

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 14 of 2023

Mr. Dhrii Law, aged about 67, S/o Dahrii Law, a Permanent Residence of Rikhumai Taphou Village, P.O. Maram & P.S. Tadubi, Senapati District, Manipur – 795106.

..... Petitioner/s

- Versus -

1. Union of India, represented by Secretary, Ministry of Finance, Dept. of Revenue, Near 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-Barrack, New Delhi-110001.
3. The State of Manipur, represented by Chief Secretary, Government of Manipur, Babupara, Imphal -795001.
4. Commissioner (Home), Government of Manipur Babupara, Imphal – 795001.
5. Superintendent, Manipur Central Jail, Sajiwa, Imphal East District, Imphal – 795001.

.....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. Serto T. Kom, Adv.
For the respondents	::	Mr. Kh. Athouba, G.A. and Mr. S. Kaminikumar, CGSC.
Date of Order	::	21.02.2023

ORDER (ORAL)

A. Guneshwar Sharma, (J)

[1] The detenu, namely, Law Pouro, was arrested on 20.02.2022 by the personnel's of Narcotic and Affairs of Border Police Station Manipur at Tangjeng area, Thoubal District, Manipur on the allegation that the detenu was carrying WY Tablets (Metamphetamine) weighing about 34 kgs. in connection with FIR No. 06(02)2022 NAB-PS U/S 22(c)/29/60(3) ND & PS Act. In the FIR, there were 5 (five) more co-accused along with the detenu. The detenu filed a bail petition on 26.08.2022 being Cril.Misc (B) Case No. 266 of 2022 before the Special Judge (ND & PS), Thoubal and on the same day, the bail petition was disposed of. Vide order dated 26.08.2022, the accused was granted default bail under Section 167 (2) of Cr.P.C. and he was released on bail.

[2] Vide order dated 13.09.2022, the Special Secretary (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 detaining the detenu, namely, Law Pouro to prevent him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of 3 months until further orders. It is also mentioned that the accused filed bail application in the Court of Special Judge (ND & PS) Thoubal, Manipur in connection with No. 06(02)2022 NAB-PS U/S 22(c)/29/60(3) ND & PS Act. and he was released on bail. After being released, he would likely to continue his illegal activities including illicit trafficking of drugs.

[3] Vide letter dated 16.09.2022, the Special Secretary (Home), Government of Manipur furnished the grounds of detention to the detenu and it was stated that he was charged of transporting the illegal drugs, i.e., 3 lakh numbers of WY Tablets, and these drugs were imported from Myanmar. It has

been stated that the detenu was a member of inter-state drug cartel having international links and in order to prevent as an alternative measure, he was taken into preventive detention. The detenu made a representation dated 03.11.2022 to the Deputy Secretary (Home), Ministry of Finance, Department of Revenue, Government of India and to the Chief Secretary, Government of Manipur and the detenu filed a writ petition being WP(C) No. 21 of 2022 under Article 32 of the Constitution of India challenging for quashing the detention order dated 13.09.2022.

[4] Vide order dated 15.12.2022, the Commissioner (Home), Government of Manipur, revoked the detention order dated 13.09.2022 under Section 12(a) of the PIT-ND & PS Act and the detention order was revoked with immediate effect. Immediately on the next day, vide order dated 16.12.2022, the Commissioner (Home), Government of Manipur issued the 2nd detention order against the detenu. It is stated that the detenu has filed a bail application in the Special Court in connection with FIR No. 06(02)2022 NAB-PS u/s 22(c)/29/2022 ND & PS Act and on release on bail, he would continue in illicit trafficking of drugs.

[5] Vide order dated 21.12.2022, the Special Secretary (Home), Government of Manipur furnished the grounds of detention to the detenu. It is stated that he was engaged in importing illicit drugs from Myanmar and was engaged in an interested inter-state and international drug smuggling and in order to prevent him from further indulging in illicit trafficking of drugs, he was taken into preventive detention.

[6] Vide order dated 20.12.2022 passed in WP(Cril.) No. 21 of 2022, this Court closed the writ petition as the detention order had already been revoked vide order dated 15.12.2022 and the cause did not survive. The detenu submitted representations dated 23.12.2022 to the Central Government and the Chief Secretary, Government of Manipur for revocation

of detention order dated 16.12.2022 on the ground that he was not involved in any drug trafficking case. The detaining authority failed to forward the report of the detention within 10 days' of the issuance of the 2nd detention order dated 16.12.2022 was issued with an ulterior motive to interfere the judicial proceeding taken in WP(C) No. 21 of 2022 and non-application of mind regarding application of bail which is not true.

[7] Vide order dated 03.01.2023, the representation submitted by the detenu was rejected and thereafter, the detenu filed the present writ petition being WP(Cril.) No. 14 of 2023 for quashing the 2nd detention order dated 16.12.2022 with a prayer to release the detenu from detention. The respondent No. 5 made 3 days' delayed in forwarding the representation dated 23.12.2022 to respondent Nos. 3 & 4 and the respondent No. 2 has not considered and disposed of the representation till the filing of the writ petition. The 2nd detention order dated 16.12.2022 was issued immediately after revocation of earlier detention order dated 13.09.2022 vide revocation order dated 15.12.2022 on the same ground and the same was to interfere with the proceedings of WP(C) No. 21 of 2022. While issuing the 2nd detention order, there was total non-application of mind as the detenu has not filed any fresh bail application after he was granted default bail on 26.08.2022 much before the 1st detention order dated 13.09.2022. The detaining authority has failed to forward to the State Government a report in respect of detention order within 10 days' of issuance and is violation of the settled law by the Hon'ble Apex Court. The Central Government, till date, has not disposed of representation dated 23.12.2022.

