

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(Cril.) No. 31 of 2023

Mrs. Taslim Banu, aged about 29 years, W/o Md.
Kabir, aged about 31 years of Lilong Chingkhram
Maning, PO/PS Lilong, Thoubal District, Manipur.

..... Petitioner

-Versus-

1. The State of Manipur represented by the
Commissioner/Special Secretary (Home),
Government of Manipur, Secretariat Building, P.O.
& P.S. Imphal, Imphal West District, Manipur-
795001.
2. The Superintendent, Manipur Central Jail, Sajiwa,
P.O. Lamlong & P.S. Heingang, Imphal East,
Manipur- 795010.
3. The Union of India represented by the Deputy
Secretary (PIT-NDPS), Ministry of Finance,
Department of Revenue, near North Block, Room
No. 26, Church Road, RFA- Barrack, New Delhi-
110001.

..... Respondents

BEFORE

**HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Petitioner	::	Mr. Th. Punshiba, Advocate
For the Respondents	::	Mr. Th. Vashum, Mr. BR Sharma, CGC
Date of Hearing and Judgment & Order	::	06.04.2023.

JUDGMENT AND ORDER

(ORAL)

(M.V. Muralidaran, Acting CJ)

The wife of the detenu, Md.Kabir, presently detained in Manipur Central Jail, Imphal, has filed this writ petition seeking to quash the impugned detention order No.H-3301/101/2022-HD-HD, dated 21.10.2022 passed by the Special Secretary (Home), Government of Manipur and its confirmation order dated 26.12.2022 passed by the Commissioner (Home), Government of Manipur.

2. The facts in a nutshell are as under: On 8.6.2022, at around 7.40 pm, a process from the Lilong Police Station, based on information from a reliable source, conducted a search at the house of the detenu, during which process, they seized one transparent plastic container from the washroom of the detenu containing suspected Heroin No.4 (white and light brown in colour) weighing 7.5 grams. The detenu was arrested at 7.45 pm and the seizure was not witnessed by anyone in the locality. An FIR was lodged against the detenu vide FIR No.38(06)2022 LIL-PS under Section 21(b) of the ND & PS Act.

3. It is stated that on 9.6.2022, the detenu was remanded to police custody for a period of five days from

9.6.2022 to 13.6.2022 by the Judicial Magistrate First Class, Thoubal. Subsequently, on 13.6.2022, the detenu was produced before the learned Special Judge, ND & PS, Thoubal, and remanded to judicial custody for a period of 15 days from 13.6.2022 to 27.6.2022. The detenu was again arrested on 13.6.2022 for the trafficking of illicit drugs and sent to the Manipur Central Jail. However, there is no FIR or record to fortify the aforesaid re-arrest, except the above FIR.

4. It is further stated that, on 11.10.2022, the detenu filed a bail application before the learned Special Judge, ND & PS, Thoubal and was released on bail vide order dated 13.10.2022 passed in Cril (Mis.) Bail No.349 of 2022. Thereafter, impugned detention order No.H-3301/101/2022-HD-HD, dated 21.10.2022 was passed by the Special Secretary (Home), Government of Manipur, which was confirmed vide order dated 26.12.2022 passed by the Commissioner (Home), Government of Manipur.

5. The main plank of the argument advanced by learned counsel appearing on behalf of the petitioner is that the detenu was not informed about his right to make a representation to the authorities concerned against the detention order. It is further submitted that the grounds on which the order of detention

was passed were not explained to the detenu in the language which he understands and, therefore, the detention order is vitiated.

6. Pointing out to this court paragraph (7) of the detention order, learned counsel for the petitioner submitted that albeit the detenu has been termed as a “habitual offender” and it was averred that the detenu has transported drugs multiple times, there is on record to show that any case has been registered against the detenu, except the case in question, namely FIR No.38(06)2022 LIL-PS. When there is no case pending against the detenu, branding him as “habitual offender” shows the complete cavalier attitude of the respondent authorities in passing the order of detention.

7. The next argument made by learned counsel for the petitioner is that even though the detenu has not made any representation against the detention order, the authority concerned, in the order dated 26.12.2022, more particularly in paragraph (4), has stated that the representation given by the detenu was rejected by the Advisory Board. He submitted that this only shows the casual and mechanical manner in which the detention order has been passed.

8. Nextly, it is submitted that the detaining authority has passed the detention order solely based on his subjective satisfaction arrived at on the basis of the statement made by the detenu to the investigating officer. He pleaded that statements under Section 161 Cr.P.C. cannot be taken as sufficient ground in the absence of any supportive or corroborative grounds.

9. On the basis of the aforesaid submissions, Th. Punshiba, learned counsel for the petitioner prayed for setting aside of the detention order.

10. Mr. Th. Vashum, learned Deputy Government Advocate appearing on behalf of the respondent authorities reiterated the reasons that weighed with the respondent authorities in passing the impugned detention order and prayed for dismissing of this writ petition.

11. Heard learned counsel on either side and perused the documents available on record.

12. Personal liberty is of the widest amplitude covering a variety of rights and its deprivation shall only be in accordance with the procedure prescribed by law conformable to the mandate of the Constitution of India. It is beyond any cavil that the right of personal liberty is the most cherished fundamental

right. Preventive detention is a serious invasion of personal liberty and any improper exercise of power must be jealously watched and enforced by the court.

