Yumkham Rother
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IN THE HIGH COURT OF MANIPUR
AT IMPHAL
W.P. (Cril.) No. 3 of 2020

Md. Kyaw Kyaw Naing @ Abdul Rahim (33) yrs. S/o Abdul Jabar @ Ula Sin of Kawhmu Village Moha Rangoon, Myanmar, NSA Detenue, Manipur Central Jail, Sajiwa, Imphal East District, Pin-795010.

... Petitioner

-Versus-

1. The District Magistrate, Thoubal, D.C. Complex, Thoubal District, Manipur, Pin-795129.
2. The State of Manipur, though the Commissioner, Home, Secretariat Complex, Imphal West District, Manipur, Pin-795001.
3. The Chief Secretary, Government of Manipur, Secretariat Complex, Imphal West District, Manipur, Pin-795001.
4. The Deputy Secretary, Home, Government of Manipur, Secretariat Complex, Imphal West District, Manipur, Pin-795001.
5. The Superintendent, Manipur Central Jail, Sajiwa, Imphal East District, Pin-795010.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Shri P. Tomcha, Advocate.
For the respondents	::	Smt. L. Monomala, Govt. Advocate.
Date of Hearing	::	**30-11-2020**
Date of Judgment & Order	::	**07-12-2020**

JUDGMENT & ORDER

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.

[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] **T**he 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 342** and 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 Kamarunnissa 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.**"***

The aforesaid principles were followed in ***Rekha Vs. State of Tamil Nadu & Ors., (2011) 4 SCC 260,*** in which the Hon'ble Supreme Court held that,

*"**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."*

The said principles were also followed in the decision rendered in ***Huidrom Konungjao Vs. State of Manipur & Ors., (2012)***

7 SCC 181 *wherein* 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 Hon'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. (Cril.) No.10 of 2013***

[7] **I**n a case which arose from the State of Manipur, the Hon'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 Hon'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, 967.*

(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 were extraneous to the scope, purpose and the object of the National Security Act. This Court in Mohd. Yousuf Rather v. State of J&K has observed that under Article 22(5), a detenu has two rights*

(1) *To be informed, as soon as may be, of the grounds on which his detention is based and*

(2) *To be afforded the earliest opportunity of making a representation against his detention.*

The inclusion of an irrelevant or non-existent ground among other relevant grounds is an infringement of the first right and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second right. No distinction can be made between introductory facts, background facts and "grounds" as such; if the actual allegations were vague and irrelevant, detention would be rendered invalid.

30. *Insofar as the documents on which reliance is placed, in our opinion, none of these documents provide any reasonable basis for passing the detention order. The primary reliance has been on the accused's own statement made to an investigating officer. This cannot be said to be sufficient to form the subjective satisfaction of the detaining authority. Statements under Section 161, Code of Criminal Procedure, 1973 (hereinafter CrPC) cannot be taken as sufficient grounds in the absence of any supportive or corroborating grounds. Section 161 statements are not considered substantive evidence, but can only be used to contradict the witness in the course of a trial. The same is clear from the wording of Section 162(1) CrPC and has been so held time and again by this Court.***"**

[8] Keeping in mind the aforesaid principles, this Court proposes to examine the case on merit. As regards the sufficiency of the materials relied upon by the District Magistrate, it may be noted that they are slightly different from that of the materials as considered by the Hon'ble Supreme Court in **Pabam Ningol Mikoi Devi (supra).** In the present case, there are statements given by the accomplices implicating the detenu as involved in the case registered by the Thoubal police and therefore, it cannot be said that the materials are not sufficient to pass the order of detention. But since the detenu was admittedly detained while in police custody, the other issue is as to whether the procedural safeguards have been observed by the District Magistrate while passing the order of detention. On perusal of the order of detention, it is clearly seen that it is nowhere mentioned therein that the District Magistrate was satisfied that the detenu was likely to be released on bail nor was it mentioned in the grounds of detention as well. Moreover, there is no material on record to show that at the time when the order of detention was passed by the District Magistrate, a bail application moved by the detenu pertaining to the present case, was pending before the appropriate Court and a copy thereof was placed before her by the sponsoring authority nor has any co-accused been released on bail. The grant of bail would have been possible only when a bail application had been filed by or on behalf of the detenu. It is not so in the present case. The District Magistrate, in her affidavit filed before this Court, did not say anything about the materials on the basis of which she was satisfied that the detenu was likely to be released on bail and therefore, it is absolutely

