

Enforcement of Preventive Detention Law in Manipur

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Abstract

The preventive detention laws have been invoked and used vigorously to detain members of outlawed organizations in the insurgency affected state of Manipur for the last many years. It is well settled that the detention of a person under the preventive detention laws is not to punish him for something he has done but to prevent him from doing it. Since the detention is made on the basis of subjective satisfaction of executive, the preventive detention laws are being extensively abused and misused, especially in the NE state of Manipur. In the catena of cases decided by the constitutional courts of India held 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 materials that there is likelihood of his release and in view of his antecedent activities he must be again detained so as to prevent him from indulging in such prejudicial activities, the detention order can validly be made. It is pertinent that the order of detention of a person shall, obviously deprive of his cherished rights and freedoms; henceforth, the laws pertaining to preventive detention need to be meticulously invoked and followed substantively and procedurally by the concerned authority. The paper also examines the recent trends of the High Court of Manipur in issuing the writ of habeas corpus against the misuse of preventive detention laws by executive authorities in the state of Manipur.

Keywords: Administrative detention, detenu, habeas corpus, subjective satisfaction, cogent material, prejudicial activities, discretionary power and cavalier fashion

Introduction

The primary objective of invoking the preventive detention law is not to punish a person for having done something but to intercept him before he does it. The constitution of India explicitly enables the parliament and state legislature to enact laws relating to preventive detention for reasons connected with defense, foreign affairs, or the security of India¹. The Constitution permits preventive detention though it takes away the liberty of a person without any inquiry or trial.² However, such preventive detention involves deprivation of personal liberty without trial. Since there is a paramount importance of the right of personal liberty, Article 22 also provides for some strict procedural safeguards: (1) every preventive detention order must be confirmed by an advisory board within three months of detention² unless

¹ List I, entry 9 and list III, entry 3 of the Seventh Schedule

² Art. 22(4)

parliament prescribes a longer period by law;³ (2) the detaining authority must furnish to the detenu the grounds on which the detention order has been made;⁴ (3) the detenu must be allowed to make a representation against the detention order;⁵ and (4) the detention must not last longer than the maximum period provided for the same under parliamentary law.⁶ Preventive detention laws are, thus, subject to the procedural safeguards provided in clauses (3) to (7) of Article 22 of the Constitution. The executive authorities can issue a preventive detention order in cases where the person is already in custody and about to be released on bail.⁷

An indispensable condition for the validity of such actions is that the detaining authority should have subjective satisfaction of a reasonable probability that the detenu would act in a manner prejudicial to the security of the state and therefore, preventing him by detention from doing the same.⁸ The north-eastern state of Manipur has been experiencing militancy for more than six decades⁹. The continuing internal armed conflict between militants and State forces has resulted in unending violence in the state. Right to life and personal liberty of citizens, one of the most cherished fundamental rights guaranteed under Article 21 of the Constitution of India, have been seriously affected. The preventive detention laws have been indiscriminately invoked and misused in the strife-torn state not only to detain accused persons of being members of unlawful organizations or associated with outlawed groups or having committed serious crimes but also to detain those individuals accused of being drug traffickers and abusers. Even media persons and journalists, who made criticisms against the public administration, were also victimized under the preventive detention laws. The paper dwells upon the basic legal provisions and precedents relating to preventive detention laws and practices enforced in the region. It also analyses a few selected cases in which the High Court of Manipur issued the writ of *habeas corpus* against the misuse of preventive detention laws by executive authorities in Manipur.

Preventive detention law

The National Security Act, 1980 (hereinafter the NSA) was enacted with the objectives, *inter alia*, to control anti-social, anti-national, and extremist activities. The NSA empowers the central government, the state governments, district magistrates, and police commissioners to issue detention orders to prevent a person from acting in any manner prejudicial to the security of the state or the maintenance of public order.¹⁰ The NSA provides that a person detained has to be informed of the grounds of detention within five days of detention which can be extended to ten days in exceptional circumstances.¹¹ Section 3(4) of the NSA provides that when a detention order is made by a district magistrate or a commissioner of police under Section 3(3) of the NSA, the magistrate/commissioner shall 'forthwith' report the fact of the detention order to the state government, along with the grounds on which the order was made, and any other relevant facts. It also states that no detention order shall remain in force for more than twelve days after making the order unless it has been approved by the state government. The expression

³ Art. 22(7)(a)

⁴ Art. 22(5)

⁵ Id.

