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

W.P.(Cril.) No.12 of 2023

Smt. Aktari aged about 42 years W/O Shamshurudin of Kiyam
Leitanpok, P.O. & P.S. – Thoubal, Thoubal District, Manipur.

..... *Petitioner/s*

– Versus –

1. The Special Secretary (Home), Govt. of Manipur, Babupara, Old Secretariat Building, P.O. & P.S. – Imphal, District – Imphal West, Manipur – 795001.
2. The State of Manipur, represented by the Chief Secretary, Govt. of Manipur, Old Secretariat Building, P.O. & P.S. – Imphal, District – Imphal West, Manipur – 795001.
3. The Deputy Secretary (PIT-NDPS), Ministry of Finance, Department of Revenue, New Delhi – 1110001 and
4. The Superintendent of Manipur Central Jail, Imphal, Old Nambulane, P.O. & P.S. – Imphal, Imphal West District, Manipur.

.... *Respondent/s*

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

For the Petitioner	:	Mr. Ajoy Pebam, Advocate
For the Respondents	:	Mr. O. Ratankumar, Dy.GA for State Govt. Mr. W. Darakishwor, Sr.PCCG for Central Govt.
Date of Hearing &		
Judgment and Order	:	02.03.2023

JUDGMENT & ORDER
(ORAL)

(A. Guneshwar Sharma, J) :

The petitioner, Smt. Aktari was one of the 9(nine) accused arrested in connection with FIR No.104(06)2022 Thoubal Police Station U/S 21(c)/29 ND&PS Act. She was arrested on 23.07.2022 by a team of Thoubal Police. The FIR was lodged on 14.06.2022 with regard to manufacture of drug and preparation in commercial quantity at the house located at Moijing Mina Bazar, Thoubal District.

The petitioner, Smt. Aktari was one of the 9(nine) accused arrested in the follow-up action on the revelation of the main accused, Thoubalmayum Ahamadi Bibi and illegal manufacturing unit of brown sugar in commercial quantity was going on and there was a recovery of 222.85 Kg. of brown sugar seized in connection with the present case.

She filed a bail application being Cril.Misc.(B) Case No. Nil of 2022 in the Court of Special Judge (ND&PS), Thoubal.

[2] Vide order dated 02.09.2022, Special Secretary (Home), Govt. of Manipur issued detention order under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act for taking into

preventive detention of the petitioner to prevent her from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of 3(three) months until further order.

It is also stated that the petitioner, Smt. Aktari filed bail application in the Court of Special Judge (ND&PS), Thoubal and suspected that on release, she would continue in illicit trafficking of drugs and psychotropic substances.

[3] Vide letter dated 06.09.2022, Special Secretary (Home), Govt. of Manipur furnished grounds of detention to the petitioner stating that she was involved in the illegal manufacturing of brown sugar in huge commercial quantity and 16(sixteen) persons involved in the case were still absconding. As an alternative, she has been taken under preventive detention.

[4] The petitioner, Smt. Aktari filed three similar representations all dated 04.10.2022 to the State Advisory Board, the Chief Secretary, Govt. of Manipur and the Deputy Secretary (PIT-ND&PS), Ministry of Finance, Department of Revenue, New Delhi, Govt. of India through the Superintendent of Manipur Central Jail, Imphal for revoking the detention order dated 02.09.2022 on the ground that there is no evidence against her and her arrest was done on fabricated documents.

[5] Vide letter dated 06.10.2022, Deputy Secretary (Home), Govt. of Manipur forwarded the representation submitted by the petitioner to the Deputy Secretary (PIT-ND&PS), Ministry of Finance, Department of Revenue, New Delhi for consideration.

[6] Vide letter dated 20.10.2022, the Deputy Secretary (Home), Govt. of Manipur informed the petitioner that her representation dated 04.10.2022 was rejected being devoid of merit.

[7] There was an unexplained delay of 15 days by the State authorities while disposing the representation submitted by the petitioner. The detention order is challenged on the following grounds:-

- a) there was non-application of mind and the detention order was passed in a casual and mechanical routine manner without applying judicious mind;
- b) mandatory provisions of the PIT-ND&PS Act were violated;
- c) no specific reason for rejecting the representation was given.

The Central Govt. is yet to dispose the representation of the petitioner. It is prayed that the detention order be set aside.

