

**(2004) 11 GAU CK 0032**  
**In the Gauhati High Court**  
**Case No : Writ Petition (Cri.) No. 6 of 2004**

|                                             |            |
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| Smt. Moirangthem Ongbi Baby alias Bibi Devi | APPELLANT  |
| Vs                                          |            |
| Union of India (UOI) and Others             | RESPONDENT |

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**Date of Decision :** 08-11-2004

**Acts Referred:**

Constitution of India, 1950 — Article 22(5), 226  
National Security Act, 1980 — Section 10, 14, 14(1), 2, 8  
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13

**Citation :** (2005) CriLJ 2490

**Hon'ble Judges :** M.B.K. Singh, J;B. Lamare, J

**Bench :** Division Bench

**Advocate :** Kh. Samarjit Singh, for the Appellant; Md. Jalal, Government Advocate and N. Ibotombi, CGSC, for the Respondent

**Final Decision :** Allowed

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## Judgement

B. Lamare, J.—Heard Mr. Kh. Samarjit, learned counsel for the petitioner. Also heard Md. Lalal, learned GA for the State as well as Mr. N. Ibotombi, learned GSSC for the Union of India.

2. In this application under Article 226 of the Constitution, the petitioner, who is the wife of the detenu, Shri M. Muni Singh has assailed the detention order dated 13-1-2004 issued by the District Magistrate, Imphal West against the detenu.

3. The detenu was arrested on 9-1-2004 in connection with FIR No. 7(1) 2004 u/s 10/13 UA(P) Act Singjamei P.S. and he was remanded to Police Station till 13-1-2004. When the detenu was in Police custody, the detention order dated 13-1-2004 was issued against the detenu. The detention order was approved by the Government vide order dated 28-1-2004 and thereafter confirmed by order dated 2-3-2004.

4. On being detained under the National Security Act (NSA), the detenu was served with the grounds of detention dated 16-1-2004. The detenu submitted his

representation dated 31-1-2004 to the Chief Secretary, Government of Manipur, however, the representation of the petitioner was rejected by the State Government. In the representation submitted to the State Government, the detenu has also endorsed a copy of the same to the Secretary, Government of India and also to the Chairman of the NSA Advisory Board.

5. In this writ petition, the petitioner has assailed the detention of the detenu mainly on two grounds namely (1) that the detaining authority failed to comply with the mandatory requirement u/s 14 of the National Security Act, 1980 read with Article 22(5) of the Constitution, and (2) that the subjective satisfaction of the authority about the necessity of passing the detention order for detaining the detenu who was already in their custody was based on nonexistent factual position in as much as the detaining authority failed to show the material ground on which the likelihood of his being released on bail was passed.

6. With regard to the first contention of the petitioner we may refer to the provisions of Section 14 of the NSA, Section 14(1)(b) which empowers the Central Government to revoke the order of detention made by the State Government. Article 22(5) of the Constitution entitles a person, who had been under preventive detention, to be communicated to him the grounds under which the order was made, to afford him the earliest opportunity of making a representation against the order.

7. According to the petitioner, the detenu was not informed of his right to make a representation to the Central Government but the detenu was only informed that he is entitled to make a representation to the Chief Secretary, Government of Manipur and also to the District Magistrate, Imphal West, therefore, the detention order is invalid for failure of the detaining authority to communicate to the detenu that he is entitled to make representation to the Central Government.

8. In order to appreciate the above contention of the petitioner Section 8(1) of the NSA is reproduced below :

"8(1) When a person is detained in pursuance of a detention order, the authority, making the order, shall as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the ground on which the order has been made and shall afford him the earliest opportunity of making representation against the order to the appropriate Government."

A reading of the above provisions of Section 8(1) of the NSA clearly shows that the respondents are to inform the detenu that he is entitled to make representation to the appropriate Government. Appropriate Government, as defined in Section 2(a) of the NSA which means as follows :

"2(a) "appropriate Government" means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government, or

by an officer subordinate to State Government or as respects a person detained under such order, the State Government;"

From the above provisions of Section 2(a), it is clear that if the detention order was made by the Central Government and the person was detained under the order of Central Government, a representation is to be made to the Central Government and in respect of the person who had been under the order made by the State Government or by an officer subordinate to the State Government, a representation lies to the State Government. Therefore, a conjoint reading of Section 2(a) and Section 8(1) of the NSA shows that the detenu is entitled to make a representation to the detaining authority and to the State Government. The provisions of Section 2(a) and Section 8(1) does not contemplate for making representation to the Central Government although Section 14 of the NSA authorizes the Central Government to revoke the order if any representation is made to the Central Government. In this regard we may refer to the notification dated 28-4-2003 issued by the Ministry of Home Affairs in connection with the NSA. The said notification reads as follows :

"The matter had been examined in this Ministry in consultation with the Ministry of Law, which have given opinion that it is not obligatory on the part of the Central Government to receive representation u/s 8 of the Act, against order passed by the State Government or officer subordinate to the State Government. But u/s 14, it is obligatory on the part of the Central Government to consider such representation, if received, by the Central Government irrespective of the fact that the order has been passed by which appropriate Government. It is obligatory on the part of the detaining authority to inform the detenu that he can make a representation to the Central Government u/s 14 of the Act.

