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

W.P.(Crl.) No.11 of 2023

Smt. Lhingneiphal Haokip, aged about 35 years, W/o Jangkhogin Haokip, resident of Pangmol Village, P.O. & P.S. Sapermeina, District: Kangpokpi, Manipur presently under detention at Manipur Central Jail, Imphal, P.O. & P.S. Imphal, District: Imphal West, Manipur – 795001.

..... *Petitioner/s*

– Versus –

1. The State of Manipur represented by the Special Secretary (Home), Govt. of Manipur, Manipur Secretariat, South Block, P.O. & P.S. Imphal, District: Imphal West, Manipur – 795001.
2. The Union of India represented by Secretary (Finance), Govt. of India, Ministry of Finance, North Block, New – Delhi – 110001.
3. The Superintendent, Manipur Central Jail, Imphal, P.O. & P.S. Imphal, District: Imphal West, Manipur – 795001.

.... *Respondent/s*

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

For the Petitioner : Mr. L. Shashibhushan, Advocate
For the Respondents : Mr. Th. Vashum, GA for Respondent Nos.1 & 3
Mr. S. Samarjeet, Sr. PCCG for Respondent No.2
Date of Hearing : 08.02.2023
Date of Judgment & Order : **21.02.2023**

JUDGMENT & ORDER
(CAV)

(A. Guneshwar Sharma, J)

The petitioner was detained under Section 3 (1) of Prevention of Illicit Trade in Narcotic Drugs and Psychotropic Substance Act (PIT– ND&PS Act, 1988) for effectively preventing her from further involvement in illicit trafficking of narcotic drugs and psychotropic substance for a period 3(three) months till further orders.

[2] It is stated that the petitioner had filed a bail application in the Court of Learned Special Judge (ND&PS), Senapati, Manipur in connection

with FIR No.16(03)2022, KPI PS under Section 21(b)/29/60(3) of ND&PS Act. It is stated that in the detention order dated 13.12.2022 (Annexure A/1) and vide letter dated 15.12.2022 (Annexure A/2), the detenue was informed about the grounds of her detention under PIT-ND&PS Act, 1988. It is also stated that the detenue is a habitual drug peddler and selling drugs to the addicted persons/youths in and around Kangpokpi area and earning huge money by operating in her Pan Shop.

[3] The petitioner submitted a representation dated 13th January, 2023 to the Chief Secretary, Govt. of Manipur through the Superintendent of Jail, Sajiwa, Imphal and also similar representation dated 13th January, 2023 to the Deputy Secretary (PIT - ND&PS), Ministry of Finance, Department of Revenue, New Delhi. Vide order dated 25th January, 2023 passed by the Commissioner (Home), Govt. of Manipur, the representation dated 13th January, 2023 submitted by the detenue was rejected.

[4] The detention order is challenged amongst on the following grounds:

- 1) The detention order dated 13.12.2022 (Annexure A/1) is non-application of mind inasmuch as the petitioner was not likely to be released on bail.
- 2) There was no cogent material for possibility of petitioner being released on bail in the face of the provision of Section 37 of the ND&PS Act.
- 3) The detention order is also vitiated on account of withholding or suppression of statements of the Investigating Officer, Seizure Witnesses, Co-accused in the said FIR.
- 4) The detention order is liable to be set aside inasmuch as the detaining authority failed to furnish the statements of the Investigating Officer, Seizure Witnesses, Co-accused which are materials and vital documents having a bearing in the issue and for making effective representation thereby violating the right provided under Article 25(5) of the Constitution of India.

[5] In the reply filed by the State Respondents, it is stated that the detenue was arrested and there was recovery of 11(eleven) soap cases suspected to be heroin No.4 weighing 433 grams (including the weight of soap cases and binding rubber) and other articles in presence of witnesses. The interrogation statement of the co-accused Thanginhao Khongsai, the owner of the seized contraband drugs was confirmed as the detenue/petitioner who became the prime accused in the present case. It is also stated that she is a part of syndicate of drug trafficking and her statutory period for releasing on bail was expired on 15.12.2022 and in order to prevent her from indulging in further business of trafficking, she was detained under PIT-ND&PS Act. It is stated that there is no delay on the part of the State authority in giving the grounds for detention and considering her detention order. It is stated that the Writ Petition (Cril.) may be rejected.

