

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 23 of 2023

Md. Ina Khan @ Abdul Manal (32), S/o Md. Abdul Jabar of Khabeisoi Sabal Leikai, P.O. Pangei & P.S. Heingang, Imphal East District, Manipur-795002.

..... Petitioner/s

- Versus -

1. Commissioner (Home), Government of Manipur, Babupara, Old Secretariat Building, P.O. & P.S. Imphal, District – Imphal West, Manipur-795001.
2. The State of Manipur represented by the Chief Secretary, Government of Manipur, Babupara, Old Secretariat Building, P.O. & P.S. Imphal, District-Imphal West, Manipur-795001.
3. The Superintendent of Manipur Central Jail, Sajiwa, at Sajiwa near Khabeisoi, P.O. Porompat, P.S. Heingang, Imphal East District, Manipur-795001.
4. 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

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. L. Seityandra, Advocate
For the respondents	::	Mr. Th. Vashum, G.A. for the State and Mr. B.R. Sharma, CGSC for the Central Govt.
Date of Order	::	20.03.2023

ORDER (ORAL)

A. Guneshwar Sharma, (J)

[1] The detenu, namely Md. Ina Khan @ Abdul Manal, was arrested on 31.05.2022 at about 8:30 pm by a team of Imphal PS in connection with 130(06)2022 IPS u/s 21(c)/60(3) ND & PS Act. From his possession, recovered four gunny bags containing altogether 2150 bottles of cough syrup and he was remanded to police custody and later on to judicial custody. The detenu was released on bail in connection with Cril.Misc.(B) Case No. 156 of 2022 and he was likely to be indulged in illegal activities. The detention order dated 15.12.2022 was issued by the Commissioner (Home), Government of Manipur under Section 3 (1) of the PIT-ND & PS Act, 1988 for effectively preventing him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of 3 months until further orders.

[2] Vide letter dated 22.12.2022, the Commissioner (Home), Government of Manipur furnished the grounds of detention and the same was received by the detenu on 23.12.2022. The detenu submitted the common representation dated 12.01.2023 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 revoking the detention order dated 15.12.2022. Vide order dated 25.01.2023, the

Commissioner (Home), Government of Manipur rejected the representation dated 12.01.2023 submitted by the detenu.

[3] The State Government filed counter affidavit wherein it is stated that the detenu was involved in multiple cases under the ND & PS Act and he was released on default bail after expiry of the statutory period of 180 days and he was likely to be indulged in illegal activities. As such, he was taken into preventive detention. It is stated that there is no delay on the part of the State Government while disposing of the representation and forwarding of the representation to the Central Government and Advisory Board.

[4] The Central Government did not file any counter affidavit.

[5] The detention order is challenged mainly on the grounds that:

- (i) There was delay on the part of the State Government in forwarding the representation of the detenu to the Central Government;
- (ii) There was no material placed for assuming that the detenu would indulge in prejudicial activities;
- (iii) Non-application of mind while passing the detention order; and
- (iv) The Central Government failed to dispose of the representation dated 12.01.2023 and it is prayed that the detention order be set aside.

[6] Heard Mr. L. Seityandra, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A. for the State respondents and Mr. BR. Sharma, learned CGSC for the Union of India.

[7] Mr. L. Seityandra, learned counsel for the petitioner, submits that there is no material for detaining the detenu under detention after his released on bail and the grounds of detention was furnished after expiry of the stipulated period of 5 days and no explanation has been given for the said delay. He further submits that there is delay on the part of the State Government in disposal of the representation submitted by the detenu and the Central Government is yet to pass any order. He prays that the detention order be set aside.

[8] Mr. Th. Vashum, learned G.A. for the State respondents, submits that the detenu has to be taken into preventive detention even after released on default bail as there is likely to indulge in illegal activities of drug trafficking. He submits that there is no inordinate delay on the part of the State Government and all the statutory requirements have been complied with. He prays that the writ petition be dismissed as being devoid of merit.

[9] Mr. BR. Sharma, learned CGSC for the Central Government, submits that the Central Government has rejected the representation dated 12.01.2023 and the writ petition becomes infructuous, may be rejected and dismissed on this ground alone.

[10] On perusal of the materials on record, it is seen that the detention order was issued on 15.12.2022 and the ground of detention dated 22.12.2022 was furnished to the detenu on 23.12.2022 (as seen in Annexure-A/2). This meant that the ground of detention was furnished after 8 days. Provisions of Section 3 (3) of the PIT-ND & PS Act provides that the grounds of detention should be furnished ordinarily within 5 days of the detention and in exceptional circumstances to be recorded in writing within 15 days from the date of detention.

[11] Admittedly, in the present case, the ground of detention was furnished to the detenu after 8 days which is beyond the statutory period of 5 days. As such, the State Government cannot avail the outer limit of 15 days for furnishing the grounds of detention to the detenu as exceptional case as provided under Section 3 (3) of the PIT-ND & PS Act in absence of any reasons recorded in writing. The detention order is liable to be set aside on this ground alone also. Moreover, even though the Central Government has not filed any counter affidavit, at the time of hearing, Mr. BR. Sharma, learned CGSC for the Central Government has stated that the representation submitted by the detenu was disposed of on 07.03.2023. There is unexplained delay of 48 days by the Central Government from the date of receipt of the representation, i.e., 17.01.2023.

[12] As per the judgment of the Hon'ble Supreme Court in the case of **Rajammal v. State of T.N.** reported in **(1999) 1 SCC 417: 1999 SCC**

(Cri) 93, at page 421 and Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur reported as **MANU/SC/1011/2021** where it was held that delay in disposal and non-disposal of the detention order vitiates the detention order. Accordingly, detention order dated 15.12.2022 is liable to be set aside on this ground alone.

[13] In view of the above findings and observations regarding unexplained delay in furnishing grounds of detention to the detenu and also unexplained delay in disposal of the representation by the State Government and unexplained delay of 48 days in disposal of the representation by the Central Government, the detention order 15.12.2022 is set aside and the detenu, namely Md. Ina Khan @ Abdul Manal, be released from detention forthwith, if not required in any other case

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

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

joshua

KH. JOSHUA
MARING

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