

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.P. (Crl.) No. 21 of 2021

Suankhanlian Tombing

Petitioner

Vs.

State of Manipur; & Ors.

Respondents

With

W.P. (Crl.) No. 22 of 2021

Nemthianmuan

Petitioner

Vs.

State of Manipur; & Ors.

Respondents

With

W.P. (Crl.) No. 23 of 2021

Chinzaniang

Petitioner

Vs.

State of Manipur; & Ors.

Respondents

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR. JUSTICE KH. NOBIN SINGH**

29.10.2021

Sanjay Kumar (C.J.):

[1] Heard Mr. Ph. Sanajaoba, learned counsel, appearing for the petitioners; Ms. L. Monomala, learned Government Advocate, appearing for respondents No. 1 & 2; and Mr. W. Darakishwor, learned Sr. PCCG, for respondent No. 3, in all the three writ petitions.

[2] Identical orders of detention having been passed against three individuals, the same are subjected to challenge before us in these three cases. They are therefore amenable to disposal by way of this common order.

[3] Constitutional and statutory mandates as to procedural safeguards in the context of preventive detention being absolutely clear and crystalized by judicial edicts galore, failure of the authorities concerned to abide by such mandates while dealing with matters of preventive detention is appalling to say the least. The cases on hand are a prime example of this lackadaisical attitude.

[4] Suankhanlian @ Frankie (detenu in W.P. (CrI.) No. 21 of 2021), Nengkhansuan Guite (detenu in W.P. (CrI.) No. 22 of 2021) and N. Thangchinhau (detenu in W.P. (CrI.) No. 23 of 2021) were subjected to separate orders of preventive detention dated 09.08.2021 passed by the District Magistrate, Churachandpur, in exercise of power under Section 3 of the National Security Act, 1980. However, it is an admitted facts that these orders of detention were not given effect to till 20.09.2021, when the 3 detenus were actually detained and incarcerated in the Manipur Central Jail at Sajiwa.

[5] In keeping with the provisions of Section 3 (4) of the National Security Act, 1980, the three orders of detention were approved by the State Government on 20.08.2021. This was in accordance with the statutory mandate. However, it appears that the authorities then went before the Advisory Board constituted under Section 9 of the National Security Act, 1980, and basing upon the Reports dated 08.09.2021 submitted by the Board in relation to these 3 detenus, the Government of Manipur passed Confirmation Orders dated 16.10.2021 against them. Perusal of these Confirmation Orders make for an interesting reading. Therein, it was recorded that the Advisory Board considered the cases of these 3 detenus in the meetings held on 28.08.2021 and 01.09.2021

and thereafter submitted reports against them on 08.09.2021, unanimously holding that there are grounds and sufficient cause for their detention under the provisions of the National Security Act, 1980.

[6] As already noted *supra*, the detenus in these cases were not subjected to detention till 20.09.2021 though orders of detention were passed against them on 09.08.2021 itself. Section 11(1) of the National Security Act, 1980, may now be considered. This statutory provision states to the effect that the Advisory Board constituted under Section 9 has to consider the materials placed before it and, if it considers it essential so to do or if the person concerned desires to be heard, the Advisory Board has to hear him in person and thereafter submit its report to the appropriate Government. Therefore, the right of the detenu to choose as to whether he would like to be heard by the Advisory Board, as spelt out above, is in clear and absolute terms. The provision therefore contemplates that a detenu should already be in custody by that stage and should be given the right of exercising his choice as to whether he wants to be heard by the Board.

In the cases on hand, the sittings of the Board were on 28.08.2021 and 01.09.2021, long before the actual incarceration of these 3 detenus, and they never had an opportunity to go before the Board if they wanted to be heard. The Advisory Board seems to have been completely unmindful of this fact and also the statutory mandate of Section 11(1) of the National Security Act, 1980. Unthinkingly and in this state of blissful ignorance, the Board seems to have submitted Reports dated 08.09.2021 against the detenus, long before their detention.

[7] This lack of application of mind by all concerned flagrantly violates the Constitutional and statutory safeguards for protection of the detenus' rights. Be it noted that the laws of preventive detention enable the State to incarcerate a

person without abiding by the ordinary legal procedure and that is the reason why stringent safeguards and measures have been provided. In **Union of India vs. Paul Manickam and another [(2003) 8 SCC 342]**, the Supreme Court observed that though preventive justice requires action to be taken to prevent apprehended objectionable activities, at the same time, a person's greatest of human freedoms, i.e., personal liberty, is deprived and held, therefore, that laws of preventive detention must be strictly construed and meticulous compliance with procedural safeguards, however technical, is mandatory. In these cases, not even lip service has been paid to such safeguards.

In such circumstances and as there is no power of review vesting in the Advisory Board, in terms of the statutory scheme, we are of the opinion that the impugned orders of detention cannot be countenanced.

The writ petitions are accordingly allowed, setting aside the orders of detention dated 09.08.2021 passed against the three detenus and also the subsequent proceedings based thereon.

In consequence, Suankhanlian @ Frankie (detenu in W.P. (Crl.) No. 21 of 2021), Nengkhansuan Guite (detenu in W.P. (Crl.) No. 22 of 2021) and N. Thangchinhau (detenu in W.P. (Crl.) No. 23 of 2021), who are presently incarcerated in Manipur Central Jail, Sajiwa, shall be set at liberty forthwith unless their continued detention is validly required in connection with any other case.

In the circumstances, there shall be no order as to costs.

A copy of this order shall be supplied online or through whatsapp to the learned counsel for the parties.

JUDGE

Sandeep

CHIEF JUSTICE