

(2012) 09 GAU CK 0119
In the Gauhati High Court
Case No : Writ Petition (Cri.) No. 43 of 2012

Smt. Laishram Shama Devi	Vs	APPELLANT
The State of Manipur and Others		RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Arms Act, 1959 — Section 25(1C), 25(1C)A
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 5A
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
National Security Act, 1980 — Section 11, 11(1), 11(2), 3, 5A
Penal Code, 1860 (IPC) — Section 121, 121A, 384, 400
Unlawful Activities (Prevention) Act, 1967 — Section 16, 17, 20

Citation : (2013) CriLJ 25

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : Sanajaoba, for the Appellant; Y. Ashang, A.G.A. and Amarjit Naorem, CGSC, for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—One of the perennial issues the Courts in this country are called upon to decide from time to time is, how to strike the fine balance between the personal liberty of a citizen, a guaranteed fundamental right under our Constitution and the equally competing concern to safeguard the security of the state and maintenance of public order. The present writ petition challenging the detention of the husband of the petitioner under the National Security Act, 1980 (hereinafter referred to as the NSA) has thrown up this challenge once again.

BRIEF FACTS OF THE CASE:

The petitioner who is the mother of Sri Laishram Suchilchandra Singh, who has been detained under the National Security Act, 1980 pursuant to an order dated

19.9.2011 passed by the District Magistrate, Imphal West District, has filed the instant petition challenging the aforesaid detention order.

2. The grounds of detention were furnished to the detenu on 20.9.2011.

3. As per the grounds of detention, the detenu joined the Kuki armed gang, namely, Kuki Revolutionary Army (KRA in short) and started extorting money from the Gas Agencies located in Imphal areas using a 9 mm pistol. He was arrested on 18.5.2007 by the police and remanded to judicial custody in connection with FIR No. 143(5)2007 IPS u/S. 400/384 IPC, but he was released on bail by the court in the month of June, 2007. After being released on bail by the court he started to work again for the organization, continuing with the extortion activities. On 26.2.2008, he was again arrested by the police and remanded to judicial custody in connection with FIR No. 17(2)2008 LIL PS u/S. 20 UA(P) A Act and 25(1-C)A . Act, but he was released on bail by the Court in the month of September, 2008. However, after being released on bail, he continued to work for the said armed gang indulging in extortion activities along with others. He was arrested again on 3.11.2008 and produced before the Court on 10.11.2008 in connection with FIR No. 37(11)2008 PRT PS u/S. 400/384 IPC and 25(1-C)A. Act, but released on bail by the Court on the same day.

4. It was further stated in the grounds of detention that after being released on bail by the court on 10.11.2008, he could no longer lead a normal life though he was arrested three times by the security forces, as he was determined to join an underground organization operating in the State of Manipur. With this view in mind, in the month of January, 2009, he contacted one activist who was the self styled Commander-in-Chief of KCP (MC) Lalumba faction, another banned organization and started to work as a member for the said organization. After he joined the said organization, he along with 83 new volunteers of KCP(MC) Lalumba and KRA (U) members 3 were given basic military training at Makhan Jungle for three months. After completion of the training, he stayed at the training centre doing camp routine works till the 2nd week of August, 2010. In the month of July, 2009 he was directly promoted to the rank of S/S Sgt. Major. While he was at Makhan jungle, there was an agreement between the KCP (MC) Lalumba faction and Indian Government for Suspension of Operation (SoO) and all the members of KCP (MC) Lalumba faction were staying at the 7th Bn. MR. Khabeisoi. However, while staying at Khabeisoi, he started to extort money from the Hospitals, Schools, NGOs etc., for the KCP(MC) Lalumba faction in the name KYKL (MDF) by neglecting the ground rules of Suspension of Operation between Indian Government. On 9.2.2011, he was arrested by the police and remanded to judicial custody in connection with FIR No. 64(2)2011 PRT PS u/S. 17/20 UA(P) A. Act and 25(1-C) A. Act. But he was released on bail by the Court on 18.3.2011. On 15.4.2011, he was again arrested by a team of the police and on 27.4.2011, he was produced before the Court for judicial remand in connection with FIR No. 233(4)2011 IPS u/S. 121/121A/384/400 IPC and 16 /1720 UA(P) A. Act. But he was released on bail by the Court on the same day. Just after release

on bail he contacted another activist, who was staying at 7th MR campus, Khabeisoi and started to extort money from the Shija Hospital, Pari Imom Sindam Shang School, Pangei and NGOs etc., in the name of KYKL (MDF). Over and above, he threatened the owners of the Private Hospitals, Private Schools and NGOs through his mobile phone. He carried out other tasks of the said organization till his arrest.

