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Lottongbam Dhiren Vs State of Manipur and Others

Civil Rule (HC) No. 18 of 1997

Court: Gauhati High Court (Imphal Bench)

Date of Decision: Sept. 10, 1997

Acts Referred:
Arms Act, 1959 â€" Section 25(1B)#Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 164, 167#National Security Act, 1980 â€" Section 3(2), 3(3), 3(4), 9#Penal Code, 1860 (IPC) â€" Section 121, 121A#Unlawful Activities (Prevention) Act, 1967 â€" Section 13

Citation: (1998) 4 GLT 70

Hon'ble Judges: W.A. Shishak, J; P.K. Ghosh, J

Bench: Division Bench

Advocate: Kh. Nimaichand, for the Appellant; A. Jagat Chandra and Ibotombi Singh, C.G.S.C., for the Respondent

Judgement

W.A. Shishak, J.
The Petitioner is a detenue held currently in Manipur Central Jal at Imphal under the provisions of National Security Act.

Order of detention was issued by District Magistrate, Imphal District on 1st March, 1997 under Sub-Section 3 of Section 3 read with Section

3(2) of the National Security Act, 1980. The said order of detention was approved by order dated 10th March, 1997 under by the Government

of Manipur u/s 3(4) of the said Act, By another order dated 4th April, 1997 issued by the Government, the order of detention was confirmed and

the Government was pleased to fix the period of detention for 12 (twelve) months from the date of detention. The order of Confirmation was

issued on receipt of report from the Advisory Board Constituted u/s 9 of the said Act Grounds of detention were furnished to the detenue on 5th

March, 1997.

2. On receipt of grounds of detention the petition filed representation to the State Government as well as to the Central Government on 14.3.1997.

It may be stated that the State Government rejected the representation and it was communicated to the Petitioner on 19.3.1997. This petition was

filed in the month of May, 1997. It is contended that at the time of filing of this petition the representation filed before the Central Government not

been disposed of inasmuch as the Petitioner was not informed of his representation at that ti(sic) It may, however, be stated that in terms of the

counter affidavit filed on behalf of the Union of India, the representation filed before the Central Government was disposed of and in fact

communicated to the detenue through the State Govermnent on 9.5.97.

3. Para 1 of the grounds of detention states that the Petitioner joined banned Organisation known as United National Liberation Front, UNLF,

some time in the last part of June, 1993. He was given assignment in finance section of the said Organisation under the command of Mr. Dinesh

Singh from November, 1993 to second week of October, 1994. It is also stated that the Petitioner also received military training some-were in

Myanmar territory along with other persons. It is further mentioned that statements of some persons were recorded as regards the activities of the

Petitioner, particularly statements of two persons viz, statements of Loitongbam Nanao Singh @ Birjit and Ningthoujam Suresh Singh Naocha.

Statement of Loitongbam Nanao Singh was recorded on 22.11.1996 whereas the statement of Ningthoujam Suresh Singh Naocha. Statement of

Loitongbam Nanao Singh was recorded on 22.11.96 where as the statement of Ningthoujam Suresh Singh was recorded on 16.2.1996. The said

two persons were arrested along with the Petitioner. Hence they were co-accused in connection with the same activities of which the Petitioner is

accused. Para 3 of the grounds of detention further states.

That, on 16.2.1996 at about 9 a.m. you were arrested by a team of RAPF, Imphal District Police led by ASI Th. Krishnatombi Singh from Lilong

Chajing Bazar along with Mr. Ningthoujam Suresh Singh @ Naocha (23) S/0 N. Nabakumar Singh of Keishamthong Elangbam Leikai. Some

incriminating documents of UNLF were recovered from your possession. This refers to FIR No. 55.(2) 96.SJM P.S u/s 121/121-A IPC and 13

UA.(P) Act. You were arrested in connection with the above noted FIR case on 16.2.1996 and released on bail on 27.2.1996 by the Ld. Chief

Judicial Magistrate/Imphal (copy of release order is enclosed).

At this stage we may state that this incident relates to the first arrest in February, 1996. As is apparent from the statement recorded above, the

Petitioner was arrested along with some other persons in February, 1996. Mr. Nimaichand, learned Counsel for the Petitioner states that release

was obtained in respect of arrest made in February, 1996 on the ground of illness of the present Petitioner. Para 4 further states that while on bail

the Petitioner was involved in activities prejudicial to the interest of State inasmuch as he contacted some members of the banned Organisation and

that he was involved in the collection of money from Lottery Agents. He was also accused of possessing one "38 Revolver loaded with six rounds

of ammunition (USA made) to be used when needed ""in the mission"". The Petitioner was again arrested on 22.11.1996 in connection with FIR

No. 619(11)96 Imphal R S. u/s 121/121AIPC, Section 13UA(P) Act and 25(1-B) Arms Act. We may here state that when the order of

detention as stated above was issued by the learned District Magistrate on 1.3.1997, the Petitioner was in Judicial custody.

