
(2013) 08 MAN CK 0001
In the Manipur High Court
Case No : Writ Petition (Cri.) No. 7 of 2003

Smt. Mayengbam

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 08 MAN CK 0001

Hon'ble Judges : A.M. Sapre, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : N. Mahendra, for the Appellant; Y. Ashang,A.G.A. and Amarjit Naorem, C.G.S.C., for the Respondent

Judgement

1. Heard Mr. N. Mahendra, learned counsel appearing for the petitioner. Also heard Mr. Y. Ashang, learned State Counsel appearing for the State respondents and Mr. Amarjit Naorem, learned counsel appearing for the Union respondent. In the present writ petition, the petitioner/detenué has challenged her detention u/ S. 3(2) of the National Security Act, 1980 under No. Cril/NSA/No. 48 of 2012 vide order dated 6th November, 2012.

2. The main contention of the petitioner/detenué is that the said detention order is vitiated because of the fact that the detaining authority while coming to the conclusion that the detenué was likely to be released on bail and also likely to continue to act in the manner prejudicial to the security of the State and maintenance of public, was not founded on any legally permissible basis in terms of the decision of the Hon'ble Supreme Court in

Rekha v. State of Tamil Nadu through Secretary to Government and another, reported in (2011) 5 SCC 244 (AIR 2012 SC (Cri) 225)

as well as in

Huidrom Konungjao Singh v. State of Manipur & Ors., reported in : AIR 2012 SC 2002

3. The detenue was arrested on 8.10.2012 in connection with FIR No. 364(10)2012 TBL P.S. u/S. 20 UA(P) A. Act and 5 Expl. Subs. Act and was remanded to police custody till 18.10.2012 and on 18.10.2012, she was produced before the Court and remanded to police custody till 24.10.2012. Thereafter, she was remanded to judicial custody and is currently in Manipur Central Jail, Imphal.

4. It is the case of the petitioner that when she was in judicial custody, the detention order was served upon her detaining her under National Security Act, 1980.

5. The charge against the petitioner/detenue is that the detenue had joined the armed organisation, namely, Peoples' Liberation Army(PLA) as a member in the month of August, 2012 through Shri M. Nanao Singh of Singjamei Kshetri Leikai. It is the case of the detaining authority that the avowed aim and objective of the PLA is to secede the State of Manipur from the Union of India and to create a sovereign, independent State of Manipur. For this purpose, the organisation had procured arms and ammunition through foreign countries and recruited youngsters from various communities. In order to realize their objectives, the members of the organisation committed series of heinous crimes like murder, dacoity, robbery, extortion and kidnapping for ransom in different parts of Manipur. It was also stated that the ring leaders have sought 3 foreign assistance and established links with countries like Bangladesh, Myanmar, Pakistan and other countries inimical to India and committed series of prejudicial activities affecting the sovereignty and territorial integrity of India.

6. As can be gathered from the grounds of detention, further charge against the detenue is that after working for the organisation, the detenue along with Shri M. Nanao Singh of Singjamei Kshetri Leikai worked under the command of Shri Kh. Tomba Singh alias Chaobi alias Yaima of Heirok Part-II, S/S Capt. of PLA and the latter entrusted the detenue and her associate to blast IEDs, fire to the security forces at an opportune moment in Heirok and Andro areas on the eve of Rising day ceremony of PLA to be held on 25.9.2012. The petitioner also helped in transporting IED materials, detonators from one place to another and planting of bombs which created panic and terror wave to the general public, which is prejudicial to the security of the State and maintenance of public order. It has been also stated by the detaining authority that on 8.10.2012 at about 1.20 p.m., the petitioner/detenue and one Shri Thokchom Sambhi Singh alias Khamba alias Jack alias Jackson were arrested by a team of CDO, Thoubal from Thoubal Bazar near UBI Bank and one Chinese hand grenade, one Nokia handset with one Airtel Sim card, one handbag and one voter card were seized from her possession and an FIR being, FIR No. 364(10)2012 TBL P.S. u/S. 20 UA(P) A. Act and 5 Expl. Subs. Act was registered against her and accordingly, she was arrested as mentioned above.

Accordingly, the detaining authority was of the opinion that in view of the prejudicial activities in the immediate past, there are reasons to understand that the petitioner/detenué would continue to act in the manner prejudicial to the security of the State and maintenance of public order, which will endanger the security of the State of Manipur and normal criminal laws are not sufficient to prevent her from the commission of prejudicial activities and accordingly, the detention order dated 6th November, 2012 was passed against her.

