

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 2 of 2023

Aribam Sharib, aged about 28 years, S/o (L) Md. Nur Rahaman of Sangaiyumpham Nungphou, P.O. Wangjing, P.S. Thoubal, District Thoubal, Manipur.

..... Petitioner/s

- Versus -

1. Special Secretary (Home), Government of Manipur Babupara, Old Secretariat Building P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
2. State of Manipur, represented by Chief Secretary, Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
3. Deputy Secretary (PIT-ND & PS) Ministry of Finance, Department of Revenue, New Delhi-1110001.
4. The Superintendent of Manipur Central Jail, Imphal, 1st M.R. P.O & P.S. Imphal, District Imphal West, Manipur.

.....Respondent/s

B E F O R E

**HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the petitioner	::	Mr. Ch. Ngongo, Adv.
For the respondents	::	Mr. Th. Vashum, G.A. and Mr. S. Kaminikumar, CGC
Date of Order	::	17.02.2023

ORDER (ORAL)

A. Guneshwar Sharma, (J)

[1] The petitioner was arrested on 12.09.2022 in connection with FIR No. 153(9)2022 TBL-PS U/S 21(b)/29/60(3) ND & PS Act the petitioner along with another co-accused was arrested on accusation and seized a total of 58.54 grams of suspected heroin powder. The petitioner filed a bail application being Cril.Misc(B) Case No. 393 of 2022 and the bail was rejected on default on 22.12.2022. While the petitioner was in judicial custody, the Special Secretary (Home), Government of Manipur issued a detention order dated 05.12.2022 under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic s Drugs and Psychotropic Substances Act (PIT-NS & PS) Act, 1988 for preventing him from further involvement in illicit trafficking of drugs even after his release on bail. On 05.12.2022, the petitioner was furnished the grounds for detention by the Commissioner (Home) Government of Manipur and the petitioner was a habitual offender and other criminally involved in drug trafficking and there is no possibility of him being released on bail and he would continue in illegal drug trafficking even after his release on bail. So, the detention order was issued in order to prevent him from further indulging in drug trafficking.

[2] The petitioner submitted 3 (three) representations all dated 19.12.2022 to the Chief Secretary, Government of Manipur, to the Deputy Secretary, (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India, New Delhi and to the State Advisory Board, ND & PS.

[3] It is stated that the respondent No. 2, Government of Manipur and the respondent No. 3, Central Government have not considered the representations submitted by the petitioner till date and as such, the

detention order is liable to be set aside on this ground alone. It is also pointed out that in the detention order dated 05.12.2022, the bail application is wrongly mentioned as Cril.Misc.(B) Case No. 389 of 2022 in place of the correct No. 393 of 2022. It is stated that it is totally non-application of mind while issuing the detention order. The detention order is challenged mainly on the ground that the representation has not been considered and non-application of mind while issuing the detention order. The State Government have filed a reply where it is stated that the petitioner being habitually deals in drug trafficking and he was arrested along with 58.54 grams of suspected heroin powder and since he was likely to be released on bail, he was detained under PIT-ND & PS Act in order to prevent him from indulging in further illicit trafficking of drugs. It is stated that the detention order was based on the relevant facts and circumstances including history sheet, FIR and recovery other evidence. It is stated that on 24.12.2022, the representation submitted by the petitioner was rejected and it was informed that the representation to the Central Government was forwarded on 22.12.2022. It is stated that there was no delay on the part of the State Government and the writ petition may be rejected.

[4] The Union of India did not file any counter affidavit, however, during the course of hearing, Mr. S. Kaminikumar, learned CGC, submits that the representation dated 19.12.2022 to the Central Government was received on 22.12.2022. On 27.12.2022, the para-wise comment was also received from the State Government and the representation is still under process.

[5] Mr. Ngongo, learned counsel for the petitioner, submits that non-disposal of the representation dated 19.12.2022 which was received by the Central Government on 22.12.2022 till date is totally uncalled for in

the case of preventive detention where a person is detained without trial. The detention order also shows total non-application of mind as the bail application No. is wrongly quoted and the delay of 20 days in disposal of the representation by the State Government is also not properly explained. He prayed for setting aside of the detention order.

[6] Mr. Th. Vashum, learned G.A., submits that there is no delay on the part of the State Government and the State Government have intimated the grounds of detention to the petitioner within the stipulated time and forwarded the representation to the Central Government and the para-wise comments within the stipulated time and as such, writ petition may be rejected.

[7] It was held in the case of **Rajammal v. State of T.N.** reported in (1999) 1 SCC 417: 1999 SCC (Cri) 93, at page 421 and **Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur** reported as **MANU/SC/1011/2021** that non-disposal of the representation of a detenu by the State and the Central Authorities and unexplained delay in disposal of the representation vitiates the detention order.

[8] In the present case, it is admitted by the learned counsel for the Union of India that the representation dated 19.12.2022 is still under consideration by the Central Government. The para-wise comment was also received by the Central Government from the State Authorities. Keeping the representation pending for more than 2 (two) months without any proper explanation strikes at the very foundation of personal liberty of a citizen enshrined under Article 21 of the Constitution. Accordingly, detention order dated 05.12.2022 issued by the Special Secretary (Home), Government of Manipur, for detaining the petitioner under Section 3 of the PIT-ND & PS Act is set aside for delay in the disposal of the

representation. The petitioner be released from detention if not required in any other case.

Accordingly, Writ petition is allowed and disposed of. No cost.

JUDGE

ACTING CHIEF JUSTICE

joshua

KH. JOSHUA
MARING

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