[6] Respondent No.2, Union of India has not filed any formal reply to the Writ Petition. However, during the time of hearing, Mr. S. Samarjeet, learned Sr.PCCG for the Union of India has submitted two print outs of emails both dated 03.02.2023 sent by PITNDPS Division, Ministry of Finance, Depart of Revenue, Govt. of India to this Court. In the first email, it is stated that the representation dated 13.01.2023 addressed to the Central

Government was received by the Ministry on 17.01.2023 and parawise comments were received on 27.01.2023.

In the second email, it is mentioned that Govt. of Manipur referred the matter to the State Advisory Board on 15.12.2022 and the outcome of the same was not yet received. It is further stated that no confirmation order was received from the State Government. It is pointed out that as per judgment/order dated 04.03.2020 in WP(Cril.) No.362 of 2019 passed by the Hon'ble Supreme Court in the case of **Ankit Ashok Jalan vs. Union of India**, the representation addressed to the Central Government, i.e., Secretary (Revenue) has to be disposed of either before a reference made to the State Advisory Board or after the receipt of Advisory Board opinion and not during the pendency of the matter before the Advisory Board.

[7] Heard the learned counsels for the parties and perused the materials available on record.

[8] Mr. L. Shashibhushan, learned counsel for the petitioner/detenuue submits that in the present case, the detention order is based on the statement of the complainant recorded under Section 161 of the Cr.P.C. and

the same cannot be admissible in evidence. Mr. L. Shashibhushan, learned counsel for the petitioner/detenu relies upon the judgment of Gauhati High Court, Imphal Bench in Writ Petition (Cril.) No.39 of 2006 dated 23.11.2006. In Para No.14 of the order dated 23.11.2006 passed in Writ Petition (Cril.) No.39 of 2006, it was held that statement recorded under Section 161 Cr.P.C. alone cannot be a ground for detention, relevant Para No.14 is reproduced as herein below:

“14. In the instant case, the purported interrogation statement of the detenu had been recorded by the Investigating Officer of a criminal case in course of the investigation thereof and while he was in police custody. Apparently this statement cannot be construed to be one recorded under section 164 Cr.P.C. to be a confession. In view of the above provisions of the Indian Evidence Act, 1872, such a statement is nonest in law. It is not the case of the respondents that the statement was taken in presence of a Magistrate. Had the statement offered to the detaining authority in eliciting his satisfaction not been of the detenu i.e. an accused in the criminal case but of any witness, the same might have been of relevance for limited purposes. The

so called statement of the detenu, however, by no means can be construed to be any material in the eye of law to be acted upon by the detaining authority to acquire the required satisfaction under the Act and to order his detention thereunder. Such a statement would be non-existent as well in the trial of the said criminal case vis-à-vis the detenu. Viewed from another angle, this statement if permitted to be validly taken note of by the detaining authority for the purpose of the Act would result in an incongruent situation. In such an eventuality, on one hand this statement would be cognizable for preventive detention but valueless for the criminal trial. Law would not approve such a fallacy. Our attention has not been drawn to any provision of law permitting the consideration of the statement of an accused recorded by the Investigating Officer of a criminal case under the Code of Criminal Procedure to be acted upon by the detaining authority to draw his satisfaction therefrom for the purposes of the Act. This determination, however, has to be limited qua the statement of an accused recorded by a police officer in connection with a criminal case under the Cr.P.C. Be that as it may, in our considered view as, in the present case, the

detaining authority had taken note of the facts and materials nonest in law and his purported satisfaction is wholly based thereon, the order of detention of the petitioner's son is invalid."

[9] Mr. L. Shashibhushan, learned counsel for the petitioner points out that in the grounds for detention in the letter dated 15.12.2022 (Annexure A/2), the date of arrest of the detenue is shown as 30.03.2022 at 6:20 p.m. by a team of Kangpokpi PS whereas in the arrest memo, the date of arrest of the detenue is shown as 10.09.2022 at 3:00 p.m. at Kangpokpi Bazar. With respect to the same FIR, it is submitted that giving different dates of arrest of the accused/detenue in the same FIR, is totally non-application of mind while issuing a detention order under the PIT-ND&PS Act. On this ground alone, the detention order is liable to be set aside. It is also submitted that grounds of arrest should be prior to the detention order, but in the present case, the detention order was after the date of arrest. In the present case, while the date of arrest is shown as 10.09.2022, but the grounds of arrest was made only on 15.12.2022. Hence, the grounds of detention was prepared after the arrest of the petitioner/detenue.

