

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

W.P. (Crl.) No. 44 of 2023

Phundreimayum Illiyas Khan aged about 24 years, S/o Md. Mufi @ Mufijal of Sangaiyumpham Nungphou Makha Leikai, P.O. – Wangjing, P.S. – Thoubal, Thoubal District, Manipur (Now a detenue under PIT-ND & PS Act).

... *Petitioner*

- Versus -

1. The Commissioner (Home)/Special Secretary (Home), Government of Manipur at Old Secretariat, Imphal P.O. & P.S. – Imphal, Imphal West, Pin Code- 795001, Manipur.
2. The State of Manipur represented by Chief Secretary Government of Manipur at Old Secretariat, Imphal, P.O. & P.S. – Imphal, Imphal West, Pin Code – 795001, Manipur.
3. 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, New Delhi – 110001.

... *Respondents*

B E F O R E

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

For the petitioner	:	Mr. Th. Jugindro, Advocate.
For the respondents	:	Mr. Athouba Khaidem, G.A. for respondent Nos. 1 & 2. Mr. S. Vijayanand Sharma, Sr.PCCG for respondent No. 3.
Date of Order	:	26.04.2023

ORDER

A. Guneshwar Sharma, J.

[1] Heard Mr. Th. Jugindro, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, appearing for respondent Nos. 1 & 2; and Mr. S. Vijayanand Sharma, learned Sr. PCCG, appearing for respondent No. 3.

[2] Mr. Th. Jugindro, learned counsel for the detenu, submits that the detenu Phundreimayum Illiyas Khan was arrested on 06.08.2022 in connection with FIR No. 132(08)2022 TBL-PS under Section 21(b)/29 ND&PS Act on the charge of trafficking drugs. The detenu filed bail application being Cril. Misc(B). Case No. 331 of 2022 in the Court of learned Special Judge, ND&PS, Thoubal. Vide order dated 20.10.2022, the Special Secretary (Home), Government of Manipur, issued 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 in order to effectively prevent him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of three months until further orders. Vide letter dated 24.10.2022, the Special Secretary (Home), Government of Manipur, issued grounds of detention to the detenu and stated that the detenu is habitual offender involving in the trafficking of illegal drugs and he would continue the business in drugs even after released on bail. Vide order dated 26.12.2022, the Commissioner (Home), Government of Manipur, confirming the detention order dated 20.10.2022 and fix the period of detention for a period of 12(twelve) months under Section 11 of the PIT-ND&PS Act. Later on the detenu submitted 3 representations, all dated 20.02.2023, to the Chief Secretary, Government of Manipur, to the Deputy Secretary (PIT-ND&PS), Ministry of Finance, Department of Revenue, New Delhi, and to the Commissioner

(Home), Government of Manipur, for setting aside the detention order dated 20.10.2022 and the confirmation of order dated 26.12.2022. Vide order dated 27.02.2023, the State Government, rejected the representation submitted by the detenu and at the time of filing of the writ petition the Central Government did not pass any order on the representation submitted by the detenu. However, during the course of the hearing vide memorandum dated 05.04.2023, the Central Government rejected the representation submitted by the detenu.

[3] Mr. Th. Jugindro, learned counsel for the petitioner, submits that the detention order dated 20.10.2022 and confirmation order 26.12.2022 were passed mechanically without any valid material and the bail application was already rejected and there is inordinate delay between the date of detention and the date of arrest and unexplained delay on the part of the State respondents and the Central Government had not considered the representation submitted by the detenu.

[4] The State respondents have filed counter affidavit. Mr. Athouba Khaidem, learned Government Advocate, submits that there is no inordinate delay. The detenu was habitual offender involving in selling of Heroin No. 4 of huge quantity in his locality. The State Government has complied all the statutory requirements. The representation dated 20.02.2023 for revocation of the detention order dated 20.10.2022 was received on 22.02.2023 and a copy of the same was forwarded to the Central Government vide letter dated 23.02.2023. Para-wise comment was called from the Office of the Director General of Police, Manipur, vide letter dated 23.02.2023 and the same was furnished on 24.02.2023 and the representation was rejected vide order dated 27.02.2023.

[5] Mr. Athouba Khaidem, learned Government Advocate, submits that there is no delay on the part of the State Government while disposing the representation and prays for rejecting the writ petition.

[6] During the course of hearing, Mr. S. Vijayanand Sharma, learned Sr. PCCG, appearing for the Central Government, has placed on record the counter affidavit dated 25.04.2023, stating that the representation dated 20.02.2023 submitted by the detenu was rejected by the Central Government vide Memorandum dated 05.04.2023. It is stated that representation dated 20.02.2023 was received by the Ministry from the State Government through an e-mail dated 23.02.2023 and para-wise comments was received from the State Government through an e-mail dated 01.03.2023 and the matter was placed before the competent/appropriate authority, i.e., Secretary (Revenue) on 28.03.2023 and the representation was rejected vide memorandum dated 05.04.2023. Mr. S. Vijayanand Sharma, learned Sr. PCCG, has submitted that time taken by the Central Government in consideration and disposal of the representation is not fatal and the same has been explained and prays for rejecting the writ petition.

[7] We have perused the materials on record and the submissions made by the parties at bar. The State Government has explained the time taken in considering the representation. There is no inordinate delay on the part of the State Government while disposing the representation submitted by the detenu and the other mandatory provisions have been complied. However, Central government has not explained the time taken from the date of receipt of the para-wise comments i.e. 01.03.2023 to placing the file before the Secretary(Revenue), Government of India on 28.03.2023 and also time taken by the Secretary(Revenue) in disposing the representation i.e.,

from 28.03.2023 to 05.04.2023. There is no proper explanation for the effective period of 36 days taken by the Central Government in disposing the representation. However, the period from 23.02.2023 to 01.03.2023 has been explained as time taken in receiving the para-wise comments from the State Government. Detention order as well as the confirmation order is vitiated by inordinate and unexplained delay while disposing the representation by the Central Government 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, detention order dated 20.10.2022 and the confirmation order dated 26.12.2022 are set-aside. The Detenu, Phundreimayum Illiyas Khan, be released immediately from detention, if not required in any other case.

Writ petition is allowed.

No costs.

JUDGE

ACTING CHIEF JUSTICE