

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 15 of 2023

Namjahat Haokip aged about 40 years W/o Thangminhou Haokip of Ziong Veng Village, P.O. & P.S. Churachandpur, Churachandpur District, Manipur (Now a detenu under PIT-ND & PS Act).

..... Petitioner/s

- Versus -

1. The Commissioner (Home), Government of Manipur at Old Secretariat, Imphal P.O. & P.S. Imphal, Imphal West, Pin Code – 795001, Manipur.
2. The State of Manipur represented by Chief Secretary, Government of Manipur, at Old Secretariat, Imphal, P.O. & P.S. Imphal, Imphal West, Pin code-795001, Manipur.
3. The Union of India, through the Deputy 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. Th. Jugindro, Adv.
For the respondents	::	Mr. Kh. Athouba, G.A. for the State and Mr. S. Vijayanand Sharma, Sr. PCCG for the Central Govt.
Date of Order	::	23.02.2023

ORDER (ORAL)

A. Guneshwar Sharma, (J)

[1] The petitioner was arrested on 21.04.2022 in connection with FIR No. 16(04)2022 NAB PS, U/s 21(c)/29 NDPS Act by a team of NAB PS while conducting frisking and checking at Churachandpur with the seizure of 100 nos. of soap caps containing Heroin Powder No. 4 weighing about 1.428 kgs from her possession and she was remanded to police and then to the judicial custody.

[2] Vide order dated 07.11.2022 in Cril.Misc.(B) Case No. 33 of 2022, the Ld. Special Judge (ND & PS), Churachandpur rejected the prayer of the I.O. for extension of detention beyond 180 days and the petitioner was directed to be released on default bail under Section 167 Cr.P.C. read with Section 36A of the ND & PS Act.

[3] Vide order dated 02.11.2022, 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 for effectively preventing her 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 had filed a bail application being Cril.Misc.(B) Case No. 40 of 2022 and on release on bail, she would continue to indulge in illicit trafficking of drugs.

[4] Vide order dated 15.12.2022, the detention order dated 02.11.2022 was revoked with immediate effect under Section 12(a) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND & PS Act), 1988. Again, vide order dated 16.12.2022, the State Government issued 2nd detention order for taking the petitioner under preventive detention on the similar grounds as mentioned in the 1st

detention order dated 02.11.2022. Vide letter dated 21.12.2022, the petitioner was furnished with the grounds of detention and stated that she was habitual drug smuggler and involved in illicit trafficking of drugs to various parts of the state for her personal gain and on release on bail, she would continue to indulge in illicit trafficking of drugs and in order to prevent her from such illegal activities, alternative measure for preventive detention has been taken.

[5] The petitioner submitted the representations dated 28.12.2022 to the Chief Secretary, Government of Manipur and to the Deputy Secretary (ND & PS), Ministry of Finance, Department of Revenue, Government of India through the Superintendent of Police, Manipur Central Jail, Imphal for revoking/cancelling or setting aside the detention order dated 16.12.2022. It is stated that the petitioner is innocent and she has been falsely implicated in the present case.

[6] Vide order dated 10.01.2023, the Commissioner (Home), Government of Manipur, rejected the representation submitted by the petitioner being devoid of merit. The detention order dated 16.12.2022 was challenged mainly on the ground that the 2nd detention order dated 16.12.2022 is liable to be set aside as it was based on the same facts similar with the 1st detention order dated 02.11.2022, which was revoked as no sufficient ground was found against the petitioner and no fresh and new facts have been disclosed for issuing the 2nd detention order.

[7] The State Government has filed counter affidavit wherein it is stated that the 1st detention order dated 02.11.2022 was revoked vide order dated 15.12.2022 on technical grounds as timeline of 5 days as per Section 3(3) and 5 weeks as provided under Section 9 (b) of PIT-ND & PS Act for intimating grounds of detention and reference to the Advisory Board could not be complied with and after revocation, vide order dated 15.12.2022, the 2nd detention order dated 16.12.2022 was issued after rectifying the

technical lapses. It is stated that the petitioner indulged in illicit trafficking of drugs of commercial quantity and he is a habitual offender and the preventive detention is the only effective alternative to deal with her case. It is stated that the writ petition may be rejected. The Central Government did not file any counter affidavit.

[8] Mr. Th. Jugindro, learned counsel for the petitioner, submits that the 2nd detention order dated 16.12.2022 is liable to be set aside as the same is based on the similar materials as mentioned in the 1st detention order dated 02.11.2022 and no new facts and grounds have been disclosed in the 2nd detention order. On this ground alone, the detention order is liable to be set aside. He further submits that the Government of India has not disposed of the representation dated 28.12.2022 till date and non-disposal of the representation vitiates the detention order. He prays that the detention order be set aside and the detenu be set at liberty.

