

ORDER (ORAL)

A. Guneshwar Sharma, (J)

[1] The detenue, namely Meisnam (O) Lata Devi, was arrested on 01.07.2022 in connection with FIR No. 115(7)2022 TBL-PS u/s 21(b)/27(a)/29/60(3) ND & PS Act and seized 4 (four) soap cases containing suspected Heroin (brown sugar) weighing 50.01 grams (approximately). Later on, she was remanded to judicial custody. The detenue filed a bail application being Cril.Misc.(B) Case No. 225 of 2022 in the Court of Special Judge (ND & PS), Thoubal. Vide order dated 14.10.2022, the Special Judge (ND & PS), Thoubal allowed the bail application.

[2] Vide Order dated 04.10.2022, the Special Secretary (Home), Government of Manipur, detained the detenue under Section 3(1) of the 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 (three) months until further orders. It is stated that the detenue has filed bail application being Cril.Misc.(B) Case No. 225 of 2022 and she was likely to be released on bail and she would continue her illegal activities in illicit trafficking of drugs after her release.

[3] Vide letter dated 07.10.2022, The Special Secretary (Home), Government of Manipur, furnished the grounds of detention to the detenue

wherein it was stated that she started transporting heroin No. 4 from Moreh on commission basis to Yairipok frequently and she was a notoriously clever, habitual offender and hardened criminal and involved in illegal trafficking of drugs on multiple instances.

[4] The detenu submitted a joint representation dated 10.11.2022 to the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, New Delhi, the Chief Secretary, Government of Manipur through the Superintendent, Manipur Central Jail, Imphal for revoking the detention order dated 04.10.2022. It was stated that the petitioner was not involved and was implicated in the case. As she was released on bail by the Special Judge (ND & PS), Thoubal vide order dated 14.10.2022, there is presumption of her innocence for the time being. The petitioner submitted representation along with documents. It is stated that the documents furnished to the petitioner are illegible and unreadable.

[5] Vide letter dated 24.01.2023, Maisanam Naoba Singh (the petitioner herein and the son of the detenu) requested the Superintendent of Prison, Manipur Central Jail, Imphal for providing a true and correct copies of the referred documents with respect to the detention of the detenu. Vide order dated 26.12.2022, the Commissioner (Home), Government of Manipur, confirmed the detention order and fixed the period of detention for 12 months.

[6] The detention order is challenged mainly on the ground that

- (i) The detaining authority has failed to justify of issuing the detention order as preventive detention;
- (ii) The detainee was supplied with illegible copies of the documents which form the basis of the grounds of detention (Annexure-A/3) Colly);
- (iii) The detainee is an illiterate and could not read any script and the impugned detention order and the grounds of detention includes hyper technical language;
- (iv) No criminal antecedents of the detainee prior to the recession of the FIR and the detention order was based on the detainee's own statement. It is prayed that the detention order be set aside.

[7] The State Government has filed counter affidavit wherein it is stated that the detainee was involved in multiple transportation of heroin No. 4 from Moreh. In order to prevent her from further involvement of illicit trafficking of drugs, she was taken into preventive detention and it is prayed that the writ petition be rejected. The detainee filed rejoinder affidavit to the counter affidavit filed by the respondents and states that the detaining authority has not mentioned in its counter that the grounds of detention was

explained to the detenue in Manipuri or in vernacular. The Central Government did not file any reply.

[8] Heard Mr. N. Jotendro, learned senior counsel assisted by Mr. Jankinath, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A. for the State respondents and Mr. S. Samarjeet, learned Sr.PCCG for the Union of India.

[9] Mr. N. Jotendro, learned senior counsel for the petitioner, submits that illegible and dimmed documents were supplied to the detenue along with the grounds of detention. Hence, effective representation could not be given. Even though the detenue requested for providing eligible copy, the same was not supplied till date. He relies upon the judgment of the Hon'ble Supreme Court in the case of **The State of Manipur & Ors. v. Buyamayum Abdul Hanan @ Anand & Anr.** reported as **2022 SCC Online SCC 1455**, wherein it was held in paras 16 and 17 as under:

“16. Article 22(5) of the Constitution confers two rights on the detenu, firstly, the right to be informed of the grounds on which the order of detention has been made and secondly, to be afforded an earliest opportunity to make a representation against the order of detention.