[10] Mr. L. Shashibhushan, learned counsel for the petitioner/detenue has also pointed out that for releasing an accused on bail in a case related in

the Narcotic Drugs and Psychotropic Substance, the provision of Section 37 of ND&PS Act says that the Court has to grant bail only when it is satisfied that the accused is innocent. Hence, in the present case, there is no likelihood of the petitioner to be released on bail and the sole ground given in the detention order dated 13.12.2022 does not survive.

[11] Mr. L. Shashibhushan, learned counsel for the petitioner refers to an order dated 16.12.2022 passed by this Hon'ble Court in WP(Cril.) No.12 of 2022 where it was held that mere filing of bail application in ND&PS case, releasing on bail is not ensured. In Para No.7 of the order dated 16.12.2022 passed in WP(Cril.) No.12 of 2022, it is reproduced as herein below:

“7. Another aspect also needs to be taken note of. As already stated *supra*, the case against the petitioner and others involved a commercial quantity of a narcotic drug. Therefore, Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 would have application and grant of bail would be subject to the stringent conditions thereof. In such a situation, the law laid down in **Rekha Vs. State of Tamil Nadu through Secretary to Government and another [(2011) 5 SCC 244]**, to the effect that mere filing of a bail application would be sufficient to infer a possibility of the accused

being released, would not apply and it would be the law laid down by the Supreme Court in **Sayed Abul Ala Vs. Union of India and others [(2007) 15 SCC 208]** that would have application. The Supreme Court observed therein that Section 37 of the Act of 1985 puts a limitation on jurisdiction of the Court in the matter of grant of bail and in cases where the detenu is in custody, the detaining authority not only should be aware of the said fact but there should be material on record to justify that he may be released on bail, having regard to the restriction imposed on the power of the Court, as it may not arrive at the conclusion there exists a reasonable ground for believing that he was not guilty of such offence and that the detenu would not indulge in similar activity, if set at liberty.”

The Central Government has not till date disposed of the representation submitted by the detenue and hence, the detention order is liable to be set aside on this ground also.

[12] Mr. Th. Vashum, learned GA for the State respondents submitted that there is no delay on the part of the State authority in dealing with the detention of the petitioner. Detention order was passed in 13.12.2022, the grounds of detention was issued on 15.12.2022,

representation dated 13.01.2023 was duly forwarded to the Central Government and State Government rejected the representation on 25.01.2023.

Learned GA further submitted that since the detenu has filed a bail application, there is a likelihood of her being released on bail. It is respectfully submitted that the judgment of **Rekha** (supra 2011) will prevail upon the decision of **Syed Abdul** (supra 2007), being a latter judgment. It is prayed that the writ petition be dismissed being devoid of any merit.

[13] Mr. S. Samarjeet, Ld. Sr.PCCG for the Central Government submits that the representation forwarded to the Advisory Board is not disposed of and as per the decision of the Hon'ble Apex Court in the case of **Ankit** (supra), the Central Government cannot decide the representation when the same is pending before the Advisory Board. He prays for dismissal of the writ petition.

[14] Mr. L. Shashibhushan, learned counsel for the petitioner/detenu has pointed out that the Central Government is relying on the minority view in the case of **Ankit Ashok Jalan [(2020) 16 SCC 127]**. Minority view is recorded in Para 55, it has been suggested to defer the decision on the

representation to revoke the detention order, when the matter is being considered by the Advisory Board, the majority view held in Para 28 that the detaining authority ought to have considered the representation independently and without waiting for the report of the Central Advisory Board.

[15] We are of the view that the Central Government has unfortunately relied on the minority view of the judgment passed in **Ankit** (supra) in Para 55 of the judgment of the Hon'ble Supreme Court while majority view held in Para 28 that the representation submitted to the Central Government ought to be considered and dispose of without waiting the opinion of the Advisory Board. In the present case, the plea of the Central Government is that it cannot decide the representation submitted by the detenu while decision of the Advisory Board is pending. It may be noted that in the case of **Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur and Ors.** reported in MANU/SC/1010/2021 in Para 55, 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 of the Appellant in a timely manner.

[16] Non-consideration of the representation submitted by the detenu to the Central Government on time and that too, waiting the opinion of the State Advisory Board is against the judgments in **Ankit (supra)** and **Sarabjeet Singh Mokha (supra)**. The detention order dated 13-12-2022 is set aside. The detenu be released from detention if not required in any other case. The writ petition is disposed of. No costs.

JUDGE

ACTING CHIEF JUSTICE

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