

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

W.P.(Cril.) No.37 of 2023

Md. Aktar Khan, S/o Ayub Khan, a PIT-ND&PS detenu, a resident of
Lilong Nungei, PO & PS – Lilong, Thoubal District, Manipur.

..... *Petitioner/s*

– Versus –

1. The State of Manipur represented by Chief Secretary, Government of Manipur at Old Secretariat, Imphal, PO & PS – Imphal, Imphal West District, Manipur – 795001.
2. The Commissioner (Home) / Special Secretary (Home), Government of Manipur at Old Secretariat, Imphal, PO & PS – Imphal, Imphal West District, Manipur – 795001.
3. The Union of India through the Deputy Secretary (PITNDPS), Ministry of Finance, Department of Revenue, Room No-202 Jeevan Tara Building, New Delhi – 110001.

.... *Respondent/s*

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner : Ms. Th. Rosy, Advocate
For the Respondents : Mr. Th. Vashum, GA for R-1 & 2
Mr. W. Darakishwor, Sr.PCCG for R-3
Date of Hearing and
Judgment & Order : **19.04.2023**

JUDGMENT & ORDER
(ORAL)

A. Guneshwar Sharma, J. :

[1] The detenu was arrested on 23.05.2022 by a team of NAB PS in connection with FIR No.22(05)2022 NAB PS under Section 21(c)/60(3) ND&PS Act. From his possession, 25 soap cases suspected to be heroin weighing about 300 grams was seized from a Tata Truck driven by him. He was remanded to police custody and then to judicial custody.

[2] Vide order dated 21.11.2022 in Cril.Misc.(B) Case No.316 of 2022 passed by the Ld. Special Judge, ND&PS, Manipur, the detenu was released on default bail on failure to submit charge-sheet within the stipulated period of 180 days.

[3] Vide order dated 05.12.2022 issued by Special Secretary (Home), Government of Manipur under Section 3(1) of the Prevention of Illicit Traffic in

Narcotic Drugs and Psychotropic Substances (ND&PS) Act, 1988, the detenu was taken into preventive detention to prevent him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of 3(three) months until further order. It is stated that he was released on bail in connection with the bail application being Cril.Misc.(B) Case No.316 of 2022 and he was likely to continue his illegal activities of illicit trafficking of narcotic drugs and psychotropic substances.

[4] Vide letter dated 09.12.2022, the Commissioner (Home), Government of Manipur furnished grounds of detention to the detenu under Section 3(3) of the PIT-ND&PS Act. It was stated that the detenu was dealing in transportation of illegal drug from Manipur to Assam and he was a part of drug cartel, supplying drug in different parts of the State and since normal criminal proceeding could not tackle his case, he was taken into preventive detention. It is stated that he has right to make representation to the State Government as well as to the Central Government against the detention order.

[4.1] The detenu made 2(two) similar representations both dated 25.01.2023 to the Chief Secretary (Home), Government of Manipur and Deputy Secretary, PIT-ND&PS, Ministry of Finance, Revenue Department, Government of India through Superintendent of Manipur Central Jail, Sajiwa, Manipur for revocation of the detention order on the ground that he is innocent having family, he knows only Manipuri language and the ground of detention

was not explained to him in Manipuri and was not furnished with translated copy of the documents annexed in the ground of detention.

[4.2] The detention order was issued after the detenu was released on default bail without any material.

[5] Vide order dated 29.01.2023, Commissioner (Home), Government of Manipur confirmed the detention order dated 05.12.2022 and fixed the period of detention as 12(twelve) months as provided under Section 11 of the PIT-ND&PS Act.

[6] By another order dated 02.02.2023, Commissioner (Home), Government of Manipur rejected the representation dated 25.01.2023 submitted by the detenu being devoid of any merit.

[7] The State Government filed counter affidavit and stated that the detenu was habitual offender and involved in transportation of narcotic drugs and psychotropic substances across the North-East India and he was taken into preventive detention for preventing him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances. It is also stated that in the proceeding before the Advisory Board, the detenu was explained to in detail the grounds of detention and he was heard in person and examined in Manipuri language. The representation dated 25.01.2023 was received by the State Government on 27.01.2023 and on the same day, it was forwarded to the Central Government and to the DGP, Manipur for furnishing parawise

comments. After receiving the parawise comments, the State Government confirmed the detention order vide order dated 29.01.2023. After considering all the materials available on record, the representation dated 25.01.2023 was rejected vide order dated 02.02.2023.

