

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

W.P. (Crl.) No. 19 of 2022

Smt. Thiyam Priya Devi, aged about 46 years, W/o Shri Thiyam Roshan Singh of Singjamei Chingamakha Kshetrileikai, P.O. & P.S. Singjamei, District – Imphal West, Manipur, 795130.

Petitioner

Vs.

- 1.** The State of Manipur, represented by the Chief Secretary, Government of Manipur, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, 795001.
- 2.** The District Magistrate, Thoubal District, P.O. & P.S. Thoubal, Thoubal District, Manipur, 795138.
- 3.** The Union of India, through the Secretary to the Government of India, Ministry of Home Affairs Department of Internal Security, North Block, New Delhi – 110001.

Respondents

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the petitioner : Mr. Ph. Sanajaoba, Advocate
For respondents No. 1 & 2 : Mr. Athouba Khaidem, Government Advocate
For respondent No. 3 : Mr. Y. Paikhomba, Advocate
Date of Order : 07.12.2022

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] The petitioner is the wife of Thiyam Roshan Singh, who was detained by the District Magistrate, Thoubal, in exercise of power under Section

3(2) of the National Security Act, 1980. By way of this writ petition, she assails the said detention order and seeks a consequential writ of *habeas corpus*.

[2] Heard Mr. Ph. Sanajaoba, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, appearing for respondents No. 1 and 2; and Mr. Y. Paikhomba, learned counsel, representing Mr. Kh. Samarjit, learned DSGI, appearing for respondent No. 3.

[3] Perusal of the order and grounds of detention, both dated 04.10.2022, reflects that the detaining authority was conscious of the fact that the petitioner's husband was arrested on 30.08.2022 in connection with FIR No. 39(8)2022 Khongjom PS, registered under Sections 18 & 20 of the Unlawful Activities Prevention Act, 1967, and Section 6A of the Explosive Substances Act, 1908. He was also aware of the fact that the petitioner's husband was thereafter arrested formally in connection with FIR No. 131(5)2022 Porompat PS, registered under Sections 307, 324, 427 and 34 IPC along with Section 3 of the Explosive Substances Act, 1908, and that he was in judicial custody in Manipur Central Jail, Sajiwa, as on the date of passing of the detention order. However, no mention is made either in the order or the grounds of detention as to any bail petition having been filed by the petitioner's husband in relation to either of the two cases.

[4] In **Rekha vs. State of Tamil Nadu, through Secretary to Government and another [(2011) 5 SCC 244]**, the Supreme Court observed that there would be a possibility of release of a person who is already in custody if he has moved a bail application which is pending and in such a case, the detaining authority can reasonably conclude that there is likelihood of such person being released on bail.

[5] Therefore, it is the *sine qua non* that the detaining authority apply his mind to whether or not a bail application has been moved by the person who

is already in custody before exercising power under preventive detention laws. Without forming an opinion as to whether there is a reasonable likelihood of such person being released on bail, the detaining authority cannot subject him to preventive detention on the ground that he would resume prejudicial activities after being released. In the case on hand, the detaining authority seems to be completely unmindful of this requirement of law.

[6] W.P. (Crl.) No. 13 of 2022 therefore succeeds on this short ground and is accordingly allowed. Order dated 04.10.2022 passed by the District Magistrate, Thoubal, detaining the petitioner's husband, in exercise of power under Section 3(2) of the National Security Act, 1980, is set aside. All consequential proceedings based thereon shall also stand set aside.

The detenu, Shri Thiyam Roshan, Singh, who is presently incarcerated at Manipur Central Jail, Sajiwa, shall be set at liberty forthwith unless his continued incarceration is validly required in connection with any other case.

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

JUDGE

CHIEF JUSTICE

Sandeep