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IN THE HIGH COURT OF MANIPUR
AT IMPHAL
W. P. (Cril.) No. 9 of 2020

Shri Sapam Kangleipal @ Chiranglen @ Sarat, aged about 38 years, S/o S. Shyamsunder of Nongada Thongkhon Awang Leikai, P.S. Lamlai, Imphal East District, Manipur.

... Petitioner

- **Versus** -

1. District Magistrare, Imphal East, Manipur.
2. State of Manipur represented by the Chief Secretary, Govt. of Manipur.
3. The Superintendent of Manipur Central Jail, Sajiwa.
4. Union of India represented by (Secretary Home Affairs), Department of Internal Security, North Block, New Delhi–110001.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH
HON'BLE MR. JUSTICE MV. MURALIDARAN

For the petitioner	:	Shri Ch. Ngongo, Advocate
For the respondents	:	Smt. L. Monomala, Govt. Advocate & Shri S. Smarjeet, CGC
Date of Hearing	:	**04-11-2020**
Date of Judgment & Order	:	**23-11-2020**

JUDGMENT & ORDER

Kh. Nobin Singh, J.

[1] Heard Shri Ch. Ngongo, learned Advocate appearing for the petitioner; Smt. L. Monomala, learned Government Advocate appearing for the State respondents and Shri S. Smarjeet, learned CGC appearing for the Union of India.

[2] The validity and correctness of the order of detention dated 04-06-2020 issued by the District Magistrate, Imphal-East is under challenge in this writ petition.

[3.1] The allegations as stated in the grounds of detention, are that on 17-10-2001, a meeting was convened at the Manipur Hindu Parishad Hall, Imphal attended by the representatives of Youth Clubs and student organizations wherein the Manipur Youth Front was formed, for which the detenu was appointed as the General Secretary. In the month of April, 2004, the detenu became the President of the Manipur Youth Front. During his tenure as the leader of the Manipur Youth Front, the detenu developed good relationship with the banned and out-law organization namely, Kangleipak Communist Party (KCP) and worked for it. The detenu in collaboration with the leaders of the KCP carried out many prejudicial activities under the guise of the President of the Manipur Youth Front. On 07-05-2008, the detenu was arrested by a team of Police of the Imphal Police Station from the gate of Manipur Press Club, Imphal in connection with a case and was detained under the NSA vide order dated 13-05-2008 of the District Magistrate, Imphal-West and was lodged in Manipur Central Jail, Sajiwa.

[3.2] In the month of July, 2008, he was lodged in the J.N. Hospital, Porompat in Room No.2 of the Security Ward for medical treatment by the jail authority. However, in the night between 28th & 29th December, 2008, he escaped from the Security Ward of the J.N. Hospital by breaking the window bar of the room, for which a regular case under FIR No. 448(12)

2008-PRT/PS U/S 224 IPC was registered against him by the OC, Porompat Police Station. After having escaped from the Security Ward of the J.N. Hospital, he contacted Shri Priyokumar, a member of the United National Liberation Front (UNLF) and went to Bangladesh and thereafter, in the middle part of January, 2009, he proceeded to Training Centre of UNLF, Thongren Jungle, Myanmar as led by a cadre of UNLF and took asylum at the camp where Shri Oinam Khongnangthaba Achouba @ Ibocha of Pishumthong Oinam Leikai was the then Camp Commander and the Chief Training Instructor.

[3.3] In the last week of February, 2009, the detenu left the UNLF camp and went to Nepal where he took asylum in a flat at Dalku, Kathmandu. In December, 2009, the detenu contacted Shri Hijam Pritam of Nongren Village, Imphal East, a former KYKL cadre and unofficially formed the KCP-Maoist. The detenu directed Shri Hijam Pritam to recruit new volunteers as well as underground members for it and accordingly, Shri Pritam recruited Shri Bikram @ Yaibilen @ Nonglen of Yairipok area; Shri Ibomcha of Napel Village and two Tangkhul youths of Sanakeithel Village, P.S. Litan. On 10-08-2011, the formation of KCP-Maoist was officially announced to the people of Manipur and the detenu became the General Secretary while Shri Bikram and Shri Prtiam became the Chairman and the Finance Secretary of the outfit respectively.

