

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

W.P.(Cril.) No.19 of 2023

Shri Moirangthem Ibomcha Singh, aged about 35 years, S/O M. Shyamkanhai Singh, a resident of Yairipok Ningel Maning Leikai, P.O. Yairipok, P.S. Nongpok Sekmai, Thoubal District, Manipur, PIN – 795149.

..... *Petitioner/s*

– Versus –

1. The State of Manipur through the Commissioner (Home), Government of Manipur, Manipur Secretariat, South Block, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
2. The Special Secretary (Home), Government of Manipur, Manipur Secretariat, South Block, P.O. & P.S. Imphal, Imphal West District, Manipur, PIN- 795001.
3. The Superintendent, Manipur Central Jail, Sajiwa, P.O. Pangei, P.S. Heingang, Imphal East District, Manipur – 795114.
4. The Deputy Secretary (PIT-ND&PS), Ministry of Finance, Department of Revenue, Government of India, Near North Block, Rom No.26, Church Road, RF – Barrack, New Delhi – 110001.

.... *Respondent/s*

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

For the Petitioners : Mr. Rakesh, Advocate
For the Respondents : Mr. Th. Vashum, GA for State Govt.
Mr. S. Vijayanand Sharma, Sr.PCCG for Central Govt.
Date of Hearing and Judgment & Order : **27.02.2023**

JUDGMENT & ORDER
(ORAL)

(A. Guneshwar, J.)

On 01.07.2022, the petitioner was arrested in connection with FIR No.115(7)2022 Thoubal Police Station under Section 21 (b)/27 (a)/29/60(3) NDPS Act and he was remanded to judicial custody on 09th July 2021. On 30.08.2022, the petitioner filed a bail application before the Ld. Special Judge, NDPS Thoubal and when the bail application was pending, vide order dated 04.10.2022, the Special Secretary (Home), Government of Manipur issued detention order under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT-ND&PS Act), 1988 for preventing the petitioner from further involvement in illicit trafficking of drug and on release on

bail in connection with the bail application being Cril.Misc.(B) Case No.278 of 2022, he would continue in illicit trafficking of drug.

[2] Vide order dated 07.10.2022, the Special Secretary (Home), Government of Manipur furnished the ground of detention to the petitioner and it was stated that he was a habitual drug trafficker and involved in illegal drug trafficking of multiple instances and from his possession, 11.94 grams of suspected heroin brown sugar was seized. Vide order dated 14.12.2022, the Ld. Special Judge, NDPS released the petitioner on bail.

[3] The petitioner submitted representation dated 03.12.2022 to the Chief Secretary, Government of Manipur and to the Deputy Secretary (PIT-ND&PS), Ministry of Finance, Department of Revenue, Government of India, Near North Block, Room No.26, Church Road, RF – Barrack, New Delhi – 110001 through the Superintendent of Police, Manipur Central Jail, Sajiwa, Imphal for revoking the detention order dated 04.10.2022. It was stated that he was innocent and he runs the Mahindra Bolero on hire and the drug was seized from gratuitous passengers and he was not involved in the case. Vide order dated 16.12.2022, Deputy Secretary (Home), Government of Manipur informed the petitioner that his representation was rejected being devoid of merit. On 08.12.2022, the representation dated 03.12.2022 was forwarded to the Central Government for consideration. Again, vide order dated 22.12.2022, the detention order was confirmed and the detention order was fixed for a period of 12(twelve) months.

[4] The State Government filed counter affidavit stating that the petitioner was indulging in the illegal trafficking of drug heroin brown sugar and he was a habitual offender involved in frequent transportation of Heroin brown sugar using his Bolero Camper and it is stated that there is no undue delay on the part of the State Government in dealing with the matter and prayed that the writ petition may be rejected.

