

SUPREME COURT OF INDIA

Pebam Ningol Mikoi Devi

Vs.

State of Manipur

CrI.A.No.1849 of 2010

(D.K.Jain and H.L. Dattu JJ.)

27.09.2010

JUDGEMENT

H.L. DATTU, J.

1) Leave granted.

2) By our order dated 14.09.2010, after hearing the learned counsel for the parties to the lis, we had directed the release of the detenu, since we were satisfied that the appellant prima- facie had made out a case for release of the detenu. Now we give our reasons for allowing this appeal in support of our pre-emptory order.

3) Here is an unfortunate case involving a person who ought not to have been detained under preventive detention and have his liberty curtailed by virtue of his incarceration under Section 3(2) of the National Security Act, 1980 (hereinafter "NS Act").

4) Individual liberty is a cherished right, one of the most valuable Fundamental Rights guaranteed by the Constitution to the citizens of this Country. On "liberty", William Shakespeare, the great play writer, has observed that "a man is master of his liberty". Benjamin Franklin goes even further and says that "any society that would give up a little liberty to gain a little security will deserve neither and lose both". The importance of protecting liberty and freedom is explained by the famous lawyer Clarence Darrow as "you can protect your liberties in this world only by protecting the other man's freedom; you can be free only if I am free." In India, the utmost importance is given to life and personal liberty of an individual, since we believe personal liberty is the paramount essential to human dignity and human happiness. The Constitution of India protects the liberty of an individual.

Article 21 provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. In matters of preventive detention such as this, as there is deprivation of liberty without trial, and subsequent safeguards are provided in Article 22 of the Constitution. They are, when any person is detained pursuant to an order made under any law providing for preventive detention, the authority making the order is required to communicate the grounds on the basis of which, the order has been made and give him an opportunity to make a representation against the order as soon as possible. It thus, cannot be doubted that the Constitutional framework envisages protection of liberty as essential, and makes the circumstances under which it can be deprived.

5) The appellant is the wife of Mr. Ranjit Oinamcha @ Oinam Ranjit Singh, who is the detenu under the National Security Act. She is questioning the detention order dated 24/09/2009 passed by the District Magistrate, Imphal West District, Manipur, against which, a challenge was made in the form of a habeas corpus petition in the Gauhati High Court (Imphal Bench) in Writ Petition (Crl.) No. 111/2009. By an order dated 18/02/2010, the High Court dismissed the writ petition.

Aggrieved by the same, the appellant has filed this appeal.

6) The facts of this case, in a nutshell, are that the detenu was the Editor of a Manipuri Daily evening paper named 'Paojel', having its printing press at Keisamthing Top Leirak, Manipur.

The assertions and allegations leading to his detention, as stated in the Grounds of Detention order passed by the District Magistrate dated 28/09/2009, are that the detenu could not get enough money from his press to maintain it or support his family, particularly due to the high rates of essential commodities in Manipur. Therefore, in 2003, he contacted Mr. Irom Priyobarta Singh @ Naocha with the intention of earning money without labour. From July 2003, he was in touch with Mr. Ratan @ Inao @ N. Ibochouba Singh, who was the Finance in-Charge of the United National Liberation Front (UNLF), Imphal West, after discussion with whom he decided to get involved in

extorting money from contractors and engineers of Public Health Engineering Department ("PHED" for short) and Forest Department of Manipur Government by delivering demand letters which he printed in his own press. He and Mr. Irom Priyobarta Singh were to receive a 10% share of the extortion money. They accordingly started carrying out such extortion by printing these demand letters in his press and delivering them to the aforementioned contractors and engineers, and even issued threats to them not to report the matter to the Security Forces. This extortion resulted in a terror wave in the general public which is prejudicial to the maintenance of public order. The Grounds also pointed out that the UNLF is an unlawful association (declared so vide Gazette of India Notification, under No. S.O. 1992(E), dated 13/11/2007) which looks to create an independent, sovereign State of Manipur by seceding from the Union of India, and that the said organization has involved itself in procuring arms and ammunitions from foreign countries, recruiting youngsters, and committing heinous crimes such as murder, dacoity, extortion, kidnapping for ransom etc.

7) Further, it is pointed out that on 17/09/2009 at 8 PM, a team of CDO/IW led by S.I. T. Khogen Singh came to the detenu's house as disclosed by Mr. Irom Priyobarta Singh, arrested him, and seized after observing due formality `10,04,000/- from him, as well as one Nokia handset from Mr. Irom Priyobarta Singh.

