

(2012) 01 SC CK 0074

In the Supreme Court Of India

Case No : Criminal Appeal No. 26 of 2012 (Arising out of SLP (Criminal) No. 7926 of 2011)

Yumman Ongbi Lembi Leima

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 22(2)
Criminal Procedure Code, 1973 (CrPC) — Section 167
National Security Act, 1980 — Section 3, 3(2), 3(4), 8
Penal Code, 1860 (IPC) — Section 302, 34, 386

Citation : (2012) 1 ACR 321 : AIR 2012 SC 321 : (2012) 2 ALT(Cri) 61 : (2012) 1 AWC 232 : (2012) BomCR(Cri) 315 : (2012) 4 CGLJ 358 : (2013) 115 CLT 392 : (2012) 2 GLD 488 : (2012) 1 JCC 531 : (2012) 1 JLJR 271 : (2012) 1 JT 11 : (2013) 1 KCCR 29 : (2012) 1 LW(Cri)

Hon'ble Judges : Surinder Singh Nijjar, J;J. Chelameswar, J;Altamas Kabir, J

Bench : Full Bench

Advocate : Sanjay Parikh, Pukhrambam Ramesh Kumar, Mamta Sinha, Pranav Raina, Shanmugo Patro and A.N. Singh, for the Appellant; Jaideep Gupta Khwairakpam Nobin Singh and B. Krishna Prasad, for the Respondent

Final Decision : Allowed

Judgement

Altamas Kabir, J.—Leave granted.

2. Under the Detention Order No. Cyril/NSA/No. 10 of 2011, Imphal, the 31st January, 2011, issued by the District Magistrate, Imphal West District, Manipur, the Appellant's husband, Yumman Somendro @ Somo @ Tiken, was detained under the provisions of the National Security Act, 1980. The said detention order was approved by the Governor of Manipur on 7th February, 2011, in exercise of his powers conferred u/s 3(4) of the aforesaid Act. The order of the Governor of Manipur dated 18th March, 2011, confirming the detention order passed against the husband of the Appellant and fixing the period of detention for 12 months on the subjective satisfaction of the detaining authority that the detenu was likely to

be released on bail by the normal criminal Courts in the near future, was challenged on behalf of Yumman Somendro in the Gauhati High Court (Imphal Bench), but without success. This Appeal is directed against the said order of the High Court and the order of detention itself. Earlier, the Appellant's husband had been arrested on 21st March, 1994 in connection with FIR No. 478(3) 1994 IPS u/s 13 Unlawful Activities (Prevention) Act, but was released on bail by the normal criminal Court. Despite the above, again on 29th June, 1995, the Appellant's husband was arrested in connection with FIR No. 450(6) 95 under Churachandpur P.S. under Sections 386 and 34 Indian Penal Code. Though he was released on bail by the normal criminal Court, he was again arrested u/s 13 UA (P) Act in connection with FIR No. 190(5) 98 and was released on bail on 8th July, 1998. After being released on bail by the normal Criminal Court, Yumman Somendro was again arrested on 16th January, 2011, in connection with FIR No. 21(1)11IPS u/s 302 Indian Penal Code for the alleged murder of the then Chairman of the Board of Secondary Education, Manipur, Dr. N. Kunjabihari Singh. The Appellant's husband was produced before the Magistrate on 17th January, 2011, who remanded him to police custody till 31st January, 2011. On the said date, he was further remanded to police custody till 2nd February, 2011, and when he was produced before the Chief Judicial Magistrate in connection with the said case, he was served with a copy of the detention order dated 31st January, 2011, issued by the District Magistrate, Imphal West, under the National Security Act, 1980.

3. On 31st January, 2011, the Appellant's husband was served with the grounds of detention under the National Security Act, 1980, under the authority of the District Magistrate, Imphal West. Along with the said order, copies of the documents on which the detaining authority had relied on to arrive at the conclusion that the detention of the Appellant's husband was necessary, was also served on him.

4. On a perusal of the grounds of detention, it is clear that the subjective satisfaction of the detaining authority is founded on the belief that after having availed of bail facility, the Appellant's husband could indulge in commission of further prejudicial activities. An alternative preventive measure was, therefore, immediately needed in the circumstances.