[5] The Central Government has not filed any reply to the Writ Petition. However, during the course of hearing, Mr. S. Vijayanand Sharma, Ld. Sr.PCCG for the Central Government has produced an e-mail dated 24.02.2023 sent by Assistant Section Officer, PITS-ND&PS, Ministry of Finance, Government of India. It is stated that the representation dated 03.12.2022 was kept in abeyance as per the judgment of the Hon'ble Supreme Court of India dated 04.03.2020 in W.P.(C) No.362 of 2019 titled Ankit Ashok Jalan vs. Union of India, reported as (2020) 16 SCC 127. It is stated that representations addressed to the Central Government, i.e., to the Secretary (Revenue) the same would continue to be considered and disposed of either before a reference made to the Advisory Board or after the receipt of the Advisory Board opinion and not during the pendency of the matter before the Advisory Board.

[6] Heard the learned counsels for the parties and perused the materials on record including the e-mail dated 24.02.2023 sent by the Central Government to the standing counsel.

[7] It is clear that the Central Government has not disposed the representation dated 03.12.2022 submitted by the detenu even though the representation was received on 20.12.2022 taking on the ground that in view of the judgment passed by the Hon'ble Supreme Court in the case of Ankit Ashok Jalan vs. Union of India (supra).

It may be noted that the portion of judgment relied by the Central Government is the minority view as held in Para 55. It has been suggested to defer the decision on the representation to revoke the detention order, when the matter is being considered by the Advisory Board. On the other hand, the majority view held in Para 28, that the detaining authority ought to have considered the representation independently and without waiting for the report of the Central Advisory Board.

It is very unfortunate that the Central Government is relying on the minority view and this Court has expressed its displeasure to the similar stand taken by the Central Government in the order dated 21.02.2023 passed by this Court in W.P.(Crl.) No.11 of 2023. It will be helpful to refer the provisions of Article 141 of the Constitution of India which specifically states that law declared by the Supreme Court shall be binding on all Courts within the territory of India. No doubt, majority view will be ratio of the judgment and hence, the binding law within the meaning of Article 141 of the Constitution. The majority view is binding on all Courts including the High Courts. The stand of the Central Government relying on the minority view of the judgment of Ankit

Ashok Jalan (supra) is against the expressed provisions of Article 141 of the Constitution and the same ought not to be repeated before this Court when similar plea was rejected in earlier order dated 21.02.2023 in W.P.(Crl.) No.11 of 2023. If the Central Government is of the opinion that the minority view is the correct proposition of law in this regard, then it ought to file a review or appropriate application before the Hon'ble Supreme Court for re-consideration of the majority view. Till then, the majority view is binding on this Court.

In the case of Fida Hussain vs. Moradabad Development: (2011) 12 SCC 615 @ Pr.21 the Hon'ble Supreme Court held that "..... the principles of law that emanate from a judgment of this Court, which have aided in reaching a conclusion of the problem, are binding precedents within the meaning of Article 141....". Further, the Hon'ble Apex Court held in the case of Manoharan vs. State: (2020) 5 SCC 782 @ Pr.60 that there is no difference in precedential value of unanimous decisions and those rendered by majority in split decisions. It was held in the case of Suganthi Suresh Kumar vs. Jagdeeshan: (2002) 2 SCC 420 @ Pr.9 that "It is impermissible for the High Court to overrule the decision of the Apex Court.....it is the mandate of the Constitution as provided in Article 141 that the law rendered by the Supreme Court shall be binding on all Courts within the territory of India."

In view of the above cited judgments, High Courts are bound by majority view and cannot prefer the minority view of the Supreme Court.

[8] We request the learned standing counsel for the Central Government to inform about the displeasure of this Court in relying upon the minority view of the judgment repeatedly when the same plea was rejected recently in earlier cases.

[9] Accordingly, the detention order dated 04.10.2022 is set aside on the ground of non-consideration of the representation dated 03.12.2022 by the Central Government alone on this ground. The detenu be set at liberty forthwith if not required in any other case. The writ petition is allowed and we are refrained from passing any order on cost.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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