5. Subsequently, he was arrested on 10.9.2011 by the police in connection with FIR No. 536(9) 2011 IPS u/S. 17 /20 UA(P) A Act and remanded to police custody till 19.9.2011.

6. The detaining authority on being satisfied, because of his past activities and tendency to indulge in illegal activities after being released on bail, that application of normal laws may not be adequate and to prevent him from committing further illegal acts, placed him under detention by invoking the provision of the National Security Act, 1980.

7. It was stated in the grounds of detention that such acts of extortion of money carried out by him and his associates caused a wave of terror amongst the general public which is prejudicial to the security of the State and maintenance of public order.

8. It may be stated that the detenu was earlier detained under the National Security Act, 1980 vide detention order dated 28.2.2008 and the said detention order on being challenged before this Court in WP (Cri I) No. 34 of 2008 was set aside on the ground that there was a delay of 122 days in disposing the representation submitted by the detenu.

ISSUES RAISED BY THE PETITIONER:

9. The petitioner, primarily on the strength of the judgment of the Hon''ble Supreme Court consisting of two Judges Bench in Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, and other subsequent judgments based on the aforesaid judgment and followed by a series of decisions of this Court, has contended that the second impugned detention order of the detenu is impermissible only for the reason that the detaining authority, while passing the impugned detention order, had relied upon certain FIRs, which had been the basis of an earlier detention order of the present detenu, which had been set aside by this Court.

10. Therefore, we will try to understand what the Hon''ble Supreme Court had held in the aforesaid case of Chhagan Bhagwan Kahar (supra). To do so, it would perhaps be inevitable that certain basic facts involved in the said case of Chhagan Bhagwan Kahar (supra) are highlighted.

i) The detenu in the case of Chhagan Bhagwan Kahar (supra) was detained under Gujarat Prevention of Anti-social Activities Act, 1985 (PASA for short) under an order of detention dated 21-10-1988 passed by the detaining authority. It was stated in the grounds of detention, inter alia, that the detenu was illegally keeping in possession country liquor and openly selling the same and that he had

been arrested in 1988 for offences under the Bombay Prohibition Act in respect of which a number of cases were registered which cases were pending trial. There were other allegations of the detenu engaging other persons to assist his bootlegging activities.

ii) One of the grounds for assailing the legality and validity of the order of detention was that the detaining authority for drawing his requisite subjective satisfaction, had taken into consideration the grounds of detention given in an earlier detention order, which was successfully challenged before the High Court of Gujarat.

iii) It was noted by the Hon''ble Supreme Court that the earlier detention order was passed on 2-1-1987 on the ground that between 1984 to 1986 there were 19 cases filed against the detenu under the Bombay Prohibition Act of which 16 were pending in Court and three others under investigation when the previous order was passed. The petitioner therein filed Special Criminal Application No. 46 of 1987 before the High Court of Gujarat challenging the said order. The Gujarat High Court by its judgment dated 3-8-1987 quashed the earlier order of detention and directed the release of the detenu forthwith.

iv) It was also noted by the Hon''ble Supreme Court in Chhagan Bhagwan Kahar (supra) that the detaining authority in the second detention order had made a reference about the previous order in the grounds of detention in the subsequent detention order which stated that the detenu was associated with bootlegging activity for a long time and, therefore, he was ordered to be detained under PASA and was kept in Baroda Central Jail, which was challenged before High Court by Special Criminal Misc. Application No. 46/1987 and the High Court quashed the detention order and released him from detention and the detaining authority was of the opinion that the proceedings taken against him have had no effect on him and after he was released from the detention, he had continued his activities. Accordingly, the second detention order was passed.

v) It was the contention of the petitioner in the said case of Chhagan Bhagwan Kahar (supra) that once the previous grounds of detention had been quashed on their merit, the detaining authority had no justification to take into consideration the grounds of detention mentioned in the previous detention order for passing the second detention order, which should have been based only on the fresh grounds that were available subsequent to the quashing of the previous detention order.

Certain judgments including Ghulam Nabi Zaki Vs. State of Jammu and Kashmir, were referred to and considered by the Hon''ble Supreme Court.

