SUPREME COURT OF INDIA

Huidrom Konungjao Singh

Vs.

State of Manipur

Crl.A.No.840 of 2012

(Dr. B.S.Chauhan J.)

17.05.2012

JUDGEMENT

Dr. B.S. CHAUHAN, J.

l. This Criminal Appeal has been preferred against the impugned judgment and order dated 13.l.2012 passed by the Gauhati High Court, Imphal Bench at Imphal in Writ Petition (Crl.) No.98 of 2011 dismissing the Habeas Corpus petition challenging the order of detention of appellants son dated 30.6.2011 passed by the District Magistrate, Imphal West District under Section 3(2) of the National Security Act, 1980 (hereinafter called `the Act).

2. The son of the appellant, namely, Huidrom Shantikumar Singh was arrested on 19.6.2011 by the Imphal Police under Section 302 of Indian Penal Code, 1860 (hereinafter called `IPC) read with Section 25(1-C) of the Arms Act, 1959 (hereinafter called `Arms Act). The District Magistrate, Imphal West passed the detention order dated 30.6.2011 under the Act on various grounds with an apprehension that as in similar cases, the accused involved therein had been enlarged on bail the detenu in this case would also be released on bail and he would indulge in activities prejudicial to public order.

3. The appellants son was served with the grounds of detention dated 2.7.2011. The detenu made representations on 16.7.2011to the Central Government as well as to the Government of Manipur which stood rejected. The detention order was confirmed vide order dated 16.8.2011and confirmation order was furnished to the detenu on 18.8.2011. The appellant filed Writ Petition (Crl.) No.98 of 2011

challenging the detention order in Gauhati High Court (Imphal Bench) which stood dismissed vide impugned judgment and order dated 13.1.2012.

Hence, this appeal.

4. The question of personal liberty of a person is sacrosanct and State Authority cannot be permitted to take it away without following the procedure prescribed by law, otherwise it would be violative of the fundamental rights guaranteed under Articles 21 and ?22 of the Constitution. In Ayya alias Ayub v. State ofU.P. & Anr.[1988] INSC 357; , AIR 1989 SC 364, this Court held that the law of preventive detention is based and could be described as a jurisdiction of suspicion" and the compulsion of values of freedom of democratic society and of social order sometimes might compel a curtailment of individual's liberty.

5. In Yumman Ongbi Lembi Leima v. State of Manipur & Ors., (2012) 2 SCC 176, this Court held that personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order.

6. Whether a person who is in jail can be detained under detention law has been a subject matter of consideration before this Court time and again. In Dharmendra Suganchand Chelawat & Anr. v. Union of India & Ors.[1990] INSC 31; , AIR 1990 SC 1196, this Court while considering the same issue has reconsidered its earlier judgments on the point in Rameshwar Shaw v. District Magistrate, Burdwan[1963] INSC 190; , AIR 1964 SC 334; Masood Alam v. Union of India, [1973] INSC 7; AIR 1973 SC 897; Dulal Roy v. District Magistrate, Burdwan, [1975] INSC 3; AIR 1975 SC 1508; Alijan Mian v. District Magistrate, Dhanbad, AIR 1983 SC 1130; Ramesh Yadav v. District Magistrate, Etah, AIR1986 SC 315; Suraj Pal Sahu v. State of Maharashtra, [1986] INSC 198; AIR 1986 SC 2177; Binod Singh v. District Magistrate, Dhanbad[1986] INSC 203; , AIR 1986 SC 2090; Smt. Shashi Aggarwal v. State of U.P.[1988] INSC 4; , AIR 1988 SC 596, and came to the following conclusion:

> "The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that

> purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

7. In Amritlal & Ors. v. Union government through Secretary, Ministry of Finance & Ors., AIR 2000 SC 3675, similar issue arose as the detaining authority recorded his satisfaction for detention under the Act, in view of the fact that the person, who was already in jail, was going to move a bail ?application. In the grounds of detention it had been mentioned that there was "likelihood of the detenu moving an application for bail" and hence detention was necessary. This Court held that there must be cogent materials before the authority passing the detention order that there was likelihood of his release on bail.

> (See also: N. Meera Rani v. Govt. of Tamil Nadu, [1989] INSC 249; AIR 1989 SC 2027; Kamarunnissa v. Union of India & Anr., AIR 1991 SC 1640; and Union of India v. Paul Manickam and Anr., AIR 2003 SC 4622).

8. This Court while deciding the case in A. Geetha v. State of Tamil Nadu & Anr., AIR 2006 SC 3053, relied upon its earlier judgments in Rajesh GuIati v. Govt- of NCT of Delhi, AIR 2002 SC 3094; Ibrahim Nazeer v. State of T.N. & Ors., (2006) 6 SCC 64; and Senthamilselvi v. State of T.N. & Anr., (2006) 5 SCC 676, and held that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. His subjective satisfaction based on materials, normally, should not to be interfered with.?

9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is? already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts:

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated.

10. The present case requires to be examined in the light of aforesaid settled legal proposition. Learned counsel for the appellant Shri L. Roshmani has submitted that the detenu had never moved the bail application after his arrest and he had not been involved in any criminal case earlier. Reliance had been placed upon two bail orders.

They are related to different FIRs and not to the same case. The bail had been granted to the accused in those cases and none of them had been co-accused with the detenu in this case. Therefore, it was not permissible for the detaining authority to rely upon those bail orders and there was no material before the detaining authority on the basis of which the subjective satisfaction could be arrived that the detenu in the instant case was likely to be released on bail and after being released on bail he would indulge in the activities detrimental to the society at large and would cause the problem of public order.

11. On the other hand, Shri R.P. Bhatt, learned senior counsel appearing for Union of India and Shri K. Nobin Singh, learned counsel appearing for the State have submitted that it is not necessary that the co-accused in the same offence is enlarged on bail. What is required to be considered by the detaining authority is whether in a similar case, i.e. in similar offence, bail has been granted on the basis of which the detenu, in case applies for bail, would be enlarged on bail.

12. In Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr., (2011) 5 SCC 244, this Court while dealing with the issue held:

> A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored 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 pending. 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 pending, since most courts normally grant bail on this ground. (Emphasis added) Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

13. So far as the appellants son is concerned, he had been arrested for the offence related to FIR No.53 (6) 2011 under Section 302 IPC read with Section 25(1-A) Arms Act dated 14.6.2011. The FIR had been lodged against unknown persons, however, appellants son was arrested on 19.6.2011 in respect of the said offence. Subsequently, the detention order dated 30.6.2011 was passed by the District Magistrate under N.S. Act on various grounds, inter-alia, that the appellants son was involved in extorting of money and giving shelter to underground members of unlawful association, namely, Kangleipak Communist Party vide notification published in the Gazette of India on 13.11.2009 as his activities were pre-judicial

to the security of the State and maintenance of public order. In support of the detention order, a large number of documents had been relied upon and supplied to the appellants son including the copy of FIR No.254 (12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011 under Section 20 of the UA (P) Act and released orders in those cases dated 13.12.2010 and 1.6.2011 respectively had been passed.

14. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co- accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law.

15. The appeal succeeds and is allowed. The impugned judgment and order is hereby set aside and detention order dated 30.6.2011 is quashed.