

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 4 of 2023

1. Lheineikim Khongsai, aged about 46 years, W/o Tongkhothang Khongsai, a resident of Yaolen Chepu Village, P.O. & P.S. Ukhrul, Ukhrul District, Manipur - 795142

..... PETITIONER/S

- Versus -

1. The State of Manipur represented by the Chief Secretary, Govt. of Manipur, Old Secretariat Building, Babupara, Imphal West District, Government of Manipur – 795001.
2. The Special Secretary (Home), Government of Manipur, Old Secretariat Building, Babupara, Imphal West District, Government of Manipur – 795001.
3. The Union of India, through the Deputy Secretary (PIT-NDPS), Department of Revenue, Near North Block, Room No. – 26, Church Road, RFA-Barrack, New Delhi – 110001.

.....RESPONDENT/S

B E F O R E

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

O R D E R

07.02.2023

[1] Heard Mr. N. Jotendro, learned senior counsel assisted by Mr. Murtaza Ahmed, learned counsel for the petitioner. Also heard Mr. A. Vashum, learned G.A. for respondent Nos. 1 & 2 and Mr. Boboy Potsangbam, learned CGSC for respondent No. 3.

[2] The present writ petition has been filed by the wife of the detenu Mr. Tongkhothang Khongsai, who had been detained under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short, PIT-ND&PS Act) in pursuance to an order dated 16.09.2022 passed by the Special Secretary (Home), Government of Manipur in connection with FIR No. 9(07)2022 Litan PS u/s 18(b)/29/60(3) ND & PS Act. It is mentioned in the detention order dated 16.09.2022 that he had filed Cril.Misc.(B) No. 8 of 2022 under the Special Court (ND & PS), Ukhrul and that “.....*the accused on release from jail on bail will continue his illegal activities including illicit trafficking of drugs which are prejudicial to public order.*” Vide letter dated 19.09.2022, the State Government intimated the detenu on the grounds for detention under sub-section (3) of Section 3 of the PIT-ND&PS Act, 1988. It is stated that the detenu is a habitual drug smuggler arrested earlier by Assam Rifles in c/w FIR No. 9(11)2018 LTN PS u/s 18(b)/29 ND & PS Act and after being released from jail on bail, the detenu resumed drug smuggling and arrested while transporting opium and it is also stated that the detenu is an associate of a drug racket operated by a syndicate which supply illicit drugs in the State. It is also stated that there is a possibility of the detenu to be released on bail and if released on bail, he would indulge in the same activities of illicit trafficking of drugs which are prejudicial to public order and hence in order to curb the illegal activities, an alternative preventive measure has to be taken up.

[3] The detenu submitted a representation dated 29.09.2022 to the Superintendent of Prison, Sajiwa Central Jail, Manipur for forwarding his representation to the State Advisory Board for Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Manipur. In the said representation dated 29.09.2022 addressed to the Chairman, Advisory Board for Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Manipur, the detenu stated that the detention order is illegal

as the detaining authority passed the order mechanically and without application of mind and further his detention under section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 is punitive in nature. It is also stated in the said representation that there is no FIR registered against the detenu except the present FIR No. 9(7)2022 LTN PS U/S 18(b)/29/60(3) ND & PS Act and he had no criminal antecedent.

Vide letter dated 31.10.2022, the Deputy Secretary (Home) Government of Manipur, forwarded the representation of the detenu to the Deputy Secretary (PIT- ND & PS), Ministry of Finance, Government of India. Vide letter dated 07.11.2022, the Deputy Secretary (Home), Government of Manipur informed the detenu that his representation dated 29.09.2022 addressed to the Chairman, Advisory Board (PIT-ND & PS), Manipur has been duly considered by the State Government and regretted as being devoid of merit. It is also stated that a similar copy of his representation addressed to the Deputy Secretary (PIT – ND & PS) Department of Revenue, New Delhi, has been forwarded. Vide order dated 05.12.2022, the Special Secretary (Home), Government of Manipur in exercise of the powers conferred under clause (f) of Section 9 of the said Act, the Government of Manipur is pleased to order that the preventive detention of Tongkhothang Khongsai (46) S/o (L) Jamkhokhei Khongsai of Yaolen Chephu Village, PO & PS Litan, Ukhrul District, Manipur vide order No. H-3301/62/2022-HD-HD dated 16.09.2022 is hereby confirmed and further fix the period of detention for 12 (twelve) months from the date of his detention.