5. On behalf of the Appellant, Mr. Sanjay Parikh, relied heavily on the decision of this Court in *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, in which it had been held that in the absence of material particulars in similar cases in which bail had been granted, the subjective satisfaction of the detaining authority was merely a ruse for issuance of the impugned detention order. After considering various decisions of this Court and the views of several jurists and the submissions made on behalf of the parties, the Division Bench of the High Court was of the view that the subjective satisfaction of the detaining authority was based on proper material and the detaining authority was also aware that the detenu was in custody and was likely to be released on bail. The detaining

authority, therefore, was of the view that the detention of the detenu was required in order to prevent him from acting in a manner prejudicial to the maintenance of public order as he was likely to be released on bail in the near future by the normal criminal Courts. On the aforesaid reasoning, the Division Bench of the High Court dismissed the Writ Petition filed by the detenu's wife.

6. The main contention urged by Mr. Parikh appearing for the Appellant was that the personal life and liberty of a person was too precious to be allowed to be interfered with in the manner in which it had been done. Mr. Parikh submitted that as would be evident, the detention order was passed on a mere supposition that the Appellant's husband was likely to be released on bail in the near future in connection with the case in respect of which he had been arrested and that in view of such future apprehension, the detention order was sought to be legitimised. Mr. Parikh submitted that not only had the Appellant's husband not applied for bail at any stage, nor was there any indication that he intends to do so, which could give rise to the supposition that in the future there was every likelihood that he would be released on bail. Mr. Parikh submitted that supposition could never take the place of facts which were necessary to establish a case which warranted the detention of a person without any trial.

7. Mr. Parikh pointed out that Yumman Somendro had been arrested in connection with several cases, but had been released on bail in all the said cases till ultimately an order of detention was passed against him under the National Security Act, 1980, on the flimsiest of excuses. Mr. Parikh submitted that if at all the Appellant's husband was alleged to have committed a crime which was punishable under the Indian Penal Code, the same could not be equated with the national security in any way, which warranted the issuance of a detention order under the National Security Act, 1980.

8. Referring to the provisions of Section 3 of the aforesaid Act, Mr. Parikh submitted that the sinequa non for an order of detention to be passed under the National Security Act, 1980, is that the Central Government or the State Government would have to be satisfied that in order to prevent any person from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order or from acting in any manner prejudicial to the maintenance of supply of services essential to the community that it was necessary so to do, make an order directing that such person be detained. Mr. Parikh submitted that although the Appellant's husband had been charged with having committed an offence u/s 302 Indian Penal Code, Section 386 and Section 13 Unlawful Activities (Prevention) Act, there was no material whatsoever to bring the Appellant's husband within the ambit of the grounds enumerated in Sub-section (2) of Section 3 of the aforesaid Act. Mr. Parikh submitted that the order of detention had been passed not for the reasons enumerated in Sub-section (2) of Section 3, but since the police was unable to pin any offence against the Appellant's husband on account whereof he could be denied bail by the Courts.

9. In support of his submissions, Mr. Parikh firstly referred to the decision of this Court in *Union of India (UOI) Vs. Paul Manickam and Another*, wherein while considering the delay in disposal of a representation in the matter of preventive detention, this Court noticed that when the detenu was already in custody, the anticipated and apprehended acts were practical impossibilities, as was the case as far as the Appellant's husband is concerned. This Court further observed that as far as the question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the detaining authorities would have to apply their minds and show their awareness in this regard in the grounds of detention. The necessity of keeping such person in detention under preventive detention laws have to be clearly indicated. It was further observed that the subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision in this regard has to depend on the facts of each case. However, 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, ordinarily it is not needed when the detenu is already in custody and the detaining authority must be 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.

10. Mr. Parikh also referred to another decision of this Court in *Haradhan Saha Vs. The State of West Bengal and Others*, , wherein in the case of a preventive detention order passed under the Maintenance of Internal Security Act, 1971, the distinction between preventive detention and criminal prosecution was sought to be defined and it was held that the essential concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. It was further observed that the basis of detention is the satisfaction of the Executive of a reasonable probability or the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. The criminal conviction, on the other hand, is for an act already done which can only be possible by a trial and legal evidence.

