
Kyaw Kyaw Naing @ Abdul Rahim Vs District Magistrate

Writ Petition (C) No. 3 Of 2020

Court: Manipur High Court

Date of Decision: Dec. 7, 2020

Acts Referred:

Code Of Criminal Procedure, 1973 â€” Section 161, 161(1)#Unlawful Activities (Prevention) Act, 1967 â€” Section 17, 20#Constitution Of India, 1950 â€” Article 21, 22(5)#Narcotic Drugs And Psychotropic Substances Act, 1985 â€” Section 22(C), 29, 60(3)

Hon'ble Judges: Kh. Nobin Singh, J; Ahanthem Bimol Singh, J

Bench: Division Bench

Advocate: P. Tomcha, L. Monomala

Judgement

'''

Kh. Nobin Singh, J",,,

[1] Heard Shri P. Tomcha Meetei, learned Advocate appearing for the petitioner and Smt. L. Monomala, learned Government Advocate appearing for",,,

the respondents.,,,

[2] The validity and correctness of the order of detention dated 29-01-2020 passed by the District Magistrate, Thoubal District, Manipur is under",,,

challenge in this writ petition.,,,

[3.1] The allegations as stated in the grounds of detention dated 29- 01-2020 are, short, that the detenu is an international drug smuggler and has",,,

network of transportation of WY Tablets from across Myanmar into India. The modus operandi of the detenu was the smuggling of WY Tablets,,,

rolled into carpets and then, transported to Silchar and Dimapur via Moreh and Imphal. In the statements given by all the accomplices, the name of the",,,

detenu has figured as the Kingpin. It came to light when a seizure of drug consignment worth Rs.400 crore was made by the Thoubal Police on 24-,,,

08-2019 which were rolled into carpets and loaded into a DI Truck driven by Md. Hussain who revealed that he was getting the consignment into,,,

India upon his instructions. The detenu was arrested based on the information given by the driver of the truck. The total value of drug seizure was,,,

estimated to be around Rs.400 crore for which a case under FIR No. 94(8)2019 TBL-PS u/s 22(C)/29/60(3) ND & PS Act dated 24-08-2019 was,,,

registered by the police. Thereafter, the entire network of drug smuggling was busted at Thoubal and Agartala. The detenu revealed his nexus in the",,,

smuggling of WY Tablets into India and confessed that he used to transport WY Tablets from Myanmar to Manipur and then, to Bangladesh. On 28-",,,

01- 2020, the detenu was granted bail by the Special Judge, ND & PS, Thoubal District, Manipur.",,,

Ã, [3.2] While in police custody, the order of detention was passed by the District Magistrate, Thoubal District. The driving consideration for his",,,

detention, is that the detenu is a foreign national and there is a high chance that he may abscond and travel beyond the jurisdictional reach of the police",,,

and he may continue such activities. The scale of his activities is very large. The consignment caught was one of the several consignments which,,,

were delivered by him which indicate his links to narco terrorism. Such a large presence of drugs is prejudicial to the security of the State and public,,,

order. The drug money is often used to fund insurgent groups and violent activities across the country, especially in Manipur and other parts of North",,,

East India. In view of the scale and scope of drug smuggling, it is a threat to the public order.",,,

[3.3] The detenu is a dangerous man with dogged determination with cool calculation and malevolent design to disrupt the public order affecting public,,,

tranquillity. The detenu is a dangerous and renowned drug smuggler. In view of his prejudicial activities in the immediate past, it is likely that he may",,,

continue to act in a manner prejudicial to the maintenance of public order. Normal criminal laws are not sufficient to prevent him from his commission,,,

of prejudicial activities. After the order of detention being passed, he was informed that he has the right to make representations to the Government of",,,

Manipur as well as the Central Government against it which can be sent through the Superintendent of Police.,,,

[4] Being aggrieved by the order of detention, the instant writ petition has been filed by the petitioner questioning it on inter-alia various grounds that",,,

when he was arrested at the Airport, no contraband article was seized from his possession; that there is no reasonable ground made in the",,,

investigation that he has committed the offence as alleged against him; that there is no any evidence to connect him with the WY tablets seized from,,,

the driver, except the statement given by the driver; that no case has been made out against him to justify the detention under the provisions of the",,,

National Security Act, 1980 and that the detention order was issued on 29- 01-2020 after his being released on bail by the Special Judge, ND & PS,",,

