved by the respondent No. 1 vide order dated 01.10.2010 and subsequently confirmed the detention of the detenu for the fixed period of 12 months from the date of detention vide order dated 05.11.2010. On 4.10.2010 the detenu submitted a representation to revoke/cancel the detention order dated 21.0.2010 to the respondent No. 2, the detaining authority, who rejected the same and informed to the detenu vide letter dated 6.10.2010. On 14.10.2010, the detenu submitted two separate representations to the respondent No. 1, State Government and the respondent No. 3, Union of India respectively for cancellation of the detention order dated 21.9.2010. The respondent No. 1 rejected the said representation and informed the detenu vide letter dated 19.10.2010. Similarly, the respondent No. 3 rejected the detenu's representation on 30.10.2010. Hence, the present habeas corpus petition.

3. Several grounds have been raised in the petition, but at the time of hearing the learned counsel appearing for the petitioner assailed the impugned detention order dated 21.9.2010 only on two grounds that some of the documents which formed the grounds of detention for passing the impugned detention order were also the documents relied upon in the earlier detention order dated 25.09.2007 passed by the same detaining authority. According to the learned counsel appearing for the petitioner the earlier detention order dated 25.9.2007 was interfered with by his Court vide judgment and order dated 23.7.2008 passed in W.P. (Cri.) No. 11 of 2008. Thus, the impugned detention order dated 21.09.2010 issued on the same very grounds on which the earlier/detention order was issued is not sustainable in law.

4. On contrary, the learned counsel appearing for the State respondents submits that the impugned detention order was not passed solely on the basis of the document referred to in the earlier detention order dated 25.09.2007 and as such no interference with the impugned detention order is called for.

5. In order to appreciate the rival contentions put forward by the learned counsel appearing for both sides, we have examined the materials/documents which formed the grounds of detention for passing the earlier detention order dated 25.9.2007 as well as the materials/documents which formed the grounds for passing the impugned detention order dated 21.9.2010. From the records of W.P. (Cri.) No. 11 of 2008, it appears that the earlier detention order dated 25.09.2007 was passed basing on the following documents :

i. Your statement given before the I.O. on 22.9.2007.

- ii. Statement of S.I. N. Sadananda Singh of CDO/Imphal West, C/No. 0101077 T. Jiten Singh of-do-and C/No. 0601272 Mr. Rangampam of-do-recorded u/s 161, Cr PC in connection with FIR No. 256(8)2007 Imphal P.S. u/s 17/20 UA(P) A Act.
- iii. Copy of the arrest memo dated 22.8.2007.
- iv. Copy of the seizure memo dated 22.8.2007.
- v. Copy of the Manipuri local daily "the Poknapham" dated 8.3.99.
- vi. Copy of the Notification under No. S.O. 1594(E) dated 13.11.2005.
- vii. Copies of-
 - (a) FIR No. 256(8)2007 Imphal P.S.
 - (b) FIR No. 3(1)2003 BPR P.S.
 - (c) FIR No. 8(1)2003 BPR P.S.
 - (d) FIR No. 73(11)2006 NBL P.S.
 - (e) FIR No. 65(7)2003 YPK P.S.
 - (f) FIR No. 128(7)2003 TBL P.S.
 - (g) FIR No. 17(2)2005 LLI PS.
 - (h) FIR No. 36 (11) 2004 JBM P.S.
 - (i) FIR No. 41(4)96 MRH P.S.
 - (j) FIR No. 46(12)99 MRH P.S.
- viii. Copy of the Government of Manipur, Home Department's Order No. 17(1)/49/80-H (Pt-1) dated 1.9.2007.

From the above materials, it is quite clear that the earlier detention order dated 25.9.2007 was passed for his (detenu) alleged unlawful activities and involvement in ten police cases of different Police Stations. Whereas, from the grounds of detention furnished to the detenu as required u/s 8 of the NSA, it appears that the impugned detention order dated 21.9.2010 was passed basing on the following documents :-

- (a) Your statement given before the I.O. on 15.9.2010;
- (b) Statement of J.C. No. 615 Jem L. Bikramjit Singh of SDO/IW recorded u/s 161 Cr. P.C. in connection with FIR No. 386 (9)20 10 IPS u/s 20 UA(P) A Act;
- (c) Copy of Arrest Memo dated 14.9.2010;
- (d) Copy of the "Poknapham" dated 8.3.1999.
- (e) Copy of Notification under No. S.O. 2883(E) dated 13.11.2009;
- (f) Copy of District Magistrate, Imphal West vide order No. Cri./NSA/No. 55 of

2007 dated 25.9.2010.

(g) Copy of FIR No. 256(8)2007 IPS u/s 17/20, UA(P)A Act.

(h) Copy of FIR No. 486(9)2010 IPS u/s 20, UA(P)A Act;

(i) Copy of the Government of Manipur, Home Department's Order No. 17(1)49/80-H(Pt-I) dated 7.8.2010.

6. Admittedly, the earlier detention order dated 25.9.2007 was interfered with by this Court vide judgment and order dated 23.7.2008 passed in W.P.(Cri.) No. 11 of 2008. The documents relied upon by the detaining authority in passing the impugned detention order includes copy of the FIR Case No. 256(8)2007 IPS u/s 17/20, UA(P)A Act and copy of the earlier detention order dated 25.09.2007 passed by the District Magistrate, Imphal West in Cri./NSA/No. 55 of 2007. Records further indicate that while the detenu was in police custody in connection with FIR Case No. 256 (8) 2007 IPS he was formally arrested in connection with 9(nine) other FIR cases referred to above in the grounds of detention of the earlier detention order.

7. In the instant case, the detenu was arrested on 4.9.2010 at about 10 a.m. by a team of CDO/IW from Khwai Brahmapur Nagamapal Laimayum Leirak and handed over to the OC, Imphal P.S. where a regular FIR Case No. 386(9)2010 IPS u/s 20, UA(P)A Act has been registered against the detenu. Thereafter, the detaining authority passed the impugned detention order dated 21.09.2010 purportedly for his prejudicial activities and involvement in FIR Case No. 386(9)2010 IPS, FIR Case No. 256(8)2007 and earlier detention order dated 25.09.2007. Mention may be made that the grounds for passing the earlier detention order dated 25.9.2007 was for his involvement in FIR Case No. 256(8)2007 IPS and others, which was set aside by this Court as stated above. The learned Government Advocate appearing for the State respondents submits that the detaining authority mentioned the earlier FIR Case and detention order in the grounds of detention of the impugned detention order just to show the antecedents of the detenu and that since the detenu is found to be involved in FIR Case No. 386(9)2010 IPS u/s 20, UA(P)A Act besides his involvement in the earlier FIR cases, the detaining authority has rightly passed the impugned detention order as the detenu continues to indulge in committing prejudicial activities to the maintenance of public order till his arrest on 14.09.2010.

8. The learned counsel appearing for the petitioner relying on the decisions of the Hon"ble Apex Court reported in Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, and Ramesh Vs. State of Gujarat and Others, submits that since the detaining authority passed the impugned detention order taking into consideration of the earlier grounds and detention order along with a purported fresh ground, the same is not sustainable in law. In paragraph No. 1 of the grounds of detention order, it is stated that on 22.8.2007 the detenu was arrested by a team of CDO/IW and handed over to OC, Imphal P.S. where he was arrested in connection with FIR Case No. 256 (8) 2007 IPS u/s 17/20, U.A(P) A.

Act and while he was in judicial custody the District Magistrate, Imphal West passed the earlier detention order dated 25.09.2007 in No. Cri/(NSA)/No. 25 of 2007. In paragraph-3 of the grounds of detention, it is also stated that on 14.9.2010 at about 10.30 a.m. the detenu was arrested by a team of CDO/IW and handed over to OC, Imphal P.S. where a regular FIR Case No. 386(9)2010 IPS u/s 20, UA(P)A Act was registered against him. From the above facts disclosed in the grounds of detention, it is crystal clear that the impugned detention order was issued on the basis of the earlier grounds, detention order and purported new ground, i.e. FIR Case No. 386(9)2010 IPS u/s 20, UA(P) A Act, which was registered against him at the time of his arrest.

9. As per provision of Section 14(2) of the National Security Act, 1980, there is no bar in making of another detention order u/s 3 against the same person even after the expiry or revocation of the earlier detention order. Proviso to Section 14(2) of the Act, however, provides that in a case where no fresh facts have arisen after the expiry of revocation of the earlier detention order made against such person(s), the maximum period for which such persons may be detained pursuant to the subsequent detention order shall, in no case, extend beyond the expiry of the period of 12 months from the date of detention under the earlier detention order. In other words, unless no fresh facts have arisen, the period of detention against the same person cannot exceed maximum period of 12 months from the date of earlier detention.

10. The question involves in this case is as to whether the impugned detention order passed by the detaining authority, by drawing his subjective satisfaction either in part or as a whole of the earlier grounds of detention along with the fresh grounds, is sustainable in law or not.

11. The above point is no more *res Integra* as the Hon"ble Supreme Court in *Chhagan Bhagwan Kahar v. N.L. Kalna* (supra) held that when a detention order is quashed by the Court issuing a his prerogative like, habeas corpus for certiorari the grounds of the said earlier order should not be taken into consideration either as a whole in part even along with fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order, because once the Court strikes down an earlier order by issuing a rule it nullifies the entire order.

12. In *Ramesh v. State of Gujarat & Ors.* (supra), the Hon"ble Apex Court quashed the successive detention order on the ground that the detaining authority had taken into consideration two criminal cases mentioned in the earlier order of detention, which was quashed by the Court. In that case, the Supreme Court observed that it cannot be said that the said cases were mentioned in the later order only for limited purpose of showing antecedents of the detenu.

13. Coming to the facts of the present case, there is no dispute that the detaining authority had taken into consideration the earlier FIR case, which

formed the basis for passing the earlier detention order, in passing the impugned detention order. In view of the decisions of the Hon"ble Apex Court in Ramesh v. State of Gujarat & Ors. (supra), the contention of the learned Government Advocate that mentioning of the earlier FIR Case in the impugned detention order is just to show the antecedents of the detenu finds no legs. On this count alone the impugned detention order and its subsequent approval and confirmation orders are liable to be set aside.

14. The learned counsel appearing for the petitioner, further, contends that the impugned detention order is also liable to be quashed as there is no cogent material for arriving at the subjective satisfaction of the detaining authority on the point of likelihood of releasing the detenu on bail in the near future. However, in view of the finding on the first point it is not necessary to delve further on the second point raised by the petitioner"s counsel.

15. For the foregoing reasons, and in view of the ratio laid down by the Apex Court in the above cited cases, we have no other alternative except to quash the impugned detention order dated 21.9.2010. Accordingly the impugned detention order dated 21.9.2010, approval order dated 1.10.2010 and confirmation order dated 5.11.2010 are quashed. Resultantly, the detenu, namely Shri Phanjoubam Abung Meitei @ Nabachandra @ Romesh @ Pungyeiba @ Sanajaoba @ Pabung Sanajaoba of Andro Mamang Leikai, is set at liberty forthwith, if not wanted in connection any other cases(s). Writ petition is allowed.