

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 22 of 2023

Paothang Lhangum, aged about 44 years, S/o Paokham Lhangum of Pashong Village, near Sanakeithel, P.O. & P.S. Litan, District, Ukhrul, Manipur

..... Petitioner/s

- Versus -

1. The State of Manipur, through the Chief Secretary, Government of Manipur at Babupara, Imphal-795001.
2. The Commissioner (Home), Government of Manipur at Babupara Imphal-795001.
3. The Superintendent, Manipur Central Jail, Sajiwa, Imphal East - 795010.
4. The Union of India, through the Secretary, Ministry of Finance, Department 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. Babloo, Advocate

For the respondents :: Mr. O. Ratankumar, Dy. G.A. for the State
and Mr. W. Darakishwor, Sr.PCCG for the
Union of India.

Date of Order :: 15.03.2023

ORDER (ORAL)

A. Guneshwar Sharma, J.

[1] On 29.07.2022 at around 1:00 pm, the detenu, namely Paothang Lhangum (accused No.1) was arrested by a team of Yaingangpokpi PS in connection with FIR No. 06(07)2022 YPI-PS u/s 18(c)/29/60(3) ND & PS Act and he was sent to judicial custody on 05.08.2022. The detenu filed a bail application being Cril.Misc.(B) Case No. 225 of 2022 before the Special Judge (ND &PS), Lamphel. However, during the pendency of the bail application, the Special Secretary (Home), Government of Manipur issued the first detention order dated 20.09.2022 under Section 3(1) of the PIT-ND & PS Act, 1988 for detaining the detenu and the grounds of detention dated 23.09.2022 was furnished to the detenu. It was stated that the detenu was a drug trafficker and habitual offender involved in trafficking of illicit drugs on multiple instances in collusion with the co-accused and other associates and he was a member of a well organized drug trafficker. The detenu filed a bail application and he was likely to be released on bail and he would continue to indulge in illegal business of drug trafficking after his release.

[2] Vide order dated 15.12.2022, the first detention order dated 20.09.2022 was revoked under Section 12(a) of the PIT-ND & PS Act. Thereafter, the second detention order dated 16.12.2022 was issued by the Commissioner (Home), Government of Manipur on the very same ground as stated in the first detention order dated 20.09.2022. Vide letter dated 20.12.2022, the Commissioner (Home), Government of Manipur

furnished the grounds of detention to the detenu. The detenu submitted a representation dated 20.01.2023 to the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India, New Delhi and to the Chief Secretary, Government of Manipur for revocation of the second detention order dated 16.12.2022.

[3] Vide order dated 01.02.2023, the State Government rejected the representation dated 19.01.2023. Till the filing of the writ petition, the Central Government has not acted upon the representation submitted by the detenu. The second detention order dated 16.12.2022 was on the same ground and there is inordinate delay on the part of both the State and Central Government and it is prayed that the detention order be set aside.

[4] The State Government filed counter affidavit stating that the detenu was taken into judicial custody as he was involved in illicit trafficking of drugs in commercial quantity and he was a part of large drug syndicate and he filed a bail application and he was likely to release on bail and he would continue illicit trafficking of drugs after his release. The first detention order dated 20.09.2022 was revoked vide order dated 15.12.2022 on technical grounds as a corrective measure and the second detention order dated 16.12.2022 was issued after rectification. It is stated that there is no delay on the part of the State Government and the representation dated 19.01.2023 was rejected on 01.02.2023 and some time has been taken in receiving the para-wise comments from the police. As 10 days delay was

taken in receiving the para-wise comments, there is delay on the part of the State Government.

[5] The Central Government did not file any reply to the petition. But at the time of hearing, produced the two e-mails dated 02.03.2023 stating that the representation was not addressed to the Central Government and another e-mail dated 14.03.2023 stating that the representation dated 20.01.2023 was received on 28.02.2023 from the State Government and the para-wise comments were received on 01.02.2023 and the representation is still under process.

