

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(Cril.) No. 42 of 2023

Abikpi

... Petitioner

Vs.

State of Manipur & ors.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

10-04-2023

A. Bimol Singh, J.

Heard Mr. K. Pradeep Singh, learned counsel appearing for the petitioner, Mr. O. Ratankumar, learned Dy. GA appearing for the respondents No. 1 and 2 and Mr Shokpei Woleng, learned counsel representing Mr. S. Vijayanand Sharma, learned senior panel counsel appearing for the respondent No. 3.

The present petition had been filed assailing the order dated 04-10-2022 issued by the District Magistrate, Thoubal District thereby detaining the son of the petitioner under Section 3(2) of the National Security Act, 1980.

Mr. K. Pradeep, learned counsel appearing for the petitioner raised only one ground in assailing the impugned detention order. It has been submitted by the learned counsel appearing for the petitioner that the detaining authority has the knowledge of detention of the son of the petitioner in judicial custody in connection with FIR No. 39(08)2022 KJM-P.S., U/S 18/20 UA(P)A. Act and 6A Expl. Subs. Act. It has been submitted that in the impugned detention order as well as in the grounds of detention furnished to the detenu, the detaining authority never mentioned about filing any bail petition by the detenu for his release from detention and that the detenu is likely to be released on bail. The learned counsel also submitted that the issue raised in the present writ petition is squarely covered by the order dated 18-01-2023 passed by this

court in WP(Cril.) No. 7 of 2023 and the present petition can be disposed of by granting similar reliefs.

On perusal of the grounds of detention as well as the impugned detention order, it is revealed that the detaining authority was conscious of the fact that the detenu had been arrested in connection with the above mentioned FIR and that at the time of passing the detention order, the detenu was in judicial custody. Despite having knowledge of the fact that the detenu was in judicial custody at the time of passing of the detention order, the detaining authority did not mentioned either in the detention order or in the grounds of detention as to whether any bail petition had been filed by the detenu in connection with the said FIR in which he had been arrested and had been detained whereby he could have formed an opinion as to whether the detenu is likely to be released on bail.

In **Rekha Vs. State of Tamil Nadu**, reported in (2011) 5 SCC 244, the Hon'ble Supreme Court observed that there would be a real possibility of release of the petitioner, who is already in custody, provided he has moved a bail application, which is pending, as in such a case, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail.

It is, therefore, incumbent upon the detaining authority to verify whether or not, the detenu, who is in custody, has moved a bail petition so as to determine the possibility of his being released on bail and only thereafter, proceed to exercise power under the special law of preventive detention. In the case in hand, the District Magistrate, Thoubal District did not even undertake this exercise as is evident from the order of detention and the grounds of detention. On this ground alone, the petition had to succeed.

In view of the above, the present writ petition is accordingly allowed. The impugned order dated 04-10-2022 passed by the District Magistrate, Thoubal District is hereby quashed and set aside. Consequently, all the

proceedings and orders passed in connection with the impugned detention order are also hereby quashed and set aside.

Parties are directed to release the detenu viz., **Naorem Britain Singh** forthwith unless his continued detention is required in connection with any another case.

With the foresaid directions, the present writ petition is disposed of. Parties are to bear their own cost.

JUDGE

JUDGE

Devananda