Thoubal District, Manipur on 28-01-2020. During the course of hearing, one issue as to whether there was any material before the District Magistrate",,,

for her satisfaction that the detenu was likely to be released on bail, did emerge, as the detenu was detained while in custody. But since this point was",,,

not raised in the writ petition, Shri P. Tomcha, learned counsel was granted some time to seek instructions in the matter. When the matter was taken",,,

up for consideration on 30-11-2020, he submitted that the writ petition being a habeas corpus petition, this point could be considered by this Court in",,,

terms of the decision rendered by the Hon'ble Supreme Court in Mohinuddin Vs. District Magistrate, (1987) 4 SCC 58 where the Hon'ble",,,

Supreme Court held that it was an improper exercise of power on the part of the High Court disallowing the writ petition on the ground of imperfect,,

pleadings. Normally, writ petitions are decided on the basis of affidavits and the petitioner cannot be permitted to raise grounds not taken in the petition",,,

at the hearing. The same rule cannot be applied to a petition for grant of a writ of habeas corpus. It is enough for the detenu to say that he is under,,

wrongful detention and the burden lies on the detaining authority to satisfy the Court that the detention is not illegal or wrongful and that the detenu is,,

not entitled to the relief claimed.,,,

[5] The District Magistrate, respondent No.1, in her affidavit, has stated that the detenu is an international drug smuggler and has a network of",,,

transportation of WY tablets from across Myanmar into India. His modus operandi was smuggling of WY tablets rolled into carpets and then",,,

transported to Silchar and Dimapur via Moreh and Imphal. He was arrested by a police team of Thoubal District in connect with the case registered,,

under FIR No.94 (8) 2019 TBL-PS. He is not a citizen of India. An affidavit on behalf of the respondent Nos.2 to 4 has been filed reiterating what,,

has been stated in the grounds of detention and in addition thereto, it has been stated that the State Government approved the order of detention on 07",,,

- 02-2020 after considering the grounds of detention and other relevant documents furnished by the District Magistrate with due application of,,

judicious mind and the same was reported to the Central Government as well as the Advisory Board. The detention of the detenu was confirmed by,,

the State Government on 25-02-2020. In the affidavit filed by the respondent No.5, it has been stated that the detenu was granted bail by the Special",,,

Judge, ND & PS, Thoubal on 28-01-2020, which was received by him in the evening and on that itself, the detenu has been released from the jail. It",,,

has been denied by him that instead of releasing the detenu, the jail authority did hand over the detenu to the police. It has further been stated that the",,,

representations addressed to the District Magistrate, Thoubal and the Chief Secretary, Manipur were received on 22-02-2020 and the same were",,,

forwarded to the concerned authorities on the same day.,,,

[6] In exercise of power conferred under the provisions of the National Security Act, 1980, the order of detention was passed by the District",,,

Magistrate, Thoubal/ detaining authority on the basis of her subjective satisfaction. It is well settled that the Court cannot go into the correctness of the",,,

decision of the detaining authority but can look into the decision-making process. In other words, the Court can scrutinize the materials relied upon by" ,,,

the detaining authority in coming to his/her conclusion. While examining the correctness of the decision-making process, two issues are required to be" ,,,

considered by the Court- one, whether there are materials on which reliance was placed by the detaining authority in passing the detention order and" ,,,

two, the detaining authority was justified in arriving at a finding based on the said materials that the detenu be detained without any trial. Since a" ,,,

person can be detained on suspicion, the procedural safeguards are to be strictly observed in order to prevent misuse of the law of preventive" ,,,

detention. It is also well settled that a person who is in custody, can also be detained under the provisions of the National Security Act, 1980 after" ,,,

having followed the principles laid down by the Hon'ble Supreme Court in Union of India Vs. Paul Manickam, (2003) 8 SCC 34 2and the" ,,,

principles which have been laid down therein are found in para 14 which is reproduced herein below:- ,,,

“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 authorities" ,,,

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 v. Govt. of T.N. and Dharmendra Suganchand Chelawat v. Union of India.) The point was gone into detail in Kamarunissa v. ,,,

Union of India. 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; and (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 of release,,,

on bail.Ã¢â¬â¸",,,

The aforesaid principles were followed in *Rekha Vs. State of Tamil Nadu & Ors.*, (2011) 4 SCC 260, in which the HonÃ¢â¬â¸ble Supreme Court held",,,

that, "",,,

Ã¢â¬â¸"26. It was held in *Union of India V. Paula Manickam* that if the detaining authority is aware of the fact that the detenu is in custody and the,,,

detaining authority is reasonably satisfied with cogent material that there is likelihood of his release and in view of his antecedent activities he must be,,,

detained to prevent him from indulging in such prejudicial activities, the detention order can validly be made.",,,