[9] Mr. Kh. Athouba, learned G.A. for the State respondent, submits that there is no delay on the part of the State Authority. The 1st detention order has to be revoked due to technical difficulties of non-furnishing of the grounds of detention and the non-forwarding of the representation to the Advisory Board within the stipulated time and after revocation of the order dated 15.12.2022, the 2nd detention order dated 16.12.2022 was issued.

Mr. Kh. Athouba, learned G.A., further submits that since the 1st detention order was not set aside or withdrawn on merit, there is no illegality in issuing the 2nd detention order with the same facts and circumstances after complying all the mandatory provisions. The representation dated 21.12.2022 was disposed of on 10.01.2023 by the State Authority. Hence, he prays that the writ petition be dismissed being devoid of merit.

[10] Mr. S. Vijayanand Sharma, learned Sr. PCCG for the Union of India, submits that even if the Central Government has not filed counter affidavit to the writ petition, he received an e-mail dated 20.02.2023 from the Section Officer, PITNDPS Division, Ministry of Finance, Department of Revenue, stating that the representation dated 28.12.2022 was received by the Ministry vide e-mail on 02.01.2023 and the para-wise comment was received on 11.01.2023 and the representation is still under process. He further submits that this Court may pass appropriate order considering the totality of the matter in facts and in the interest of the society.

[11] We have perused the materials available on record and considered the submissions at the bar.

[12] The 1st detention order dated 02.11.2022 is not in force after its revocation vide order dated 15.12.2022. After issuance of the 2nd detention order dated 16.12.2022, we did not find any undue delay on the part of the State Government in dealing with the matter such as furnishing grounds of detention, disposal of the representation and forwarding the representation to the Advisory Board and to the Central Government. However, It is seen that the representation dated 28.12.2022 was received by the Central Government on 02.01.2023 and para-wise comments were also received from the State Government on 11.01.2023. In spite of this, the representation is yet to be decided by the Central Government. It may be emphasised that non-disposal of the representation and unexplained delay in disposal of the representation vitiates the detention order as per the decision of the Hon'ble Supreme Court in the case of **Rajammal v. State of T.N.** reported in (1999) 1 SCC 417; 1999 SCC (Crl.) 93, at page 421 and **Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur** reported as **MANU/SC/1011/2021**. Accordingly, the detention order dated 16.12.2022 is set aside for non-consideration of the representation by the

Central Government and the detenu, namely Nemjahat Haokip, be set at liberty from detention if not required in any other case.

[13] Accordingly, writ petition is allowed. No cost.

[14] Before parting, this Court desires to make a few observations in connection with the preventive detention and its handling by the authorities. The State Government has declared “War on Drugs” with all its resources available with it in order to curb the menace on illicit trafficking of drugs which poses a threat to the society. It is known to all that huge quantity of narcotic and psychotropic substances are being seized on daily basis. Due to the difficulty to deal with by the normal criminal procedure, the State Government has resorted to the preventive detention as an alternative means for preventing such persons from indulging in this illicit trafficking of drugs with considerable magnitude and taking such persons into custody for a period upto one year without any trial. It is settled proposition of law that the preventive detention has to be interpreted strictly as it affects the right and liberty of a person and they are liable to be detained without any due process of law. All the statutory and mandatory conditions are to be complied strictly. Any lapse on the part of the detaining authority with such conditions will render the detention order bad in law.[Kindly see (2003) 8 SCC 342, para 6]

In this Court, many cases under Article 226 of the Constitution praying for a writ in the nature of Habeas Corpus have been filed as many persons have been taken into preventive detention. However, in most of the cases, the writ petitions are allowed and the detention orders have been set aside only on technicalities such as non-disposal/delay in disposal of the representations, non-furnishing of the relevant materials and non-application of mind. A major portion of setting aside of the detention order is due to non-disposal of the representations submitted by the detenu by the Central Government. In most of the cases, the Central

Government has not filed any reply/counter affidavit/response to the writ petition filed by the detenu. In the present case also, the representation dated 28.12.2022 has not been disposed of for almost 2 months. This Court draws the attention of the Central Authority to comply with all the statutory provisions strictly and to dispose of the representation as expeditiously as practicable, as the detention order affects the right and liberty of a person enshrined under Article 21 of the Constitution and he/she has been taken into detention without any due process of law. But in most of the cases of preventive detention, the authorities seem to lack promptness in dealing with the matter and in a majority of the cases, the representations are disposed of after a long unexplained delay or the representations have not disposed of at all.

We request Mr. Kh. Samarjit, learned DSGI who is present in the Court, to advise the Central Government for disposing of the representations submitted by the detenu on time. Invocation of the preventive detention law will be a futile exercise if the authorities are not inclined to comply the strict mandatory provisions of the law and detention orders are set aside for non-compliance of mandatory provisions.

Furnish a copy of this order to Mr. Kh. Samarjit, learned DSGI, for informing the Central Authorities and for doing the needful.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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