11. Referring to the Division Bench order dated 31st January, 2011, Mr. Parikh submitted that the same did not contain any material whatsoever on which the detaining authority could have arrived at a satisfaction that Yumman Somendro had acted in any manner which warranted his detention under the provisions of Section 3(2) of the National Security Act, 1980. The only reason given for issuing such order of detention was that Yumman Somendro, who was in police custody, was likely to be released on bail in the near future by the normal criminal Courts, as, according to him, bails are granted in similar cases by the criminal Courts. Mr. Parikh submitted that this is a case where the detention order passed against the Appellant's husband was without any basis whatsoever and had been resorted to on account of the failure of the police to keep him in judicial custody.

12. On the other hand, appearing for the State of Manipur, Mr. Jaideep Gupta, learned Senior Advocate, repeated the facts indicated earlier to the effect that the Appellant's husband had been arrested in connection with several cases and, in particular, for the murder of Dr. N. Kunjabihari Singh, the then Chairman of the Board of Secondary Education, Manipur, in his office room on 11th January, 2011. Mr. Gupta submitted that it was subsequent to the murder of Dr. N. Kunjabihari Singh that on 31st January, 2011, the order of detention was passed u/s 3 of the aforesaid Act and was served on the Appellant's husband, while he was in judicial custody, on 2nd February, 2011. It was also submitted that thereafter the grounds of detention were provided to the Appellant's husband, as required u/s 8 of the above-mentioned Act to enable him at the earliest opportunity of making a representation against the order to the appropriate Government. The detention order was considered by the State Government which approved the same on 7th February, 2011, and the representation made by Yumman Somendro to the State Government was rejected on 10th February, 2011. The matter was, thereafter, referred to the Advisory Board which came to the conclusion that since Yumman Somendro was a member of the banned organization, Kanglei Yaol Kanna Lup, he was a potential danger to society, whose activities were prejudicial to the maintenance of public order and there was a likelihood that he would continue such activities the moment he was released from detention and accordingly he should be detained for the maximum period of 12 months, as provided u/s 13 of the Act. Mr. Gupta submitted that since the detention order was to end on 31st January, 2012, there could be no reason to interfere with the same prior to its dissolution by efflux of time.

13. Having carefully considered the submissions made on behalf of respective parties, we are inclined to hold that the extra-ordinary powers of detaining an individual in contravention of the provisions of Article 22(2) of the Constitution was not warranted in the instant case, where the grounds of detention do not disclose any material which was before the detaining authority, other than the fact that there was every likelihood of Yumman Somendro being released on bail in connection with the cases in respect of which he had been arrested, to support the order of detention. Article 21 of the Constitution enjoins that no person shall be deprived of his life or personal liberty except, according to procedure established by law. In the instant case, although the power is vested with the concerned authorities, unless the same are invoked and implemented in a justifiable manner, such action of the detaining authority cannot be sustained, inasmuch as, such a detention order is an exception to the provisions of Articles 21 and 22(2) of the Constitution.

14. 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. In addition to the above, the FIRs in respect of which the Appellant's husband had been arrested relate to the years 1994, 1995 and 1998 respectively, whereas the order of detention was passed against him on

31st January, 2011, almost 12 years after the last FIR No. 190(5) 98 IPS u/s 13 of the Unlawful Activities (Prevention) Act. There is no live link between the earlier incidents and the incident in respect of which the detention order had been passed.

15. As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. An individual incident of an offence under the Indian Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention.

16. In our view, the detaining authority acted rather casually in the matter in issuing the order of detention and the High Court also appears to have missed the right to liberty as contained in Article 21 of the Constitution and Article 22(2) thereof, as well as the provisions of Section 167 of the Code of Criminal Procedure.

17. The Appeal must, therefore, succeed. The impugned order of detention dated 31st January, 2011, passed by the District Magistrate, Imphal West District, Manipur, in regard to the detention of Yumman Somendro @ Somo @ Tiken son of Y. Roton Singh, is hereby quashed. The Appeal accordingly succeeds. Let the Appellant's husband, Yumman Somendro, be released from custody, if he is not required in connection with any other case.