

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Crl.) No. 39 of 2023

Mrs. Nienglalchawi, aged about 26 years, W/o Solensei Haokip, resident of B. Vengnom Village, P.O. & P.S. Churachandpur, District: Churachandpur, Manipur-795135.

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Special Secretary (Home), Government of Manipur, Manipur Secretariat, South Block, P.O. & P.S. Imphal, District: Imphal West, Manipur-795001.
2. The Union of India represented by Secretary (Finance), Government of India, Ministry of Finance, North Block, New Delhi-110001.
3. The Superintendent, Manipur Central Jail, Imphal, P.O. & P.S. Imphal, District: Imphal West, Manipur-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. L. Shashibhushan, Sr. Advocate
For the respondents	:: Mr. Th. Vashum, G.A. for the State and Mr. S. Kaminikumar, CGC for the Union of India.
Date of Order	:: 27.03.2023

ORDER (ORAL)

A. Guneshwar Sharma, J.

[1] The detenu, namely Mr. Solensei Haokip, was arrested on 09.05.2022 in connection with FIR No. 17(5)2022 KPI PS u/s 21(c)/29/60(3) NDPS Act. From his possession 212 Shop cases containing suspected Heroin No. 4 weighing 2.131 Kgs. was recovered and he was remanded to police custody and later on to judicial custody. Vide order dated 15.11.2022 in Cril.Misc.Case No. 63 of 2022, the Ld. Special Judge (ND & PS), Senapati rejected the application under Section 167(2) Cr.P.C. read with Section 37 of ND & PS Act on the ground that extending the period for completing the investigation under Section 36 (A)(4) of ND & PS Act was disposed of on 09.11.2022.

[2] Vide order dated 25.11.2022, the Special Secretary (Home), Government of Manipur issued the detention order to 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.

[3] Vide letter dated 05.12.2022, the Special Secretary (Home), Government of Manipur furnished the grounds of detention to the detenu wherein it was stated that 2.131 Kgs. of Heroin No. 4 was seized from him and the co-accused. It was stated that the detenu filed Cril.Misc.Case No.

63 of 2022 and he was likely to be released on bail. It was stated that the extension of time under Section 36 (A)(4) of ND & PS Act was required to be modified and releasing the accused on bail on expiry of 180 days would hamper the progress of investigation and as an alternative measure, preventive detention order was passed. However, there is no explanation for not furnishing the grounds of detention to the detenu within 5 days of detention as under Section 3(3) of the PIT-ND & PS Act.

[4] Vide letter dated 29.12.2022 addressed to the Superintendent, Manipur Central Jail, Sajiwa, the detenu submitted 2 (two) similar representations all dated 29.12.2022 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 for revocation of the detention order dated 25.11.2022 on the ground that no recovery was made from him, he was wrongly implicated and the default bail was already rejected on 15.11.2022 and no reason for likely to be released on bail was mentioned. It was prayed that a copy of the representation be sent to the Advisory Board and to the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India, New Delhi.

[5] Vide order dated 11.01.2023, the Commissioner (Home), Government of Manipur rejected the representation submitted by the detenu as being devoid of merit. Vide order dated 27.01.2023, the Commissioner (Home), Government of Manipur confirmed the detention

order dated 25.11.2022 and fixed the period of detention for 12 months from the date of detention.

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

- (i) Non-application of mind while passing the detention order;
- (ii) Delay in disposal of the representation by the State Government; and
- (iii) Furnishing the grounds of detention beyond 5 days in violation of under Section 3 (3) of the PIT-ND & PS Act.

[7] The State Government filed counter affidavit and it was stated that the detenu and co-accused were habitual drug offender and from their possession, Heroin No. 4 of 2.131 Kgs (of commercial quantity) was recovered. Further, it was stated that they were indulging in illicit trafficking of drugs thereby earning illegal profit and as an alternative measure, preventive detention was taken. It was also stated that the representation dated 29.12.2022 forwarded by IG (Prisons) was received on 02.01.2023.

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

[9] Heard Mr. L. Shashibhushan, learned senior counsel for the petitioner, Mr. Th. Vashum, learned G.A. for the State respondents and Mr. S. Kaminikumar, learned CGC for the Union of India.

[10] Mr. L. Shashibhushan, learned senior counsel for the petitioner, submits that on 05.12.2022, the grounds of detention was furnished to the detenu with respect to the detention order dated 25.11.2022, i.e. after expiry of 10 days from the date of detention. The learned senior counsel draws the attention of this Court to the provision of Section 3(3) of the PIT-ND & PS Act. He further submits that the grounds of detention ought to be furnished within 5 days in ordinary case and in exceptional circumstances and for the reasons to be recorded within 15 days from the date of detention. He points that in the letter dated 05.12.2022 containing the grounds of detention, there is no recording of the circumstances under which the detention order could not be furnished within the stipulated period of 5 days and as such, the detention order is liable to be set aside on this ground alone. He also submits that the State Government took 12 days in disposal of the representation submitted by the detenu and the same is not explained. The Central Government is yet to pass any order with regard to the representation submitted by the detenu. For violation of all the statutory requirements, Mr. L. Shashibhushan, learned senior counsel, prays for setting aside of the detention order and the said detenu be set at liberty or release the detenu from detention.

[11] Mr. Th. Vashum, learned G.A. for the State respondents, submits that the representation dated 29.12.2022 was forwarded by the IG (Prisons) vide letter dated 30.12.2022 and was received on 02.01.2023. On

05.01.2023, para-wise comment was called from DGP, Manipur and the same was furnished on 06.01.2023. After considering the view of the Advisory Board and the para-wise comment, the State Government rejected the representation dated 29.12.2022 on 11.01.2023. He submits that there is no inordinate delay on the part of the State Government. He further submits that the grounds of detention was furnished within the outer limit of 15 days and as such, there is no violation of the mandatory provisions.

[12] Mr. S. Kaminikumar, learned CGC for the Central Government, submits that he has no specific instruction in this matter and this Court may pass appropriate order.

[13] Considering the submissions of the learned counsel for both the parties at bar and on perusal of the documents on record, it is seen that the grounds of detention was furnished on 05.12.2022 i.e. 10 days after the detention order dated 25.11.2022. It is the mandate of Section 3(3) of the PIT-ND & PS Act that ordinarily, grounds of detention should be furnished within 5 days and in exceptional cases and for the reasons to be recorded in writing, the same may be furnished within 15 days from the date of detention. In the present case, there is no recording of such reasons for not furnishing the grounds of detention within the stipulated period of 5 days. As such, the State Government cannot claim the benefit of the outer limit of 15 days as an exceptional case, when no reason has been recorded in this regard. The detention order is bad on this ground alone. However, we do

not find any undue delay in disposal of the representation of the detenu by the State Government and 13 days time taken in disposing of the representation has been explained properly by the State Government. On the other hand, the Central Government is yet to pass any order on the representation submitted by the detenu even after 88 days from the date of receiving of the representation. There is no explanation in this regard and the detention order is liable to be set aside on this ground also. 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 v. The District Magistrate, Jabalpur** reported as **MANU/SC/1011/2021**, the Hon'ble Supreme Court held that non-disposal and/or delay in disposal of the representation of the detenu vitiates the detention order.

[14] Accordingly, the detention order dated 25.11.2022 and confirmation order dated 27.01.2023 are set aside for delay in furnishing grounds of detention and non-disposal of the representation by the Central Government. The detenu, namely Solensei Haokip, be released from detention forthwith, if not required in any other case.

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

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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