

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 40 of 2023

Lamneihat Haolen Thadou @ Hatpi (27 years), W/o
Jangminlen Haolen Thadou of Gamnomjang Village, P.O &
P.S. and District: Churachandpur.

..... Petitioner/s

- Versus -

- 1.** The State of Manipur, through the Chief Secretary,
Government of Manipur at Babupara, Imphal-795001;
- 2.** The Commissioner (Home), Government of Manipur at
Babupara, Imphal-795001;
- 3.** The Union of India – through the Secretary, Ministry of
Finance, Department of Revenue, Near North Block, Room
No. 26, Church Road, RFA, Barrack, 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. Th. Babloo, Advocate
For the respondents	::	Mr. O. Ratankumar, Dy. G.A. for the State and Mr. Boboy Potsangbam, CGSC for the Union of India.
Date of Order	::	17.04.2023

ORDER(ORAL)

A. Guneshwar Sharma, (J)

[1] The detenu was arrested on 01.10.2022 by a team of NAB-PS from Tuibong Bazar, Churachandpur in connection with FIR No. 33(10)2022 NAB-PS u/s 18(c) ND & PS Act. From her possession, 1 kg of opium was recovered and she was produced before the Court and remanded to judicial custody. When the detenu was in custody, the 1st detention order dated 02.11.2022 under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND & PS Act), 1988 was issued by the Special Secretary (Home), Government of Manipur for effectively preventing her from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of three months until further orders. It is also stated that the detenu filed a bail application being Cril.Misc.(B) Case No. 38 of 2022 before the Special Judge (ND & PS), Churachandpur in connection with FIR No. 33(10)2022 NAB-PS u/s 18(c) ND & PS Act. Vide order dated 15.12.2022, the Commissioner (Home), Government of Manipur revoked the 1st detention order dated 02.11.2022 under section 12(a) of the PIT-ND & PS Act with immediate effect. The bail application being Cril.Misc.(B) No. 33 of 2022 was disposed of as not pressed vide order dated 28.11.2022 by the Ld. Special Judge, ND & PS, Churachandpur. The 2nd detention order dated 16.12.2022 against the detenu was issued by the Commissioner (Home),

Government of Manipur exactly the same grounds as the 1st detention order dated 02.11.2022. Vide order dated 18.01.2023, the State Government rejected the representation submitted by the detenu.

[2] The detention was challenged mainly on the ground that the 2nd detention order dated 16.12.2022 was issued on the same grounds as the 1st detention order dated 02.11.2022 which was revoked vide order dated 15.12.2022. It is also stated that after withdrawal of the bail application being Cril.Misc.(B) Case No. 33 of 2022 vide order dated 28.11.2022, the detenu did not file any fresh bail application and the Central Government has not disposed of the representation till the date of filing.

[3] The State Government filed counter affidavit where it is stated that the detenu was taken into preventive detention as she was a habitual offender. The 1st detention order dated 02.11.2022 was withdrawn on technical ground on the advice of the AG, Mannipur and as a corrective steps, the 2nd detention order was freshly issued. Hence, there is no defect in the 2nd detention order. The 2nd detention order was duly communicated to the Central Government. The representation dated 10.01.2023 was received by the State government on 11.01.2023 and forwarded the same to the Central Government vide letter dated 13.01.2023. The representation was rejected vide order dated 18.01.2023. It is prayed that

there is no delay on the part of the State Government and as such the writ petition be rejected.

[4] The Central Government did not file any reply, however, during the course of hearing, Mr. Boboy Potsangbam, learned CGSC for the Union of India, submitted a copy of e-mail dated 10.03.2023 sent by PITNDPS Division, Government of India to the Home Department, Government of Manipur stating that the representation submitted by the detenu was addressed to the Chief Secretary, Government of Manipur and requested to forward a copy of the representation addressed to the Central Government urgently.

[5] Heard Mr. Th. Babloo, learned counsel for the petitioner, Mr. O. Ratankumar, learned Dy. G.A. for the State and Mr. Boboy Potsangbam, learned CGSC for the Union of India.

[6] Mr. Th. Babloo, learned counsel for the petitioner, submits that the 2nd detention order is liable to be set aside as no fresh ground has been disclosed, no bail application filed by the detenu is pending on the date of the detention and mentioning of a bail application is total non-application of mind and as such, the detention order is liable to be set aside on this ground alone. He further submits that the Central Government ought to consider the representation submitted by the detenu irrespective of whether it was addressed to the Central Government or not. Non-

disposal of the representation dated 10.01.2023 for more than 3 months vitiates the detention order. He prays that the detention order be set aside and the detenu be set at liberty.

[7] Mr. O. Ratankumar, learned Dy. A.G. for the State respondent, submits that there is no defect in the 2nd detention order which was reissued to rectify the technical defect in the 1st detention order. The State Government duly intimated the Central Government about the detention and the representation submitted by the detenu. The representation submitted by the detenu was disposed of within a short period of 5 days and hence, there is no delay on the part of the State Government. He prays that the writ petition be rejected.

[8] Mr. Boboy Potsangbam, learned CGSC for the Union of India, submits that as the detenu has not preferred any representation addressed to the Central Government, a request has been made to the State Government to forward a representation addressed to the Central Government. In the circumstances, the Central Government could not take any effective step.

[9] On comparing the 1st detention order dated 02.11.2022 and 2nd detention order dated 16.12.2022, it is clearly seen that both have the same contents and in other words, there is no new material in the 2nd detention order. It may be noted that the Hon'ble Supreme Court held in

the Case of **Chhagan Bhagwan Kahar vs. N.L. Kalna** reported as (1989) **2 SCC 318** at para 12 that fresh order of detention can be passed against the same person only if some additional or fresh materials are in possession after the 1st detention order was revoked or lapsed or set aside by the Court. But in the present case, after revocation of the 1st detention order dated 02.11.2022, there are no fresh additional facts for issuing the 2nd detention order. The revocation order dated 16.12.2022 did not mention that the same was done due to technical ground, rather it was revoked with immediate effect without any condition. The 2nd detention order dated 16.12.2022 is in clear violation of the dictum of the decision of **Chhagan Bhagwan Kahar** (Supra). Moreover, there is total non-application of mind while issuing the 2nd detention order where no bail application was pending on the date of issue of the 2nd detention order dated 16.12.2022 after withdrawal of bail application being Cril.Misc.(B) No. 33 of 2022 on 28.11.2022. However, in the 2nd detention order, bail application No. 33 of 2022 was mentioned and hence the detention order is also vitiated due to total non-application of mind.

[10] In the case of **Gracy vs. State of Kerala & Ors.** reported as (1991) **2 SCC 1** at para 9, the Hon'ble Supreme Court held that the competent authority has to consider the representation submitted by the detenu irrespective of the authority mentioned therein. Para 9 is reproduced as under:

“9. It being settled that the aforesaid dual obligation of consideration of the detenu’s representation by the Advisory Board and independently by the detaining authority flows from Article 22(5) when only one representation is made addressed to the detaining authority, there is no reason to hold that the detaining authority is relieved of this obligation merely because the representation is addressed to the Advisory Board instead of the detaining authority and submitted to the Advisory Board during pendency of the reference before it. It is difficult to spell out such an inference from the contents of Article 22(5) in support of the contention of the learned Solicitor General. The Contents of Article 22(5) as well as the nature of duty imposed thereby on the detaining authority support the view that so long as there is a representation made by the detenu against the order of detention, the aforesaid dual obligation under Article 22(5) arises irrespective of the fact whether the representation is addressed to the detaining authority or to the Advisory Board or to both. The mode of address in only a matter of form which cannot whittle down the requirement of the Constitutional mandate in Article 22(5) enacted as one of the safeguards provided to the detenu in case of preventive detention.”

[11] In case, the Central Government did not take any action on the representation submitted by the detenu on the ground that it was not addressed to it to the Advisory Board and not to the Central Government and hence there is no obligation on the Central Government to consider the representation addressed to the Advisory Board. The Hon’ble Supreme Court held in the case of Gracy (supra) that the Central Government has

mandate to consider an obligation under Article 22(5) of the constitution to consider the representation submitted by the detenu irrespective of the fact whether it is addressed to the Central Government or not.

[12] In view of the above discussion and decision of the Superior Court, we are of the view that the detention order cannot be sustained on the ground that (i) non-application of mind; (ii) non-disclosure of additional facts while issuing the 2nd detention order dated 16.12.2022 and (iii) non-consideration of the representation submitted by the detenu by the Central Government on the ground that the same was addressed to the Chief Secretary, Government of Manipur and not to it. Accordingly, the detention order dated 16.12.2022 is set aside and all consequential proceedings with respect to the detention order dated 16.12.2022 are also set aside. The detenu, namely Lamneihat Haolen Thadou @ Hatpi be released from detention forthwith, if not required in any other case.

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

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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KH. JOSHUA MARING
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