4. Mr. Kh. Nimaichand, learned Counsel for the Petitioner submits that the order of detention is not sustainable inasmuch as it was passed without

any application of mind on the part of the District Magistrate while issuing the impugned order of detention. It is submitted by the learned Counsel

that although the Petitioner was injudicial custody, there is nothing to show in the order that the detaining authority was aware that the detenue was

in jail custody. It is further submitted that the Petitioner had not made any application for bail. Therefore, there was no apprehension that the

Petitioner would be enlarged on bail and if the Petitioner was to remain in jail, there was no likelihood of the Petitioner involving in any activity

prejudicial to the interest of the State. It is also submitted that no other person had made any application for bail on behalf of the detenue. In AIR

1989 Supreme Court 2265 it was held that there must be awareness in the mind of detaining authority that the detenue is in custody at the time of

service of the order of detention on him and cogent relevant materials and fresh facts have been disclosed wich necessitate the making of an order

of detention. It was further held in that case that the detenue was in jail custody in connection with a criminal case and the order of detention was

served on him in jail and that it was also evident that the application for bail filed by the detenue was rejected by the desighated Court. It was also

further held that no application for bail was made thereafter before the order of detention was served on him. Therefore, the detaining authority

was completely unaware of the fact that no application for bail was made on behalf of the detenue for his release before the designated Court and

as such the possibility of his coming out On bail was non-existent. In Ahmedhussain Shaikhhussain @ Ahmed Kalio Vs. Commissioner of Police,

Ahmedabad and Another, it was held that unless some fresh facts are disclosed, simply because detenue may go on bail would not justify order of

detention. In an affidavit filed on behalf of the District Magistrate, it is stated that if order of detention was not issued, the Petitioner might be

released on bail under the provisions of Section 167 Code of Criminal Procedure. It may be stated that the said statement made in the affidavit

was nowhere found in the grounds of detention when the learned Magistrate issued the order of detention against the Petitioner. It is submitted by

the learned council for the Petitioner that the operation of law has nothing to do with any act of the Petitioner. According to Mr. Nimaichand it is

enough for the Petitioner to say that while in custody after arrest on 22.11.96, the Petitioner had not made any application for bail and as such

there was no question of his involving in any activity prejudicial to the interest of the state. In AIR 1986 Supreme Court 315 it was held that the

order of detention issued only on the ground that detenue in distention as under trial was likely to get bail was not proper. In the said case the order

of detention was passed because the detaining authority was apprehensive that in case the detenue was released on bail he would again carry on

his criminal activities in the area and yet the same was held to be improper. It was further stated that if the apprehension of the detaining authority

was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised.

Therefore, it was held that merely on the ground that an accused in detention as an under trial prisoner was likely to get bail, an order of detention

under the said act should not ordinarily be made.

5. Second submission of Mr. Nimaichand is that the order of detention should be held to be bad inasmuch as the material on which the detention

order is based is mainly the statements made by two co-accused persons as stated earlier. It is submitted that Shri Loitongbam Nanao Singh @

Birjit was arrested along with Petitioner and his statement is stated to have been recorded on 22.11.1996. Apparently the said person was

arrested along with the Petitioner when he was arrested for the second time in November, 1996. The other person whose statement was recorded

is Suresh Singh. As stated above his statement was recorded in connection with an earlier arrest made on 16.2.96. It is the submission of Mr.

Nimaichand that there is no other material to substantiate the allegation that the Petitioner was involved in the collection of money from various

Departments of the Government of Manipur. It is the contention that any statement recorded u/s 161 Code Criminal Procedure from co -accused

carmot at all form the basis for detention of the Petitioner. It is further submitted that if the statement of co-accused have been recorded u/s 164

Code of Criminal Procedure it would have been a different matter. As against this Mr. A. Jagatchandra who appears on behalf of the Government

states that it is a question of likelihood of the Petitioner carrying out activity prejudicial to the interest of the state in view of the fact that after

release from his arrest made in February, 1996 the Petitioner was involved in activities prejudicial to the interest of the state. Mr. Nimaichand once

again submits that such mere submissions based on mere allegations cannot be sustained.