In Ghulam Nambi Zaki (supra), the Hon''ble Supreme Court held that:

The matter is not *res integra*. In a number of decisions of this Court to which reference will be made presently, this point has been considered and it has been held that once an order of revocation is made, another order detaining the same

person can only be passed if some additional or fresh material is in possession of the State Government on which action can be based.

vi) The Hon''ble Supreme Court in Chhagan Bhagwan Kahar (supra) also referred to the decisions of the Constitution Bench in Hadibandhu Das Vs. District Magistrate and Another, , and Har Jas Dev Singh Vs. State of Punjab and Others, which held that unless fresh or additional materials are available, subsequent detention on the very same grounds would be invalid.

vii) The Hon''ble Supreme Court in Chhagan Bhagwan Kahar (supra) however, observed that those decisions mentioned albeit were cases wherein the first detention order ceased to be either by revocation or by expiry of the period of detention and went on to consider as to what would be the legal implications and ultimate effect of quashing an order of detention by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India and referred to the decision in Ibrahim Bachu Bafan Vs. State of Gujarat and Ors, , wherein it the Supreme Court had held that:

.....When the High Court exercises jurisdiction under Article 226 of the Constitution it does not make an order of revocation. By issuing a high prerogative writ like habeas corpus or certiorari it quashes the order impugned before it and by declaring the order to be void and striking down the same it nullifies the order. The ultimate effect of cancellation of an order by revocation and quashing of the same in exercise of the high prerogative jurisdiction vested in the High Court may be the same but the manner in which the situation is obtained is patently different and while one process is covered by Section 11(1) of the Act, the other is not known to the statute and is exercised by an authority beyond the purview of sub-section (1) of Section 11 of the Act. It is, therefore, our clear opinion that in a situation where the order of detention has been quashed by the High Court, sub-section (2) of Section 11 is not applicable and the detaining authority is not entitled to make another order u/s 3 of the Act on the same grounds.

viii) On the basis of the aforesaid decisions, the Supreme Court in the said case of Chhagan Bhagwan Kahar (supra) held that:

12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the 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 rule it nullifies the entire order.

ix) Accordingly, the Hon''ble Supreme Court in Chhagan Bhagwan Kahar (supra) quashed the second detention order by holding that:

13. In the present case, no doubt, the order of detention contains fresh facts. In addition to that the detaining authority has referred to the earlier detention order and the judgment of the High Court quashing it, presumably for the purpose of showing that the detenu in spite of earlier detention order was continuing his bootlegging activities. But what the detaining authority says clearly in paragraph 9 of his affidavit in reply is that he took into consideration the previous grounds of detention also for his conclusion that the detenu "was engaged in bootlegging activities since long". In other words the detaining authority has taken into consideration the earlier grounds of detention which grounds had been nullified by the High Court in Special Criminal Application No. 46 of 1987 by issuing a prerogative writ of habeas corpus.

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15. Mr. Poti has sought to explain the statement of the detaining authority made in his counter saying that the earlier proceeding was considered only to a limited purpose of taking note of the detenu's continued involvement of bootlegging activities; but the entire grounds of earlier detention as they were, were not considered. We are unable to accept this explanation because the detaining authority, in the counter, in clear terms had expressed that he considered the earlier grounds of detention also. Incidentally, it was brought to our notice that a copy of the earlier grounds of detention was also one of the documents furnished to the detenu in the present case which confirms the fact that the detaining authority has considered the earlier grounds of detention along with other documents for drawing his requisite subjective satisfaction for passing this impugned order. In other words, the earlier grounds of detention dated 2-1-1987, quashed by the High Court was one of the material documents considered by the detaining authority in drawing his subjective satisfaction. Therefore, we hold that this order of detention is vitiated on the ground that the detaining authority has taken into consideration the grounds of earlier detention order alone with other materials for passing this impugned order. Hence, the order is liable to be set aside. Accordingly, we quash the detention-order on this ground and direct that the detenu be set at liberty forthwith if his detention is not required for any other case.

11. Thus, on examination of the aforesaid judgment of the Hon"ble Supreme Court in Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, , it seems that the Hon"ble Supreme Court basing on the decision in the Ibrahim Bachu Bafan Vs. State of Gujarat and Ors, held that the grounds used in the earlier detention order, if the same had been quashed by the High Court on merit, cannot be used at all again in the second detention order.

12. However, it is to be noted that in Ibrahim Bachu Bafan (supra), which was decided by a three Judges Bench, the Hon"ble Supreme Court held in para No. 5 of the judgment that:

5. Law of preventive detention within the ambit of which the Act is covered has been accepted by our Constitution. Challenge to legislations of preventive detention as being ultra vires the Constitution has, therefore, been repelled by this Court on more than one occasion. The inbuilt safeguards provided by the different statutes dealing with preventive detention have been accepted to be in keeping with the rule of law. There is judicial consensus that under the preventive detention law, before the Act in question came into the field, repeated orders of detention could not be made. This Court had clearly indicated that more than one order of detention on the same grounds in succession would not be valid, notwithstanding the aforesaid legal position, S. 11(2) of the Act authorises making of "another detention order under S. 3 against the same person." Counsel for both the parties have agreed that all the three orders of detention made in these cases were on the same grounds.....

