

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 29 of 2023

Mrs. Tinneichong Haokip, aged about 47 years, W/o Chungpao Haokip, a permanent resident of Moreh Ward No. 7, Zion Veng, Tengnoupal Sub-Division, Chandel District, Manipur-795131.

..... Petitioner/s

- Versus -

- 1.** Union of India, represented by Secretary, Ministry of Finance, Dept. of Revenue, Near North Block, Room No. 26, Church Road, RFA Brracks, New Delhi-110001.
- 2.** The Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Near North Block, Room No. 26, Church Road, RFA Barracks, New Delhi-110001.
- 3.** State of Manipur, represented by the Chief Secy. Government of Manipur, Babupara, Imphal 795001.
- 4.** Commissioner (Home), Government of Manipur Babupara, Imphal-795001.
- 5.** Superintendent of Central Jail, Imphal East-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. Serto T Kom, Advocate
For the respondents	::	Mr. Th. Vashum, G.A. for the State and Mr. Kh. Samarjit, DSGI for the Union of India.
Date of Order	::	27.03.2023

ORDER(ORAL)

A. Guneshwar Sharma, (J)

[1] On 10.07.2022, a team of Kangpokpi District Police arrested the detenu, namely Thangkholen Haokip @ Thanglen Haokip along with his associates, namely Satminlun Tuboi, Lhaineineng Haokip (wife of detenu) and Hethem Sitlhou in connection with FIR No. 14(7)2022 G SPM-PS U/s 22(c)/29/60(3) ND & PS Act. From their possession WY Tablets weighing 5.568 kgs. were recovered. Thereafter, the detenu was remanded to judicial custody. Vide order dated 10.10.2022 passed by the Special Judge (ND & PS), Senapati, Manipur in Cril.Misc.(B) Case No. 44 of 2022, the bail application filed by the detenu, namely Thangkholen Haokip @ Thanglen Haokip and his wife, namely Lhaineineng Haokip was rejected.

[2] While the detenu was in judicial custody, vide order dated 13.09.2022, the Special Secretary (Home), Government of Manipur, issued the detention order 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 trafficking of narcotic drugs and psychotropic substances for a period of 3 months until further orders. It was stated that the detenu filed a bail application being Cril.Misc.(B) Case No. 59 of 2022 in connection with FIR No. 14(7)2022 G SPM-PS U/s 22(c)/29/60(3) ND & PS Act and the detenu, on release from

jail on bail, would continue in illegal activities including illicit trafficking of drugs.

[3] Vide letter dated 16.09.2022, the Special Secretary (Home), Government of Manipur furnished the grounds of detention to the detenu inter-alia alleging that the detenu was a member of drug syndicate and he filed a bail application being Cril.Misc.(B) Case No. 59 of 2022 (ref.FIR No. 14(7)2022 G SPM-PS U/s 22(c)/29/60(3) ND & PS Act) and on release on bail, he would likely to indulge in illegal activities of drug trafficking and as an alternative preventive measure, he was taken into prevention detention. The detenu submitted 2 (two) representations both dated 10.10.2022 to (i) The Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India, New Delhi and (ii) the Chief Secretary, Government of Manipur through the Superintendent, Manipur Central Jail, Sajiwa Imphal, Manipur for revoking the detention order dated 13.09.2022 on the ground that there is violation of mandatory provisions and reasons for likelihood to be released on bail is not indicated. The detenu challenged the 1st detention order dated 13.09.2022 before this Court by way of writ petition being WP(Cril.) No. 40 of 2022 inter-alia on the ground that there was no likelihood of the detenu being released on bail and delay in disposal of the representation dated 10.10.2022.

[4] Vide order dated 15.12.2022, the Commissioner (Home), Government of Manipur revoked the 1st detention order dated 13.09.2022

under Section 12 (a) of the PIT-ND & PS Act with immediate effect. Vide order dated 16.01.2023 in WP(Cril.). No. 40 of 2022, this Court disposed of the writ petition as infructuous as the 1st detention order dated 13.09.2022 was revoked by a subsequent order dated 15.12.2022 giving liberty to challenge the fresh detention order.

