

n IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 13 of 2023

Phundreimayum Alam, aged about 36 years, S/o (L) Ph. Najimuddin of Sangaiyumpham Puleipokpi, Pt.-I, District Thoubal, Manipur at present lodged in Manipur Central Jail, Sajiwa.

..... Petitioner/s

- Versus -

1. The State of Manipur, represented by Chief Secretary, Government of Manipur, Babupara, Imphal -795001.
2. The Commissioner (Home), Government of Manipur, Secretariat, Imphal West, Imphal – 795001
3. The Superintendent of Jail, Manipur Central Jail, Government of Manipur.
4. Union of India represented by 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. S. Rajeetchandra, Adv.
For the respondents	::	Mr. Th. Vashum, G.A. for the State and Mr. B.R. Sharma, CGSC for the Central Govt.
Date of Order	::	21.02.2023

ORDER (ORAL)

A. Guneshwar Sharma, (J)

[1] The petitioner, namely, Mr. Phundreimayum Alam, was arrested on 03.08.2022 by a team of Thoubal P.S. for unauthorised possession of suspected Heroin powder of 15.20 grms. in connection with FIR No. 129(8)2022 TBL-PS U/s 21(b)/29 ND & PS Act and he was remanded to police and later on to judicial custody. The petitioner filed a bail application being Cril.Misc.(B) No. 238 of 2022 before the Ld. Special Judge (ND & PS), Thoubal on 10.08.2022 and the same was rejected and the petitioner was remanded to the judicial custody. Later on, vide order dated 06.12.2022 passed by the Ld. Special Judge (ND & PS), Thoubal in Cril.Misc.(B) No. 400 of 2022, the petitioner was directed to be released on default bail under Section 167(2) Cr.P.C. as charge sheet could not be filed within the statutory time.

[2] The petitioner was picked up from his home on 20.12.2022 and served a copy of the detention order dated 09.12.2022 and since then he was lodged in the Manipur Central Jail, Sajiwa. Vide order dated 09.12.2022, the Commissioner (Home), Government of Manipur, issued a 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 3 months' until further orders. It is stated that the petitioner was released on bail in connection with Cril.Misc.(B) No. 480 of 2022 and he was likely continue to indulge in his illegal activities of illicit trafficking of drugs after his release.

[3] The detention order is challenged amongst the following grounds that

- (a) The detention order dated 09.12.2022 was passed mechanically without application of mind and lacks requisite satisfaction.
- (b) Material particulars and documents have not been placed for the detaining authority and the same has been held back while communicating the grounds of detention.
- (c) The impugned order is vitiated for consideration of extraneous materials not communicated to the detenu.
- (d) The ground of detention was supplied after 13 days' of the detention order exceeding the stipulated period of 5 days'.

[4] It is prayed that the detention order be set aside and the detenu be set free. Vide order dated 22.12.2022, the Commissioner (Home), Government of Manipur, issued the grounds of detention under Section 3 (3) of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 stating that the petitioner was dealing in retailing business of purchasing and selling of Heroin powder No. 4 and he was a notoriously clever, habitual offender and hardened criminal and had been involved in the trafficking of illegal drugs and after his release in connection with Cril.Misc.(B) No. 480 of 2022 on statutory bail, he would indulge in the same activities of illicit trafficking of drugs.

[5] The petitioner submitted a representation dated 27.12.2022 to the Chief Secretary, Government of Manipur, through the Superintendent of Jail, Manipur Central Jail Sajiwa for revocation of the detention order with a request to supply better particulars and documents. It is stated that there is no material against the petitioner and he was detained on the basis of fabricated grounds. It is also stated that the statement of the one co-accused, namely Mrs. Rabina, has not been supplied to him. The absence

of seizure memo is a proof that no incriminating substances were seized from the possession of the petitioner and he also requested that a better particulars of the grounds/allegations of illicit trafficking, statement of co-accused and the remand objection application be supplied to the petitioner to make a better and effective representation. It is also requested further that the present representation be forwarded to the Central Government. Similar representation dated 11.01.2023 was also submitted by the petitioner to the State Advisory Board.