clear that the principles laid down by the Hon'ble Supreme Court in **Union of India Vs. Paul Manickam (supra)** have not been followed by the District Magistrate. The District Magistrate appears to have not applied her judicious mind while passing the order of detention which is violative of Article 21 of the Constitution of India. Considering the materials on record and having heard the learned counsels appearing for the parties, we are of the view that the order of detention is bad in law and is liable to be quashed and set aside.

[9] In view of the above and for the reasons stated hereinabove, the instant writ petition is allowed and consequently, the order of detention dated 29-01-2020 passed by the District Magistrate, Thoubal District, Manipur is quashed and set aside with the direction that **Mr. Kyaw Kyaw Naing @ Addul Rahim (33 years) S/o Abdul Jabar @ Ula Sin of Kawhmu Village, Moha Rangoon, Myanmar** shall be released forthwith, if he is not required for any other case.

[10] After having allowed the writ petition as aforesaid, this Court deems it appropriate to reiterate the observations made by this Court in **Shri Sapam Kangleipal @ Chiranglen @ Sarat Vs. State of Manipur & ors, WP(Cril) No.9 of 2020**, the paragraph 11 of which reads as under:

> *"[11] Before parting from the present case, this Court deems it necessary and appropriate to make some observations as regards the manner in which the orders of detention are passed by the detaining authorities from time to time. It may be noted that there is hardly any case in which the Court has not interfered with the order of detention. In this regard, it may further be noted that*

Hon'ble Mr. Justice N. Kotiswar Singh, the then Acting Chief Justice of this Court, while agreeing with the judgment written by his esteem brother, made certain observations on 08-09-2017 in WP (Cril.) No.5 of 2017, ***Ningthoujam Yamba Singh Vs. the State of Manipur,*** *the relevant paragraphs of which read as under:*

> *"[12] This is not the first occasion where this Court had dealt with such habeas corpus petitions challenging detention orders passed under the National Security Act, 1980 based on non application of mind as regards the satisfaction of the detaining authority that the detenu is likely to be released on bail in near future. In the past, on similar ground, the detention orders had been set aside and the Court directed release of the detenues. In many petitions, similar issue was raised by the detenu that there was no material before the detaining authority to arrive at the satisfaction that the detenue who was already in custody is likely to be released on bail in the near future. Some of such petitions where the detention orders were set aside on the aforesaid ground are listed here below (**the list is not exhaustive**):*

SL. NO	CASE NO.	Party name	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) MEMCHA DEVI VS STATE OF MANIPUR AND 2 OTHERS	2/5/2013
4	WP(CRL) 4/2013	CHONGSEI BAITE 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

SL. NO	CASE NO.	Party name	Date of Judgment and Order
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) MEMACHA DEVI @OMITA VS STATE OF MANIPUR AND 3 ORS	05/08/2013
8	WP(CRL) 8/2013	RK.MARY 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.THOUBAL AND 3 OTHERS	11/07/2013
12	WP(CRL) 12/2013	S.TOMBA SINGH VS DM.THOUBAL 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 OTHERS	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 SINGH@ KHAMBA VS DM THOUBAL,MANIPUR AND 3 ORS	24/09/2013
19	WP(CRL) 19/2013	TUANKHANSUAN 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. MEGHACHANDRA MEITEI VS DM IMPHAL WEST MANIPUR AND 2 ORS	17/09/2013
23	WP(CRL)27 /2013	N.ROBI SINGH VS DM IMPHAL WEST AND 2 ORS	05/12/2013

