

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 38 of 2023

Shri Gopal Sarkar, aged about 34 years, S/o (Late) Chittaranjan Sarkar, resident of 230, Shaktifarm No. 2, Kali Mandir Ward No. 2, Gurugram, Udham Singh Nagar, Uttarakhand-263151 at present Moreh Ward No. 3, P.O. & P.S. Moreh and District Tengnoupal, Manipur-795131.

..... Petitioner/s

- Versus -

1. The State of Manipur through the Special Secretary (Home), Government of Manipur, Manipur Secretariat, Imphal West, Manipur-795001.
2. The Director General of Police, Government of Manipur, Babupara, Imphal West, Manipur-795001.
3. The Superintendent of Police, Imphal West District, Government of Manipur, Manipur-795001.
4. The Officer-in-Charge, Singjamei Police Station, Imphal West District, Government of Manipur-795008.
5. 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, Government of India, 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. Sh. Athoi Singh, Advocate
For the respondents	:: Mr. Kh. Athouba, G.A. for the State and Mr. S. Samarjeet, Sr. PCCG for the Union of India.
Date of Order	:: 27.03.2023

ORDER (ORAL)

A. Guneshwar Sharma, J.

[1] The detenu, namely Gopal Sarkar, was arrested on 26.05.2022 along with other co-accused in connection with FIR No. 83(05)2022 SJM-PS u/s 9-A/25-A/29 ND & PS Act r/w 60(3) ND & PS Act. From their possession, found one parcel in the name of the detenu containing Clavitol-50, Tramadol Hcl Capsules I.P. 50 mg altogether 3380 stripes (each stripe contained 10 nos/piece of capsule i.e 33800 capsules) of Clavitol-50, Tramadol Hcl Capsules I.P. 50 mg were recovered and he was taken into custody.

[2] Vide order dated 12.07.2022 in Cril.Misc.(B)Case No. 178 of 2022, the learned Special Judge (ND & PS), Manipur Imphal released the detenu on inerim bail for 3 (three) months on medical ground. Vide order dated 11.10.2022, the interim bail was extended for another 2 (two) months and vide order dated 08.12.2022, the interim bail was again extended for another 2 (two) months till 06.02.2023.

[3] Vide order dated 09.12.2022, the Commissioner (Home), Government of Manipur issued the detention order against 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 trafficking of narcotic drugs and psychotropic substances for a period of three months until further orders. It was stated that he was highly suspected to be released on bail in connection with Cril.Misc.(B) Case No. 178 of 2022.

[4] Vide order dated 14.12.2022, the Commissioner (Home), Government of Manipur furnished the grounds of detention to the detenu under Section 3(3) of the PIT-ND & PS Act, 1988. The detenu submitted 2 (two) similar representations both dated 13.01.2023 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 revoking the detention order.

[5] Vide order dated 27.01.2023, the Commissioner (Home), Government of Manipur rejected the representation dated 13.01.2023 submitted by the detenu as being devoid of merit. Vide letter dated 13.02.2023, the Commissioner (Home), Government of Manipur confirmed the detention order dated 09.12.2022.

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

- (i) The detenu was released on interim bail on medical ground;
- (ii) There was no likely of him indulging in illicit trafficking of drugs; and
- (iii) No proper document was placed before the Authority.

[7] The State Government filed counter affidavit and stated that the detenu is the main accused in illicit trafficking of drugs and 3380 stripes (each stripe contained 10 nos/piece of capsule i.e 33800 capsules) of Clavitol-50, Tramadol Hcl Capsules I.P. 50 mg were seized from him. It is stated that there was no delay on the part of the State Government in dealing with the case and necessary information was furnished to the Advisory Board and to the Central Government. It is stated that the interim bail was extended from time to time.

[8] The Central Government did not file any reply but during the course of hearing, Mr. S. Samarjeet, learned Sr. PCCG for the Central Government, produced a copy of the e-mail dated 13.03.2023 sent by the Section Officer, PIT-ND & PS Division, Ministry of Finance, Department of Revenue, Government of India to him where it was stated that the representation dated 13.01.2023 was received by the Ministry on 19.01.2023 by e-mail and the para-wise comments were received on

27.01.2023 from the State Government. Further, it was stated that the representation of the detenu was rejected by the Central Government vide memorandum dated 13.03.2023.

[9] Heard Mr. Sh. Athoi Singh, learned counsel for the petitioner, Mr. Kh. Athouba, learned G.A. for the State respondents and Mr. S. Samarjeet, learned Sr. PCCG for the Union of India.

[10] Mr. Sh. Athoi Singh, learned counsel for the petitioner, submits that it took 14 days for the State Government and 59 days for the Central Government in disposing of the representation submitted by the detenu. He further submits that there is no proper explanation for the time taken in disposing of the representation and he prays that the detention order be set aside on this ground alone and the detenu be set at liberty.

[11] Mr. Kh. Athouba, learned G.A. for the State Government, submits that there is no delay on the part of the State Government in dealing with the detention of the detenu. He submits that the representation dated 13.01.2023 was received on 17.01.2023 and the para-wise comment was called on 19.01.2023 from the DGP, Manipur and the same was furnished on 24.01.2023 and on the basis of the materials available on record, the State Government rejected the representation on 27.01.2023. As such, there is no delay on the part of the State Government. Moreover, the confirmation order was issued on 13.02.2023 within the stipulated 3 months of its validity period. He prays that the writ petition may be rejected.

[12] Mr. S. Samarjeet, learned Sr. PCCG for the Central Government, submits that the representation was received by the Ministry on 19.01.2023 by e-mail and the para-wise comment was received on 27.01.2023. Thereafter, the representation was placed before the competent authority and rejected vide memorandum dated 13.03.2023. Accordingly, he prays that the writ petition may be rejected.

[13] On perusal of the materials available on record, it is found that it took 14 days for the State Government in disposal of the representation and proper explanation has been given and the representation was disposed of within 3 days on receipt of the para-wise comment from the Office of the DGP, Manipur. As such, we do not find any inordinate delay on the part of the State Government. However, it took 59 days for the Central Government after deducting 6 days from the date of receipt of the representation by the Central Government and 8 days after deducting the time taken in receipt of the representation and the para-wise comment from the State Government. In all effective 45 days were taken by the Central Government in rejecting the representation. However, there is no proper explanation for 45 days time taken by the Central Government in disposing of the representation. In the case of **Rajammal v. State of T.N.** reported in **(1999) 1 SCC 417: 1999 SCC (Cri) 93, at page 421** and **Sarabjeet Singh Mokha vs. The District Magistrate, Jabalpur** reported as **MANU/SC/1011/2021**, the Hon'ble Supreme Court held that unexplained delay in disposal of the representation vitiates the detention order.

[14] Accordingly, the detention order dated 09.12.2022 and the confirmation order dated 13.02.2023 are set aside for the delay in disposal of the representation by the Central Government and the detenu, namely Gopal Sarkar, 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

KH. JOSHUA
MARING

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