[6] Vide letter dated 02.01.2023, the Deputy Secretary (Home), Government of Manipur, informed the petitioner through the Superintendent, Manipur Central Jail, Sajiwa that his representation was rejected being devoid of merit. It is also informed that a copy of the representation was forwarded to the Central Government and the State Advisory Board vide letter dated 30.12.2022.

[7] The State respondent has filed counter affidavit wherein it is stated that the petitioner was indulged in selling of Heroin powder No. 4 to many youths and earning an illegal profit. In order to prevent him from continuing in illicit trafficking of drugs, he was taken into preventive detention and his representation was rightly rejected as he was a habitual offender. It is prayed that the writ petition be dismissed being devoid of merit. The Central Government did not file any counter affidavit.

[9] Mr. S. Rajeetchandra, learned counsel for the petitioner, submits that there is no material against the petitioner to be detained under the preventive detention. In this connection, the seizure memo is not attached, the detention order is bad as the relevant materials such as statement of the co-accused, remand objection and report were held back from the petitioner while furnishing the grounds for detention. It is stated that the ground of detention was intimated only on 22.12.2022 after a gap of 13 days against the statutory period within 5 days as prescribed by

Section 3 (3) of PIT-ND & PS Act. It is further stated that no exceptional circumstances have been stated by the State Authority so as to get exception 15 days for supply of the grounds of detention. It is stated that the Central Government has to pass the detention order on the representation of the petitioner and the same is still pending even after almost 2 months’.

Mr. S. Rajeetchandra, learned counsel for the petitioner, relies on the judgment of the Hon’ble Supreme Court in the case of **Ayya v. State of U.P.** reported as **AIR 1989 SCC 364: (1989) 1 SCC 374** to the effect that preventive detention to negate bail order is bad in law.

[10] Mr. Th. Vashum, learned G.A. for the State respondent, submits that there is no delay on the part of the State Authority. The representation dated 27.12.2022 was duly disposed of on 02.01.2023 and the same was forwarded to the Central Government on 30.12.2022 along with the para-wise comment received from the SP, Thoubal. It is prayed that the writ petition be dismissed.

[11] Mr. BR. Sharma, learned CGSC for the Union of India, submits that he has no specific instruction in this case and this Court may pass appropriate order on the basis of the materials available on record.

[12] We have considered the materials on record, the rival submissions at bar and the relevant settled law in this regard. On perusal of the case record, it is seen that the detention order was issued on 09.12.2022 and the ground of arrest was furnished vide letter dated 22.12.2022 after a lapse of 13 days. Section 3 (3) of PIT-ND & PS Act, 1988 prescribes that the grounds of detention is ordinarily to be furnished within 5 days of detention and for exceptional circumstances and for reasons to be recorded in writing not less than 15 days from the date of detention.

[13] In the present case, the grounds of detention was furnished vide letter dated 22.12.2022 and the same was received by the detenu on 23.12.2022, i.e. after 14 days of detention. However, on minute reading of the letter dated 22.12.2022, no specific reasons were recorded for not furnishing the grounds of detention within the stipulated 5 days. We are of the opinion that the detention is bad on this ground alone. The Central Government has not acted upon the representation dated 27.12.2022 submitted by the detenu and the same was forwarded on 30.12.2022 along with the para-wise comment submitted by the SP Thoubal. Till date, the Central Government is keeping the representation pending and has not passed any specific order in this regard after expiry of 7 weeks. As per the judgment of the Hon'ble Supreme Court in the case of **Rajammal v. State of T.N.** reported in (1999) 1 SCC 417; 1999 SCC (Cril.) 93, at page 421 and **Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur** reported as **MANU/SC/1011/2021** that non-disposal of the representation of the detenu by the State and the Central Authority and unexplained delay in disposal of the representation vitiates the detention order.

[14] Accordingly, writ petition is allowed and the detention order dated 09.12.2022 is set aside and the detenu, namely, Mr. Phundreimayum Alam, be set free from detention if not required in any other case. No cost.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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KH. JOSHUA
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