[8] The State respondent filed counter affidavit where it was stated that since the detenu was involved in inter-state and international drug network, he was issued 1st detention order dated 13.09.2022 and subsequently, the same was revoked vide order dated 15.12.2022. Accordingly, writ petition being WP(C) No. 21 of 2022 was also closed on

20.12.2022. It is also stated that the revocation order dated 15.12.2022 was passed after taking advice of the A.G. and after due approval, the 2nd detention order dated 16.12.2022 was issued to prevent the detenu from indulging him in illicit trafficking of drugs. It is stated that the revocation was not done on merit. The 2nd detention order dated 16.12.2022 was issued after issuing fresh independent proposal from the police vide letter dated 16.12.2022. It is stated that the detention orders dated 13.09.2022 and 16.12.2022 are independent one and the 2nd detention order dated 16.12.2022 is not consequential or subsequent to the 1st detention order dated 13.09.2022. It is stated that after revocation of detention order, fresh detention order are permissible under Section 12 of PIT-ND & PS Act. It is stated that the representation dated 23.12.2022 of the detenu was forwarded by the IG (Prison) on 26.12.2022 and the same was forwarded to the Advisory Board and to the Government of India, request for para-wise comment was sought from DGP vide letter dated 27.12.2022 and SP (NAB), Manipur sent parawise comment vide letter dated 30.12.2022 and the representation was duly considered and rejected on 03.01.2022. It is stated that there is no delay on the part of the State Government in dealing with the representation and the time taken was routine in processing the same. It is prayed that the writ petition be rejected.

[9] The Central Government did not file any counter affidavit and the matter was heard on the basis of the writ petition and the reply filed by the State Government.

[10] Mr. Serto T. Kom, learned counsel for the petitioner, submits that the 2nd detention order dated 16.12.2022 was immediately issued after revocation order dated 15.12.2022 of the 1st detention order dated 13.09.2022. It is submitted that the tenures of the contents of both the detention orders are same. He submits that there is total non-application of mind in the 2nd detention order as it was wrongly stated that the detenu filed

bail application in the Court of Special Judge (ND & PS), Imphal, Manipur in connection with FIR No. 06(02)2022 NAB-PS u/s 22(c)/29/2022 ND & PS Act. It may be noted that the FIR is concerned with respect to the Special Judge (ND & PS), Thoubal, and the petitioner also filed a bail application being Cril.Misc.(B) Case No. 266 of 2022 in the Court of Special Judge (ND & PS), Thoubal and he was released on default bail vide order dated 26.08.2022. While he was on bail, he was taken into detention vide 1st detention order dated 13.09.2022 and after revocation on 15.12.2022, he was taken into detention vide the 2nd detention order dated 16.12.2022. He submits that the detenu has not filed any other bail application before the Special Judge (ND & PS), Thoubal.

Mr. Serto T. Kom, learned counsel, points out that in the 2nd detention order, it is wrongly stated that in para 2 the detenu has filed bail application in the Court of Special Judge (ND & PS), Imphal which is totally non-application of mind as the FIR is concerned with the Special Court (ND & PS), Thoubal. He submits that the detention order dated 16.12.2022 is liable to be set aside on this ground alone. He further submits that the Central Government has not acted upon the representation dated 23.12.2022 submitted by the detenu to the Central Government and it is settled proposition of law that non-disposal of the representation diligently vitiates the detention order. Accordingly, he prays that the detention order dated 16.12.2022 be quashed and the detenu be set free.

[11] Mr. Kh. Athouba, learned PP for the State respondents, submits that there is no delay on the part of the State Authority in dealing with the detention and the disposal of the representation. Necessary information was forwarded to the Central Government within the stipulated time and as such, he prayed that the writ petition be dismissed.

[12] Mr. S. Kaminikumar, learned CGSC for the Central Government, fairly submits that the State Government has not filed any reply with respect

to the allegation made in the writ petition and he has no specific instruction in this case and he submits that Court may pass appropriate order in the facts and circumstances of the present case.

[13] In the present petition, the 1st detention order dated 13.09.2022 was for a period of 3 months' until further orders and on 3 months' expires on 13.12.2022 until further orders. Before expiry of the validity of the 1st detention order on 13.12.2022, no order for extension was passed and it was lapsed on 13.12.2022. However, the detention order dated 13.12.2022 was revoked vide order dated 15.12.2022. While the detenu was in detention, the 2nd detention order dated 16.12.2022 was issued.

[14] It may be noted that the Hon'ble Supreme Court has held in the case of **Ujjal Mandal v. State of West Bengal** reported in **1972 1 SCC 456**, at para 7 that the period of detention is not automatically extended beyond 3 months' unless the detention order was issued to confirm the order of detention or to revoke it. On mere perusal of the 2nd detention order dated 16.12.2022, it is almost similar with the contents of the 1st detention order dated 13.12.2022. However, in the 2nd detention order, there is wrongly mentioned that the detenu has filed bail application in the Special court which is not correct and there is total non-application of mind on the part of the detaining authority and the detention order also vitiate on this ground alone.

[15] We also find substance in the submission of Mr. Serto T. Kom, learned counsel for the petitioner, to the fact that non-disposal of the representation dated 23.12.2022 by the Central Authority, till date, after a lapsed of 2 months' is against the settled principle of law. It was held in the case of **Rajammal v. State of T.N.** reported in **(1999) 1 SCC 417: 1999 SCC (Cri) 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 a detenu by the State and the Central Authorities

and unexplained delay in disposal of the representation vitiates the detention order.

[16] Accordingly, writ petition is allowed and the detention order dated 16.12.2022 issued by the State Government is set aside on the ground of non-application of mind and non-disposal of the representation for a long period of time and the detenu be released from detention if not required in any other case. No cost.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

joshua

KH. JOSHUA
MARING

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