⁶ Art. 22(7)(b) of the Constitution of India

⁷ Dropti Devi v. Union of India, AIR 2012 SC 2550

⁸ Hardhan Saha v. State of WB, (1975) 3 SCC 198

⁹ Phanjoubam Tarapot, Insurgency Movement in North Eastern India. New Delhi: Vikas Publishing, 1996, p. 41.

¹⁰ Section 3

¹¹ Section 8

“forthwith” under Section 3(4) must be interpreted to mean within a reasonable time and without any undue delay. This shall not mean that the detaining authority has a period of twelve days to submit the report (with grounds) to the state government from the date of detention. The detaining authority must furnish the report at the earliest possible.¹² The maximum permissible period of detention under the NSA is twelve months, but the order for preventive detention can be modified or revoked at any time earlier.¹³ Moreover, Section 16 of the NSA, 1980 protects the central government or a state government or any person from any suit or legal proceedings for anything done in good faith or intended to be done in pursuance of this law.

Advisory Board

The Advisory Board is like that of a reviewing authority which is competent to examine the correctness of statements and facts on which the preventive detention order is based. However, the preventive detention law cannot authorize the detention of a person for a period longer than three months unless an Advisory Board, consisting of persons who are, or have been, or are qualified to be appointed as the High Court Judges, reports that there is sufficient cause for such detention.¹⁴ The NSA provides for the constitution of Advisory Boards.¹⁵ The Authority issuing the detention order must refer all cases to an Advisory Board within three weeks from the date of the detention order. The government must also forward any representation made by the detenu and the report of the detaining authority to the Board.¹⁶ The Advisory Board is required to submit a report to the detaining Authority within seven weeks of the date of detention. The prime consideration before the Advisory Board is the detention of the person and not the period of detention. If the Board fails to furnish its opinion within three months of detention, the order of detention becomes illegal. The detenu is entitled to be released even though the opinion of the Board has been obtained within three months of the second order of detention revoking the first and authorizing the continuation of detention on the same ground on which the original detention was made.¹⁷ This report must include the opinion of the Advisory Board that there is or no sufficient cause to detain the individual.¹⁸ The detaining authority must release the detenu immediately if the Advisory Board opines that there is no sufficient cause to maintain the order.¹⁹ The detenu may not be represented by a legal practitioner as the proceedings of the Board are private and reports are confidential.²⁰

Rights of detenu

It is worth mentioning that in tune with the international standard and norms, the constitutional makers of India, having incorporated a list fundamental right, have provided effective remedies for the enforcement of these rights. Since the preventive detention is carried out without judicial oversight by an administrative order, it always involves serious risks of ill-treatment of detenu by the detaining authority. The constitutional safeguards against preventive detention also mandate that no person shall be detained

¹² Hetchin Haokip v. State of Manipur, (2008)9 SCC 562

¹³ Section 13

¹⁴ Article 22(4) of the Constitution of India

¹⁵ Section 9

¹⁶ Section 10

¹⁷ Abdul Latif v. B.K. Jha, AIR 1987 SC 725

¹⁸ Section 11

¹⁹ Section 12(2)

²⁰ Section 11(4)

by the order of the executive without the authority of a valid law. As such, the constitution has guaranteed certain rights to a detenu.²¹ He has the right to be communicated the grounds of detention in the language known to him as soon as possible. The detenu has a right to be afforded the earliest opportunity of making a representation against the detention order before the appropriate government. The Supreme Court has ruled that the detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India.²² Moreover, the detenu must also be given the documents on which the detention order is based, and delay in supplying these documents will result in the court setting aside the detention order.²³ Further, any inordinate delay in considering the representation of the detenu renders the detention illegal and invalid.²⁴