(Emphasis added).

Again, in para No. 9 of the said judgment in Ibrahim Bachu Bafan (supra), the Hon"ble Supreme Court further held that,

9. The power conferred under clauses (a) and (b) of sub-s. (1) of S. 11 is in fact extension of the power recognised under S. 21 of the General Clauses Act and while under the General Clauses Act, the power is exercisable by the authority making the order, the named authorities under clauses (a) and (b) of S. 11(1) of the Act are also entitled to exercise the power of revocation. When the High Court exercises jurisdiction under Article 226 of the Constitution it does not make an order of revocation. By issuing a high prerogative writ like habeas corpus or certiorari it quashes the order impugned before it and by declaring the order to be void and striking down the same it nullifies the order. The ultimate effect of cancellation of an order by revocation and quashing of the same in exercise of the high prerogative jurisdiction vested in the High Court may be the same but the manner in which the situation is obtained is patently different and while one process is covered by S. 11(1) of the Act, the order is not known to the statute and is exercised by an authority beyond the purview of sub-section (1) of S. 11 of the Act. It is, therefore, our clear opinion that in a situation where the order of detention has been quashed by the High Court, sub-s. (2) of S. 11 is not applicable and the detaining authority is not entitled to make another order under S. 3 of the Act on the same grounds.

(Emphasis added)

13. Therefore, it is abundantly clear that the Hon"ble Supreme Court in Ibrahim Bachu Bafan (supra) was dealing with a case where the second detention order was based on the same grounds which were the basis for the first detention order, which was already set aside by the High Court, which the Hon"ble Supreme Court held categorically as not permissible to be used again in the subsequent detention order. A reading of the Ibrahim Bachu Bafan (supra) case shows that the Hon"ble Supreme Court was not dealing with a case where there

were additional or fresh grounds as in the case of Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, .

14. However, it appears that the Hon"ble Supreme Court in the case of Chhagan Bhagwan Kahar (supra) had expanded the scope of the said principle of declaring such subsequent detention based on the same grounds as not permissible, by holding that once the earlier detention order was quashed by the High Court, even a part of the ground used in the earlier detention order cannot be used in the second detention order as stated in para No. 12 of the judgment reproduced above. It matters not even if fresh grounds are also available, according to Chhagan Bhagwan Kahar (supra).

15. The aforesaid decision in Chhagan Bhagwan Kahar (supra) was followed subsequently in Jahangirkhan Fazalkhan Pathan Vs. Police Commissioner, Ahmedabad and Another, and Ramesh Vs. State of Gujarat and Others, (all by two Judges Bench of the Hon"ble Supreme Court).

In Jahangirkhan Fazalkhan Pathan (supra), the Hon"ble Supreme Court held:

6. In the present case, admittedly in the grounds of detention specific reference has been made to the earlier two orders of detention made in 1985 and 1986 against the petitioner. It is also evident that in the schedule of documents annexed to the grounds of detention not only the copies of the order of detention but also of the grounds of detention in the earlier detention cases have been given to the petitioner. It also appears from the statements made in the grounds of detention that the detaining authority took into consideration the previous grounds of detention as well as the orders made therein even though the same were nullified by the High Court as well as by the Advisory Body, presumably, for the purpose of showing that the detenu in spite of those earlier orders of detention was continuing in his bootlegging activities. It has been tried to be contended on behalf of the detaining authority that though the earlier two detention orders have been mentioned in the grounds of detention and the copy of the orders passed in the previous detention cases as well as the grounds of detention were supplied to the detenu yet these were not at all considered by him in forming subjective satisfaction for clamping the order of detention. This submission cannot be sustained in view of the statements made in the grounds of detention.

16. Similarly, in Ramesh v. State of Gujarat (supra), the Hon"ble Supreme Court held that:

10. On a careful scrutiny of the grounds of detention, we unreservedly hold that the detaining authority has taken into consideration the two criminal cases mentioned under Sr. Nos. 1 and 2 of the table which were the materials in the earlier order of detention that had been quashed and that it cannot be said that those two cases are mentioned only for a limited purpose of showing the antecedents of the detenu.

11. In view of the above finding, we hold that the ratio laid down in Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, will squarely apply to the facts of the present case and the impugned order has become liable to be quashed.