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",,,

pendig. 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 conclude that there is likelihood of the detenu being released on bail even",,,

though no bail application of his is ending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be",,,

given, otherwise the bald statement of the authority cannot be believed.Ã¢â¬â¸",,,

The said principles were also followed in the decision rendered in *Huidrom Konungjao Vs. State of Manipur & Ors.*, (2012) 7 SCC 18 1wherein it has",,,

been held that if such detention order is challenged, the detaining authority ought to satisfy the Court the following facts:",,,

(i) the detaining authority was fully aware of the fact that detenu was actually in custody;,,,

(ii) there was reliable materials before the said authority on the basis of which it could have reasons to believe that there is reliable possibility of,,,

released on bail and further on being released, he would probably indulge in activities which are prejudicial to the public order.",,,

The aforesaid principles have been reiterated and followed in many subsequent decisions of the HonÃ¢â¬â¸ble Supreme Court and the High Courts,,,

including the judgment and order dated 04-06-2013 passed by this Court in *Elangbam Mangijao Singh Vs. State of Manipur & anr.*, W.P. (Crl.) No.10",,,

of 2013,,,

[7] In a case which arose from the State of Manipur, the HonÃ¢â¬â¸ble Supreme Court had the occasion to go into the sufficiency of the materials",,,

relied upon by the detaining authority, to determine the validity of the order of detention. The HonÃ¢â¬â¸ble Supreme Court, after the perusal of the",,,

grounds of detention and the documents relied upon by the detaining authority, came to the conclusion that they were not sufficient to form subjective",,,

satisfaction by the detaining authority. The said decision has been rendered by the Hon'ble Supreme Court in Pabam Ningol Mikoi Devi Vs. State,,,

of Manipur & ors.,(2010) 9 SCC 618 and para 27 thereof wherein the materials have been enumerated, is as under:-",,,

"27. In light of these decisions, to determine the validity of the detention order, it is necessary to go into the materials relied on by the detaining",,,

authority in passing the detention order. The documents relied upon by the District Magistrate, West Imphal, as mentioned in the grounds of detention",,,

dated 28-9-2009 are:",,,

(a) The statement of the detenu given before the IO on 18-9-2009.,,,

(b) Statement of SI T. Khogen Singh of CDO/IW recorded under Section 161 CrPC in connection with FIR No.183 (9) 09 SJM-PS under Sections,,,

17/20 of the Unlawful Activities (Prevention) Act, 1967.",,,

(c) Statement of Rfm. No. 15007038 L. Rajen Singh of CDO/IW recorded under Section 161 CrPC in connection with FIR No. 183 (9) 09 SJM-PS,,,

under Sections 17/20 of the Unlawful Activities (Prevention) Act, 1967.",,,

(d) Statement of Constable No.0601193 S. Khomei Singh recorded under Section 161 CrPC in connection with FIR No. 183 (9) 09 SJM-PS under,,,

Sections 17/20 of the Unlawful Activities (Prevention) Act, 1967.",,,

(e) Copy of arrest memo dated 17-9-2009.,,,

(f) Copy of seizure memo dated 17-9-2009.,,,

(g) Copy of Manipur local daily The Poknapham dated 8-3-1999.,,,

(h) Copy of Notification under No. S.O. 1922 (E) dated 13-11-2007. After examining the aforesaid materials, the Hon'ble Supreme Court held:",,,

"28. We are conscious of the fact that the grounds stated in the order of detention are sufficient or not, is not within the ambit of the discretion of",,,

the court and it is the subjective satisfaction of the detaining authority which is implied. However, if one of the grounds or reasons which lead to the",,,

subjective satisfaction of the detaining authority under the NS Act, is non-existent or misconceived or irrelevant, the order of detention would be",,,

invalid.,,,

29. Keeping in view these well-settled legal principles, we have perused the grounds of detention and the documents relied on by the detaining",,,

authority while passing the order of detention. In our considered view, the grounds on which the detention order is passed has no probative value and",,,

SL.