SL. NO	CASE NO.	Party name	Date of Judgment and Order
24	WP(CRL)28 /2013	MD.ABDULA CHAOBA VS THE STATE OF MANIPUR AND ORS	24/07/2013
25	WP(CRL)30/2013	Y.BASIR VS DM THOUBAL,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(Crl) 25/2014	TH (O) AKASHINI DEVI v. STATE OF MANIPUR AND 4 ORS.	27/09/2016
28	WP(Crl)27/2014	L.BUSHAN SINGH v. DM, IMPHAL WEST AND 2 ORS	14/10/2014
29	WP(Crl)15/2015	Md. NASIR HUSSAIN v. STATE OF MANIPUR AND 2 ORS	18/04/2016
30	WP(Crl)16/2015	Md.YAHIYA KHAN v. STATE OF MANIPUR AND 2 ORS	18/04/2016
31	WP(Crl)17/2015	SHANTIKUMAR@SHANTI v. DISTRICT MAGISTRATE AND 2 ORS	01/03/2016
32	WP(Crl)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

[13] It may be noted that most of the decisions for quashing the detention orders were based on the

decisions of the Hon'ble Supreme Court rendered in ***Union of India –vs- Paul Manickam, (2003) 8 SCC342; 2004 SCC (Cril.) 239.*** *In the case of* ***Paul Manickam (supra),*** *it has been held that*

> *"14 … 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*

……The point was gone into detail in Kamarunnisasa v. Union of India: (1991) 1 SCC 128: 1991 SCC (Crl) 88. 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 released on bail."

[14] Accordingly, this Court, having observed that the detaining authority and the other concerned authorities have not been properly applying the law as laid down in the aforesaid decisions of the Hon'ble Supreme Court, in ***W.P.(CRIL). No.37 of 2013*** *which was disposed of on 01.4.2014, made the following observations and issued the direction as follows:*

"(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."*

[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 Hon'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:*

"[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 Hon'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."

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 indicating that they have not properly applied their mind in violation of the law laid down by the Hon'ble Supreme Court as referred to above, resulting in quashing of the detention orders by the Court.

[17] It may be noted that most of the persons who have been detained under the National Security Act in Manipur have been accused of being members of or associated with various outlawed organizations and of having committed serious heinous crimes.

Accordingly, while allowing this petition by setting aside the impugned detention order dated 06.02.2017, we direct that notice be issued to the Chief Secretary, Government of Manipur; Director General of Police, Manipur; Commissioner/ Secretary (Home), Government of Manipur to explain before this Court as to what steps they had taken earlier in compliance of the earlier directions issued by this Court in W.P.(Cril) No. 37 of 2013 as well as in W.P.(Cril) No.37 of 2016 by filing their respective affidavits before this Court within a period of one month from today with the copies of relevant instructions issued by the authorities in this regard, if any.

We hereby reiterate that the copies of the judgments delivered in ***(1) Union of India –vs- Paul Manickam, (2003) 8 SCC 342; 2004 SCC (Cril.) 239, (2) Rekha –vs- State of Tamil Nadu & Ors. (2011) 4 SCC 260*** *and* ***(3) Huidrom Konungjao –vs- State of Manipur & Ors. (2012) 7 SCC 181*** *be circulated to all the Superintendents of Police, Deputy Commissioner/ District Magistrates of all the Districts for strict compliance of the law laid down in the aforesaid judgments and if necessary, the Chief Secretary of the State may organize training programmes of the Deputy Commissioners and Superintendents of Police through the State Academy of Training (SAT) or any such body as it may be deemed fit.*

It may be also noted that this Court may be constrained to pass appropriate orders in future against those persons responsible for issuing defective detention orders by way of

imposing exemplary costs who continue to issue such defective orders as these defective orders may amount to illegally detaining persons and violating their Fundamental Right as guaranteed under Article 21 of the Constitution."

*[12] The officials of the State Government and in particular, the detaining authorities appear to have not yet taken into account the said observations seriously while passing the orders of detention. Therefore, the Chief Secretary, Manipur is directed to re-look into the matter without fail and issue appropriate instructions to the detaining authorities, at the earliest possible, so as to avoid any order being passed by this Court imposing heavy costs upon the detaining authorities for violating the provisions of Article 21 of the Constitution of India. A copy of this judgment and order shall be sent to the Chief Secretary, Manipur, through his e-mail/WhatsApp for doing the needful***."**

[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-mail/ WhatsApp for his perusal and necessary action.

JUDGE **JUDGE**

FR/NFR

Devananda