17. Based on the aforesaid decisions of the Hon''ble Court, a Division Bench of this Court in [WP(Crl) No. 82/2010 (Imphal Bench) Sri Naorem Brojen Singh v. State of Manipur & Ors.] and [WP (Crl) No. 131/2010 (Imphal Bench) Sri Phanjaobam Indramani Singh v. State of Manipur & Ors.] and a Single Bench of this Court in [WP(Crl) No. 114/2011 (Imphal Bench) Smt. Khadangbam (O) Sanatombi Devi] had set aside the subsequent detention orders in which grounds used in the earlier detention orders were referred to.

18. In WP(Crl) No. 82/2010 (Imphal Bench), a Division Bench of this Court held that:

18 In the instant case, the detaining authority having issued the detention order taking note of the earlier grounds along with a purported fresh ground, same is vitiated and thus not sustainable in law. It has rightly been contended by the learned counsel for the petitioner that purported fresh ground/case being in existence during the period when the petitioner was in judicial custody, it was incumbent on the part of the authority to act upon the same promptly and not to thrust upon the same to detain the petitioner attributing to him an impossible act while in detention.

19. Similarly, in WP(Crl) No. 131/2010 (Imphal Bench) a Division Bench of this Court held that:

14 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 Vs. State of Gujarat and Others, , 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 alone, the impugned detention order and its subsequent approval and confirmation orders are liable to be set aside.

20. In WP(Crl) No. 114/2011 (Imphal Bench), a Single Bench, relying on the aforesaid judgment of the Hon''ble Supreme Court, held that:

9. On facts it is found that the earlier order of detention and release order on bail in respect of the present detenu finds place in Clause (g) of Paragraph 5 of the grounds of detention communicated to the detenu vide order dated 25.07.2011. According to the State-respondents the said previous orders were not relied upon but it was referred only for the purpose of taking into note of the detenu''s persistent involvement in various prejudicial activities to the securities of the State and maintenance of public order as a member of the banned organization. Whatever may be the reasons behind referring the previous order, one thing is

sure that the detaining authority referred to the previous case and order to strengthen the grounds of detention in the fresh order against the detenu. It cannot be construed that making reference to the earlier order is so innocuous without any effect or implication on the fresh order of detention issued against the detenu. The successive orders of the Apex Court as referred to above, prohibit the state in clear terms from referring or relying on the previous orders, even in part, in issuing the second or fresh order of detention. The detaining authority has lost sight of this important direction of the Apex Court and in my considered view, the District Magistrate concerned passed the impugned detention order without application of his mind. The respondents-District Magistrate was oblivious of the law that there is no bar in issuing fresh detention order based on fresh materials against the detenu. In spite of such clear legal position, the District Magistrate concerned referred himself to the earlier detention order and release orders on bail. This also reflects non-application of mind of the District Magistrate in issuing the impugned detention order.

10. There should not be any dispute on the submission of the learned counsel for the petitioner in so far as the law in this regard has been settled in the aforesaid decisions.

11. In view of the above discussion, reasons, findings and the law laid down by the Apex Court in regard to the question of law involved, I hold that the present case is squarely covered by the decisions referred to in the above cited cases. Accordingly, I set aside and quash the impugned orders directing the respondents to set the detenu.....

21. Armed with the aforesaid decisions of the Hon''ble Supreme Court and this Court, the learned counsel for the petitioner has submitted that in the present case as two FIRs, being FIR No. 143(5)07 IPS U/S 400 /384 IPC and FIR No. 17(2)2008 LIL IPS U/S 20 UA (P) A. Act and 25(1-C) Arms Act which had been referred to and relied upon by the detaining authority while issuing the first detention order dated 28.2.2008 have been again used in the second detention order, the second detention order would be invalid.

22. In response to the aforesaid argument advanced by the petitioner, fully backed by the decisions of the Hon''ble Supreme Court and supplemented by the decisions of this Court as referred to above, the learned counsel appearing for the State has made an valiant endeavour to counter the assailment made by the petitioner on the strength of the decision of the Constitution Bench of the Hon''ble Court rendered in Attorney General for India and Others Vs. Amratlal Prajivandas and Others, and also decision of the Supreme Court in State of U.P. and Another Vs. Sanjai Pratap Gupta @ Pappu and Others, and of this Court in Toijam Bhogendro Singh v. District Magistrate, Imphal West & Ors., 2012 (1) GLT 442.

23. Learned counsel for the State Government submits that as per Section 5-A of the National Security Act, 1980, the grounds mentioned in the detention order

are separable, and such order of detention shall be deemed to have been made separately on each of such grounds and further has submitted that the detention order will not be vitiated on the ground that one of the grounds is invalid for any other reason whatsoever.

