

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 25 of 2023

Mr. S. Tamreishang, aged about 28 years, S/o S. Angam, a permanent resident of Litan Sareikhong Village, P.O. & P.S. Litan, Ukhrul District, Manipur-795145

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Chief Secretary (Home), Government of Manipur, Old Secretariat, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur- 795001.
2. 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.
3. The Special Secretary (Home), Government of Manipur, Secretariat, Babupara, Imphal West District-795001.
4. The Superintendent of Police, Central Jail, Old Lambulane, P.O & P.S. Imphal, Imphal West District-795001.

.....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. K. Aaron, Advocate
For the respondents	::	Mr. Th. Vashum, G.A. for the State and Mr. Kh. Samarjit, learned DSGI assisted by Mr. Y. Paikhomba, Advocate for the Central Government.
Date of Hearing	::	15.03.2023
Date of Judgment & Order	::	04.04.2023

JUDGMENT & ORDER(CAV)

A. Guneshwar Sharma, (J)

[1] The present writ petition has been filed by the detenu who was detained under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short, PIT-ND&PS Act) in pursuance to an order dated 16.09.2022 passed by the Special Secretary (Home), Government of Manipur in connection with FIR No. 9(07)2022 LTN PS u/s 18(b)/29/60(3) ND & PS Act. It is mentioned in the detention order dated 16.09.2022 that he had filed Cril. Misc. (B) No. 9 of 2022 under the Special Court (ND & PS), Ukhrul and that “.....*the accused on release from jail on bail will continue his illegal activities including illicit trafficking of drugs which are prejudicial to public order.*”

[2] Vide letter dated 19.09.2022, the Special Secretary (Home), Government of Manipur intimated the grounds of detention to the detenu under sub-section (3) of Section 3 of the PIT-ND&PS Act, 1988. It is stated that the detenu is a habitual drug smuggler arrested by Assam Rifles on 19.07.2022 along with co-accused namely Tongkhothang Khongsai, in connection with FIR No. 9(7)2022 LTN PS u/s 18(b)/29/60(3) ND & PS Act and from their possession, 5 Kgs of suspected opium of commercial quantity were seized and they were handed over to Litan PS along with the seized items. He had numerous talks with the co-accused over phone. It is stated that there is possibility of the detenu to be released on bail in

connection with Cril. Misc. (B) Case No. 9 of 2022 and on release on bail, he would likely to indulge in the same activities of illicit trafficking of drugs which are prejudicial to public order. As such, he was detained under Section 3(1) of the PIT-ND & PS Act in order to prevent him from further involvement.

[3] Vide order dated 05.12.2022, the Special Secretary (Home), Government of Manipur confirmed the detention order dated 16.09.2022 and further fixed the period of detention for 12 (twelve) months from the date of his detention. The detenu did not file any representations to both the State and Central authorities.

[4] In the writ petition, only the confirmation order dated 05.12.2022 is challenged. The main ground for challenge in the present petition is that the detention order dated 16.09.2022 and subsequent confirmation order dated 05.12.2022 are without any cogent materials and have been passed arbitrarily, mechanically and in a routine manner without application of judicious mind. The same is in violation of the mandate of Articles 14, 21 and 50 of the Constitution and judgments reported as **(1993) 4 SCC 441; (1995) 5 SCC 457 & (1997) 6 SCC 339.**

[5] The State Government filed an affidavit-in-opposition and it is stated that the detenu is a habitual offender and was arrested in connection with FIR No. 9(7)2022 LTN PS U/S 18(b)/29/60(3) ND & PS Act, he would resume his illicit business of drug trafficking after his likelihood to release

on bail. It is stated that he is required to keep under preventive detention under PIT-ND&PS Act, as ordinary criminal proceeding cannot prevent him from commission of prejudicial activities. The detenu and co-accused (main accused) had repeated telephone calls more than 20 times and 4 time on the day of arrest. He was involved in transportation of the opium from Litan area to Imphal for the past 3/4 years as per police report. It is stated that the detention order and the confirmation order were passed in good faith and in public interest as preventive measure for effectively preventing him from indulging in illicit trafficking of Narcotic Drugs and Psychotropic Substances. It is also stated that the detention order dated 16.09.2022 had been forwarded to Ministry of Finance, Government of India vide letter dated 22.09.2022 through e-mail. It is also stated that the detenu had not submitted any representation and the case of the detention of the detenu was referred to the Advisory Board vide letter dated 18.10.2022. Advisory Board gave its report dated 31.11.2022 finding sufficient materials for detention of the detenu. After receiving the opinion of the Board, the confirmation order dated 05.12.2022 was issued. It is stated that the detention and confirmation orders were issued after satisfying all mandatory provisions and the same cannot be faulted.

[6] The petitioner filed rejoinder affidavit to the affidavit-in-opposition filed by the State respondent wherein it is stated that the detenu is an innocent person and he could not submit effective representations

due to ignorant of the English language and acute financial constraints. Besides, it is stated that the respondents never considered the representations made by the detenu in all similar cases. A copy of the order dated 07.02.2023 passed by this Court in WP(Crl.) No. 4 of 2023 where detention order dated 16.09.2022 of the co-accused Mr. Tongkhothang Khongsai was set aside, as the Central Government did not consider the representation submitted by the co-accused and prays for similar order in the present case also.