Writ of habeas corpus

Articles 32 and 226 of the Constitution of India empower the Supreme Court and the High Courts respectively to issue certain writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari for the enforcement of any right set forth in the Part III of the Constitution. One of the most effective remedies for any illegal detention is the writ of *habeas corpus*. It is a prerogative writ by which, the causes and validity of detention of a person being investigated by summary procedure and if the detaining authority does not satisfy the court that the deprivation of his liberty is according to the procedure established by law, the person is entitled to his liberty. By this writ, the Court directs the person or authority who has detained another person to bring the body of the prisoner before the Court so as to enable the Court to decide the validity, jurisdiction, or justification for such detention. Though the literal meaning of the Latin phrase *habeas corpus* is ‘to produce the body’, many a time production of the body is not insisted upon but the court decides whether the person is under illegal detention or not. Habeas corpus is often used as a remedy in cases of preventive detention because in such cases, the validity of the detention order is not subject to challenge in any other court and it is only the writ jurisdiction available to the aggrieved party. In the exercise of judicial review the constitutional courts can examine whether (a) the grounds of detention were promptly communicated to the detenu, (b) the detenu was timely permitted to make a representation to the Advisory Board or the appropriate government against the detention; (c) the facts based on which the person is detained have a proximate nexus with the aim sought to be achieved by detaining him, and (d) any of the grounds stated in the detention order are vague or irrelevant. Further, the writ of *habeas corpus* can be issued not only for release from detention by the state but also for release from private detention²⁵.

Subjective satisfaction

Literally, the term ‘subjective satisfaction’ of the detaining authority is the statutory prerequisite for the exercise of the power of preventive detention.²⁶ When the detaining authority has a compelling reason to issue a detention order, it is not for the court to substitute its satisfaction, but it is only to determine whether the detaining authority has arrived at the satisfaction that the detenu has to be preventively

²¹ Article 22(5) of the Constitution of India

²² Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police, 1989 Cri LJ 2119

²³ Mehrunissa v. State of Maharashtra, AIR 1981 SC 1861

²⁴ Kailash Pandey v. State of UP, AIR 1983 SC 505

²⁵ Mohd. Ikram vs State of UP, AIR 1964 SC 1625

²⁶ Anil Dey vs State of West Bengal, AIR 1974 SC 832

detained in the public interest.²⁷ The Supreme Court held that the veil of subjective satisfaction of the detaining authority cannot be lifted by the courts to appreciate its objective sufficiency, rather they do review whether the satisfaction is honest and real, and not fanciful and imaginary.²⁸ The executive is, therefore, required to "apply his mind" to the decision to issue a detention order. A preventive detention order may indeed be validly issued even when the person is already in custody and about to be released on bail.²⁹ The law of preventive detention should not be used merely to clip the wings of an accused who is involved in criminal prosecution.³⁰ There must be substantial and cogent facts and circumstances as well before the detaining authority for passing the detention order, that the detenu is likely to be released on bail. The concern of the court should be to ascertain as to whether the decision-making process of making the subjective satisfaction on objective facts, is in any way influenced, coloured, or affected by any caprice, malice, or irrelevant considerations or non-application of mind. Subjective satisfaction being a condition precedent for the exercise of the power of preventive detention conferred on the executive, the court can always examine whether the requisite satisfaction is arrived at by the authority.³¹ If it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be held bad.³² It is also obligatory on the part of the detaining authority to arrive at the subjective satisfaction; however, it has to rely on the materials placed before him and also application of the general criminal laws could not have the desired effect of preventing him from indulging such activities. The role of the court is to examine whether the detaining authority has applied its mind to the facts relevant and vital in reaching the subjective satisfaction before passing the detention order. The court has to examine whether the grounds disclosed are relevant to the objects of the preventive detention law. The mere possibility of his release on bail and a bald statement that the detenu would repeat his criminal activities was alone, not sufficient to sustain the order of preventive detention.³³

In the landmark case of *Union of India vs Paul Manickam*,³⁴ the Supreme Court declared that "the detaining authority must show its awareness of the fact of subsisting custody of the detenu and take that factor into account while making the order. It also held that the detention order can be validly made if the detaining authority is reasonably satisfied with cogent materials that there is the likelihood of his release and given his antecedent activities which are proximate in point of time, he must be detained to prevent him from indulging in such prejudicial activities. 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." Further, 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

²⁷ *Radhakrishnan Prabhakaran vs State of TN*, (2000)9 SCC 170

²⁸ *Supra* note. 26

²⁹ *Union of India vs Dimple Happy Dhakad*, AIR 2019 SC 3428

³⁰ *Vijay Narain Singh vs State of Bihar*, AIR 1984 SC 1334

³¹ *State of Maharashtra vs Bhaurao Punjabrao Gawande*, AIR 2008 SC 1705

³² *Ibid*

³³ *Smt. Shashi Aggarwal vs State of UP*, (1988) 1 SCC 436

³⁴ (2003)8 SCC 342

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 to prevent from so acting.³⁵