[8] The Central Government also filed an affidavit dated 24.03.2023. It was stated that the representation dated 25.01.2023 was received by the Ministry from the State Government through e-mail dated 30.01.2023 and the same was kept in abeyance as per the **Judgment of the Hon'ble Supreme Court of India dated 04.03.2020 in W.P.(Crl) No.362 of 2019 titled Ankit Ashok Jalan Vs. Union of India** during pendency of the representation submitted by the detenu before the Advisory Board. Subsequently, parawise comments along with confirmation order dated 29.01.2023 by the State Government was forwarded to the Ministry of Finance, Revenue Department, Government of India through e-mail dated 02.02.2023. After examining the facts of the case and the relevant materials provided by the State Government, the matter was submitted to the competent authority, i.e., Secretary (Revenue), Government of India and rejected the representation vide memorandum dated 13.03.2023 and stated that time taken by the Central Government in disposal of the representation is not fatal.

[9] Heard Ms. Th. Rosy, learned counsel for the detenu, Mr. Th. Vashum, learned GA for the State Government and Mr. W. Darakishwor, learned Sr.PCCG for the Union of India.

[10] Ms. Th. Rosy, learned counsel for the detenu submits that there is no material to take the detenu under detention after his release on default bail by the Ld. Special Court and the same was done in routine manner and delay of 8(eight) days taken by the State Government in disposal of the representation has not been properly explained. Moreover, Central Government had not explained delay of 42 days while disposing the representation submitted to the Central Government. Hence, the detention order dated 05.12.2022 is vitiated and liable to be set aside.

[11] Mr. Th Vashum, learned GA for the State Government submits that the State Government have complied all the mandatory provisions of the PIT-ND&PS Act. The Detention order and the representation are intimated to the Advisory Board and the grounds of detention was also furnished within the stipulated period of 5(five) days. The representation dated 25.01.2023 was received on 27.01.2023 and the same was duly rejected on 02.02.2023 after receiving parawise comments from the DGP Office. Hence, there is no delay on the part of the State Government and the Writ Petition be dismissed.

[12] Mr. W. Darakishwor, learned Sr.PCCG submits that the representation dated 25.01.2023 was received by the Ministry on 30.01.2023 and the parawise comments was received on 02.02.2023 and the representation was rejected vide memorandum dated 13.03.2023 and submits that time taken by the Central Government is not fatal and the Writ Petition may be dismissed.

[13] Considered the rival submissions of the learned counsels for the parties, perused the materials on record and the relevant provisions and the decisions of the superior Courts in this Court.

[13.1] It is seen that the State Government have complied all the mandatory statutory requirements and after receiving of the parawise comments from the Police, the representation was rejected on 02.02.2023. So, there is no inordinate delay on the part of the State Government in disposal of the representation submitted by the detenu.

[13.2] However, as per the affidavit of the Central Government, the representation was received on 30.01.2023 from the State Government and the parawise comments was received on 02.02.2023 and the representation of the detenu was rejected vide memorandum dated 13.03.2023. In the affidavit filed by the Central Government, there is no explanation for the period from 02.02.2023 to 13.03.2023. It took 42 days by the Central Government in disposal of the representation of the detenu. After deducting the 3(three) days for receiving the parawise comments from the State Government, it took 39 effective days for the Central Government in disposal of the representation and the same is not explained. Moreover, in the affidavit, the Central Government also relied on **the minority view of the Hon'ble Supreme Court in the case of Ankit Ashok Jalan Vs. Union of India reported as 2020 (16) SCC 127** for

keeping in abeyance the consideration of the representation submitted by the detenu when the same was pending before the Advisory Board.

[13.3] It may be pointed out that this Court in earlier cases, expressed its displeasure to the repeated reliance on the Minority View in the case of Ankit Ashok Jalan (supra) by the Central Government where the Majority View held that the authority ought to have considered the representation independently without waiting the opinion of the Advisory Board. Kindly see order dated 27.02.2023 passed by this Court in W.P.(Crl) No.19 of 2023.

[14] Unexplained delay in disposal of the representation strikes to the very root of the detention order as right and liberty of persons are involved.

[15] 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 in considering the representation and the failure to communicate its rejection vitiates the detention order.

[16] In the present case, the Central Government has failed to explained the period from 02.02.2023 to 13.03.2023 which it took for disposal of the representation submitted by the detenu.

[16.1] Accordingly, the detention order dated 05.12.2022 is set aside on this ground alone.

[16.2] The detenu namely, Md. Aktar Khan, S/o Ayub Khan, a resident of Lilong Nungei, PO & PS - Lilong, Thoubal District, Manipur be released from detention immediately if not required in any other case and all consequential proceedings irrespective of the detention order are also set aside.

[16.3] The Writ Petition is allowed. No cost.

JUDGE

ACTING CHIEF JUSTICE

-Larson

FR/NFR