The State Governments are, therefore, requested to issue necessary directions to all the District Magistrates and Commissioners of Police to the effect that while communicating the grounds of detention they may, inform the detenu about making representation u/s 8 to "appropriate Government" which would mean State Government in case when such detention orders are signed by the State Government/District Magistrate/Commissioner of Police. They should not mention about making representation to the Central Government u/s 8 of the National Security Act, 1980, they can also draw the attention to the provisions of Sections 9 and 10 and advise that if detenu wants to submit any representation to the Advisory Board he may do so."

In view of the said provisions of Section 2(a) and Section 8(1) of the NSA and the above notification issued by the Central Government, it is not mandatory for the detaining authority to inform the detenu about his right to make representation to the Central Government.

9. In the instant case, the detenu has made representation to the Chief Secretary of the State and also enclosed 5 (five) copies of the representation to be submitted to the Central Government and the NSA Advisory Board. The

representation of the detenu was duly forwarded to the Central Government and it was received by the Central Government in the Home Ministry on 20-2-2004. The representation of the petitioner was examined by the Central Government and after due consideration the Union Home Secretary, who was delegated with the power by the Union Home Ministry to decide such cases rejected the representation of the detenu on 26-2-2004 and it was duly communicated to the Home Secretary, Manipur by a crash message dated 1-3-2004. By the above actions taken by the State and the Central Government, it shows that the provisions of Section 14 of the NSA have been duly complied with by the respondents. Therefore, with regard to the first contention raised by the petitioner, there is no force.

10. With regard to the second contention of the petitioner that the detention order was passed on non-existence factual position and that there was no subjective satisfaction of the authority for passing the detention order, we may look into the detention order as well as the grounds of detention issued by the detaining authority. Learned counsel for the petitioner while supporting the contention of the petitioner on this point has drawn attention of this Court to the detention order and submitted that the petitioner was arrested on 9-1-2004 and he was remanded to Police Custody till 13-1-2004. The detenu had not applied for any bail for his release in connection with FIR No. 7(1) 2004 u/s 10/13 UA(P) Act Singjamei P.S. however, when the petitioner was in Police Custody the detention order was passed against the detenu. According to the learned counsel, the detaining authority was quite aware that at the relevant time the detenu was in Police Custody and without application of mind has passed the detention order.

11. In the case of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, the Apex Court held that (at page 1062, of Cri LJ) :

"7. It is settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not: be exercised."

In the case of Kamarunnissa and Others Vs. Union of India and another, the Apex Court has held as follows (at page 2065; of Cri LJ) :

"12. ... There must be cogent material before the officer passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the officer passing the detention order. Eternal vigilance on the part of the authority charged with the duty of maintaining law and order and public order is

the price which the democracy in this country extracts to protect the fundamental freedoms of the citizens. This Court, therefore, emphasized that before passing a detention order in respect of the person who is in jail the concerned authority must satisfy himself and that satisfaction must be reached on the basis of cogent material that there is a real possibility of the detenu being released on bail and further if released on bail the material on record reveals that he will indulge in prejudicial activity if not detained."

12. Taking into consideration, the above laws laid down by the Apex Court, we may now examine the merits of the case with regard to the detention of the petitioner and about non-application of mind by the detaining authority. The grounds for detention of the detenu as stated in paragraph 4 of the grounds is that the detenu was arrested in connection with FIR No. 7(1)2004 u/s 10/13 UA(P) Act Singjamei P.S. which runs as follows :

"On 9-1-2004 at about 0915 hrs. you were arrested by a Colm. of 17 A.R. from Mongsangei and handed over to the O/C Singjamei, Police Station with a written report. On the strength of the report, O/C Singjamei Police Station registered a regular case under FIR No. 7(1) 2004 u/s 10/13 UA(P) Act at Police Station Singjamei and investigated of the case, you were arrested on 9-1-2004 and remanded to Police custody till 13-1-2004."