The Supreme Court categorically stated in *Huidrom Konungjao vs State of Manipur*³⁶ that if such detention order is challenged, the detaining authority ought to satisfy the court the following facts: (a) the detaining authority was fully aware of the fact that detenu was actually in custody and (b) there was reliable materials before the said authority based on which it could have reasons to believe that there is a reliable possibility of release on bail and further, on being released, he would probably indulge in activities which are prejudicial to the public order. In the case of *Yumnam Ongbi Lembi Leima vs State of Manipur*,³⁷ the Supreme Court held that the laws of preventive detention are required to be exercised with due caution as well as upon a proper appreciation of facts as to whether such acts are in any way prejudicial to the interest and security of the State and its citizens or seek to disturb public law and order warranting the issuance of such an order.

Further reaffirming earlier precedents, the Apex Court, in *Champion R. Sangma vs State of Meghalaya*,³⁸ held that in case of a person in custody a detention order can validly be passed (a) if the authority passing the order is aware of the fact that he is actually in custody; (b) if he has a reasonable belief based on reliable material placed before him (i) that there is a real possibility of his being released on bail, and (ii) that on being so released he would in all probability indulge in prejudicial activity and (c) if it is felt essential to detain him to prevent him from so doing.

The NSA has been indiscriminately used and misused in the state of Manipur not only to detain persons who are associated with various outlawed organizations and accused of having committed serious crimes but also to detain drug traffickers, even journalists who made criticism against the public administration. The executive authorities have often invoked the provisions of the NSA to prolong the detention of accused persons who are already in custody. In this regard, the High Court of Manipur has issued in many cases the writ of *habeas corpus* to protect personal liberty of citizens by quashing detention orders for violating laws relating to preventive detention. In most of these litigations, a similar issue was raised by the petitioners that there was no material before the detaining authority to arrive at the subjective satisfaction that the detenu should be preventively detained. The High Court also quashed the detention orders on the ground of non-application of mind by the detaining authorities and also on basis of the callous nature of detaining authorities in issuing defective detention orders. Even the Court has directed the state government to organize training programs for district magistrates and district police on the law relating to preventive detention.³⁹ The Court also categorically observed that it would impose exemplary costs to the state government officers responsible for illegally detaining persons deeming it as a violation of their fundamental rights. It shows that detaining authorities have ignored the binding principles laid down by the apex court of India and also highlights a new judicial trend to protect the personal liberty of a detenu.

³⁵ *Pebam Ningol Mikoi Devi vs State of Manipur*, (2010) 9 SCC 618

³⁶ (2012)7 SCC 181

³⁷ (2012) 2 SCC176

³⁸ (2015) 16 SCC253

Conclusion

Administrative detention gives broad and wide discretionary powers to the administrative authorities, that is why they have often used the powers on the basis of mere presumption. Application of mind before issuing the detention order under the preventive detention law is imperative since the order has the large effect on the liberty of a person, and therefore, the authorities vested with such wide powers are required to bestow careful attention to the relevant materials on record. It is not expected that the detention order would be passed in a cavalier fashion without properly referring to the relevant materials. The exercise of such unbridled power conferred on executive must be with circumspection and care. As such, the detaining authorities need to comply with the constitutional norms coupled with the international standards while discharging their statutory obligations, especially for safeguarding the rights of those persons detained under the preventive detention laws. Any casual or careless approach on the part of the state or any of its officers resulting in violation of personal life and liberty should not be taken leniently, and it will also be a failure on the part of the constitutional obligation of the court. It is evident that the constitutional courts have always played a vital role in protecting and safeguarding the fundamental rights of citizens whether it may be under the preventive detention laws or the general criminal laws. Despite the substantive rules, the statutory procedural requirements as prescribed under the preventive detention laws must also meticulously be followed by the detaining authority. Therefore, the power of detention cannot be used to subvert, supplant, or substitute the punitive law of general criminal laws of the country.

39 Sapam Kangleipal vs State of Manipur, WP(CRL) No.9 of 2020