

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 6 of 2023

Lunkithang Vaiphei @ Thangkhopu aged about 30 years, S/o (L) Khawmgen Vaiphei of Boljang Village, PO & PS-Churachandpur, Churachandpur District, Manipur (Now a detenu under PIT-ND & PS Act).

..... Petitioner/s

- Versus -

1. The Special Secretary (Home), Government of Manipur at Old Secretariat, Imphal, P.O. & P.S. Imphal, Imphal West, Pin Code – 795001, Manipur.
2. The State of Manipur represented by Chief Secretary, Government of Manipur, at Old Secretariat, Imphal, P.O. & P.S. Imphal, Imphal West, Pin code-795001, Manipur.
3. The Union of India, through the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Dept. 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**

For the petitioner	::	Mr. Th. Jugindro, Advocate.
For the respondents	::	Mr. Th. Vashum, G.A. for the State and Mr. S. Samarjeet, Sr. PCCG for the Union of India.
Date of Order	::	27.02.2023

ORDER (ORAL)

A. Guneshwar Sharma, (J)

[1] The petitioner, who was accused No. 1, in FIR No. 23(5)22 MRG-PSu/s 18(c)/29 ND & PS Act was arrested along with co-accused on 02.05.2022 by a team of Commando, Bishnupur and 4.99 Kgs. of opium were seized from their possession. He was taken into police custody and later on, remanded to judicial custody. The petitioner filed a bail application being Cril.Misc.(B)Case No. 33 of 2022 before the Special Judge (ND & PS), Bishnupur. While the petitioner was in jail, vide order dated 09.09.2022, the Special Secretary (Home), Government of Manipur, issued the detention order under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND & PS Act), 1988 for effectively preventing him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of three months until further orders.

[2] Vide letter dated 13.09.2022, the Special Secretary (Home), Government of Manipur, furnished the grounds of detention to the petitioner stating that he was involved in trafficking drug racket and on his release, he would likely to continue in illicit trafficking of drugs.

[3] The petitioner submitted 2 (two) representations both dated 20.09.2022 to the Chief Secretary, Government of Manipur and to the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of

Revenue, Government of India, New Delhi through the Superintendent of Police, Manipur Central Jail, Sajiwa, for revoking the detention order dated 09.09.2022. He denied the allegations made in the detention order and stated that he was innocent and he was arrested from his house. Vide letter dated 16.09.2022, the Deputy Secretary (Home), Government of Manipur, intimated the detention of the petitioner under Section 3 (1) of the PIT-ND & PS Act, 1988 to the Deputy Secretary (ND & PS), Government of India. Vide letter dated 28.09.2022, the Deputy Secretary (Home), Government of Manipur forwarded the representation dated 20.09.2022 submitted by the petitioner to the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, New Delhi.

[4] Vide letter dated 19.10.2022, the Deputy Secretary (Home), Government of Manipur, intimated the petitioner that the State Government rejected the representation submitted by the petitioner. Vide order dated 23.12.2022 passed by the Commissioner (Home), Government of Manipur, the detention order dated 09.09.2022 was confirmed and fixed the period of detention for 12 months.

[5] The petitioner challenged the detention order amongst the following grounds that:

- (a) The detention order was passed mechanically without application of mind;

- (b) There was unreasonable delay between the date of detention (09.09.2022) and the date of arrest (02.05.2022);
- (c) The detention order dated 09.09.2022 was placed before the advisory board on 14.11.2022 after a lapsed of 9 weeks and 2 days in violation of Section 9 (b) of the PIT-ND & PS Act, 1988;
- (d) The confirmation order dated 23.12.2022 was passed after a lapsed of 3 months from the date of detention, i.e., 09.09.2022; and
- (e) There was delay in disposal of the representation by the State Government.

[6] The State respondents have filed counter affidavit and stated that the petitioner was arrested and from his possession seized 4.99 kgs of opium. It is stated that the detenu was a habitual drug peddler of opium of commercial quantity in association with drug racket and there was likely to be released on bail and on release, he would continue in illicit trafficking of drugs. It is stated that reference to the Advisory Board was made on 13.10.2022, i.e., within the stipulated period of 5 weeks under Section 9(b) of the PIT-ND & PS Act. It is stated that there is no specific timeline given for disposal of the representation and there is no inordinate delay on the part of the State Government.

[7] The Central Government has not filed any reply.

[8] Heard Mr. Th. Jugindro, learned counsel for the petitioner, Mr Th. Vashum, learned G.A. for the state respondents and Mr. S. Samarjeet, learned Sr.PCCG for the Union of India.

[9] Mr. Th. Jugindro, learned counsel for the petitioner, submits that there was delay in disposal of the representation by the State Government and delay of 29 days has not been explained. He further submits that the Central Government has not acted upon the representation dated 20.09.2022, which was received on 28.09.2022 even after a lapse of 5 months. He states that the detention order expired on 09.12.2022 but the confirmation order was issued only on 23.12.2022 after a lapsed of detention order dated 09.09.2022. It is stated that both the detention order and confirmation order are liable to be set aside.

He relies on the judgment of the Hon'ble Supreme Court in the case of **Shri Ujjal Mandal vs. The State of West Bengal** reported as **(1972) 1 SCC 456** where it was held that the detention order is valid only 3 months and confirmation and/or revocation have to be done within the validity period of 3 months.

[9] Mr. Th. Vashum, learned G.A. for the State respondents, submits that there is no inordinate delay on the part of the State Government and the petitioner has to be taken into preventive detention as

the normal criminal procedure cannot deal with his case. He further states that the petitioner was a habitual offender and prays that writ petition may be rejected.

[10] Mr. S. Samarjeet, learned Sr.PCCG for the Central Government, submits that he has no instruction in the matter and the Hon'ble Court may pass appropriate order in the facts of the present case.

[11] On perusal of the materials available on record, it is seen that the Central Government has not acted upon the representation dated 20.09.2022 submitted by the petitioner and it was forwarded on 28.09.2022 by the State Government to the Central Government. From the date of receipt of the representation submitted by the petitioner, till date, i.e., for a period of 5 months, the Central Government has not passed any order on the representation submitted by the petitioner. Besides, no reply has been filed on behalf of the Central Government in the writ petition filed by the petitioner. The delay of 5 months for keeping the representation pending has not been explained.

[12] It is unfortunate that in most of the cases of preventive detention under PIT-ND & PS Act, the Central Government has not shown any sign of urgency or promptness as directed by the Hon'ble Supreme Court in a catena of cases. The Authority has to be very prompt while dealing with the case of preventive detention keeping in mind the right of personal liberty as enshrined in Article 21 of the Constitution. Accordingly,

the detention order dated 09.09.2022 and confirmation order dated 23.12.2022 are set aside on the ground of delay in disposal of the representation by the State Government and non-consideration of the representation by the Central Government for 5 months and issuance of confirmation order after the expiry of the detention order. The petitioner be released from detention immediately, if not required in any other case.

[13] Accordingly, writ petition is allowed. No cost.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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KH. JOSHUA
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