7. Learned counsel appearing for the petitioner/detenué relying on the decisions of the Hon"ble Supreme Court in

Huidrom Konungjao Singh's case (: AIR 2012 SC 2002) (supra)

and Rekha's case (AIR 2012 SC (Cri) 225) (supra) has stated that in the present case, the detenué had not moved any application for bail and in view of that, the question of likelihood of the detenué, who was already in judicial custody, being released on bail does not arise. Further, no detail materials have been given neither in the detention order nor in the grounds of detention as to how the detaining authority came to the conclusion that petitioner/detenué is likely to be released on bail.

8. Heard the learned counsel appearing for the petitioner.

The State respondents have filed their affidavit-in-opposition supporting the detention order dated 6.11.2012 and it was contended that the only requirement for the detaining authority to arrive at the subjective satisfaction for passing a valid detention order, inter alia, is that the detaining authority should be aware of the fact that the detenué was actually in custody and there must be reliable materials before the said authorities by which the detaining authority would have reasons to believe that there was real possibility of releasing the detenué on bail in near future and such report and materials before the police were the basis for forming an opinion. However, apart from making a bald statement to the effect that the detaining authority formed an opinion on the basis of the relevant facts materials available on record, nothing is mentioned about any particular or material in the detention order dated 6.11.2012 nor in the grounds of detention dated 6.11.2012 which were the basis for such conclusions and satisfaction.

9. Even though the charges against the detenué are serious enough to warrant detention under the National Security Act, 1980, it has to be also noted that the procedural safeguards as provided under the Act, which has been also explained by the Courts from time to time have to be scrupulously followed. In the present case, what has been observed is that the detenué had not submitted any application for bail. Therefore, release of the detenué without any application of bail at that stage of investigation was not feasible. Secondly, there is nothing also on record to show that any of the other co-accused has been released on bail nor there is any other instance of earlier cases where the detenué was arrested and released. Therefore, in view of the law laid down by the Hon"ble Supreme Court in Rekha's case (AIR 2012 SC (Cri) 225) (supra) as well as in

Huidrom Konungjao Singh's case (: AIR 2012 SC 2002) (supra)

, this Court is of the view that the subjective satisfaction arrived at by the detaining authority without any valid material and purely on a bald statement that there are materials, without disclosing the same, cannot be sustained.

In Rekha's case (AIR 2012 SC (Cri) 225) (supra), the Hon'ble Supreme Court had stated as follows in para No. 27:-

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 concluded that there is likelihood of the detainee being released on bail even though no bail application of his pending, since most courts normally grant bail on this ground. However, details of such alleged similar case must be given, otherwise the bald statement of the authority cannot be believed.

10. In the present case, the detaining authority had neither cited any similar case nor the existence of any other person who was similarly placed with the detainee or was arrested along with the detainee. It may be noted that after the Hon'ble Supreme Court in the aforesaid cases of Rekha (AIR 2012 SC (Cri) 225) (supra)

Huidrom Konungjao Singh (: AIR 2012 SC 2002) (supra)

held that merely a person who was arrested in another similar case and released on bail would not provide a valid legal basis for the detaining authority to form such an opinion and held that the similarity should be in respect of a co-accused in the same offence. But, in the present case, there is neither any co-accused nor even any existence of any other similar case cited. In other words, nothing is mentioned except for the statement that the detainee was in custody and there she was likely to be released on bail. Thus, in other words, it can be inferred that there was no valid material to show that the detainee was likely to be released on bail. In view of the above, this Court is of the opinion that irrespective of seriousness of the charges levelled against the detainee, which may justify detention of the detainee under National Security Act, 1980, in view of the fact that the detaining authority has failed to provide the necessary legally tenable materials for arriving at the subjective satisfaction that the petitioner/detainee is likely to be released on bail, impugned detention order dated 6.11.2012 cannot be sustained. Accordingly the present writ petition is allowed. The detention order dated 06.11.2012, the approval order dated 09.11.2012 and the confirmation order dated 18.12.2012 are set aside and the detainee, namely, Smt. Mayengbam (N) Ningthoujam (O) Memacha alias Omita Devi, shall be set at liberty forthwith unless wanted in any other case.

Accordingly, the petition stands disposed of.