[8] The State Respondent filed counter affidavit stating that the petitioner was taken into custody for involving in illegal manufacture of brown sugar in commercial quantity from raw opium material and so far, 15 co-accused are still absconding and in order to prevent this and for protection of illegal drug, she was taken into custody.

It is stated that there is no delay or lapses on the part of the State Government in dealing with the detention order while forwarding the representation to the Central Government and while deciding the representation by the State Government. It is prayed that the same may be set aside.

The Central Government has not filed any counter affidavit.

[9] Mr. Ajoy Pebam, learned counsel for the petitioner submits that there is delay of 15(fifteen) days which has not been duly explained by the State authorities in disposing the representation by the State Government and the detention order is liable to be set aside on this ground alone. Moreover, the Central Govt. is yet to pass any order on the representation dated 04.10.2022 submitted by the petitioner and the same was duly received by the Central Govt. on 06.10.2022 and even after 5(five) months, the Central Govt. has not acted upon the representation. The detention order

is liable to quashed as it infringed the right of a citizen as conferred by Article 21 of the Constitution.

Mr. Ajoy Pebam, learned counsel for the petitioner refers to an order dated 20.01.2023 passed by a Division Bench of this Court in W.P.(Crl.) No.45 of 2022 relying upon **Rajammal vs. State of T.N and another [(1999) 1 SCC 417]**, **Professor Khaidem Ibocha Singh vs. The State of Manipur [AIR 1972 Supreme Court 438]**, **Sarabjeet Singh Mokha vs. The District Magistrate, Jabalpur, and others [(Criminal Appeal No.1301 of 2021, decided on 29.10.2021 = 2021 SCC Online SC 1019)]** wherein the detention order was set aside for unexplained delay in the disposal of the representation.

[10] Mr. O. Ratankumar, learned Dy.GA for the State submits that there is no delay on the part of the State while deciding the representation and prayed that the writ petition may be rejected. It is stated that the petitioner was taken into preventive detention as she was involved in illicit manufacture of brown sugar in a large scale and if she is released on bail, she would likely to continue her illegal activities.

[11] Considered the submissions of the learned counsels for the parties and perused the materials on record including the original file submitted by the State Government.

On perusal of the original file, it is seen that vide letter dated 20.10.2022, the Deputy Secretary (Home), Government of Manipur forwarded the parawise comments to the Central Government with respect to the representation submitted by the petitioner and the representation dated 04.10.2022 was forwarded to the Central Government on 06.10.2022. In spite of this, the Central Government has not acted upon the representation and did not even file a response in this case. There is no explanation for the delay of 5(five) months for not considering the representation by the Central authority and the detention order is liable to be set aside on this ground alone.

[12] Accordingly, the detention order dated 02.09.2022 is set aside for non-consideration of the representation for 5(five) months and the detenu, Smt. Aktari (42), W/O Shamsurudin of Kiyam Leitanpok be released from detention immediately if not required in any other case.

[13] The writ petition is allowed. No cost.

This Court do not appreciate the conduct of the Central Government in keeping the representation submitted by the detenu pending for 5(five) months and the detention order is set aside on this ground alone, as there ought to be strict compliance of the mandatory provisions while dealing with a case of preventive detention. In the case of **Union of India v. Paul Manickam and Anr.** reported in **(2003) 8 SCC 342**, at para 16 where it was held that meticulous compliance of the procedural safeguard provided in

a preventive detention, however, technical, is mandatory. It is reproduced herein below:

*“16. In a case of preventive detention no offence is proved, nor is any charge formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. **Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See R. v. Halliday and Kubic Dariusz v. Union of India). But at the same time, a person’s greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a “jurisdiction of suspicion”, and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. (See Ayya v. State of U.P.). To lose our country by a scrupulous adherence to the written law, said Thomas Jefferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end in itself and the curtailment of liberty for reasons of the State’s security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters.”***

In the present case, the petitioner has been alleged of involving in the illegal manufacturing of heroin brown sugar in commercial quantity and the detention order is set aside on the ground of non-disposal of the representation by the Central Government for 5(five) months (as done in most of the cases). The endeavour of the State Government to fight the problem of drug menace in the State through the 'War on Drug' will only be a casualty due to the indifferent attitude of the authorities.

[14] Copy of this order be sent to the Chief Secretary, Govt. of Manipur and Secretary, Ministry of Finance, Department of Revenue, Govt. of India for information and necessary action.

JUDGE

JUDGE

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