[4] The main grounds for challenging in the present petition are that;

(i) the detention order dated 16.09.2022 and subsequent confirmation order dated 05.12.2022 are without any cogent

materials and have been passed arbitrarily, mechanically and in a routine manner without application of judicious mind.

(ii) there is no cogent materials that the detenu was involved in the FIR case and that the respondent No. 2 forwarded the representation dated 29.09.2022 to respondent No. 3 only on 31.10.2022 after a lapses of 31 (thirty one) days and the same has not been considered by respondent No. 3 till date.

(iii) there is an unexplained and inordinate delay of 39 (thirty nine) days by respondent No. 2 in disposing of the representation dated 29.09.2022.

[5] The State Government filed an affidavit-in-opposition and it is stated that the detenu is a habitual offender and after his released in connection with FIR No. 9(11)2018 LTN PS U/S 18(b)/29 ND & PS Act, he resumed his illicit business of drug trafficking till his arrest on 19.07.2022 in connection with FIR No. 9(7)2022 LTN PS U/S 18(b)/29/60(3) ND & PS Act. It is stated that he is required to keep under detention under PIT-ND&PS Act as ordinary criminal proceeding cannot prevent him from commission of prejudicial activities. It is stated that the detention order and the confirmation order are passed in good faith and public interest as preventive measure for effectively preventing him from indulging in illicit trafficking of Narcotic Drugs and Psychotropic Substances. It is also stated that the detention order dated 16.09.2022 had been forwarded to Ministry of Finance, Government of India vide letter dated 22.09.2022 through e-mail within the prescribed period of 10 (ten) days as prescribed by section 3(2) of the Pitt's Act. Further, representation of the detention order dated 29.09.2022 was forwarded by IG (prisons) vide letter dated 05.10.2022 and received by the State Government on 06.10.2022 and had been forwarded to the Government of India vide letter dated 31.10.2022. The representation was disposed of after due application of mind and intimated

to the detenu vide letter dated 07.11.2022. It is stated that there is no lapse on the part of the State Government in forwarding the detention order to the concerned authorities.

In the reply filed by respondent No. 3, it is stated that the detention order dated 16.09.2022 was forwarded to the Ministry on 22.09.2022.

The Representation dated 29.09.2022 made by the detenu along with the parawise comment was received by the Ministry from the State Government through e-mail dated 01.11.2022. It is further stated that the representation was addressed to the Chairman, State Advisory Board (PIT- ND & PS Act) and not to the Ministry and hence, the respondent No. 3 has not passed any order on the representation.

[6] Mr. N. Jotendro, learned senior counsel for the petitioner, submits that the Central Government has not passed any order on the representation submitted by the detenu only on the plea that the same was addressed to the Chairman, State Advisory Board (PIT – ND & PS) and not to the Central Government. It is submitted that the stand of the Central Government is totally wrong, illegal and it is against the provisions of law. The learned senior counsel draws the attention of this court to the decision of Bombay High Court in the case of **Sohinidevi Mohanlal Jain –vs – Union of India and others** reported in **1995 Legal Eagle (BOM) 302: 1996 (3) Bom. C.R. 328**

In the above cited case arising out of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA Act), the representation was addressed to the Detaining Authority and Advisory Board and not to the Central Government. Only on this plea, the Central Government stated that it has no obligation to consider the matter. It was held that non-consideration of a representation not addressed to the

Central Government at an early point of time would not affect the order of detention or the continued detention of the detenu. The relevant portion is held at para 13 and is reproduced hereinbelow:

“13. As far as the controversy at hand is concerned, it is undisputed that the representation in question is not addressed to the Central Government and is addressed only to the Detaining Authority and the Advisory Board. As far as the petitioner is concerned, he has contended that the representation which was jointly addressed to the Detaining Authority and the Central Advisory Board, ought to have been promptly considered and decided by the Central Government. This is disputed by Shri Agrawal, who appears both for the Detaining Authority and the Central Government. Accordingly to him, Central Government was not obliged to consider the representation not addressed to it, up-till the stage it received the report from the Advisory Board. He does not dispute, rather he concedes, that there is a duty cast upon the Central Government to consider the said representation while performing its functions of either confirming the order of detention or revoking the same under section 8(f) and section 11 of the Act and this is only after it has received the report of the Advisory Board. According to Shri Agrawal the obligation to consider the representation at this stage by the Central Government is statutory. As far as the representation is concerned, the same form a part of the proceedings of the Advisory Board. After the Advisory Board opined that there was sufficient material to pass an order of detention against the detenu the record in respect of the proceedings was sent to the Central Government and the Central Government was required to pass its orders in the light of the provisions of section 8 (f) of the Act. In view of the opinion of the Advisory Board that there was sufficient cause for the detention of the detenu the Central Government would proceed to confirm the order of detention and provide for the period during which the detenu was required to be

detained. Despite the said opinion, it was still open to the Central Government to revoke the order of detention. For deciding this issue, it was necessary to consider the representation of the detenu which forms part of the proceedings before the Advisory Board. Hence, it was only at that stage and at no prior point of time, that the Central Government was obliged or called upon to consider the representation. Non-consideration of a representation not addressed to the Central Government at an early point of time would not affect the order of detention or the continued detention of the detenu.

[7] Mr. N. Jotendro, learned senior counsel, submits that the facts of the present case is squarely covered by the decision of the Bombay High Court in the above cited case and it is prayed that the detention order be set aside as it is in violation of the settled proposition of law and non-consideration of the representation submitted by the detenu affects its right to live and liberty enshrined under Article 22 of the constitution.

[8] Mr. A. Vashum, learned G.A. submits that the State Government have done everything in time and there is no lapse from the State Government and it has complied all the statutory requirements except for some time taken in parawise comment. He prays for dismissal of the writ petition.

[9] Mr. Boboy Potsangbam, learned CGSC, stated that there is no obligation on the part of the Central Government to consider and decide the representation not addressed to it and prayed that the writ petition may be dismissed.

[10] The PIT-ND&PS Act has been enacted in the year 1988 in order to provide for preventive detention of person indulging in illicit trafficking in ND & PS in a considerable magnitude and such activities could not be dealt with by the normal criminal procedure. So, in short, it

confers a power on the Central Government or State Government to detain a person with a view to prevent him from engaging in illicit trafficking in ND & PS. The detenu is in apprehension of a committing clandestine business in Narcotic Substances. There is a departure from the normal criminal proceeding and involving such stringent provisions affects the right of person and liberty enshrined under Article 21 of the Constitution. Such detention has to satisfy the mandate of Article 22 of the Constitution. Therefore, the State Authorities have to deal with very carefully while considering with the preventive detention and the same should satisfy the requirements as prescribed under Articles 21 and 22 of the Constitution.

[11] In the present case, it is the stand of the respondent No. 3 (Central Government) that since the representation was addressed to the State Advisory Board and not to it and there is no obligation on the part of the Central Government to consider and dispose of the representation submitted by the detenu but this plea is in contrast with the law laid down by Bombay High Court in the case of **Sohinidevi Mohanlal Jain –vs – Union of India and others.**

[12] We are of the view that non-examination of the representation dated 29.09.2022 submitted by the detenu by Central Government on the plea that the same was not addressed to it cannot hold ground and it affects the life and liberty of a person as enshrined under Article 21. Accordingly, the detention order dated 16.09.2022 is set aside and the detenu be released from detention unless he is required in any other case.

[13] Writ petition is allowed and disposed of. No cost.

JUDGE

ACTING CHIEF JUSTICE

joshua

KH. JOSHUA
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