[3.4] The avowed aim and objective of the KCP-Maoist is to secede Manipur from the Union of India and to create an independent Sovereign Socialist State of Manipur for which they started procuring arms and

ammunitions from the foreign countries and recruited youths from various communities in Manipur. In order to fulfill their objectives, their members committed heinous crimes such as murder, dacoit, robbery, extortion, kidnapping etc. for ransom from different areas in Manipur. They sought foreign assistance and established relation with countries like Bangladesh, Mayanmar, Pakistan and other countries inimical to India and committed prejudicial activities affecting the sovereignty and territorial integrity of India and in particular, the State of Manipur.

[3.5] After the formation of the KCP-Maoist, the detenu recruited many innocent youths from the State of Manipur and directed them to carry out extortion of money from the general public, businessmen, contractors, Schools and Colleges, etc for raising its funds. The detenu directed his subordinates to threaten the general public with dire consequences, if they neglect to pay the amount of money demanded by them. Thus, the KCP-Maoist carried out prejudicial activities like extortion of money from the general public, businessman, contractors, school and colleges etc. The detenu extorted huge amount of money and used in procuring of arms and ammunitions, bombs and IEDs etc. in order to wage war against the Union of India. The detenu committed a large number of crimes as mentioned in the grounds of detention and in addition thereto, the detenu with his subordinates recruited a large number of members, the details of which are mentioned in the grounds of detention. Such act of extortion of money, hurling of explosions and hand grenade carried out by the detenu along with his associates, created panic and terror wave in the minds of the

general public which is prejudicial to the security of the State and maintenance of public order.

[3.6] On 08-08-2019, the detenu was arrested by a team of Imphal Police Station led by Shri Shankerjit S. Loitongbam, SDPO, Porompat from Harding Park, near Patna Railway Junction in connection with the case under FIR No.448(12)2018 with the recovery of one brown colour leather wallet containing Rs.1295/- and seized the same from his possession by observing the formalities. On 11-08-2019, he was brought to Imphal after obtaining a transit remand from the CJM, Patna, Bihar and was remanded to police custody till 22-08-2019 when the detenu was produced before the Court for judicial remand but was formally arrested in connection with various cases as detailed in the grounds of detention.

[3.7] On 19-09-2019, he was remanded to judicial custody in connection with the said cases but was released on bail by the Court on 22-02-2020. On 08-03-2020 at about 05:00 am, he was arrested by a police team of Lamphel PS from a place in front of the ISBT, Chingmeirong in connection with FIR No.250(12)2016 Lamphel P.S. U/S 20 UA(P) A. Act, 384 IPC 25(1-B) A. Act and was remanded to police custody till 19-03-2020 when he was formally arrested in connection with a case under an FIR No.141(12)2016 Nambol PS U/S 307/506/34 IPC, 20 UA(P) Act and 4 Expls. Subs. Act. On 23-03-2020, the detenu was remanded to judicial custody and while in custody, he was detained vide order dated 04-06-2020 issued by the District Magistrate, Imphal-East and thereafter, the grounds of detention were furnished to him vide letter dated 08-06-2020.

[3.8] The detaining authority was satisfied that he was likely to be released on bail in the near future, or otherwise, by the competent Court , at the end of the period of judicial custody because there had been instances of similar release by the Court in such cases. In view of the prejudicial activities indulged in the immediate past, it is also more likely that he would continue to act in the manner prejudicial to the maintenance of public order. As is evident from the facts mentioned above, the criminal laws would not normally be sufficient to prevent him from the commission of prejudicial activities. As the detenu might be released on bail, an alternative preventive measure was called for. After the detenu having been detained, he was informed that he had the right to make representations to the Government of Manipur as well as the Central Government against the order of detention.

