
(2012) 03 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 96 of 2011

Smt. Ningthoujam Ningol Romabati Devi (now in Manipur
Central Jail, Imphal under the provisions of N.S.A. 1980)

APPELLANT

Vs

The State of Manipur and The Union of India

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 34, 364A

Citation : (2012) 03 GAU CK 0003

Hon'ble Judges : Tinlianthang Vaiphei, J;P.K. Musahary, J

Bench : Division Bench

**Advocate : N. Surendrajit, for the Appellant; RS Reisang, Sr. Government
Advocate, Manipur. Mr. Amarjit Naorem, CGSC., for the Respondent**

Final Decision : Allowed

Judgement

T. Vaiphei, J.—Heard Mr. N. Surendrajit, learned counsel for the petitioner and also Mr. RS Reisang, learned Senior Government Advocate for the State respondent as well as Mr. Amarjit Naorem, learned C.G.S.C. for the Union of India. This writ petition of Habeas Corpus is directed against the order dated 11.3.2011 issued by the District Magistrate, Bishnupur, Manipur detaining the detenu Smt. Ningthoujam Ningol Nongmaithem Ongbi Romabati Devi u/s 3 of the National Security Act, 1980(the "Act" for short).

2. The detenu is the petitioner herself. The petitioner was arrested on 23.2.2011 in connection with FIR No. 7(2) of 2011 Kumbi P.S. u/s 364-A IPC 20 U.A. (P) Act & 25(1-C) Arms Act. When she was produced before the learned Judicial Magistrate, 1st Class, Bishnupur, she was also formally arrested in connection with FIR No. 8(2) 2011 BPR. P.S. u/s 364-A/34 IPC and 20 U.A.(P) Arms Act, whereafter she was remanded to police custody till 11.3.2011. On her production before the learned Chief Judicial Magistrate, Bishnupur on 11.3.2011, she was served with the impugned detention order. On 15.3.2011, the grounds of

detention were furnished to her whereupon she filed a representation to the detaining authority on 18.3.2011. This representation was rejected by the District Magistrate, Bishnupur on 11.4.2011. On 17.3.2011, the State Government approved the impugned detention order. On 29.3.2011 the petitioner filed representations to the respondent Nos. 1 and 3. However, on 26.4.2011, the State Government issued the order confirming the detention order. On 24.3.2011 the Superintendent of Police, Manipur Central Jail, Imphal reported to the IG of Prisons, Manipur, Imphal that the detenu was found to be pregnant, for which she was released on parole for 10 (ten) days. The Superintendent of Police, Manipur, Central Jail, Imphal requested the Director of Medical and Health Services, Manipur for special sitting of State Medical Board. On 1.8.2011, the Director of Medical and Health Services submitted his report. The special State Medical Board reported that she deserved to be released on parole on the ground of 8(eight) weeks of pregnancy and should be under the care of jail medical authorities. Any way the petitioner is still under detention. It is reported at the bar that she has now delivered a child.

3. The submission of the learned counsel for the petitioner is that the conclusion of the detaining authority that the petitioner is likely to be released on bail is based on no material and as such the detention order is liable to be quashed. He places strong reliance on the recent decision of the Apex Court in Yumman Ongbi Lembi Leima Vs. State of Manipur and Others, in support of his contention. On the other hand, Mr. RS Reisang, learned Senior State Counsel, supports the impugned detention order by contending that considering the past history of the petitioner, there is every likelihood of her being released on bail by criminal court. According to the learned State Counsel, in the atmosphere prevalent in this part of the country, where threats given to Magistrate from time to time unless militants are released on bail are not unusual, the release of the petitioner will result in grave public mischief, which is prejudicial to the maintenance of public order. A number of decisions have been cited by the learned State Counsel in vehemently opposing the writ petition which need not be referred to in view of the decision of the three Judges' Bench of the Apex Court in Yumman Ongbi Lembi Liema (supra).

In the impugned detention order the detaining authority observed as follows -

And whereas, I am satisfied with the Police report that Smt. Ningthoujam (N) Nongmaithem (O) Romabati Devi (a) Romapati @ Rebika @ Chitra (39) W/O Shri Nongmaithem Mahindra Singh of Kumbi Awang Khuno, P.S. Kumbi Distirct Bishnupur, Manipur is likely to be released on bail in the near future unless provision under 3(2) of the National Security Act, 1980 is applied.

We may as well reproduce paragraph 6 of the impugned detention order which is at Annexure - A/2:

That, from the points enumerated above, it is clearly seen that you are a hard core member of the banned organization namely Kangleipak Communist Party

(KCP in short) MC who repeatedly joined the banned organization and carried out prejudicial activities which disturbs public order affecting public tranquility. You are likely to be released on bail in the near future. In view of your prejudicial activities in the immediate past, it is very likely that you 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 Manipur State. As it is evident from the facts mentioned above, normal criminal laws are not sufficient to prevent you from the commission of prejudicial activities. An alternative preventive measure is, therefore, immediately called for.

The above grounds are based on the report of the SO, Bishnupur vide his letter No. C-5/27/SP-BPR/07(NSA)/1232 dated the 8th March, 2011.

4. The fact that the petitioner has already delivered a child is not in dispute. Under the circumstances, we do not find any material upon which the detaining authority came to the conclusion that she is likely to be released on bail. In this connection, the observations of the Apex Court in *Union of India (UOI) Vs. Paul Manickam and Another*, are quite pertinent. This is what it said:

14. So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authority should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability etc. ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order, if the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated (*See N. Meera Rani Vs. Government of Tamil Nadu and Another*, and *Dharmendra Suganchand Chelawat and another Vs. Union of India and others*,). The point was gone into detail in *Kamarunnissa and Others Vs. Union of India and another*, . The principles were set out as follows : even in the case of a person in custody, a detention order can be validly passed : (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable

material placed before him; (a) that there is a real possibility of his release on bail; and (b) that on being released, he would in all probability indulge in prejudicial activities; (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility or release on bail.

5. Thus, the test laid down therein for adjudging the detention order is that even in the case of a person in custody, a detention order can be validly passed : (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him; (a) that there is a real possibility of his release on bail; and (b) that on being released, he would in all probability indulge in prejudicial activities; (3) if it is felt essential to detain him to prevent him from so doing. In our opinion, the impugned detention order does not satisfy the test laid down by the Apex Court in Paul Manickam case (*supra*). On the contrary, the observation of the Apex Court in paragraph 25 of Yumman Ongbi Lembi Liema (*supra*) clinches the issue in favour of the petitioner when it said that when the courts thought it fit to release the appellant's husband on bail in connection with the cases in respect of which he had been arrested, the mere apprehension that he was likely to be released on bail as a ground of his detention, is not justified. On reading and re-reading, it is quite obvious that there is no material upon which the detaining authority can come to subjective satisfaction that the detinue is likely to be released on bail unless she is preventively detained. Under the circumstances the impugned detention order cannot be sustained in law.

6. For what has been stated in the forgoing, this writ petition is allowed. The impugned order dated 11.03.2011(Annexure - A/1), the order dated 17.3.2011 (Annexure- A/6) approving the detention order and the order dated 26.4.2011 (Annexure - A/9) confirming the detention order are hereby quashed. The petitioner shall be released forthwith from detention unless she is wanted in connection with some other case or cases.