

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

W.P.(CRL) No. 5 of 2014

Smti. Pardilina R. Sangma
Aged about 28 years,
W/o Shri. Pingku Palley Ch. Marak,
R/o Medical Colony, Williamnagar,
East Garo Hills District, Meghalaya.

..... Petitioner

-Vrs-

1. The Union of India,
Through the Secretary to the
Government of India, Ministry
Of Home, New Delhi
2. The State of Meghalaya,
Through the Secretary to the
Government of Meghalaya,
Home & Political Department,
Shillong.
3. The Commissioner and
Secretary to the Government of
Meghalaya, Political
Department, Meghalaya,
Shillong.
4. The District Magistrate,
East Garo Hills District,
Williamnagar, Meghalaya.
5. The Superintendent of District
Jail, Jowai, West Jaintia Hills
District, Meghalaya

..... Respondents

**BEFORE
THE HON'BLE MR JUSTICE SR SEN**

For the Petitioner : Mr. S.P. Mahanta, Sr. Advocate

For the Respondent : Mr. S. Sen Gupta, GA, Meghalaya

Date of hearing : **26.08.2014**

Date of Judgment & Order : **26.08.2014**

JUDGMENT AND ORDER (ORAL)

This instant writ petition is directed against the detention order dated 14.01.2014, ground of detention dated 14.01.2014, approval order dated 24.01.2014 and confirmation order of the MPDA dated 04.03.2014.

2. The brief fact of the case is that:

“On 14.01.2014, the husband of the Petitioner Shri. Pingku Palley Ch. Marak the Detenue, was booked under MPDA, 1995 by the Respondent District Magistrate and the Detention Order and the ground of detention were issued and the Detenue was kept in District Jail, Jowai until further orders and the detention Order was approved by the Orders of the Governor through the Under Secretary, to the Government of Meghalaya, Political Department and subsequently also confirmed by the Governor of Meghalaya (Annexures – 1, 2, 3 & 4).

The Government of Meghalaya had issued the guidelines for detention under MPDA through the Officer on Special Duty to the Govt. of Meghalaya, vide Guidelines dated 17th October, 2008 (Annexure -5)

The Detenue could not file any effective representation as he was never explained about his right to make representation before the Advisor Board and the Central Government and thereby denied of his right and was also not supplied with the necessary documents supporting the ground of detention and being aggrieved by the Impugned Detention Order (Annexure -1) prefers to file this Writ Petition through his wife praying for setting aside and quashing the impugned Detention Order, the ground of Detention and approval order and confirmation Order (Annexures - 1, 2, 3 & 4) and also praying for release him from detention”.

3. The learned Sr. counsel, Mr. S.P. Mahanta appearing for and on behalf of the petitioner assisted by Mr. H. Abraham, learned counsel submits that the detenue is an innocent man and is neither a member of the GNLA or any outfit organization. Infact he is a Laboratory Technician who was working under the office of the DM & HO, East Garo Hills District, Williamnagar since the year 2002.

The learned Sr. counsel also further submits that, from record it appears that some seals of the GNLA were recovered from his residence and on that ground he has been put under MPDA. The learned Sr. counsel vehemently

argued that the detenue has never been supplied with the necessary documents like ground of detention, approval of detention, confirmation of detention and seizure, statement of the co-accused, etc. As a result, he failed to place or forward any effective representation to the authority concerned to revoke his detention order and till date he is under detention without any rhyme and reason. And prays that his detention order may be revoked.

4. On the other hand, the learned State counsel, Mr. S. Sen Gupta appearing for and on behalf of the State fairly submits that all the documents referred above has been supplied to the detenue, but that was under a close envelope.

5. Now, the question arise before me whether that close envelope which was received by the detenue on 15.01.2014 as per the record had contained the documents 1 to 6 as mentioned in the letter dated 14.01.2014.

6. The Hon'ble Supreme Court in the case of ***Thahira Haris & Ors. Vrs Government of Karnataka & Ors reported in (2009) 11 SCC 438 at Para-15*** was pleased to observe that:

“the Court observed that Article 22(5) insists that all basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenue”.

“Section-8(1) of the Act, which merely re-enacts the constitutional requirements of Article-22(5) insists that all basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu, so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, not only the right of the Court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that is has taken into account only certain basic

facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority”.

7. I could not understand what reason compelled the authority to supply the necessary documents to the detainee so as to enable him to file an effective representation in a close cover. Now, the petitioner is claiming that he has not received this document in a close cover whereas; the prosecution is claiming that the document has been supplied to him. So, in such peculiar circumstances, it is not possible for this court to ascertain the actual fact and it is not the duty of the court to go for probing enquiry in such case, and it is also a settled principle of law, when two interpretations evolve out of argument or record, the interpretation which is in favour of the accused or detainee shall stand.

8. I reiterate back the judgment passed by this court in W.P.(CRL) No. 2 of 2014 in similar nature of the case, the Deputy Commissioner and Superintendent of Police, East Garo Hills, Williamnagar was called for and they were made aware and apprise to do their duty in accordance with the law. In spite of the appraisal, it appears that there is no improvement. Once again, I reiterate that whenever any document will be supplied to any detainee or any person, it should be received under the signature of the detainee or the person concerned in that particular document and not under sealed cover. We will have to remember that the detention under MPDA Act is different from a detention under the general law, where a person is detained without trial. So, the court is bound to take extra caution so that none is harassed.

9. For the reasons discussed above, I find force in the submission of the learned Sr. counsel; Mr. S.P. Mahanta and I have no reason to satisfy myself to reject the petition. Accordingly, the petition is allowed and the detention order is quashed.

10. The Chief Secretary to the Government of Meghalaya is directed to release the detenue forthwith.

11. Registry is also directed to furnish a copy of this order to the Govt. counsel.

12. With this observation and direction, the matter stands disposed of.

JUDGE

D. Nary