6. It is further submitted that even on humanitarian grounds this order of detention should not have been issued against the Petitioner inasmuch as

even in connection with the first arrest in February, 1996 the Petitioner was allowed to go on bail on ground of sickness as the Petitioner has

serious health problems. Medical reports have been produced before this Court in support of this contention. Another submission of Mr.

Nimaichand is that the order of detention is liable to be set aside on the ground of delay in the disposal of the representation made before the State

Government as well as before the Central Government. As far as this submission is concerned, it seems the representation made before the State

Government was disposed of without delay and the order of rejection was communicated to the Petitioner in time. However, we shall examine as

regards the allegation whether there was undue and unexplained delay as respects the representation filed before the Central Government.

7. Mr. A. Jagatchandra, learned Government Advocate appearing on behalf of the State Government draws our attention to para 5 of grounds of

detention. It is stated in that para:

That, from the above enumerated pomts, it is seen that you as a dangerous hard-core member of UNLF disturb public order aflfecting public

tranquilities. In view of your pre-judicial activities in the proximate 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 as and when you be enlarged from detention as you resumed your activities in the UNLF

Organisation in the past- after your release on bail. Thus, the application of normal criminal laws against you will not be effective to prevent you

from commission of further prejudicial activities. An alternative preventive measure, is, therefore, immediately called for.

Mr. Jagatchandra submits that after he was released in February, 1996, the Petitioner was involved in some activities prejudicial to the security and

maintenance of public order in Manipur. In AIR 1991 Supreme Court 1640 it was held that if there are materials on record to show that the

Petitioner if released on bail is likely to indulge himself in activities prejudicial to the security and maintenance of public order, the detaining authority

shall be justified to pass an order of detention even while the detenue is in judicial custody. Mr. Nimaichand submits that in the present case there

are no materials on record to support the contention of the Government in this regard inasmuch as the materials which formed the basis of

detention are mainly the statements recorded from co-accused persons u/s 161 Code of Criminal Procedure Accordingly it is submitted that the

apprehension that the Petitioner might indulge in activities prejudicial to the interest of the State is only imaginary and not real on the present facts

and circumstances of the case. Mr. Jagatchandra further submits that although no petition for bail had been made at the time of issuance of the

order of detention, it could have been reasonably presumed by the detaining authority that in the course of time bail usually would be granted. It is

further submitted by Mr. Jagatchandra that the question of admissibility or inadmissibility of material/evidence to be taken into consideration by the

detaining authority while issuing order of detrition should not be taken into consideration by this Court inasmtich as the satisfaction of the materials

before the detaining authority can not be the subject matter for satisfaction of this Court. In other-words, the materials placed before the detaining

authority cannot be examined as evidence strictly in terms of the Evidence Act in the matter of order of detention under the National Security Act.

8. As regards delay, counter affidavit filed on behalf of the State Government in para 2 states that representation made by the Petitioner on

14.3.1997 was forwarded by S.P.(J) on the same day and it was sent to the Central Government on 15.3.1997 by speed post. Thereafter a

massage was received on 21.3.1997 asking from the State Government to give further information. After collection of necessary informations the

materials were forwarded on 7.4.1997 by speed post. The Central Government sent a message dated 8.5.1997 stating that the request of the

detenue for revocation of the detention order was not acceded to and the order of rejection was duly communicated to the detenue through

Respondent No. 3 on 7.5.1997. The detonue signed on the order of rejection on 10.5.1997. As far as the representation to the State Government

is concerned it was disposed of within five days of the making the representation and the order of rejection was commimicated to the detenue on

19.3.1997. Hence Mr. Jagatcbandra submits that there is no delay in disposal of the representation filed before the State Government.

9. Mr.N. Ibotombi Singh, learned Central Government Standing Counsel submits mainly as regards the allegation that there was undue and

unexplained delay in the disposal of the representation made by the Petitioner. Para 6 of the affidavit filed on behalf of Union of India states that

representation of the Petitioner dated 14.3.97 was received by the Central Government in the Ministry of Home Affairs on 20.3.97 through

Government of Manipur. The matter was immediately processed for consideration and it was found that certain vital informations were not

available for proper consideration of the said representation. Accordingly a Crash Wireless Message was sent to the Government of Manipur on

21.3.97, asking for certain informations to be furnished to the Central Government by the State Government. As there was no response to the said

Wireless Message sent on 21.3.97 another Message was sent on 4.4.97. Still there was no response from the State Government. Hence a third

Wireless Message was sent on 15.4.97. Para 7 states that:

the required information was received by the Central Government in the Ministry of Home Affairs on 17.4.97 and on 21.4.97 in the Concerned

Desk vide the State Government"s letter dated 7.4.97. On receiving the said information on 21.4.97, the case of the detenue was put up before

the Joint Secretary, Ministry of Home Affairs on 22.4.97. The Joint Secretary considered the case and with his comments put up the same before

the Minister of State for Home Affairs, Govt. of India on 22.4.97. The Minister of State for Home Affairs himself duly considered the case of the

detenue and rejected the representation of the detenue on 6.5.97.