[5] After revocation of the 1st detention order dated 13.09.2022 on 15.12.2022, the Commissioner (Home), Government of Manipur issued the 2nd detention order dated 16.12.2022 against the detenu under Section 3(1) of the PIT-ND & PS Act on the same grounds as mentioned in the 1st detention order. It was stated that the detenu filed a bail application being Cril.Misc.(B) Case No. 59 of 2022 in connection with FIR No. 14(7)2022 G SPM-PS U/s 22(c)/29/60(3) ND & PS Act. Vide letter dated 20.12.2022, the Commissioner (Home), Government of Manipur furnished the 2nd grounds of detention against the detenu. The detenu submitted 2 (two) representations both dated 16.01.2023 to (i) the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India, New Delhi and (ii) the Chief Secretary, Government of Manipur through the Superintendent, Manipur Central Jail, Sajiwa Imphal, Manipur for revoking the 2nd detention order inter-alia on the ground that the detenu was not involved in the alleged recovery of 5.568 kg of WY tablets and the bail application being Cril.Misc.(B) Case No. 44 of 2022 filed by the detenu was rejected on 10.10.2022. The 2nd detention order was issued after

revocation of the 1st detention order to interfere with the judicial proceedings in connection with WP(Cril.) No. 40 of 2022 filed earlier by the detenu. Vide order dated 23.01.2023, the Commissioner (Home), Government of Manipur rejected the representation dated 16.01.2023 filed by the detenu as being devoid of any merit. It was also stated that a copy of the representation dated 16.01.2023 was forwarded to the Advisory Board and to the Central Government on 19.01.2023.

[6] The detention order was challenged mainly amongst on the following grounds that:

- (i) There is no material to indicate that the detenu will be released on bail;
- (ii) The 1st detention order dated 13.09.2022 was revoked vide order dated 15.09.2022 to frustrate the writ petition being WP(Cril.) No. 40 of 2022 filed by the detenu challenging the 1st detention order;
- (iii) There is total non-application of mind as the detenu never filed any Cril.Misc.(B) Case No. 59 of 2022 after rejection of Cril.Misc.(B) Case No. 44 of 2022 on 10.10.2022;
- (iv) There was violation of Section 3(2) of the PIT-ND & PS Act for failure to send to the Central Government.

(v) There is delay in the consideration of the 2nd representation dated 16.01.2023; and

(vi) Some of the documents furnished are not legible.

Hence, it is prayed that the detention order dated 16.12.2022 be set aside.

[7] The State Government filed counter affidavit where it is stated that the detenu was involved in racket of drug trafficker and from him and other associates, WY tablets weighing 5.568 kgs. were recovered. The cause of the writ petition being WP(Cril.) No. 40 of 2022 did not survive on revocation of the 1st detention order dated 13.09.2022 vide order dated 15.12.2022 and the writ petition was accordingly closed vide order dated 16.01.2023 giving liberty to the detenu. The revocation of the 1st detention order dated 13.09.2022 was done on technical ground after seeking advice of the Ld. A.G. and obtaining approval by the then detaining authority as corrective measure and Section 12 of the PIT-ND & PS Act permits issuance of fresh detention order. The bail application number was clearly indicated in the proposal letter dated 16.12.2022 submitted by the police. The representation dated 16.01.2023 was received on 17.01.2023 and on the same day forwarded to the DGP, Manipur for para-wise comment, to the Advisory Board and to the Government of India vide letter dated 19.01.2023. Para-wise comment from SP, Kangpokpi vide letter dated 20.01.2023 was received on 23.01.2023 and the same was disposed of by

considering the para-wise comment and the representation was rejected on 23.01.2023. It is stated that there is no delay on the part of the detaining authority. It is also stated that there is no delay on the part of the State Government and as such, the writ petition be rejected.

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

[9] Heard Mr. Serto T Kom, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A. for the State respondent and Mr. Kh. Samarjit, learned DSGI for the Union of India.