24. Section 5-A of the National Security Act, 1980 reads as follows:

5-A. Grounds of detention severable.--Where a person has been detained in pursuance of an order of detention whether made before or after the commencement of the National Security (Second Amendment) Act, 1984 u/s 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly--

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are--

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

25. Learned counsel for the Respondents therefore, submits that in view of the Section 5-A(a)(v) of the National Security Act, 1980, even if the said old grounds cannot be acted upon as invalid by virtue of being already set aside by the Court, since the grounds are separable, the detention order can be sustained on the basis of the remaining fresh grounds as per the aforesaid provision of the National Security Act, 1980 which makes a deeming provision that whenever a detention order has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds.

26. Therefore, it has been argued that even if the said old grounds cannot be used in the subsequent detention order, and to that extent held invalid, yet it has to be presumed that there are other separate detention orders on the basis of other new grounds. The validity of the remaining grounds has to be tested on their own merit and cannot suffer the automatic disqualification by virtue of Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, and to render the entire subsequent detention order invalid.

27. He also submits that the validity and constitutionality of such a provision providing for severability of grounds had been upheld by the Constitution Bench in Attorney General for India and Others Vs. Amratlal Prajivandas and Others, which was dealing with a similar provision under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), viz. Section 5-A of COFEPOSA, which had been held to be in pari materia with Section 5-A of NSA by the Hon''ble Supreme Court in State of U.P. and Another Vs. Sanjai Pratap Gupta @ Pappu and Others, .

The Hon''ble Supreme Court in State of U.P. v. Sanjai Pratap Gupta, (supra) held that:

18. In Attorney General for India v. Amratlal Prajivandas it was observed that where the detention order is based on more than one ground, by a legal fiction it would be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent one. In that case the Constitution Bench was considering scope of Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short "the COFEPOSA Act") which is in pari materia with Section 5-A of the Act. In view of the factual position analysed, the inevitable conclusion is that Section 5-A is applicable to the case and the High Court was not justified in holding to the contrary. The High Court's judgment is therefore clearly indefensible.

14: Attorney General for India and Others Vs. Amratlal Prajivandas and Others,

28. The aforesaid judgment was followed by this Court in Toijam Bhogendro Singh's (supra) case.

29. Yes, it is true that the aforesaid judgment of the Hon''ble Court in Attorney General for India v. Amratlal Prajivandas (supra) was not considered by the Supreme Court in Chhagan Bhagwan Kahar (supra) and other subsequent decisions of the Supreme Court referred to above and therefore, the contention that the grounds are separable and the subsequent detention order can still be sustained under the new and fresh grounds mentioned in the subsequent detention order by ignoring the old grounds which had been referred in the subsequent detention order, was also not considered by the Hon''ble Supreme Court in Chhagan Bhagwan Kahar (supra).

30. The learned counsel for the State, therefore, submits that the decision of the Hon''ble Supreme Court in Chhagan Bhagwan Kahar (supra) accordingly cannot be relied upon in view of the judgment of the Attorney General for India v. Amratlal Prajivandas (supra) and State of U.P. v. Sanjai Pratap Gupta, (supra).

31. The learned counsel for the State submits that the decision of the Chhagan Bhagwan Kahar (supra) can be distinguished and explained on the basis of the Attorney General for India v. Amratlal Prajivandas (supra) and State of U.P. v. Sanjai Pratap Gupta, (supra). He submits that otherwise, it would not be possible

for the detaining authority to come to the subjective satisfaction without referring to his past activities, that a habitual law breaker may be required to be detained under preventive detention if he continues with illegal activities. He submits that his past illegal activities would indicate, in view of continuing activities after being released, the tendencies to further indulge in illegal activities which may call for his preventive detention to prevent further illegal activities.

32. He submits that the present petitioner was arrested on numerous earlier occasions of being involved in certain crimes as evident from the two FIRs, being FIR No. 143(5)07 IPS U/S 400 /384 IPC and FIR No. 17(2)2008 LIL IPS U/S 20 UA (P) A. Act and 25(1-C) Arms Act. He was thereafter, detained under the NSA vide detention order dated 28.2.2008. Yet, after his release from custody after completing the term of detention, he continued to indulge in serious antinational activities like extortion and he was arrested several times thereafter, in connection with as many as 4 (four) FIRs on 3.11.2008, 9.2.2011, 15.4.2011 and lastly on 10.9.2011.

33. Therefore, the detaining authority had come to the satisfaction that in view of the tendencies and inclinations reflected in the offences committed by the petitioner in the proximate past by being a member of a banned organisation and indulging in serious criminal acts after being released on numerous occasions, he would continue to indulge in the same activities which are prejudicial to the state and maintenance of public order and thus the detention order ought not be interfered on the ground raised by the petitioner.

34. Related to this contention, another aspect which came up for consideration was whether, the decision of the Hon"ble Supreme Court in Chhagan Bhagwan Kahar (supra) can be applicable only when the High Court sets aside the earlier detention order on merits and not on technical ground.

35. In the present case, the earlier detention order of the petitioner dated 28.2.2008 was set aside only on the ground that there was a delay of about 122 days in disposing the representation filed by the detenu. The interference by this Court was without going into the merit of the case as far as the grounds of detention were concerned. There was no decision by the High Courts regarding legality or validity of the grounds of detention, as to whether they were vague, nonexistent, irrelevant or not, connected or not proximately connected with such person, or invalid for any reason whatsoever.

36. The "grounds of detention" relates to the facts preceding the detention order, whereas, the issue of delay in consideration of the representation of the detenu is a post detention consideration. Therefore, setting aside a detention order on the ground of delay of consideration of the representation would fall in a different situation from a case where the Court sets aside the detention order by deciding the validity/legality of the grounds of detention by entering into the merit of the case.

37. The learned counsel appearing for the petitioner, however, contends that it is immaterial whether the earlier detention order was quashed on merits by referring to the grounds of detention or merely on technical grounds as has been done in the present case as the legal effect remains the same. It would be sufficient to render the subsequent detention order illegal, if the earlier detention order was set aside by the Court on mere technical ground and without deciding the validity of the grounds of detention on merit.

38. It may also be noted that while the Hon''ble Supreme Court decided the case of Chhagan Bhagwan Kahar (AIR 1985 SC 1234 : 1989 Cri LJ 1145) (supra), it was based on the earlier decision of the Hon''ble Supreme Court in Ibrahim Bachu Bafan (AIR 1989 SC 697 : 1985 Cri LJ 583) (supra) of a larger Bench where the Hon''ble Supreme Court was dealing with a case in which the subsequent detention order was based on the same grounds of detention and the Ibrahim Bachu Bafan (supra) was decided as the subsequent detention order was based on the same grounds of detention in the previous order of detention which was set aside by the High Court.

39. Upon hearing the arguments on both the sides and on consideration of the judgments of the Hon''ble Supreme Court and of this High Court, certain debatable issues have arisen.

40. Firstly, whether the decision of the Hon''ble Supreme Court in Chhagan Bhagwan Kahar (supra), which is rendered by two Judges Bench, had correctly followed the decision by three Judges Bench in Ibrahim Bachu Bafan (supra) to the extent that interference in the subsequent detention ought to be allowed only when the grounds in the subsequent detention order is based on the same grounds used in the previous detention order as in the case of Ibrahim Bachu Bafan (supra). In Ibrahim Bachu Bafan (supra), the Hon''ble Supreme Court had set aside the subsequent detention order as it was found that it was based on the same grounds used in the previous detention order.

41. Secondly, can Chhagan Bhagwan Kahar (supra) be ignored on the ground that though it was rendered on the basis of Ibrahim Bachu Bafan's case (supra), which was of a larger Bench, its decision was beyond the scope of the ratio of the Ibrahim Bachu Bafan (supra).

42. Related to this issue is, what is the "ratio decidendi" of the Ibrahim Bachu Bafan (supra) and Chhagan Bhagwan Kahar's cases (supra)? The Hon''ble Supreme Court relied on the earlier decision in Ibrahim Bachu Bafan (supra) while deciding the Chhagan Bhagwan Kahar (supra).

43. Ibrahim Bachu Bafan's (supra) decision was based on the fact that the grounds of detention in the previous and subsequent detention orders were the same. The "ratio decidendi" of the Ibrahim Bachu Bafan (supra) as can be culled out from the facts and discussions involved in the case is that where the subsequent detention order is based on the same grounds of detention in the previous detention order, which had been set aside by the Court exercising

jurisdiction under Article 226 of the Constitution, the second detention order will be illegal.

44. What is important to note is that in Chhagan Bhagwan Kahar (supra), the Gujarat High Court had set aside the previous detention order by nullifying the ground. The Hon"ble Supreme Court in Chhagan Bhagwan Kahar (supra) case noted in para No. 13 of the judgment that "detaining authority has taken into consideration the earlier grounds of detention which had been nullified by the High Court", which clearly indicates that the High Court had quashed the previous detention order by setting aside the "grounds of detention", thus by deciding on the legality of the "grounds of detention".

45. Therefore, if the correct "ratio decidendi" of the Chhagan Bhagwan Kahar (supra) case is that once the ground/grounds of the previous detention order had been considered on merit by the High Court and set aside in a writ proceeding, the same grounds, cannot not be used in the subsequent detention order.

