

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 36 of 2023

Mayangmayum Farish Khan @ Laly aged about 25 years, S/o (L)
Sarafat of Sangaiyumpham Nungphou, P.O. Wanjing, P.S. Thoubal,
Thoubal District, Manipur

..... *Petitioner/s*

- *Versus* -

1. State of Manipur represented by Chief Secretary, Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
2. Commissioner (Home), Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
3. Special Secretary (Home), Government of Manipur, Babupara, Old Secretariat Building P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
4. Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Near North Block, Room No. 26-Church Road, RFA-Barrack, New-Delhi-110001.
5. The Superintendent of Manipur Central Jail, Sajiwa near Khabeisoi, P.O. Porompat, P.S. Heingang, Imphal East District, Manipur.

.....*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. Ajmal Hussain, Advocate
For the respondents :: Mr. O. Ratankumar, Dy. G.A. for the State
and Mr. BR. Sharma, CGSC for the Union
of India.
Date of Order :: 04.04.2023

O R D E R (ORAL)

A. Guneshwar Sharma, J.

[1] The detenu, namely Mayangmayum Farish Khan @ Laly (accused No. 1), was arrested on 12.09.2022 in connection with FIR No. 153(9)2022 TBL-PS u/s 21(b)29/60(3) ND & PS Act. From his possession, 58.54 gms of suspected Heroin No. 4 was seized and he was taken into custody. The detenu filed a bail application being Cril.Misc.(B)Case No. 389 of 2022 and the same has been dismissed on default vide order dated 28.12.2022 by the Special Judge (ND & PS), Thoubal.

[2] Vide order dated 05.12.2022, 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 manufacturing and trafficking of narcotic drugs and psychotropic substances for a period of three months until

further orders. It was stated that the detenu filed bail application being Cril.Misc.(B)Case No. 389 of 2022 and was likely to be released on bail and after release on bail, he would continue his illegal activities in trafficking of illicit drugs. Vide letter dated 09.12.2022, the Commissioner (Home), Government of Manipur furnished the grounds of detention to the detenu under Section 3(3) of PIT-ND & PS Act.

[3] The detenu submitted 4 (four) similar representations all dated 01.02.2023 to: (i) the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India, New Delhi, (ii) the Chief Secretary, Government of Manipur, (iii) the Special Secretary (Home), Government of Manipur and (iv) the Advisory Board, ND & PS through the Superintendent, Manipur Central Jail, Sajiwa. Vide order dated 31.01.2023, the Commissioner (Home), Government of Manipur confirmed the detention order dated 05.12.2022 and fixed the period of detention for 12 months from the date of detention. The State Government forwarded the representation dated 01.02.2023 of the detenu to the Central Government vide letter dated 07.02.2023. Vide letter dated 09.02.2023, the Deputy Secretary (Home), Government of Manipur informed the detenu that his representation was rejected being devoid of merit.

[4] During the course of hearing, a copy of the memorandum dated 13.03.2023 issued by the Central Government rejecting the representation of the detenu was placed before this Court and the same was taken in record.

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

- (i) Document was not clear;
- (ii) grounds of detention was not properly formulated;
- (iii) The detenu was involved in a sole Criminal Case;
- (iv) The bail application was rejected later on;
- (v) There was violation of mandatory provision of the PIT-ND & PS Act; and
- (v) No reason was given for rejecting the representation.

[6] The State Government filed counter affidavit and stated that the detenu was arrested for possession of 58.54 gms. of Heroin No. 4 and he was involved in the business of Cough Syrup, WY tablet and other illicit drug and he was a habitual offender and he was a member of the syndicate. It is stated that there was no violation of the mandatory provision of the PIT-ND & PS Act and all the necessary steps were complied within the stipulated time and there is no undue delay on the part of the State Government in dealing with the present detention.

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

[8] Heard Mr. Ajmal Hussain, learned counsel for the petitioner, Mr. O. Ratankumar, learned Dy. G.A. for the State respondents and Mr. BR. Sharma, learned CGSC for the Union of India.

[9] Mr. Ajmal Hussain, learned counsel for the petitioner, submits that both the State Government and Central Government could not properly explain the delay of 9 days taken by the State Government and 41 days taken by the Central Government in disposing of the representation of the detenu. As such, the detention order dated 05.12.2022 is liable to be set aside on this ground alone.

[10] Mr. O. Ratankumar, learned Dy. G.A. for the State respondents, submits that 8 days time taken by the State Government in disposing of the representation is not an inordinate delay when the statute does not provide for strict time limit and the same is reasonable and is also explained in the counter affidavit. He prays that writ petition may be rejected.

[11] Mr. BR. Sharma, learned CGSC for the Central Government, submits that the representation dated 01.02.2023 was rejected by the Ministry vide memorandum dated 13.03.2023. He further submits that some time is taken in getting the para-wise comment and other inputs from the State Government and delay is not fatal. He prays that the writ petition may be rejected.

[12] We have considered the rival submission made by the learned counsel for the parties and perused the materials available on record.

[13] We do not find any inordinate delay on the part of the State Government in disposing of the representation and the time taken of 8 days has been explained and other mandatory provisions of the PIT-ND & PS Act have also been complied. However, it took 41 days for the Central Government in rejecting the representation and in the memorandum dated 13.03.2023, there is no explanation at all for the delay. In absence of any reply filed by the Central Government, it can be presumed that the delay of 41 days in disposing of the representation has not properly been explained. It is settled proposition of law that unexplained delay in disposal of the representation of the detenu is fatal.

[14] Accordingly, the detention order dated 05.12.2022 and the confirmation order dated 31.01.2023 are set aside and the detenu, namely Mayangmayum Farish Khan @ Laly, be released from detention forthwith, if not required in any other case.

[15] Writ petition is allowed on the ground of unexplained delay in disposal of the representation by the Central Government. No cost.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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MARING

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