[10] Mr. Serto T Kom, learned counsel for the petitioner, submits that there is total non-application of mind in both the detention orders 13.09.2022 and 16.12.2022, as the same were issued on the ground that the detenu has filed bail application being Cril.Misc.(B) Case No. 59 of 2022 in connection with FIR No. 14(7)2022 G SPM-PS U/s 22(c)/29/60(3) ND & PS Act. He submits that the bail application being Cril.Misc.(B) Case No. 44 of 2022 of the detenu and his wife with reference to the same FIR was rejected on 10.10.2022. Thereafter, the bail application being Cril.Misc.(B) Case No. 59 of 2022 (as alleged in the detention order) was never filed by the detenu herein. Hence, it is total non-application of mind. He also refers to an order dated 06.02.2023 passed by this Court in WP(Cril.) No. 10 of 2023 where similar detention order dated 16.12.2022 against detenu's wife Mrs. Lhaineineng Haokip who was arrested in the

same FIR along with the detenu was set aside on the ground of non-application of mind that the bail application number was wrongly mentioned in the detention order and the grounds of detention.

[10.1] Mr. Serto T Kom, learned counsel, also attacks the detention order on the ground that there is violation of Section 3 (2) of the PIT-ND & PS Act and there is no new grounds for issuing the 2nd detention order dated 16.12.2022 and the same was a verbatim reproduction of the 1st detention order dated 13.09.2022. He submits that the 2nd detention order is liable to be set aside on this ground also. There is 6 days of unexplained delay by the State Government in disposal of the representation submitted by the detenu and the Central Government is yet to pass any order on the representation submitted by the detenu as on the date of filing of the writ petition. During the course of hearing, learned counsel for the petitioner informs this Court that the Central Government rejected the representation by way of Memorandum dated 15.03.2023 and the same was furnished to the detenu on 16.03.2023. He submits that there is no explanation for the delay of 2 months taken by the Central Government in disposing of the representation. Hence, it is prayed that the detention order be set aside.

[11] Mr. Th. Vashum, learned G.A. for the State respondents, submits that there is no delay on the part of the State Government in dealing with the detention order of the detenu. The 1st detention order was withdrawn on technical ground so as to rectify the same and thereafter, the

2nd detention order dated 16.12.2022 was issued. Hence, there is no defect in the 2nd detention order. It took only 6 days by the State Government in disposing of the detention order and the same has been explained in the counter affidavit, as the time taken in receiving the para-wise comment from the DGP Office. Hence, it is prayed that the writ petition be rejected.

[12] Mr. Kh. Samarjit, learned DSGI for the Union of India, submits that he has no specific instruction in this matter and this Court may pass appropriate order in the facts and circumstances of the case

[13] Heard the learned counsel for the parties, perused the materials available on record and the original file submitted by the State Government.

[14] In the present case, it is seen that the 1st detention order dated 13.09.2022 was revoked vide revocation order dated 15.12.2022 and the 2nd detention order dated 16.12.2022 was issued exactly on the same ground as contained in the 1st detention order. There is no new material in the 2nd detention order. It is also seen that in both the detention orders, filing of bail application being Cril.Misc.(B) Case No. 59 of 2022 in connection with FIR No. 14(7)2022 G SPM-PS U/s 22(c)/29/60(3) ND & PS Act. was mentioned. It is the specific case of the detenu that after rejection of Cril.Misc.(B) Case No. 44 of 2022 in connection with 14(7)2022 G SPM-PS U/s 22(c)/29/60(3) ND & PS Act, the detenu did not file any fresh bail application. On perusal of the original record submitted by the State

Government, it is seen that there is one application being Cril.Misc. Case No. 59 of 2022 in connection with FIR No. 14(7)2022 G SPM-PS U/s 22(c)/29/60(3) ND & PS Act wherein vide order dated 06.09.2022, the learned Special Judge (ND & PS), Senapati, permitted the Investigating Officer (IO) to interrogate the 4 (four) accused including the detenu herein, who were arrested in the same FIR but there is no bail application bearing Cril.Misc.(B) Case No. 59 of 2022 in connection with FIR No. 14(7)2022 G SPM-PS U/s 22(c)/29/60(3) ND & PS Act.

