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

W.P.(CrI.) No.43 of 2023

Md. Shahid Rahman @ Khullakpam Shahid Rahaman aged about 27
years, S/o Md. Abdul of Lilong Tharaorok, PO / PS Lilong, Thoubal
District, Manipur.

..... Petitioner/s

– Versus –

1. The State of Manipur represented by the Commissioner/ Special Secretary (Home), Government of Manipur, Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
2. The Deputy Secretary (PIT-NDPS), Ministry of Finance, Department of Revenue, Near North Block, Room no – 26, Church Road, RFA – Barrack, New Delhi – 110001.
3. The Superintendent, Manipur Central Jail, Sajiwa, P.O. Lamlong & P.S. Heingang, Imphal East, Manipur – 795010.

.... Respondent/s

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

For the Petitioner : Mr. Th. Punshiba, Advocate

For Respondent Nos.1 & 3 : Mr. Th. Vashum, GA for R - 1 & 3

For Respondent No. 2 : Mr. I. Somorjit, Advocate representing
Mr. S. Samarjeet, Sr. PCCG for R - 2

Date of Hearing &
Judgment & Order : **26.04.2023.**

JUDGMENT & ORDER
(ORAL)

A. Guneshwar Sharma, J. :

[1] Heard Mr. Th. Punshiba, learned counsel for the petitioner; Mr. Th. Vashum, learned GA for State Respondent Nos.1 & 3; and Mr. I. Somorjit, learned advocate representing Mr. S. Samarjeet, learned Sr. PCCG appearing for respondent No.2.

[2] Mr. Th. Punshiba, learned counsel for the petitioner submits that the detenu namely, Md. Shahid Rahaman @ Khullakpam Shahid Rahaman and another namely, Khullakpam Sajid Ahamad were arrested on 25.04.2022 in connection with FIR No.25(04)2022 LIL-PS under Section 21(b)/60(3)/29 ND&PS Act. From their possession, 12 gms of suspected brown sugar was

recovered from the detenu and another 13 gms of brown sugar were recovered from Khullakpam Sajid Ahamad. The detenu was remanded to police custody and then to judicial custody. During the course of investigation, it was revealed that the detenu was previously arrested on 06.07.2020 along with 3 other persons in connection with FIR No.63(07)2020 LIL-PS under Section 21(a)/21(b)/29 ND&PS Act for unauthorized possession of 475 bottles of Cough Syrup.

[2.1] Vide order dated 09.09.2020 in Cril.Misc.(Bail) Case No.68 of 2020 in connection with FIR No.63(07)2020 LIL-PS, the detenu was released on bail by the Ld. Special Judge (ND&PS), Thoubal and now, he is facing trial in connection with the said FIR case.

[2.2] Vide order dated 22.08.2022 in Cril. Misc (Bail) Case No.174 of 2022, the Ld. Special Judge (ND&PS), Thoubal released the detenu on bail in connection with FIR 25(04)2022 LIL-PS. Thereafter, vide order dated 24.08.2022, Special Secretary (Home), Government of Manipur issued detention order under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND&PS Act), 1988 for his involvement in illicit trafficking in narcotic drugs and psychotropic substances for a period of 3 months until further order as he was granted bail and was likely to continue his illegal activities even after his release.

[2.3] Vide letter dated 26.08.2022, Special Secretary (Home), Government of Manipur furnished grounds of detention to the detenu under Section 3(3) of the PIT-ND&PS Act, 1988 and it is stated that the detenu was involved in multiple cases under ND&PS Act and he is a habitual offender.

[2.4] The detenu filed common representation dated 23.09.2022 through the Superintendent, Manipur Central Jail, Sajiwa to the Deputy Secretary (PIT-ND&PS), Ministry of Finance, Department of Revenue, Government of India, New Delhi and to the Chief Secretary (Home), Government of Manipur for revocation of the detention order.

[3] Vide order dated 22.11.2022, Special Secretary (Home), Government of Manipur confirmed the detention order dated 24.08.2022 and fixed the period of detention for 12 months under Section 11 of the PIT-ND&PS Act. However, there is no material on record to show that the State Government has passed any order regarding the representation dated 23.09.2022 submitted by the detenu.

[3.1] Vide Memorandum dated 07.03.2022, the Central Government rejected the representation dated 23.09.2022 submitted by the detenu. The detention order was challenged amongst on the following grounds: (i) the detention was formulated on false and concocted charges; (ii) the detention order was issued to make the bail order dated 22.08.2022 as infructuous. It is prayed that the detention order may be set aside. State Government did not file

any counter affidavit. Mr. Th. Vashum, learned GA for the State submits that there is no lapse on the part of the State Government in passing the detention order and the detenu was a habitual offender and has been arrested in 2(two) FIRs with relation to the ND&PS Act for trafficking of narcotic drugs and psychotropic substances. The confirmation order dated 22.11.2022 was issued after submission of the representation dated 23.09.2022 and the same may be treated rejection of the representation and he prays that the writ petition may be dismissed.

[3.2] During the course of hearing, print out of the counter affidavit dated 24.04.2023 of the Central Government/Respondent No.2 has been submitted. It is stated that the representation dated 23.09.2022 submitted by the detenu was received by the Ministry from the State Government through e-mail dated 12.10.2022 and the parawise comments was received on 14.10.2022. The confirmation order dated 22.11.2022 issued by the State Government was received on 10.01.2023 by e-mail and on 01.03.2023, the matter was submitted to the competent authority, i.e., Secretary (Revenue), Government of India. Vide Memorandum dated 07.03.2023, the representation dated 23.09.2022 submitted by the detenu was rejected. It is stated that time taken by the Central Government in disposal of the representation is not fatal and prayed that the writ petition may be dismissed with cost.

[4] Considered the rival submissions of the parties and perused the materials and documents on record.

[5] In the present case as per the available record, there is no document on record of the State Government passing any specific order on the representation dated 23.09.2022 submitted by the detenu. Even if the confirmation order dated 22.11.2022 is to be considered as disposal of the representation submitted by the detenu, there is no explanation for 2 months' time in issuing the said order.

[6] On the other hand, there is no explanation from the Central Government for the period from 14.10.2022 to 07.03.2023 while disposing the representation dated 23.09.2022 submitted by the detenu. The explanation for the period from 14.10.2022 (date of receipt of parawise comment from the State Government) to 10.01.2023 (date of receipt of confirmation order) for keeping in abeyance of the representation in view of **the Hon'ble Supreme Court judgment dated 04.03.2020 in the case of Ankit Ashok Jalan Vs. Union of India reported as 2020 (16) SCC 127** during the pendency before the State Advisory Board cannot be accepted as the Central Government has relied on the minority judgment. There is no explanation at all for the period from 10.01.2023 to 01.03.2023 for keeping the file with the Ministry and for the period from 01.03.2023 to 07.03.2023 for the time taken by the Secretary (Revenue) in disposing the representation dated 23.09.2022 submitted by the detenu.

[7] We are of the view that there is no explanation for the effective time of 144 days taken by the Central Government in disposing the representation

dated 23.09.2022 after getting parawise comments from the State Government vide e-mail dated 14.10.2022. Hence, the detention order is vitiated by unexplained delay in considering the representation as held in the case of **Sarabjeet Singh Mokha Vs. the District Magistrate, Jabalpur reported as MANU/SC/1011/2021** in which the Hon'ble Supreme Court held that unexplained delay in considering the representation and the failure to communicate its rejection vitiates the detention order.

[8] Accordingly, the detention order dated 24.08.2022 is set aside and the detenu namely, Md. Shahid Rahman @ Khullakpam Shahid Rahaman aged about 27 years, S/o Md. Abdul of Lilong Tharaorok, PO / PS Lilong, Thoubal District, Manipur be released from custody if not required in any other case.

[8.1] In view of the above finding and observation, the Writ Petition is allowed. No cost.

JUDGE

ACTING CHIEF JUSTICE

-Larson

FR/NFR