[6] Heard Mr. Th. Babloo, learned counsel for the petitioner, Mr. O. Ratankumar, learned Dy. G.A. for the State respondents and Mr. W. Darakishwor, learned Sr. PCCG for the Union of India.

[7] Mr. Th. Babloo, learned counsel for the petitioner, submits that there is no new ground for issuance of the second detention order dated 16.12.2022 after revocation of the first detention order dated 20.09.2022 and both the detention orders have the same contents and there is no new fact or development in the second detention order. Accordingly, he submits that the detention order may be set aside on this ground alone. He further submits that the Central Government has not disposed of the representation submitted by the detenu for more than 15 days from the date of receipt of the representation dated 19.01.2023 on 28.02.2023 and he states that non-consideration of the representation for a

long period of time without any explanation vitiates the detention order. He prays that detention the detention order be set aside on this ground alone.

[8] Mr. O. Ratankumar, learned Dy. G.A. for the State respondents, submits that there is no delay on the part of the State Government while disposing of the representation dated 19.01.2023 and after 10 days time taken in receiving the para-wise comments from the police and there is no undue delay on the part of the State Government. He further submits that the second detention order dated 16.12.2022 was in continuation of the earlier one and the defects in the first detention order dated 20.09.2022 was rectified by the second detention order. As such, no new grounds are required to be mentioned in the second detention order. He prays that the writ petition be dismissed.

[9] Mr. W. Darakishwor, learned Sr. PCCG for the Central Government, submits that the representation is still pending with the Central Government and he fairly submits that appropriate order may be passed by this Court.

[10] In the present case, the first detention order dated 20.09.2022 was revoked vide order dated 15.12.2022 within its validity period of 3 months and the second detention order dated 16.12.2022 was issued. On mere perusal of both the detention orders dated 20.09.2022 and 16.12.2022, the contents and grounds are similar and no new facts have been disclosed.

[11] In the revocation order dated 15.12.2022, it is not mentioned that the revocation order was done on technical grounds. However, it was clarified in the counter affidavit submitted by the State respondents that the first detention order was revoked on technical grounds and after rectifying the defects, the second detention order dated 16.12.2022 was issued. As such, there is no defect in the second detention order. It is settled proposition of law that the detention order can be revoked during its validity period and fresh detention order can be issued and the same is provided under Section 12(2) of the PIT-ND & PS Act to the effect that revocation of the detention order shall not bar in making another representation.

[12] However, in the case of **Chhagan Bhagwan Kahar vs. N.L. Kalna & Ors.: (1989) 2 SCC 318** and **Anand Singh Vs. State of Bihar: (2017) 13 SCC 226**, the Hon'ble Supreme Court held that even the detention is revoked or expired, there must be fresh facts for passing the second detention order and the same principle is applicable when the earlier detention order has been quashed by the Court.

[13] In the present case, no new facts have been indicated in the second detention order dated 16.12.2022. The revocation order dated 15.12.2022 is a revocation simpliciter and did not mention that revocation was done on technical ground. As the second detention order does not disclosed any new materials, the second detention order is liable to be set aside on this ground alone. Moreover, the Central Government has not passed any order on the representation dated 19.01.2023 submitted by the

detenu as indicated in the e-mail dated 14.03.2023 sent by the Section officer, PITNDPS Division, Ministry of Finance, Department of Revenue, Government of India to its standing counsel stating that the representation is under process. Even after receiving the para-wise comments by e-mail dated 01.02.2023, there is no explanation for keeping the representation pending by the Central Government and as such, the detention order is liable to be set aside on this ground alone also.

[14] In view of the above findings and observations, the second detention order dated 16.12.2022 is set aside and the detenu namely, Mr. Paothang Lhangum, be released from detention forthwith, if not required in any other case. Accordingly, writ petition is allowed. No cost.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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KH. JOSHUA
MARING

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