An F.I.R. No. 183(9)09 SJM-P.S. was registered under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967, and the detenu was arrested on 18/09/2009 and remanded into police custody till 24/09/2009. On 24/09/2009, he was presented before the Magistrate for judicial remand, and the detention order passed by the District Magistrate, Imphal West, was served on him. The Grounds of Detention were served on him on 28/09/2009, as required under Section 8 of the National Security Act.

8) The version of the detenu, on the contrary, as emerges from his Representation made to the Secretary, Ministry of Home Affairs, Government of India, as well as to the Chief Secretary, Manipur State, and the District Magistrate, Imphal West on 09/10/2009, is that he was indeed the editor of 'Paojel', an evening daily, which was established on 08/04/2006. On 17/09/2009 at about 4:30 PM, Mr. Irom Priyobarta Singh @ Naocha, who was a 'locality brother', brought to his residence a sum of `10,04,000/- for safe keeping, which he claimed was received for contract work, and which the detenu bona fide believed, and kept the money with him. The detenu then claims that at around 8:30 PM on the same day, police personnel of CDO, Imphal West, along with Mr. Irom Priyobarta Singh, came to his residence and asked him to hand over the money, which he did. On 18/09/2009, i.e. the next day, he was told to report to the Officer in-Charge of the CDO, Imphal West, where he asserts he was interrogated regarding the money and forced to sign on a back dated Seizure Memo for 17/09/2009, as well as a back dated Arrest Memo. He was then detained and handed over to the Singjamei Police Station, where he was told that he was made a co-accused with Mr. Irom Priyobarta Singh, and a police case F.I.R. No. 183(9)09 SJM-P.S. was registered under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967. Then, on 19/09/2009, he was remanded to police custody till 24/09/2009, when he was produced before the Magistrate for judicial remand, and the detention order passed by the District Magistrate, Imphal West, was served

on him, which was followed by the Grounds of Detention given to him on 28/09/2009 at his cell at Manipur Central Jail, Sajiwa. He denies all the allegations made against him in the Grounds for Detention, claiming that he was not in any way involved with the UNLF or any of its associated cadres, that he started the press only in 2006 and could not have been involved in printing demand letters since 2003, that he did not even know Mr. Ratan @ Inao @ N. Ibochouba Singh, that the arrest and seizure was not done on 17/09/2008, but actually on 18/09/2009, and that he has not committed any acts so as to disturb the maintenance of public order and cause prejudice to the security of the State in any manner so as to have the NS Act invoked against him.

9) The Representation made by the detenu was rejected by State of Manipur on 03.10.2009. The Advisory Board constituted under Section 9 of the Act opined that there was sufficient cause for detention of the husband of the appellant under the National Security Act. The Governor of Manipur, in exercise of the power conferred under Section 12(1) of the Act, has approved the opinion expressed by the Advisory Board and has ordered that the detention of the husband of the appellant made by the District Magistrate, Imphal West District, dated 24.09.2009, and fixed the period of the detention for 12(twelve) months from the date of detention by his order dated 07.11.2009. There was delay in forwarding the Representation of the detenu to the Government of India. It was filed on 09/10/2009 and it was forwarded to the Central Government on 16/10/2009 by the State Government and received only on 28/10/2009, before being finally rejected by the Central Government on 03/11/2009.

10) The detention order was questioned before the Gauhati High Court in W.P. (CrI.) No.111/2009. The Court in the course of its order has noticed the main contention of the petitioner (who is the appellant in this appeal). They are: (1) the allegations made in the detention order are vague and irrelevant and not sufficient to deprive the detenu of his fundamental rights guaranteed under Art. 22(5); (2) there are no cogent materials upon which the subjective satisfaction of the detaining Authority that the detenu was likely to be released on bail was arrived at; (3) there was a delay of 6 days in forwarding representation to the Central government. (4) All the procedural requirements of Article 22 are mandatory in character and even if one of the procedural requirements is not complied with, the order of detention would be rendered illegal.

11) The High Court has responded to each of these, by holding that the allegations projected in the grounds of detention have been corroborated in material particulars. Further, the allegations were not vague or ambiguous, and the material was sufficient for the detaining Authority to arrive at the subjective satisfaction that the detenu was acting in a manner prejudicial to the maintenance of the public order. The High Court has also pointed out that the statement incriminating himself under Section 161 was prepared by a public servant, and there is a presumption of regularity, which the appellant has a burden to disprove in order to prove them false and fabricated, which was not done in this case. It highlighted that the exercise of discretionary power involved objective and subjective elements, and the subjective elements if derived from objective elements cannot be questioned on grounds of adequacy of subjective satisfaction by a judicial review.