[7] The Central Government did not file any reply to the petition. However, during the course of hearing, a copy of the e-mail dated 09.03.2023 sent by PITNDPS Division, Ministry of Finance, Department of Revenue to Mr. Kh. Samarjit, learned DSGI stating that the Central Government has not received any representation on behalf of the detenu.

[8] Heard Mr. K. Aaron, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A. for the State respondents and Mr. Kh. Samarjit, learned DSGI assisted by Mr. Y. Paikhomba, learned counsel for the Central Government.

[9] Mr. K. Aaron, learned counsel for the detenu has submitted that the detenu is innocent and has wrongly been arrested while he was talking with the main accused. No recovery of the alleged opium was recovered from his possession. He could not submit representation as he did not know English language and due to poverty. His continued detention

is in violation of his fundamental rights. Since the detention order of the main accused has been set aside by this Court, he is also entitled to the same treatment. It is prayed that the detention order and confirmation order be set aside and the detenu be set at liberty.

[10] Mr. Kh Vashum, learned GA for the State submits that the detenu was taken into preventive detention after receiving a detailed report from the police for his involvement in transporting opium from Litan area to Imphal for a long period. As per call record, the detenu and co-accused were in constant touch and immediately before his arrest, they has 4 telephonic conversations. From their conscious possession, there was seizure of 5 kg of opium. The confirmation order dated 05.12.2022 was issued after receiving the opinion of the Advisory Board. There is no violation of the mandatory provisions of PIT-NDPS Act and the Constitution. From perusal of the materials available on record, it is found that the detenu has not filed any representation against the detention order dated 16.09.2022. Vide letter dated 19.03.2022 issued by the Special Secretary (Home), Government of Manipur to the detenu, it was informed that he has right to make representation to the Government of Manipur as well as to the Central Government against the detention order. However, the detenu did not file any representation to the State and Central Authority. The confirmation order was challenged on vague grounds. There is no violation of the fundamental rights of the detenu on the basis of

various judgment passed by the Hon'ble Apex Court. It highlighted that in a preventive detention, the Court has to examine whether the mandatory provisions as stipulated in the statute are complied or not and the same is not to give findings on the merit of the sufficiency of the materials taken for issuing detention order.

[11] Mr. Kh. Samarjit, learned DSGI assisted by Mr. Y. Paikhomba, Advocate submits that as the detenu has not submitted any representation, the Central Government has no obligation to pass any order. It is further stated that there is no lapse on the part of the Central authority.

[12] In the present case, the detention order was issued on 16.09.2022, the ground of detention was furnished on 19.09.2022 within 5 days as stipulated under Section 3(3) of PIT-NDPS Act and intimated to the Central Government on 22.09.2022. i.e., within 10 days as required by Section 3(2) of the Act. The detention order dated 16.09.2022 was referred to the Advisory Board on 18.10.2022 within 5 weeks as provided under Section 9(b) of the Act. The detention order was confirmed on 05.12.2022, i.e. within the period of 3 (three) months as stipulated under Article 22(4) of the Constitution of India. Accordingly, we do not find any defect in the detention order. The grounds of detention have been precisely enumerated and the detenu has not able to find out any fault except for citing Constitutional provisions and unrelated judgments. When the detenu has not filed any representation, there is no obligation to pass any further order.

[13] In the case of **Shyamal Kumar Sarkar v. State of W.B.:** (1972) 3 SCC 791, Hon'ble Supreme Court held that when no specific ground was taken in the writ petition challenging the validity of the order of detention, nor any ground put forward to show that the detention order was in any way vitiated, the writ petition invoking habeas corpus was dismissed. In another case titled as **Khagen Sarkar v. State of W.B.: AIR 1971 SC 2051**, it was held that "... The Act being on for preventive detention, the Court would not sit in appeal against the impugned order, and therefore, would not go into the question of sufficiency or otherwise of the materials for arriving at the satisfaction by the relevant authority under S.3 of the aforesaid Act. The Court would have, however, no hesitation to interfere with such order, if for instance it were shown that the exercise of powers under S.3 was mala fide or on grounds alien to the Act".

[14] In the present case, no specific grounds have been taken in the writ petition to challenge the detention and confirmation orders as violative of any mandatory requirements, nor mala fide or otherwise in exercise of the preventive detention regime. The detenu has taken only vague grounds as violative of constitutional rights. The judgments referred in the writ petition are not relevant with the present case. The plea of the not understanding English language is not forceful as the detenu has passed matriculation and signed the pleadings in English. The order dated 07.02.2023 passed by this Court in WP(Crl.) No. 4 of 2023 setting aside

detention order of co-accused was for non-consideration of the representation by the Central authority and the ratio of that order will not be applicable to the facts of the present case where the detenu did not submit any representation.

[15] We are of the firmed opinion that the present writ petition is devoid of any merit, as it has not disclosed any defects- either technical or substantive. The grounds taken are very vague and no specific plea of violation of any mandatory requirements can be seen. Accordingly, the writ petition is dismissed, and the detention order dated 16.09.2022 and confirmation order dated 05.12.2022 are upheld. No cost. Return original file of the State Government.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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KH. JOSHUA MARING
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