

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 27 of 2023

Md. Azamir, aged about 26 years, S/o Md. Azman of Sora Mamang Leikai, P.O. & P.S.-Kakching, Kakching District, Manipur (Now a detenu under PIT-ND & PS Act).

..... Petitioner/s

- Versus -

1. The Commissioner (Home)/Special Secretary (Home), Government of Manipur at Old Secretariat, Imphal P.O. & P.S.- Imphal, Imphal West, Pin Code-795001, Manipur.
2. The State of Manipur represented by Chief Secretary, Government of Manipur at Old Secretariat, Imphal, P.O. & P.S.- Imphal, Imphal West, Pin Code-795001, Manipur.
3. The Union of India.
Through 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. Th. Jugindro, Advocate
For the respondents	:: Mr. Th. Vashum, G.A. for the State and Mr. Boboy Potsangbam, CGSC for the Union of India.
Date of Order	:: 27.03.2023

ORDER (ORAL)

A. Guneshwar Sharma, J.

[1] The detenu, namely Md. Azamir, was arrested on 26.03.2022 in connection with FIR No. 12(3)2022 JBM PS u/s 21(c)/60(3) ND & PS Act. He was released on bail vide order dated 14.06.2022. Vide order dated 01.10.2022, the Special Secretary (Home), Government of Manipur issued the detention order to the detenu under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND & PS Act), 1988 for effectively preventing him from further involvement in illicit manufacturing and trafficking of narcotic drugs and psychotropic substances for a period of three months until further orders. It was stated that he was released on default bail and would likely to continue in illicit trafficking of drugs.

[2] Vide letter dated 10.10.2022, the Special Secretary (Home), Government of Manipur furnished the grounds of detention to the detenu. It was stated that he was involved in illicit manufacturing of drug preparation and in involvement of commercial quantity in trafficking drugs and from his possession 316.62 gms. of brown sugar was recovered.

[3] The detenu submitted 2 (two) similar representations both dated 31.10.2022 to the Chief Secretary, Government of Manipur and to the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India, New Delhi through the Superintendent,

Manipur Central Jail. Sajiwa for revocation of the detention order 01.10.2022. Vide letter dated 04.11.2022, the Deputy Secretary (Home), Government of Manipur forwarded the representation dated 31.10.2022 submitted by the detenu to the Central Government. Vide letter dated 16.12.2022, the Deputy Secretary (Home), Government of Manipur informed the detenu that his representation was rejected as devoid of merit.

[4] Vide order dated 23.12.2022, the Commissioner (Home), Government of Manipur confirmed the detention order dated 01.10.2022 and fixed the period of detention for 12 months from the date of detention. Vide memorandum dated 07.03.2023 (produced during the course of hearing), the Central Government rejected the representation of the detenu.

[5] The detention order was challenged mainly on the ground that:

- (i) There was no material for issuing the detention order;
- (ii) Material document was not supplied;
- (iii) There was violation of mandatory provisions of Article 22 of the Constitution; and
- (iv) The State Government took unexplained delay of 45 days in disposing of the representation and the Central

Government had not disposed of the representation till the filing of the writ petition.

[6] The State Government filed counter affidavit and stated that the detenu was taken into preventive detention as he was habitual offender and was involved in transportation of illicit drugs of commercial quantity and he belongs to syndicate of illicit drug traffickers and later on, he was released on default bail. It is stated that the detention order was issued after consideration of the facts/materials available on record and after observing due process under PIT-ND & PS Act. It is stated that the representation dated 31.10.2022 forwarded by IG (Prisons) vide letter dated 02.11.2022 was received on the same day and forwarded to the Government of India and para-wise comment was called from DGP, Manipur on 04.11.2022. Further, reminder sent on 09.11.2022, para-wise comment was received on 13.12.2022 and the representation was rejected on 16.12.2022. It is stated that there was undue delay on the part of the State Government and delay, if any, has been explained. It is stated that writ petition may be rejected. It is stated that the detention order dated 01.10.2022 and the grounds of detention dated 10.10.2022 were intimated to the Government of India on 10.10.2022 within the stipulated period of 10 days as specified under Section 3(2) of the PIT-ND & PS Act, 1988.

[7] The Central Government did not file any reply.

[8] Heard Mr. Th. Jugindro, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A. for the State respondents and Mr. Boboy Potsangbam, learned CGSC for the Union of India.

[9] During the course of hearing, Mr. Th. Jugindro, learned counsel for the petitioner, hands over a copy of memorandum dated 07.03.2023 whereby the Central Government rejected the representation of the detenu and the same is taken on record.

[10] Mr. Th. Jugindro, learned counsel for the petitioner, submits that the grounds of detention was furnished only on 10.10.2022 after 10 days of date of detention, i.e. 01.10.2022 and there is no explanation for furnishing the same beyond the stipulated 5 days from the date of detention. He draws the attention of this Court to the provisions of Section 3(3) of the PIT-ND & PS Act whereby the ground of detention ought to be furnished ordinarily within 5 days from the date of detention and in exceptional circumstances and for the reasons to be recorded in writing within 15 days. In absence of any reasons for not furnishing the grounds of detention within 5 days, it has violated all the mandatory provisions of the Act. He submits that the detention order is liable to be set aside on this ground alone. It took 46 days for the State Government to dispose of the representation submitted by the detenu and the explanation given by the State Government is not proper

Mr. Th. Jugindro, learned counsel, reiterates that detention order is bad for unexplained delay in disposal of the representation and it took 127 days for the Central Government and the same could not be explained as the Central Government did not file any reply to the writ petition.

[11] Mr. Th. Vashum, learned G.A. for the State respondents, submits that there is no inordinate delay on the part of the State Government and furnishing the ground of detention within 10 days is not fatal. The time taken in disposal of the representation submitted by the detenu has been explained in the counter affidavit. He prays that the writ petition may be rejected.

[12] Mr. Boboy Potsangbam, learned CGSC for the Union of India, submits that he has no further instruction and this Court may pass appropriate order.

[13] Heard the learned counsel for the parties and perused the materials available on record. From perusal of the record, it is seen that the ground of detention order was furnished after 10 days of the detention and no reason was recorded for not furnishing the same within 5 days as stipulated under Section 3(3) of the PIT-ND & PS Act. There is violation of mandatory provisions as no reason has been recorded in this regard and as such, the detention order is liable to be set aside on this ground alone. Moreover, the explanation given by the State Government for 46 days time

taken in disposal of the representation is not also satisfactory. On the other hand, the Central Government has not given any reasons for 127 days time taken in rejecting the representation submitted by the detenu. In a catena of cases, the Hon'ble Supreme court has held that delay in disposal of the representation vitiates the detention order.

[14] In view of the findings and observations, the detention order dated 01.10.2022 and the confirmation order dated 23.12.2022 are set aside and the detenu, namely Md. Azamir, 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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