17. It is well settled that right to make a representation implies that the detenu should have all the information that will enable him to make an effective representation. No doubt, this right is again subject to the right or

privilege given by clause (6). At the same time, refusal to supply the documents requested by the detenu or supply of illegible or blurred copies of the documents relied upon by the detaining authority amounts to violation of Article 22(5) of the Constitution. Although it is true that whether an opportunity has been afforded to make an effective representation always depends on the facts and circumstances of each case.”

He relies on another judgment of the Hon’ble Supreme Court in the case of **Hadibandhu Das vs. District Magistrate, Cuttack & Ors.** reported as **(1969) 1 SCR 227** where it was held that mere oral explanation of a complicated order of the nature made against the detenu without supplying him the translation in script and language which he understood would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.

Further, the learned senior counsel submits that the Central Government is yet to pass any order with respect to the representation submitted by the detenu. The State Government has not passed any separate order rejecting the representation, but rejection of the representation was mentioned in the confirmation order dated 26.12.2022. Mr. Jotendro, learned senior counsel, submits that there is no effective disposal of the representation by the State Authority also. So, he prays that

detention order be set aside. He submits that vide order dated 27.01.2023 passed by the Division Bench of this Court in WP(Cril.) No. 15 of 2022, the detention order of the co-accused namely, Khangembam (O) Tombi Devi, in the same FIR was set aside as there was unexplained delay on the part of the State Government in dealing with the detenue's representation. He prays that the present case is covered by the order dated 27.01.2023 with respect to the co-accused.

[10] Mr. Th. Vashum, learned G.A. for the State respondents, submits that legible documents were supplied to the detenue and the Central Government has not disposed of the representation till date. However, he submits that there is no lapse on the part of the State Government.

[11] Mr. S. Samarjeet, learned Sr. PCCG for the Central Government, submits that he produced a copy of the e-mail dated 27.02.2023 sent by the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India, stating that the Ministry has not received any report of detention of the detenue under Section 3(2) of the PIT-ND & PS Act. He further states that the Central Government cannot pass any effective order when it has no information with respect to the detention of the detenue.

[12] Having considered the rival submissions of the learned counsel for the parties, the documents on record and original file submitted by the

State Authorities, it is clear that both the Central Authority and State Authority have not passed any speaking order with respect to the representation dated 10.11.2022 submitted by the detainee. However, the State Authority confirmed the detention order for the periods of 12 months vide order dated 26.12.2022 implying that the representation was deemed to be rejected on the same date, i.e., 26.12.2022. However, there is no explanation for 46 days delay in deemed disposal of the representation by the State Authority. Apparently, some documents supplied to the detainee are also dimmed and blurred.

[13] It is the case of the Central Government that they have not been informed by the State Authority with regard to the detention of the detainee as indicated in e-mail dated 27.03.2023. However, on perusal of the original file submitted by the State Government, it is seen that vide letter dated 11.10.2022, the Deputy Secretary (Home), Government of Manipur informed the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India about the detention of the detainee, namely Meisnam (O) Lata Devi, on 04.10.2022 under Section 3(1) of the PIT-ND & PS Act. This shows that the contents of the e-mail dated 27.02.2023 is in contradiction with the letter dated 11.10.2022 sent by the Deputy Secretary (Home), Government of Manipur to the Central Government. So, in the present case, there is total lack of promptness and co-ordination by the State Authority as well as the Central Authority while

dealing with the preventive detention of the detainee. The State Government has not issued any order for disposing of the representation of the detainee on time, even if we consider the confirmation order dated 26.12.2022 as a deemed rejection of the representation. There has been unexplained delay of 46 days in disposing of the representation by the State Authority even from the date of deemed rejection.

[14] Accordingly, the detention order dated 04.10.2022 is set aside on the ground of undue and unexplained delay on the part of the State Authority and non-disposal of the representation by the Central Government. The detainee, namely Meisnam (O) Lata Devi, be released from detention immediately if not required in any other case.

[15] Accordingly, writ petition is allowed and disposed of. No cost.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

joshua

KH. JOSHUA
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