NO",CASE NO.,Party na me,"Date of

Judgment

and Order

1,WP(CRL) 1/2013,"SANATOMBI BIBI

VS

STATE OF MANIPUR",13/3/2013

2,WP(CRL) 2/2013,"N(N) M(O) GAMBHINI

DEVI VS

DM, THOUBAL MANIPUR AND 3

OTHERS",16/4/2013

3,WP(CRL) 3/2013,"TH.(O) MEMC HA DEVI

VS

STATE OF MANIPUR AND 2 OT

HERS",2/5/2013

4,WP(CRL) 4/2013,"CHONGSEI BA ITE

VS

STATE OF MANIPUR AND 2 ORS",2/5/2013

5,WP(CRL) 5/2013,"L. BALA DEVI

VS

STATE OF MANIPUR",25/4/2013

6,WP(CRL) 6/2013,"S. KAILUN

VAIPHEI VS

STATE OF MANIPUR AND ORS",03/12/2013

7,WP(CRL) 7/2013,"M(N) N(O) MEMAC HA DEVI

@OMITA VS

STATE OF MANIPUR AND 3 ORS",05/08/2013

8,WP(CRL) 8/2013,"RK.MA RY

VS

STATE OF MANIPUR AND

ANOTHER",29/04/2013

9,WP(CRL) 9/2013,"Y.RONIBALA DEVI

VS

STATE OF MANIPUR AND

ANOTHER",21/05/2013

10,WP(CRL) 10/2013,"E. MANGIJAO SINGH VS

STATE OF MANIPUR AND

ANOTHER",24/06/2013

11,WP(CRL) 11/2013,"Md. ABDUL RAJAK

KHAN VS

DM.T HOUBAL AND 3 OTHERS",11/07/2013

12,WP(CRL) 12/2013,"S.TOMBA SINGH

VS

DM.T HOUBAL AND 3 OTHERS",11/07/2013

13,WP(CRL) 13/2013,"AIHOME REMOI @ AIHOME

INPUI VS

DM. THOUBAL AND 3 OTHERS",24/09/2013

14,WP(CRL) 14/2013,"JONATHAN PHIAMPHU

ZOU VS

DM. THOUBAL AND 3 OTHERS",24/09/2013

15,WP(CRL) 15/2013,"SH.BIJEN SHARMA

VS

STATE OF MANIPUR AND 2 OT

HERS",12/11/2013

16,WP(CRL) 16/2013,"MOIROUSANG

GUITE VS

DM CC PUR AND 2 ORS",24/09/2013

17,WP(CRL) 17/2013,"NENGMUAN

KHUPTONG VS

DM CC PUR AND 2 ORS",24/09/2013

18,WP(CRL) 18/2013,"TH. SAMBI S INGH@

KHAMBA VS

DM THOUBA L,MANIPUR AND 3

ORS",24/09/2013

19,WP(CRL) 19/2013,"TUANKHA NSUA

N VS

UNION OF INDIA AND 2 ORS",12/11/2013

20,WP(CRL)20 /2013,"CHINNUAMKIM

VS

UNION OF INDIA AND 2 ORS",12/11/2013

21,WP(CRL)21 /2013,"MRS. BETTY

CHINGSUANKIM

VS

UNION OF INDIA AND ORS",12/11/2013

22,WP(CRL)23 /2013,"PH. MEGHAC HANDRA

MEITEI VS

DM IMPHAL WEST MA NIPUR

AND 2 ORS",17/09/2013

23,WP(CRL)27 /2013,"N.ROBI SINGH

VS

DM IMPHAL WEST AND 2 ORS",05/12/2013

24,"WP(CRL)28

/2013","MD.A BDULA C HA

OBA VS

THE STATE OF MANIPUR AND

ORS",24/07/2013

25,WP(CRL)30/2013,"Y.BAS IR VS

DM THOUBA L,MANIPUR AND 2

ORS",05/12/2013

26,WP(CRL)31/2013,"M (O) SANDHAYA

LEIMA VS

STATE OF MANIPUR AND 2 ORS",05/12/2013

27,WP(CrI) 25/2014,"TH (O) AKASHINI DEVI

V.

STATE OF MANIPUR AND 4 ORS.",27/09/2016

28,WP(CrI)27/2014,"L.BUSHAN S INGH

V.

DM, IMPHAL WEST AND 2 ORS",14/10/2014

29,WP(CrI)15/2015,"Md. NASIR HUSSAIN

V.

STATE OF MANIPUR AND 2 ORS",18/04/2016

30,WP(CrI)16/2015,"Md.YAHIYA KHAN

V.

STATE OF MANIPUR AND 2 ORS",18/04/2016

31,WP(CrI)17/2015,"SHANTIKUMAR@SHANTI

V.

DISTRICT MAGISTRATE AND 2

ORS",01/03/2016

32,WP(CrI)18/2015,"LANGHU TANGLUN

ANAL

V.

STATE OF MANIPUR AND 6 ORS",25/01/2016

33,WP(Crl)19/2015,"I.RAKESH SINGH

v.

DM,IMPHAL WEST AND 2 ORS",05/02/2016

34,WP(Crl)20/2015,"MD.ILLIYASH KHAN@ ILLIYASH

v.