[4] Being aggrieved by the order of detention, the instant writ petition has been filed by the petitioner questioning it on various grounds but during the course of hearing, Shri Ch. Ngongo, the learned counsel appearing for the petitioner has confined his argument only to the ground that there was no material before the District Magistrate/ detaining authority to come to the conclusion that the detenu was likely to be released on bail. In order to substantiate his argument, he has relied upon the decisions rendered by the Hon'ble Supreme Court in **AIR 1978 SC 851** and ***Union of India Vs. Paul Manickam & anr., (2003) 8 SCC 342.***

[5] In the affidavit-in-opposition filed by the District magistrate, it has been stated that the detaining authority after due application of judicious

mind and minutely evaluating the materials/ documents produced by the sponsoring authority passed the order of detention under the provisions of the National Security Act, 1980 with a view to prevent the detenu from committing further prejudicial activities in the near future. There was an apprehension from the past experience that the detenu was applying bail application to the competent Court and if released on bail, he would continue to commit prejudicial activities in the same manner as has been done in the proximate past. In the recent past, he has been released on bail on 22-02-2020. An affidavit has also been filed on behalf of the State of Manipur reiterating the averments made in the grounds of detention and in addition thereto, it has been stated that after considering the grounds of detention and other relevant documents furnished by the District Magistrate, it approved the detention of the detenu vide its order dated 12-06-2020 and confirmed the same thereafter after following due process of law. The Union of India has also filed an affidavit but the details thereof are not referred to herein, as they are not relevant while considering the argument advanced by the counsel appearing for the detenu.

[6] It is 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 ***Paul Manickam*** (supra) 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] In exercise of power conferred under the provisions of the National Security Act, 1980, the order of detention has been passed by the 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 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 while in custody can also be detained under the provisions of the National Security Act, 1980 provided the principles laid down by the Hon'ble Supreme Court in P***aul Manickam*** (supra) are strictly followed by the detaining authority.

[8] Keeping in mind the aforesaid principles, this Court proposes to examine as to whether the procedural safeguards have been observed by the detaining authority while passing the order of detention or not. On perusal of the order of detention, it is seen that it is nowhere mentioned therein that the detaining authority was satisfied that the detenu was likely to be released on bail. Only in the grounds of detention, it has been stated that the detaining authority was satisfied that the detenu was likely to be released on bail in the near future or otherwise by the competent Court, at the end of the period of judicial custody, because there had been instances of similar release in such cases and that in view of the prejudicial activities in the immediate past, it is likely that he would continue to act in the

manner prejudicial to the maintenance of public order as in the proximate past. In this regard, the submission of the learned counsel appearing for the petitioner has some force and merit for the reason that there is no material on record to show that the particulars of the instances of similar release on which the detaining authority has formed her satisfaction, were furnished to the detenu. What does the expression "**instances of similar release in such cases**" mean ? It is quite vague. There is no material in support thereof and in the absence of such materials being supplied to the detenu, it would have been impossible for him to make proper representation resulting in the violation of the provisions of Article 22 of the Constitution of India. On top of that, 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, as contended by the counsel appearing for the detenu. The District Magistrate, in her affidavit filed before this Court, made an attempt to improve the grounds of detention which is impermissible in law. 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 an identical case which arose from the State of Manipur, the Hon'ble Supreme Court had the occasion to go into the materials which are similar to that of the present case and are 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:*
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> ***(a)*** *The statement of the detenu given before the IO on 18-9-2009.*
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> ***(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.*
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> ***(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.*
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> ***(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.

[10] In view of the above and for the reasons stated hereinabove, the instant writ petition is allowed and consequently, the order of detention dated 04-06-2020 passed by the District Magistrate, Imphal-East and the order dated 12-06-2020 issued by the Deputy Secretary (Home), Government of Manipur are quashed and set aside with the direction that

Shri Sapam Kangleipal @ Chiranglen @ Sarat (Nepali name) (38 years), S/o Shri S. Shyamsunder of Nongada Thongkhong Awang Leikai, PS Lamlai, Imphal-East District, Manipur shall be released forthwith, if he is not required for any other case.

[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
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

SL. NO	CASE NO.	Party name	Date of Judgment and Order
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
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." (emphasis added)*

[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.

JUDGE **JUDGE**

FR / NFR

Devananda