12) On the second ground, the Court held that the likelihood of detenu being released on bail can be determined by objective criteria, such as the conditions prevailing in Manipur, the fact that he was charged with heinous offences, and that he was remanded to judicial custody; it refused to interfere with the determination as it said it was not irrational, and the Court in such circumstances could not substitute its view for that of the detaining Authority. On the issue of delay, it pointed out that even though no explanation has been given by the State on delay, it is not inordinate enough to quash the order, and that delay per se cannot be a ground to quash the order.

13) At the time of hearing, learned Counsel for the appellant Mr. Dolen Phurailatpam argued, that though a few days have remained for the detention period to expire, the appeal need not be disposed of as having become infructuous, since the reputation of the detenu is sacrosanct and the right of reputation is a facet of right to life under Article 21. He took considerable time explaining the factual background of the case. He pointed out that the printing press of the detenu was established only in 2006, and therefore, there could be no question of him having been involved in printing demand letters from 2003 or 2004.

He further explained that there was no supportive material to sustain the detention order, and that the same had also been mentioned in the writ petition filed before the High Court. He also stressed the point of delay of forwarding the representation of the detenu, and that no adequate reasons for the same had been given by the respondents in either the affidavit or in the pleadings before the Court.

14) Per contra, the learned counsel for the State of Manipur Mr. Khwairakpam Nobin Singh urged the factual background on the basis of which the decision to detain had been taken, and the difficulty faced due to the special conditions prevailing in Manipur in getting the evidence to prove the illegal activities of people such as the detenu and further the prosecution would not be in a position to procure any evidence to sustain conviction.

It is also urged that with the documents available, the detaining authority could form an opinion that the person to be detained is likely to act in a manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order etc. He did not, however, provide any explanation regarding the reason for delay in forwarding the representation. The learned counsel appearing for the Union of India Ms. Charu Wali Khanna, when questioned by this Court, also did not shed any further light on this issue.

15) To decide the correctness or otherwise of the detention order, two issues of importance arise before this Court. The first is, regarding the documents and material on which reliance was placed by the detaining Authority in passing the detention order. Secondly, with those materials, the detaining authority was justified in arriving at a finding that the detenu should be detained under the National Security Act without any trial. In matters of this nature, this Court normally will not go into the correctness of the decision as such but will only look into decision making process. Judicial review, it may be noted, is not an appeal from a decision but review of the manner in which the

decision was made. The purpose of review is to ensure that the individual receives a fair treatment.

16) Some of the decisions of this Court may be of relevance in determining in what manner such subjective satisfaction of the Authority must be arrived at, in particular on Section 3(2) of the National Security Act. In Fazal Ghosi v. State of Uttar Pradesh, (1987) 3 SCC 502, this Court observed that:

"The District Magistrate, it is true, has stated that the detention of the detenus was effected because he was satisfied that it was necessary to prevent them from acting prejudicially to the maintenance of public order, but there is no reference to any material in support of that satisfaction. We are aware that the satisfaction of the District Magistrate is subjective in nature, but even subjective satisfaction must be based upon some pertinent material. We are concerned here not with the sufficiency of that material but with the existence of any relevant material at all." (emphasis supplied) (Para 3).

17) In Shafiq Ahmed v. District Magistrate, Meerut, (1989) 4 SCC 556, this Court opined :-
"Preventive detention is a serious inroad into the freedom of individuals. Reasons, purposes and the manner of such detention must, therefore, be subject to closest scrutiny and examination by the courts."

(emphasis supplied) (Para 5).

This Court further added:

"...there must be conduct relevant to the formation of the satisfaction having reasonable nexus with the action of the petitioner which are prejudicial to the maintenance of public order. Existence of materials relevant to the formation of the satisfaction and having rational nexus to the formation of the satisfaction that because of certain conduct "it is necessary" to make an order "detaining" such person, are subject to judicial review." (emphasis supplied) (Para 5).

18) In State of Punjab v. Sukhpal Singh, (1990) 1 SCC 35, this Court held:

"...the grounds supplied operate as an objective test for determining the question whether a nexus reasonably exists between grounds of detention and the detention order or whether some infirmities had crept in." (emphasis supplied) (Para 9).

19) In State of Rajasthan v. Talib Khan, (1996) 11 SCC 393, this Court observed that:

"...what is material and mandatory is the communication of the grounds of detention to the detenu together with documents in support of subjective satisfaction reached by the detaining authority." (emphasis supplied) (Para 8).

20) What emerges from these rulings is that, there must be a reasonable basis for the detention order, and there must be material to support the same. The Court is entitled to scrutinize the material relied upon by the Authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. The subjective satisfaction must be two fold. The detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent from so acting.

21) 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 for Detention dated 28/09/2009 are:

a) The statement of the detenu given before the I.O. on 18/09/2009.

b) Statement of S.I. T. Khogen Singh of CDO/I.W.

recorded under S. 161 Cr.P.C. in connection with F.I.R. No. 183 (9) 09 SJM-P.S. under S. 17/20 of the Unlawful Activities (Prevention) Act, 1967.

c) Statement of Rfm. No. 15007038 L. Rajen Singh of CDO/I.W. recorded under S. 161 Cr.P.C. in connection with F.I.R. No. 183 (9) 09 SJM-P.S. under S. 17/20 of the Unlawful Activities (Prevention) Act, 1967.

d) Statement of C/No. 0601193 S. Khomei Singh recorded under S. 161 Cr.P.C. in connection with F.I.R. No. 183 (9) 09 SJM-P.S. under S. 17/20 of the Unlawful Activities (Prevention) Act, 1967.

e) Copy of arrest memo dated 17/09/2009.

f) Copy of seizure memo dated 17/09/2009.

g) Copy of Manipur Local daily "the Poknapham" dated 08/03/1999.

h) Copy of Notification under No. S.O. 1922 (E) dated 13/11/2007.

22) 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 NS Act, is non-existent or misconceived or irrelevant, the order of detention would be invalid.

23) 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 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 Kashmir and Ors. (AIR 1979 SC 1925) 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. In so far 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 Cr.P.C.) 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) of the Cr.P.C and has been so held time and again by this Court. In *Rajendra Singh v. State of Uttar Pradesh*, (2007) 7 SCC 378, this Court laid down that:

"A statement under Section 161 Cr.P.C. is not a substantive piece of evidence. In view of the proviso to Sub-section (1) of Section 162 Cr.P.C., the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Therefore,

the High Court committed a manifest error of law in relying upon wholly inadmissible evidence..." (emphasis supplied) (Para 6).

23) Furthermore, none of the other documents substantiate the involvement of the detenu in unlawful activities as alleged in the detention order. Thus, it is clear that there was no pertinent or relevant material on the basis of which, the detention order could be passed.

24) The second issue is that of delay. There has been a delay of 7 days, i.e. from 09/10/2009 to 16/10/2009, in forwarding the representation of the detenu to the Central Government. There has been no explanation of the reasons for this delay given by the respondents.

25) Article 22(5) of the Constitution of India mandates in preventive detention matters. The detenu should be afforded the earliest possible opportunity to make a representation against the order. With regard to the importance of delay in preventive detention matters under the National Security Act, it has been held by this Court in Union of India v. Laishram Lincola Singh @ Nicolai, (2008) 5 SCC 490, that:

"There can be no hard and fast rule as to the measure of reasonable time and each case has to be considered from the facts of the case and if there is no negligence or callous inaction or avoidable red-tapism on the facts of a case, the Court would not interfere. It needs no reiteration that it is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention becomes vulnerable."

(emphasis supplied) (Para 6).

26) On the specific ground of delay in forwarding the representation under the National Security Act, it has been observed by this Court in Haji Mohd. Akhlaq v. District Magistrate, 1988 Supp (1) SCC 538, that:

"There can be no doubt whatever that there was unexplained delay on the part of the State Government in forwarding the representation to the Central Government with the result that the said representation was not considered by the Central Government till October 16, 1987 i.e. for a period of more than two months. Section 14(1) of the Act confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must imply a right in a detenu to make representation to the Central Government against the order of detention. Thus, the failure of the State Government to comply

with the request of the detenu for the onward transmission of the representation to the Central Government has deprived the detenu of his valuable right to have his detention revoked by that Government." (emphasis supplied) (Para 3).

27) In the matter before us, a delay of 7 days has occurred in the forwarding of the representation. This may not be inordinate;

however, at no stage has there been an explanation given for this delay. The State Government or Central Government has not clarified the same and thus the delay remains unexplained.

28) In light of the fact that none of the documents relied on by the detaining Authority in passing the detention order can be deemed to be pertinent, and the fact that the delay has remained unexplained, there is sufficient ground made out in order to quash the order of preventive detention made against the detenu.

29) Before parting with the case, we wish to add that in a criminal case, if it is initiated against the detenu, the prosecution would not be in a position to procure evidence to sustain conviction cannot be a ground to pass an order of preventive detention under National Security Act. Therefore, we cannot agree with the submission made by the learned counsel for the State of Manipur.

30) As a result of our above discussion, we cannot sustain the impugned judgment and order of the High Court and the order of detention passed by the detaining authority. Accordingly, the appeal is allowed. The impugned order of the High Court and the order of detention passed by the detaining authority are set aside. Ordered accordingly.