

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

WP (Cril) No.8 of 2023

Mr.Jangminlen Guite, aged about 34 yrs
s/o Seingam Guite, a permanent resident
of B.Vengnom Village, Churacandpur District
Manipur-795135 ... Petitioner

-Versus-

1. Union of India, represented by Secretary,
Ministry of Finance, Dept of Revenue,
North Block, Room No.26 Church Road,
RFA Barracks, New Delhi 110001.
2. The Deputy Secretary (PIT-ND & PS),
Ministry of Finance, Department of
Revenue, Near North Block, Room
No.26, Church Road, RFA Barracks,
New Delhi 110001.
3. State of Manipur, represented by the
Chief Secy, Govt of Manipur, Babupara,
Imphal-795001
4. Special Secretary (Home),
Government of Manipur, Babupara,
Imphal-795001

... Respondents

**BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR.MV MURALIDHARAN
HON'BLE MR. JUSTICE A.GUNESHWAR SHARMA**

For the petitioner : Mr.L.Shashibhushan, Advocate
Mr.G.Khupchinpao, Advocate

For the respondents : Mr.Boboy Potsangbam, CGSC &
Mr.Th.Athouba, GA

Date of hearing/ : 13.02.2023
Judgment/order

JUDGMENT AND ORDER

A.Guneshwar Sharma,J.

Heard Mr.L.Shashibhushan, learned counsel for the petitioner, Mr.P.Boboy, learned counsel for respondent Nos.1 and 2 and Mr.Athouba, learned Government Advocate for the State respondent Nos.3 and 4.

[2] The petitioner, who is the husband of the detenu namely, Mrs Nemneilam @ Lalam Guite, who was detained vide order dated 29.09.2022 issued by the Special Secretary, Home, Government of Manipur under Sub Section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988, in connection with FIR No.19(05) 2022 NAB PS under Section 21(c)/29/ND&PS Act. She was arrested on 13.05.2022 by a team of NAB PS and detained on the ground that on release on bail in connection with Cril Misc (B) Case No.35 of 2022 in the Court of Special Judge, ND & PS, Churachandpur, she would continue in her illicit activities of illicit drug trafficking.

On 23.12.2022, the Commissioner (Home), Government of Manipur issued grounds of detention that she was involved in multiple instances in the proximate past and she could not be dealt by normal criminal proceedings. The detention was confirmed for one year. On 04.10.2022, Special Secretary (Home), Government of Manipur issued grounds of her detention. It is stated that the detenu is a hard core member of a drug cartel and did not cooperate with the investigation and refused to reveal the identity of the other persons.

It is stated that the detainee was a habitual offender and with her co accused, she had involved in many activities including illicit trafficking of drugs.

It is stated that the detainee had filed a Cril Misc (B) Case No.25 of 2022 before the Special Judge (ND & PS), Thoubal and there is a real possibility of her release on bail and on release she could intimidate and influence and temper with evidences and likely to indulge in the same activities of illicit trafficking of drugs. In order to curb her illegal activities she was detained under Section 3 (1) of the PIT-NDPS Act, 1988. It is informed that the decenue can file representation before the Advisory Board. On 10.11.2022 the detainee submitted two representations, (1) to the Deputy Secretary (PIT-ND&PS), Ministry of Finance, Department of Revenue, New North Block, Room No.26, Church Road, RFA Barrack New Delhi and (2) to the Chief Secretary, Govt of Manipur, Imphal, Manipur for revocation and cancellation of her detention order. In the representations it is stated that no drug was recovered from her and she was never involved in drug trafficking in earlier occasion and there is no likelihood of being released her on bail.

On 23.12.2022, the Commissioner (Home), Government of Manipur confirmed the detention order dated 29.02.2022 and continued to be detained for a period 12 (twelve) months as provided under Section 11 of the (PIT-NDPS) Act.

[3] The Union of India, respondent Nos.1 and 2 filed reply affidavit dated 03.02.2023 and states that the detention order dated 29.09.2022 was received by the Ministry on 07.10.2022. However, the Ministry has not received any representation from or on behalf of the detainee till date.

In the reply filed by the State Respondent Nos.3 and 4, it is stated that the detenue was detained under the Act as there is likelihood to be released her on bail on technical grounds under the provisions of Section 37 of the NDPS Act, 1985.

It is also stated that the detenue was involved in earlier case of drug trafficking and her case cannot be dealt by normal criminal procedure and she was detained to prevent her from indulging any further illicit trafficking of drug. It is further stated that the State Government rejected the representation of the detenue and confirmed the detention order within the stipulated time.

It is stated that the State authorities have not made any inordinate delay/unexplained delay and prayed that the petition may be rejected.

[4] Heard Mr.L.Shashibhushan, learned counsel assisted by Mr.G.Khupchinpao, learned counsel for the petitioner, Mr.Boboy, learned CGSC and Mr.Athouba, learned Government Advocate for the State respondents.

Mr.Shashibhushan, learned counsel for the petitioner has pointed out that it is clear from the affidavit submitted by the Union of India that the State respondents have not forwarded the representation of the detenue submitted to the Central Government, as such, the detention order is liable to be set aside on this ground alone.

Mr.Shashibhushan, further pointed that in the ground for detention dated 4.10.2022 supplied to the detenue, the State in para 7, it is wrongly stated that the bail application before the Special Judge, NDPS Thoubal, while the Cril Misc (B) Case No.35 of 2022 was filed in the Court of Special Judge (ND & PS), Churachandpur. He also pointed out that it is total non-application of mind.

[5] In **Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur and Ors** reported in **MANU/SC/1010/2021** the Hon'ble Supreme Court, 3 Judge Bench held in para 49 that the detenu has a right of representation and the State authority is expected to dispose in a timely manner. Para 49 reads as follows:

"49. Article 22(4), in guaranteeing a right to make a representation to the detenu, understandably creates a corresponding duty on the State machinery to render this right meaningful. In Section D.1 of the judgment, we have detailed this Court's settled precedent on the detenu's right to make a representation and for it to be considered expeditiously-failing which the detention order would be invalidated. However, this right would ring hollow without a corollary right of the detenu to receive a timely communication from the appropriate government on the status of its representation-be it an acceptance or a rejection."

In para 55 of the **Sarabjeet Singh Mokha** case (supra) it was held that the detention order is invalid on two grounds: first, the unexplained delay on part of the State Government in deciding the representation of the Appellant and second, the failure of the Central and State Governments to communicate the rejection of the representation to the Appellant in a timely manner.

[6] In the present case, the representation of the detenu was never sent by the State Government to the Central Government and the same is evident from the affidavit filed by the Union of India before this Court. Moreover in the grounds of detention, the bail application was wrongly mentioned in the Court of Special Judge, NDPS Thoubal, in place of Special Judge, NDPS Churachandpur.

We are of the view that the detention order is vitiated on this ground alone. Accordingly, the detention order dated 29.02.2022 and confirmation order dated 23.12.2022 are set aside. The detenue, shall be released from detention, if not required in any other case.

The writ petition stands allowed and disposed of.

JUDGE

CHIEF JUSTICE (ACTING)

Priyojit

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