It is further stated that in para 5 of the Government of India affidavit that the final decision on the representation of the detenue was taken within

twelve days excluding 26th, 27th, April, 3rd and 4th May, 1997, being closed holidays. Mr. Ibotombi Singh submits that even assuming that there

was some delay in the disposal of the representation of the detenue, it cannot be said that there was undue delay. It is also submitted that delay, if

any, has satisfactorily been explamed on behalf of the Central Government. Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others, has been relied

upon by Mr. A. Jagatchandra as well as Mr. Ibotombi appearing on behalf of the State of Manipur and Union of India respectively to say that

delay in the present case cannot be fatal and in the present circumstances the State Government and the Union Government cannot be faulted on

this score. In the aforesaid case representation was received by the Central Government on July 15, 1991. The Central Government sought

information from the State Government though their wireless message dated July 16,1991. The State Government intum sought the information

from the detaining authority on July 24,1991. The comments and the material were forwarded by the detaining authority to the State Government

and on receipt of those materials the State Government submitted the parawise comments to the Central Government and the Central Government

received information on August 6, 1991. Final order rejecting the Petitioner"s representation was passed on 24 August, 1991 and it was duly

communicated to the detenue on August 27,1991. In the aforesaid case in the circumstances explained by the Central Government the Court held

that there was no delay. It is submitted by Mr. Ibotombi as well as Mr. Jagatchandra that the present case is similar to the one referred to above.

10. We have heard Mr. Kh. Nimaichand, learned Counsel for the Petitioner, Mr. A. Jagatchandra, learned Government Advocate and Mr. N.

Ibotombi Singh, learned Central Government Standing Counsel at length. We have also perused relevant documents filed in the present case.

Learned Counsel appearing for the parties have taken us through the entire grounds of detention. On careful perusal of the grounds of detention, it

appears to us that the material on wich the order of detention is based are mainly the statements said to have been recorded from accused persons,

mainly two co-accused persons. Although it is stated in the grounds of detention that there were allegations that the Petitioner was involved in

collection of money from various offices of the Government Departments, we do not find any material to show that some statements in this regard

were recorded from any of the offices/departments as regards such collection of money. It appears to us that as regards seizure of one Revolver,

the Petitioner can be dealt with effectively under the ordinary law of the land.

11. It is true that there was no delay in the disposal of representation filed before State Government inasmwh as representation dated 14.3,97 was

disposed of and order of rejection was communicated to the detenue on 19.3.97. However, while considering the submission that there was delay

in the disposal of the representation made before the Central Government, we noticed in terms of para 6 of the affidavit filed on behalf of the Union

of India that were was unexplained delay in furnishing the required materials on the part of the detaining authority to the Central Government. As

we have stated above further information was sought from State Government through a Crash wireless Message on 21.3.97. Normally relevant

materials/ documents would have been available in the hands of one or two authorities only and the State Government would not have to look for

materials from place to place, particularly after the order of detention was issued on the basis of the materials already placed before the detaining

authority. As mentioned above the Central Government had to send another message on 4.4.97. The said message was to be followed by a third

message on 15.4.97 It is nowhere explained in the affidavit as to why the State Government was not able to send the required materials on receipt

of the first message on 21.3.97 from the Central Government. We are of the view that although there was some delay in the disposal of the

representation on receipt of the required materials from the State Government, in view of the explanations given by the Union Government and also

in view of the submission made by the learned Central Government Standing Counsel that there is only one Joint- Secretary dealing with the matter

concerning National Security Act for the entire country, we may not attribute laches or malafide on the part of the Central Government. We are of

the view that the State Government seems to have acted leisurely and not with promptitude that is expected in the matter of furnishing the relevant

information sought by the Central Government. In the facts and circumstances of the present case we hold that the delay in furnishing the relevant

materials to the Central Government has not been satisfactorily explained. Therefore, we hold that there was undue delay in furnishing informations

to the Central Government thereby further delay was caused in the disposal of the representation made before the Central Government. We must

always keep in view that in the matter of detention of a citizen of this country under the provisions of National Security Act, the detaining authority

is expected to act with promptitude and there should be no casualness at any stage.

12. In the light of the circumstances that we have stated above, this petition is allowed.sThe detenue shall be set at liberty forthwith.

This petition is disposed of.