

(1987) 12 GAU CK 0007

Gauhati High Court

Case No: Civil Rule (HC) No. 10 of 1987

Mayengbam Ningol
Nongmeikapam Ongbi Anuradha
Devi

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision: Dec. 15, 1987

Acts Referred:

- Constitution of India, 1950 - Article 226, 226
- National Security Act, 1980 - Section 3(2), 3(2), 3(3), 3(3)

Citation: (1988) 1 GLJ 127

Hon'ble Judges: J.M.Srivastava, J and R.K.Manisana Singh, J

Bench: Division Bench

Advocate: Promod Chandra Singh, Kh.Chonjohn Singh, Advocates appearing for Parties

Judgement

Manisana, J.

By this application under Article 226 of the Constitution of India, the petitioner Anuradha Devi has challenged the detention of her husband Shri Nongmeikapam Sanajaoba Singh under the National Security Act, 1980, for short "the act."

2. The detenue was ordered to be detained by the District Magistrate Imphal on 15.5.1987. On 26.5.1987 the Government of Manipur approved the detention order. The grounds of detention are as follows ;

"I. (a). That while all the senior members of (Pan Manipuri Leagued have either personally joined the underground organisation namely United National Liberation Front (UNLF in short) or have given moral support to the prejudicial activities of the organisation. You being one of the seniormost and important members of the PAN NYLE could not be an exception. Though you and your wife were Govt. servants you became hostile to the Govt. by abetting, advocating, inciting and facilitating the underground members of the UNLF in their prejudicial activities. L (b). That you used

to be associated not only with senior underground members of the UNLF but also with those newly recruited underground members. While Shri Y. Kholchandra Singh, s/o Y. Kullajit Singh planned to loot money from the office of the C.P.W.D, at Changangei in December, 1985. You readily agreed to sparing your jeep MNP 1188 for use in committing the crime on 2.12.85. A sum of Rs. 35,482/was looted at gun point from the cashier of the office CPWD, Changangei by Shri Kholchandra Singh along with six other. Although you had full knowledge about it, you did not give any to the Govt. about the culprits except that of Y. Kholchandra Singh whom you know to have absconded successfully with the loot. You were arrested on 2.12,1985 in connection with the FIR No. 438 (12) 85 SJM P.S. U/s 121/121/V/392 IPC, 25(1) @ A Act and section 3 (3)/TDA (P) Act and remanded to the judicial custody. But on the fourth day, you were released on bail by the court.

1 (c). That from the interrogation of the arrested UNLF members namely Y. Kholchandra, W. Samson Singh, of Wangkhei, it came to light of your nephew Oinam Chitaranjan Singh @ Sanou, that you gave shelter to Shri Ningombam Basanta Singh @ Wanglen Finance Secretary, of Bashikhong a/p Wangkhei Angom Leikai in your house from 27.3.87. You in collusion with a Chitaranjan @ Sanou kept W. Samson Singh @ Ningthem of Wangkhei Angora Leikai, an underground activist of the UNLF who carried a cash reward of Rs. 5,000/on his head in your neighbour and your cousin, Shri N. K. Shantikumar for the last one month. Further you used to keep the fund of the UNLF in your custody till April, 1987 on deposit by Shri N. Basanta Singh, the Finance Secretary of UNLF who withdrew the amount of Rs.1, 000/ on 4.4.87 in order to meet the expenses for tr. use volunteers proceeding to the so called council Head quarters of the UNLF.

1(d). That you were arrested on 27.4.87 in connection with a case vide FIR. No. 428 (11; 86 Lamphel P.S. U/s 121/121A IPC and 4(1) TDA, (P) Act. In that case a member of UNLF members used to assemble in the house of R. K. Lakhikumar Singh @ Koireng at Khurai Soibam Leikai and held meeting clandestinely plans for carrying out prejudicial activities were also chalked out. You were remanded to the police custody 7.5.87 and then remanded to the judicial custody. But on 12.5.87 the court ordered your release on bail and you are being released from the custody. In case you are at large in those days, where the prejudicial activities of the UNLF are gradually increasing, it can reasonably be anticipated that you will continue to act in the manner Prejudicial to the security of the State and the maintenance of the public order. Thus the application of normal criminal laws against you is not at all effective. An alternative preventive measure against you by detaining you under the" NSA 1980 in therefore unavoidably called for.