46. If that be the correct "ratio decidendi" of the Chhagan Bhagwan Kahar (supra), what would be the precedential value of the subsequent decisions of the Hon"ble Supreme Court in Jahangirkhan Fazalkhan Pathan Vs. Police Commissioner, Ahmedabad and Another, and Ramesh Vs. State of Gujarat and Others, and judgments of this High Court as referred to above.

47. Or, can it be said that the decisions of the Supreme Court in Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, and other cases were rendered per incuriam and do not constitute binding precedents in the light of the judgment in Ibrahim Bachu Bafan Vs. State of Gujarat and Ors, , as the State Respondents would contend? The Supreme Court in V. Kishan Rao Vs. Nikhil Super Speciality Hospital and Another, , held that:

54. When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decision on the point such decisions are rendered per incuriam. This concept of per incuriam has been explained in many decisions of this Court. Sabyasachi Mukharji, J. (as his Lordship then was) speaking for the majority in A.R. Antulay Vs. R.S. Nayak and Another, explained the concept in the following words: (SCC p. 652, para 42) : (Para 44 of AIR, Cri LJ)

42.... "Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

31: A.R. Antulay Vs. R.S. Nayak and Another,

48. Fourthly, even if it is held on the basis of Chhagan Bhagwan Kahar (supra) that such reliance on previous grounds of detention is not permissible, can the remaining grounds which are fresh and new be saved by Section 5-A of the

National Security Act, 1980 which provides that grounds are severable and it would be deemed that there would be as many detention orders as the grounds. Thus, even if the old grounds are not permissible to be considered, there would be several other detention orders on the basis of the remaining new grounds, and as such, the detention order could be sustained in view of Section 5-A of the NSA which was also not considered by the Hon''ble Supreme Court in Chhagan Bhagwan Kahar's case (supra).

49. Fifthly, if setting aside of the first detention order is based only on technical ground or on the ground of procedural lapses on the part of the authorities which is subsequent to the formation of the subjective satisfaction by the detaining authorities based on some grounds, and not on merit by referring to the grounds of detention, whether such setting aside of the detention order would place an absolute bar on the detaining authority even to make any reference to it in the subsequent detention order?

50. Or in the alternative, would the legal consequence be same, irrespective of whether the previous order is set aside on mere technical ground or on merit by considering the validity of the grounds of detention, which are used in the subsequent detention order.

51. These are some of the challenging questions and issues of grave consequences which could affect the personal liberty of the citizen and the security of the State and maintenance of public order, which arose at the time of consideration of the present writ petition. The State Government would contend that Chhagan Bhagwan Kahar (supra) had not been correctly decided, being not in conformity with the decision of the larger Bench in Ibrahim Bachu Bafan's (supra), and also that the provisions of Section 5-A of the National Security Act, 1980 was not considered. However, how convincing the arguments of the State Respondents may sound, this Court is of the view that it may not be appropriate for this Court to agree with the contentions of the State Respondents in view of the judicial decorum and discipline Courts are expected to observe while dealing with the decisions of the Supreme Court and of a cognate and larger Bench of this Court, which apparently had decided against the State.

52. This Court is of the view that it would be for the Hon''ble Supreme Court to clarify on the issues, as discussed above, which had been raised by the State Government, in an appropriate case. Till, such clarifications are made, this court has no other alternative but to follow the decision in Chhagan Bhagwan Kahar (supra) and other cases based on it, as referred to above which held that if the subsequent detention order refers to some grounds of detention of a previous detention order which was set aside by the Court, such subsequent detention order cannot be sustained. In holding so, this Court has kept in mind the note of caution recorded by the Supreme Court in Shri Bhagwan and Another Vs. Ram Chand and Another, where it was held:

18.... It is hardly necessary to emphasise that considerations of judicial propriety

and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned single Judge departed from this traditional way in the present case and chose to examine the question himself.

In the result, there is no alternative but to allow the petition. The impugned second detention order dated 19.9.2011 of the detainee had relied upon certain grounds used in the previous detention order dated 28.2.2008 which had been set aside by this Court in WP (CrI) No. 34 of 2008 and as such, the second detention order cannot be sustained in terms of the decisions in Chhagan Bhagwan Kahar (supra) and other cases referred to above. Accordingly, the detention order dated 19.9.2011, approval order dated 24.9.2011 and confirmation order dated 20.10.2011 are set aside and the detainee namely, Sri Laishram Suchilchandra Singh, s/o L. Tombi Singh of Keishampat Jailor Leirak, Imphal be set at liberty forthwith unless wanted in connection with other cases.