13. The above statement made in the grounds of detention was contradicted by respondent No. 2 and in their affidavit-in-opposition when it is stated in paragraph No. 5 of the affidavit-in-opposition, that the detenu was found involved in various heinous crimes which is prejudicial to the security of the State and maintenance of public order and thus he was arrested by the Police in a number of FIR cases and after strictly examining the relevant documents the District Magistrate, Imphal West with due application of mind passed an order on 13-1-2004 for detaining the detenu under the NSA. The District Magistrate, Imphal West also filed affidavit-in-opposition and made the same statement in paragraph-6 of his affidavit in which it is stated that the detenu was found involved in various heinous crimes which is prejudicial to the security of the State and maintenance of public order and thus he was arrested by the Police in a number of FIR cases and after strictly examining the relevant documents the District Magistrate, Imphal West with due application of judicial mind passed the order on 13-1-2004 for detaining the detenu under the NSA. The statements made by the State Government and the District Magistrate in their affidavit runs contrary to the grounds of detention. In the grounds of detention the detenu was shown to have been involved only in one FIR No. 7(1) 2004 u/s 13/10 UAP Act. Therefore, the : detaining authority while passing the detention order had already a pre-conceived mind that the detenu was involved in many cases involving heinous crimes, which were not reflected in the grounds of detention. In the detention order it is also not stated that the detenu is likely to be released on bail and on being released he is likely to involve himself in heinous activities which may be prejudicial to the security of the State and public order.

14. In the detention order no statement was made that the detenu in the said FIR No. 7(1)2004 u/s 10/13 UA(P) Act and has applied for bail and the Court is likely to release him on and for which reason the detention order was issued. Even if the detenu have applied for bail the detaining authority could have opposed the bail application of the detenu and if he is released on bail, the authority could have approached the higher forum for cancellation of the bail, but, before resorting to such provisions of the ordinary law of the land the detaining authority has issued the detention order, which shows that the detaining authority has not applied its mind before issuing the detention order.

15. In the case of Chowdarapu Raghunandan Vs. State of Tamil Nadu and Others, the Apex Court, in paragraph 14 of the judgment has held as follows :

"14. It is true that in appropriate case, an inference could legitimately be drawn even from a single incident of smuggling that the person may indulge in smuggling activity but for that purpose antecedents and nature of the activities carried out by a person are required to be taken into consideration for reaching justified satisfaction that the person was engaged in smuggling and that with a view to prevent, it was necessary to detain him. It is also settled law that an order of preventive detention is founded on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. If there is non-application of mind by the authority to this object, then the Court is required and is bound to protect the citizen's personal liberty which is guaranteed under the Constitution. Subjective satisfaction of the authority under the law is not absolute and should not be unreasonable. The question, therefore, would be from the past conduct of the petitioner as set out in the grounds of detention or other circumstances, whether reasonably inference could be drawn that he is likely to repeat such acts in the future."

Concurring with the above judgment. Justice Doraiswamy Raju, has also observed in paragraph-22 of the judgment as follows :

"22. Though, no doubt Courts exercising powers of judicial review do not consider the challenge to an order of detention, as if on an appeal reappreciating the materials, yet since an order of detention in prison involves the fundamental rights of citizen, freedom of movement and pursuit of normal life and liberty, no absolute immunity can be claimed by the respondents as to the decision arrived and it is open to the Courts to see whether there has been due and proper application of mind and that all the relevant and vital materials for the purpose have been noticed, adverted to and considered."

16. In the case in hand, it is seen that the detenu was involved in 2004(1) FIR 7 and there is no other cases heinous or otherwise, in which the detenu was

involved. The detention order did not indicate that the detenu is likely to involve himself in un-lawful activities prejudicial to the public order or maintenance of security of the State if he is released on bail by the Court.

17. A copy of the Police report was also placed before us by the counsel for the petitioner, where it is seen that the detenu was arrested in connection with the said FIR No. 7(1)2004 u/s 10/13 UA(P) Act and there is no case against the detenu. There is also no evidence before us to prove that the detenu was member of unlawful groups and that he has been involved in many cases including the heinous ones as alleged by the respondents in their affidavit. The act on which the detenu was arrested is a single act and that there is nothing to show about the antecedent of the detenu that he was involved in such illegal activities so as to disturb maintenance of public peace and order. The detention order, was therefore, passed in a mechanical manner without application of mind and therefore, the order is not valid in the eye of law and it is liable to be set aside and quashed.

18. Accordingly, the detention order, dated 13-1-2004 issued against the detenu is hereby set aside and quashed. The detenu is, directed to be released forthwith.