Your own statement before the police that of Ningonibam Basanta @ Walnglen of Bashikhong, that of Oiuarn Chiiaranjan @ Sanou or Pishum Oinam Leikai. that of R. K. Eatankumar Singh of Wangkhei Angom Leikai, seizure list dt. 2.12.85 Chakpram Bhupen (c) Bhupendra of "Nongmeibung, copies of FIR 438 (12) 85 SJM P.S. dt.

Which form the basis of your ground of your detention are also enclosed."

3. The learned counsel for the petitioner has submitted that the ground 1 (c) was based on or relied upon the statements of Kholchandra and Samson but those statements of Kholchandra & Samson had not been communicated to the detenu. The failure to communicate the statements would amount to noncommunication of ground and, therefore, ground No. I(c) would not be available to be used.

4. In subpara 1 (c) of para 8 of the petition it is stated:

❖I(c)). The third ground is quite baseless. Interrogation statements of the arrested UNLF members namely, Y. Kholchandra Singh and W. Samson Singh of Wangkhei are the only basis upon which the ground of detention has been framed. That copies of these interrogation statements of these two alleged UNLF members have not been furnished to the detenu. decision to furnish copy of these statements has caused a serious dice to the detenu."

5 On 25.5.87 the detenu submitted a representation stating inter alia that the copies of the statements of Y. Kholchandra and W. Samson Singh relied on in the ground I(c) had not been furnished to the detenu and as such, the detenu could not make effective representation.

6. In the Writ petition and representation it is stated clearly that the ground No. I (c) was based on the statements of Kholchandra and Samson and that those statements had not been communicated to the detenu. The respondents had not filed counter. In *Munna Tuin vs. District Magistrate Lucknow*, AIR 1982 SC. 878, the Supreme Court held :

"The District Magistrate should have filed counter affidavit himself. In fact by an order of this Court dated 8.1.1982 the District Magistrate was directed to file counter affidavit which alone could be treated as a proper return. Despite this direction, no counter affidavit has been filed by the District Magistrate. Thus, in short there is no proper explanations or return before us to rebut the allegations made by the detenu. On this ground alone, we are of the opinion that the petitioner should be released." (emphasis added)

7. In the course of hearing of the petition, we requested the learned Additional Public Prosecutor to produce the statements of Kholchandra and Samson for our perusal but the learned Public Prosecutor failed to produce the same. Under the circumstances, in the light of the Supreme Court in *Munna* (Supra), we hold the ground I(c) was based on the statements of Kholchandra and Samson. Admittedly, the statements of Kholchandra and Samson were not communicated to the detenu. The Supreme Court had in a series of cases, held that the documents, statements, or other materials relied upon in the ground of detention must be communicated to the detenu (See *Ichchu Devi vs. Union, of India*, AIR 1980 SC 1983 ; *Shalini Soni vs.*

Union of India ; AIR 1981 SC431; and Md. Jakir vs. Delhi Administration, AIR 1982 SC 696). In this view of the matter, ground No. I(c) will not be available to be used in the detention order as the statements, which had been relied on in the grounds of detentions, had not been supplied to the detenu.

8. As regards the ground I(d), the District Magistrate has shown his awareness of the criminal case. Otherwise, the detention order would be bad for absence of application of mind on the part of the detaining authority in the light of the decisions of the Supreme Court in *Devi Lai vs. State of Bihar*, AIR 1982 SC 1548; and *Anant vs. State of Maharashtra*, 1987 SC 137. As regards the ground I(b) is concerned, the incident was of December, 1985. It is already stated, the detention order was made on 16.5.1987. The delay has not been explained. In *Abdul Munna vs. State of West Bengal*, AIR 1974 SC 2066, the Supreme Court quashed the detention order on the ground that time lag of 9 (nine) months between the prejudicial activities of a detenu and the detention order was not explained. Therefore, we are of the view that the ground I(b) is clearly stated and not available to be used in an order of detention of 1987. The ground I(a) is a casual reference, or, past conduct or antecedent history.

9. Considering the overall circumstances of the case, we are of the view that all the grounds are not available to be used against the detenu and that the order of detention is liable to be quashed.

10. For the reasons stated, we quash the orders of detention of the detenu Nongmeikapam Kapam Sanajaoba Singh and direct that he shall be released forthwith if he is not required to be detained in connection with other case. The petition is allowed accordingly,

Sd/ Judge