[15] It may be noted that vide order dated 06.02.2023 in WP(Cril.) No. 10 of 2023, this Court set aside the 2nd detention order dated 16.12.2022 with respect to the wife of the detenu herein, who was arrested in the same FIR, due to non-application of mind as Cril.Misc.(B) Case No. 59 of 2022 was also wrongly mentioned in the detention order. The present case is also squarely covered by the order dated 06.02.2023 as mentioned herein above.

[16] A 5 (five) Judge Constitution Bench of the Hon'ble Supreme Court held in **Hadibhandu Das vs. District Magistrate, Cuttack** reported as **AIR (1969) SC 43** at para 7 that *"In terms of Section 13(2) authorises the making of a fresh detention order against the same person against whom the previous order has been revoked or has expired, in any case where fresh facts have arisen after the date of revocation or expiry, on which the detaining authority is satisfied that such an order should be*

made. The clearest implication of Section 13 (2) is that after revocation of expiry of the previous order, no fresh order may issue on the grounds on which the order revoked or expired had been made.”

[17] Relying upon this judgment, in the case of **Chhagan Bhagwan Kahar vs. N.L. Kalna** reported as **(1989) 2 SCC 318** at para 12, the Hon’ble Supreme Court held as under:

“12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the court strikes down an earlier order by issuing rule it nullifies the entire order.”

[18] The above decision was relied in the case of **Anant Singh Alias Anant Kumar Singh vs. State of Bihar & Ors.** reported as **(2017) 13 SCC 229**. The crux of the above judgment says that when the detention order is revoked or expired or quashed by the Competent Court, there must be fresh facts for passing a subsequent detention order against the same person. In the present case, the 2nd detention order dated 16.12.2022 is

exactly a copy of the 1st detention order dated 13.09.2022, which was revoked vide order dated 15.12.2022. There is no new ground as mentioned in the above cited decision of the Hon'ble Supreme Court. Moreover, there is total non-application of mind of mentioning a wrong bail application number in both the detention orders. As mentioned above, this Court has already set aside similar detention order in the same FIR on the ground of mentioning a wrong bail application number as a facet of non-application of mind. The 2nd detention order is also liable to be set aside on the ground of non-application of mind as well as non-disclosure of new facts for issuance of the 2nd detention order.

[19] However, in the present case, the State Government took only 6 days while disposing of the detention order. The same has been explained in the counter affidavit and the disposal of the representation on 23.01.2023 was on the same day, para-wise comment was received from SP, Kangpokpi. Hence, there is no unexplained delay on the part of the State Government. The Central Government has not filed anything and there is no material on record to explain the delay of 2 months taken in disposal of the representation dated 16.01.2023 vide memorandum dated 15.03.2023 when the same was forwarded to the Central Government on 19.01.2023.

[20] In the case of **Sarabjeet Singh Mokha vs. The District Magistrate, Jabalpur** reported as **MANU/SC/1011/2021**, the Hon'ble

Supreme Court held that unexplained delay and non-disposal of the representation submitted by the detenu strike at the very root of the detention order as it affects the life and liberty of a person enshrined under Article 21 of the Constitution of India. Accordingly, the detention order is vitiated on this ground alone.

[21] Considering all the facts and circumstances and relevant case law in this regard, we are of the view that the detention order cannot be sustained for (i) non-disclosure of fresh material in the 2nd detention order dated 16.12.2022; (ii) non-application of mind while issuing the detention order as detail of bail application is wrongly quoted; and (iii) non-explanation of 2 months time taken in disposal of the representation by the Central Government. Accordingly, the detention order dated 16.12.2022 is set aside and the detenu, namely Mr. Thangkholen Haokip @ Thanglen Haokip, be released from detention forthwith, if not required in any other case.

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

[23] Return the original file to the State Government.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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