

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

W.P.(Cril.) No.16 of 2023

Nemneihei Zou, aged about 25 years, W/O. Goumang Zou, a resident of Khenjang Village, PO & PS – Churachandpur, District – Churachandpur, 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 District, 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 District, PIN Code – 795001, Manipur.
3. The Union of India through 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.

.... *Respondent/s*

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

For the Petitioners : Mr. Th. Jugindro, Advocate
For the Respondents : Mr. Athouba, Govt. Advocate for State Govt.
Mr. S. Kaminikumar, CGSC for Central Govt.
Date of Hearing and
Judgment & Order : **27.02.2023**

JUDGMENT & ORDER
(ORAL)

(A. Guneshwar, J.)

On 21.04.2022, the petitioner was arrested by a team of NAB Police Personnel in connection with FIR No.16(4)2022 NAB-PS under Section 21(c)/29 ND&PS Act and from her possession, hundred numbers of soap caps containing heroin powder weighing about 1.428 kg. were seized and she was remanded to judicial custody by the Ld. Special Judge (ND&PS), Churachandpur. During the period of her judicial custody, vide order dated 02.11.2022 issued by the Special Secretary (Home), Government of Manipur, the petitioner was detained under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act (PIT-ND&PS Act), for effectively preventing her from further involvement and illicit trafficking of drug for a period of 3(three) months until further order.

[2] It was stated that the petitioner filed a bail application being Cril.Misc.(B) Case No.40 of 2022 in the Court of Special Judge (ND&PS), Churachandpur and on her release from jail, she would continue her illegal activities of illicit trafficking of drug. Vide order dated 07.11.2022 passed by the Ld. Special Judge (ND&PS), Churachandpur in Cril.Misc.Case No.33 of 2022, the application filed by the I/O for extension of detention beyond 180 days was rejected and the petitioner was to be released on default bail under Section 167 Cr.P.C. r/w Section 36A ND&PS Act. Vide order dated 15.12.2022 issued by the Commissioner (Home), Government of Manipur, the detention order dated 02.11.2022 was revoked under Section 12(a) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND&PS Act), 1988. Vide order dated 16.12.2022, the Commissioner (Home), Government of Manipur issued second detention order detaining the petitioner under Section 3(1) of the PIT- NDPS Act on the same ground as stated in the first detention order dated 02.11.2022. Vide order dated 21.12.2022, the Commissioner (Home), Government of Manipur furnished ground of detention to the petitioner stating that she was habitual offender and indulging in illegal trafficking of drug and in order to prevent her from illegal activities while on bail, an alternative preventive measures of detention was taken up.

[3] The petitioner submitted representations dated 28.12.2022 to the Chief Secretary, Government of Manipur and to 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 through the Superintendent of Police, Manipur Central Jail, Imphal for cancelling the detention order dated 16.12.2022 and set her at liberty.

Vide order dated 10.01.2023, the Commissioner (Home), Government of Manipur rejected the representation of the petitioner being devoid of merit.

The detention order is challenged amongst on the following grounds –

1. The second detention order dated 16.12.2022 was similar to the first detention order dated 02.11.2022 and upon revocation of the first detention order, no new facts have been given for issuing the second detention order.
2. The second detention order is not required as the petitioner was already in custody under stringent provision of ND&PS Act. There was unreasonable delay between the date of arrest, i.e., 21.04.2022 and the date of second detention order, i.e., 16.12.2022.
3. There is delay of 12 days in disposing of the representation by the State Government and the Central Government is yet to dispose the representation dated 28.12.2022.

It is prayed that the detention order dated 16.12.2022 be set aside and award compensation to the petitioner for illegal detention in connection with the second detention order dated 16.12.2022.

[4] The State Government filed affidavit-in-opposition stating that the first detention order dated 02.11.2022 was revoked on technical ground as statutory provisions of Section 3(3) and Section 9(b) of PIT-NDPS Act were not complied. Accordingly, the Writ Petition (Cril.) No. 43 of 2022 in connection with the first detention order dated 02.11.2022 was withdrawn by the petitioner as infructuous.

It is also stated that the petitioner was involved in illegal trafficking of heroin powder of commercial quantity and she was detained in custody in order to prevent her from indulging in illegal trafficking of drug. Since the first detention order was revoked on technical ground, there is no infirmity in the second detention order dated 16.12.2022. It is also stated that there is no lapse on the part of the State Government in dealing with the case and the representation dated 28.12.2022 of the detenu was forwarded to 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 and the parawise comments sought from the SP/NAB was received on 04.01.2023 and the same was forwarded to the Central Government. It is stated that the Writ Petition be dismissed being devoid of merit.

[5] The Central Government has not filed any reply to the Writ Petition, but during the course of hearing, Mr. S. Kaminikumar, Ld. CGSC produced an e-mail dated 09.02.2023 sent by the Section Officer, PIT-ND&PS Division, Ministry of Finance, Department of Revenue, Government of India stating that the representation dated 28.12.2022 of the detenu was received by e-mail on 02.01.2023 and the parawise comments from the State Government was received on 11.01.2023 and the representation is under process.

[6] Heard the learned counsels for the parties and perused the materials on record including the e-mail dated 09.02.2023 sent by the Section Officer, PIT-ND&PS Division, Ministry of Finance, Department of Revenue, Government of India to its standing counsel.

[7] From the case record, we do not find any inordinate delay on the part of the State authority while dealing with the preventive detention of the detenu. However, the Central Government has not considered and disposed of the representation dated 28.12.2022 submitted by the detenu till date when the same was received on 02.01.2023. There is no explanation for non-disposal of representation for almost 2(two) months. The Central authority has not acted upon the representation submitted by the detenu. It is true that no specific time frame is laid down by the statute. However, the Hon'ble Supreme Court in a catena of cases including the case of Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur reported as MANU/SC/1011/2021 held that non-disposal of the representation and the inordinate delay in disposal of the representation

vitiating the detention order. It may be noted that preventive detention affects the right of personal liberty enshrined under Article 21 of the Constitution as the detenu has been taken into detention without any due process of law. The State/Central authorities have to act diligently and as expeditiously as possible while dealing with the case of preventive detention resorted to cope with extraordinary circumstances.

In the present case, there is unexplained delay of almost 2(two) months, i.e., from 02.01.2023 to till date for not considering the representation sent by the detenu without any valid reasons.

[8] Accordingly, the detention order dated 16.12.2022 is set aside only on this ground and the detenu, namely Nemneihoi Zou, aged about 25 years, W/O. Goumang Zou, a resident of Khenjang Village, PO & PS – Churachandpur, District – Churachandpur, Manipur be set at liberty immediately if not required in any other case.

[9] Accordingly, the writ petition is allowed and disposed of. No costs.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

-Larson