STATE OF MANIPUR AND 2 ORS",31/03/2016

35,WP(Crl)21/2015,"AJIANA GANGMEI

v.

STATE OF MANIPUR AND 2 ORS",18/04/2016

36,WP(Crl)23/2015,"MD.FIROZ KHAN

v.

DM and 3 ORS",21/04/2016

37,WP(Crl)24/2015,"NGAMSINLUNG PANMEI

v.

DISTRICT MAGISTRATE AND 3

ORS",18/04/2016

38,WP(Crl)25/2015,"N.MENAOBI DEVI

v.

STATE OF MANIPUR AND 2 ORS",30/03/2016

39,WP(Crl)01/2016,"KH.TOMBA SINGH

v.

DISTRICT MAGISTRATE AND 3

ORS",25/04/2016

“(6) We are, therefore, of the view that in absence of any bail application on behalf of the petitioner pending before the Court for being”,,,

released on bail in the criminal case in which he had been taken to police custody, there could not be any apprehension in the mind of the”,,,

District Magistrate that the petitioner may be released on bail merely because in similar cases some accused persons had been released on”,,,

bail earlier. We are, therefore, further of the view that in absence of any bail application on behalf of the petitioner pending consideration”,,,

by the Court, the order of detention passed by the District Magistrate, becomes invalid.”,,,

(7) Before parting with the case, we should like to observe that similar cases had come up for consideration before us earlier and several”,,,

judgments have been delivered quashing the detention solely on the above ground. The District Magistrate, while passing such orders of”,,,

detention, are not taking note of the judgment of the Supreme Court rendered in the case of Rekha Vs. State of Tamil Nadu & Ors. (supra)",,,

as well as the judgments passed by this Court in several cases setting aside such orders of detention solely on the above ground. We, "",,,

therefore, direct that the Chief Secretary, Government of Manipur shall circulate a copy of the judgment delivered in the case of Rekha Vs. "",,,

State of Tamil Nadu & Ors. (supra) quoted above, along with a copy of this judgment to all the District Magistrates for their perusal and "",,,

guidance in future. Copy of this judgment and copy of the judgment in the case of Rekha (supra) be communicated to the Chief Secretary,,,

forthwith.Ã¢â¬â¢,,,

[15] Subsequently also, when this Court noted that a large number of detention orders passed under the National Security Act,1980 had "",,,

been quashed on the similar ground and felt that the law laid down by the HonÃ¢â¬â¢ble Supreme Court as referred to above were not being,,,

adhered to by the detaining authorities, this Court again made the following observation and direction in W.P.(CRIL) No. 37 of 2016 which "",,,

was disposed of on 03.10.2016:,,,

Ã¢â¬â¢[14] Thus, we find that subjective satisfaction of the detaining authority of likelihood of the accused being released on bail is not based "",,,

on any factual aspect and thereby order of detention being bad, is hereby quashed. Consequently, the detenu Wahengbam Ramananda @ "",,,

Luwangngamba @ Rousow s/o (L) W. Biren Singh of Kontha Ahallup Makha Leikai, PS Heingang, is hereby directed to be released "",,,

forthwith, if not wanted in connection with any other case" "",,,

[15] Before parting with this order, it be recorded that earlier when we did find in another case that order of detention is being passed "",,,

without having regard to the provisions of the Act and also of several decisions rendered by the HonÃ¢â¬â¢ble Supreme Court indicating,,,

therein the manner in which the order of detention be passed, we, after discussing the issue in details in context of different decisions of the "",,,

Supreme Court, passed order of communicating the said order to the District Magistrates and Superintendents of Police for their guidelines "",,,

to be observed while passing the order of detention, we are constrained to say that it is being not adhered to by the detaining authority and "",,,

therefore the matter needs to be brought to the notice of the Chief Secretary for doing needful in the matter. Accordingly, copy of this order "",,,

be communicated to the Chief Secretary, Govt. of Manipur. Thus, this application stands allowed.Ã¢â¬â¢ "",,,

Similar directions were issued in W.P.(Cril) No.35 of 2016 and W.P.(Cril) No. 36 of 2016.,,,

[16] However, we are constrained to say that in spite of such observations and directions issued by this Court on earlier occasions as "",,,

mentioned above, the detaining authorities and other concerned authorities continue to issue detention orders with similar deficiencies "",,,

[11] As a reminder, a copy of this judgment and order may be sent to the Chief Secretary, Manipur either through a messenger or his e-¹¹¹

mail/ WhatsApp for his perusal and necessary action.,,,