13. At this juncture, it is apposite to refer to Article 22(5) of the Constitution of India, which reads as under:

*“When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, **communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.**”*

(emphasis supplied)

14. The rights guaranteed to a person detained are stipulated under Article 22(5) of the Constitution of India. When a person is detained in pursuance of a preventive detention order, he has to be supplied with the grounds on which the order was made and he should be afforded the earliest opportunity of making a representation against the order. The right to make a representation carried within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order

of detention to the authorities who are required to consider a representation.

15. In the light of the aforesaid constitutional right and the law laid down by the Supreme Court, now let us analyse the case on hand.

16. Firstly, a perusal of the entire file produced by the respondent authorities does not show a whit of material in the form of a representation submitted by the detenu against the impugned detention order. No person knowing about his right to make a representation against the detention order will remain silent without making a representation for months together. At this juncture, it is appropriate to refer to the relevant portion of the order dated 26.12.2022 passed by the respondent authorities:

*“And whereas, the Advisory Board constituted under Section 9 of the said Act after due consideration of the material facts, circumstances, **representation submitted by the detenu** and hearing him in person in its sitting held on 19.12.2022 and report pronounced on 22.12.2022, has rejected the representation & unanimously decided that there are sufficient causes for detention of the detenu under the provisions of the said Act;”*

17. When the detenu has admittedly not made any representation against the detention order, it is not known how the Advisory Board has considered such representation and the said fact was reiterated in the order dated 26.12.2022 passed by the respondent authority. In fact, the non-making of representation by the detenu is further fortified by the stand taken by the respondent authorities in the counter affidavit itself to the following effect:

*“9. That, with reference to Para No.6 of the Writ Petition, the deponent begs to submit that Advisory Board in its original proceeding of sitting didn’t mention about consideration and rejection/disposal of the same. **The same had been inadvertently printed while preparing the confirmation orders out of human error.**”*

[emphasis supplied]

18. The aforesaid averment in the counter affidavit clearly establishes that the detenu has not made any representation against the detention order.

19. The Apex Court in **Lallubhai Jogibhai Patel v. Union of India, (1981) 2 SCC 427**, has emphatically held that

the mere statement that the grounds of detention were fully explained to the detenu, who does not know English, is not sufficient compliance of the mandate of Article 22(5) of the Constitution. The relevant portion of the said decision is reproduced hereunder:

*“ ‘Communicate’ is a strong word which means that sufficient knowledge of the basic facts constituting the ‘grounds’ should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the ‘grounds’ to the detenu is to enable him to make a purposeful and effective representation. **If the ‘grounds’ are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands, then that purpose is not serve, and the constitutional mandate in Article 22(5) is infringed.**”*

20. That apart, the Hon’ble Apex Court in ***Powanammal v. State of Tamil Nadu and another, (1999) 2 SCC 413***, has categorically held that non-supply of the detention order in a language that the detenu understands impairs the detenu’s right to make an effective representation. Similarly, in ***Chaju Ram v. The State of Jammu and Kashmir, (1970) 1***

SCC 536, the Hon'ble Apex Court held that handing over the grounds of detention to detenu in an alien language frustrates his right to make an effective representation.

21. The detenu, in the instant case, is an illiterate, as submitted by learned counsel for the petitioner. By virtue of the decisions referred supra, oral explanation or oral translation of the grounds of detention would not amount to communicating the grounds to a detenu. The respondent authorities have not produced any document to show that the grounds of detention have been furnished to the detenu in writing in a language which he understands. In the communication dated 26.10.2022, the Superintendent, Manipur Central Jail, Sajiwa, has stated as under:

*“... a copy of the Grounds of detention along with relevant documents was served to the detenu namely, Mohamed Kabir (31 years) S/o (L) Md. Hassan Khan of Lilong Chingkham Maning, PO/PS-Lilong, Thoubal District, Manipur and **obtained his acknowledgement receipt in all the connected documents of the copy marked “O/C” in token of receipt after translating the contents in the language known to him on 24/10/2022 at 6.30 PM....”***

In the order dated 24.10.2022, an endorsement has been made to the following effect:

“Received a similar copy and I understand all the contents.”

But, in the grounds of detention in page 1 of the writ petition it is mentioned only as :

“Md. Kabir Ali Date 24/10/2022 Time : 6:30 P.M.”

21. As this Court doubted the very endorsement made by the detenu to the aforesaid effect, the respondent authorities were directed to produce the original files. On perusal of the original file pertaining to the detention of the detenu, firstly, we have not found any document to show that the grounds of detention were translated and given to the detenu in the language which he understands. The endorsement, referred supra, only seems to be a subsequent insertion by the respondent authorities. The respondents have miserably failed to show that the grounds of detention and relied upon documents were communicated to the detenu in the language known to him.

22. The action of the respondent authorities falls foul of the constitutional made under Article 22(5) of the Constitution of India and is also against the dictum laid down by the Hon’ble

Apex Court in the judgments referred supra. The ultimate conclusion this court can infer is that the entire procedure adopted by the respondent authorities reeks of malafide and reveals a complete non-application of mind.

23. In view of the major flaw in the orders passed by the respondent authorities which has been referred supra, the other grounds urged by learned counsel for the petitioner become purely academic and are not necessary to be dealt with in the present writ petition.

24. For the foregoing reasons, the writ petition is allowed and the detention order No.H-3301/101/2022-HD-HD, dated 21.10.2022 passed by the Special Secretary (Home), Government of Manipur and its confirmation order dated 26.12.2022 passed by the Commissioner (Home), Government of Manipur, stand quashed and the detenu is set at liberty. The respondents are directed to release the detenu forthwith, unless his detention is otherwise required as per law in any other case.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil