

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 41 of 2023

Md. Bocha Khuleipham aged about 33 years S/o Md. Ali, a resident of Kiyamgei Makha Leikai, P.O. Canchipur, P.S. Irilbung, Imphal East District, Manipur

..... Petitioner/s

- Versus -

1. State of Manipur represented by the Chief Secretary, Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. Commissioner/Secretary (Home), Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
3. Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Near North Block, Room No. 26, Church Road, RFA-Barrack, New Delhi-110001.
4. The Superintendent of Manipur Sajiwa Jail, Imphal East, P.O & P.S. Lamlai, 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. S. Jhalajit, Advocate
For the respondents	::	Mr. Th. Vashum, G.A. for the State and Mr. Shokpei Woleng, Advocate junior to Mr. S. Vijayanand Sharma, Sr. PCCG for the Union of India.
Date of Order	::	30.03.2023

O R D E R (Oral)

A. Guneshwar Sharma, J.

[1] On 24.08.2022 at about 6:30 am, the detenu, namely Md. Bocha Khuleipham, was arrested by a special team of Police, Imphal East in connection with FIR No. 88(8)2022 IBG-PS u/s 21(b)/22(c)/29 ND & PS Act & 489-A IPC from his residence for concealment of illegal drugs. He was remanded to judicial custody and he filed a bail application dated 24.03.2022 in connection with the said FIR.

[2] Vide order dated 21.09.2022, the Special Secretary (Home), Government of Manipur issued the detention order to the detenu under Section 3 (1) of the PIT-ND & PS Act for effectively preventing him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of 3 months until further orders. Vide letter 22.09.2022, the Special Secretary (Home), Government of Manipur furnished the grounds of detention to the detenu under Section 3 (3) of the PIT-ND & PS Act. The detenu submitted 2 (two) similar representations dated 17.10.2022 to the Special Secretary (Home), 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 21.09.2022.

[3] Vide letter dated 08.11.2022, the State Government rejected the representation dated 17.10.2022 submitted by the detenu and stated that a copy of the representation was forwarded to the Central

Government on 19.10.2022. Vide order dated 20.12.2022, the Commissioner (Home), Government of Manipur confirmed the detention order dated 21.09.2022 and fixed the period of detention for 12 months. Vide memorandum dated 21.11.2022, the Central Government rejected the representation submitted by the detenu. It may be noted that vide order dated 16.12.2022 in WP(Cril.) No. 12 of 2022, this Court set aside the detention order in respect of co-accused, who was detained in respect of the same FIR.

[4] The detention order is challenged mainly on the ground that:

- (i) There was non-application of mind;
- (ii) There was no material likelihood of the detenu to be released on bail;
- (iii) The detaining authority did not formulate law;
- (iv) Inordinate delay on the part of the State Government in forwarding the representation to the Central Government; and
- (v) There was 36 days delay on the part of the Central Government to consider the representation and the detention order is liable to be set aside.

[5] The State Government filed counter affidavit stating that the detention order has to be issued as the detenu was habitual offender of

selling and buying Heroin No. 4 and WY tablets and involved in counterfeiting of Indian Currency notes. It is stated that there is likelihood of him being indulged in the same activities after release on bail. It is also stated that there is inordinate delay on the part of the State Government in connection with the detention of the detenu.

[6] The Central Government did not file any counter affidavit.

[7] Heard Mr. S. Jhalajit, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A. for the State respondents and Mr. Shokpei Woleng, learned counsel junior to Mr. S. Vijayanand Sharma, learned Sr. PCCG for the Central Government.

[8] Mr. S. Jhalajit, learned counsel for the petitioner, submits that there is delay of 22 days by the State Government and 35 days by the Central Government in rejecting the representation submitted by the detenu and there is no explanation in this regard. The learned counsel draws the attention of this Court to the order dated 16.12.2022 in WP(Cril.) No. 12 of 2022 and the order dated 22.12.2022 in WP(Cril.) No. 14 of 2022 passed by this Court where the detention orders of the co-arrestee were set aside as violation of the statutory provisions of the PIT- ND & PS Act. He prays that the writ petition be allowed and the detention order be set aside on parity.

[9] Mr. Th. Vashum, learned G.A. for the State respondents, submits that there is not much delay on the part of the State Government in

dealing and disposal of the case. He refers to the decision of the Hon'ble Supreme Court reported in **2006 5 SCC 676 at para 6** where delay of 12 days in disposal of the representation was reasonable. He states that delay is caused in receiving the para-wise comments from the Police Department. He prays that writ petition be rejected.

[10] Mr. Shokpei Woleng, learned counsel, submits that representation has been disposed of by the Central Government on 21.11.2022 and 35 days delay is due to late receiving of the para-wise comments after some days. However, the Central Government has not filed any document in this regard.

[11] On perusal of the document available on record, this Court find that there is delay of 22 days by the State Government and 35 days by the Central Government in disposing of the representation dated 17.10.2022. The submission of Mr. Th. Vashum, learned G.A., is that the delay has been properly explained, but it is in contradiction with the counter affidavit filed by the State respondents. In para 9 (iii), it is stated that there is no reason recorded in writing for the delay but the time gap is apparently out of the communication between offices and processing. It is evident that there is no credible explanation from the State Government and oral submission is not supported by the sworn affidavit of the State Government itself. So, this Court is of the opinion that delay of 22 days has not been explained by the State Government and judgment of the Hon'ble Apex Court relied by Mr. Th. Vashum, learned G.A. is not applicable in the

present case. Moreover, there is no explanation at all on the part of the Central Government for the delay of 35 days in disposing of the representation submitted by the detenu.

[12] Reference may be made to the judgment passed by the Hon'ble Supreme Court in the cases of **Ichu Devi vs. Union of India: (1980) 4 SCC 531**; **Rajammal v. State of T.N.** reported in **(1999) 1 SCC 417: 1999 SCC (Cri) 93**, at page 421; **Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur** reported as **MANU/SC/1011/2021** and **Ummu Sabeena vs. State of Kerala: (2011) 10 SCC 781** where it was held that unexplained and inordinate delay in disposing the representation vitiates the detention order. This Court is of the opinion that there is unexplained delay on the part of the State and Central Authorities in disposal of the representation. Accordingly, the detention order dated 21.09.2022 and the confirmation order dated 20.12.2022 are set aside and the detenu, namely Md. Bocha Khuleipham, 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

joshua

KH. JOSHUA
MARING

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