

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 45 of 2023

Rose Gangte @ Kim, aged about 28 years W/o Kamlalden Gangte, a resident of Tuibong Village, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.

..... Petitioner/s

- Versus -

1. State of Manipur, represented by Chief Secretary, Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
2. Commissioner (Home), Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, 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 Central Jail, Imphal near Old Lambulane Road, P.O. & P.S. Imphal, Imphal West 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. Ajmal Hussain, Adv.

For the respondents :: Mr. Th. Vashum, G.A. & Mr. BR. Sharma, CGSC.

Date of hearing :: 01.08.2023

Date of Judgment and Order :: 07.08.2023.

ORDER (CAV)

A. Guneshwar Sharma, J.

[1] By the present writ petition under Article 226 of the Constitution of India, the detenu, namely Ms. Rose Gangte @ Kim has challenged the detention order dated 19.12.2022 issued by the Commissioner (Home), Government of Manipur under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drgs and Psychotropic Substances Act (PIT-ND & PS Act), 1988 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.

[2] Heard Mr. Asmal Hussain, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A. for the State respondent and Mr. BR Sharma, learned CGSC for the Central Government.

[3] Mr. Asmal Hussain, learned counsel for the petitioner, submits that the detenu was arrested along with co-accused namely Ms. Nemneilam @ Lalam Guite on 13.05.2022 in connection with FIR No. 19(05)2022 NAB-PS U/S 21(c)/29 ND & PS Act for illegal possession of 1 (one) Kg. of Heroin No. 4. On 08.12.2022, the detenu was released on statutory bail.

[4] Vide detention order dated 19.12.2022 issued by the Commissioner (Home), Government of Manipur, the detenu was taken into custody under Section 3 (1) of the PIT- ND & PS Act to prevent her from illegal activities after release from bail. Since, the detenu was not found at her

residence, the detention order dated 19.12.2022 could not be executed and she was detained only on 14.02.2023 and the grounds of detention dated 14.02.2023 was served on 14.02.2023.

[5] The detenu submitted 4 (four) similar representations all dated 27.02.2023 to (i) The Chief Secretary, Government of Manipur, (ii) The Commissioner (Home), Government of Manipur, (iii) The Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India and (iv) The Advisory Board, ND & PS, Manipur for revoking the detention order dated 19.12.2022. Vide order dated 03.03.2023 issued by the Commissioner (Home), Government of Manipur, the representation was rejected and the same was furnished to the detenu on 06.03.2023. At the time of the filing of the writ petition, the Central Government is yet to pass any order on the representation submitted by the detenu.

[6] Mr. Asmal Hussain, learned counsel for the petitioner, raises the following main grounds challenging the detention order:

- (i) Non-application of mind in detention order;
- (ii) Some of the documents furnished along with the grounds of detention are not clear and readable;
- (iii) The detaining authority did not formulate ground of detention before passing of the detention order;

- (iv) 57 days delay between the date of detention (i.e. 14.12.2022) and date of arrest (i.e. 14.02.2023) is sufficient to set aside the detention order;
- (v) The detenu is not criminal antecedent;
- (vi) Violation of mandatory provision of PIT-ND & PS Act;
- (vii) The State Government has not applied any mind in rejecting the representation submitted by the detenu; and
- (viii) The Central Government has not passed any detention order till date. He prays that the detention order dated 19.12.2022 be set aside.

[7] Mr. Th. Vashum, learned G.A. for the State respondent, relying on the counter affidavit has submitted that the petitioner was taken into custody as she was found in possession of 1 (one) Kg. of Heroin No. 4 and she belonged to a drug racket. It is submitted that there is no violation of mandatory provision of PIT-ND & PS Act. The detention order dated 19.12.2022 could be executed only on 14.02.2023 and the grounds of detention order dated 14.02.2023 was furnished to her on 15.02.2023. The detention order was referred to the Advisory Board within 5 (five) weeks' time line under Section 9 (b) of the PIT-ND & PS Act and the representation dated 27.02.2023 was forwarded to the Advisory Board on 28.02.2023 and para-wise comment was called from DGP and para-wise comment was received on 01.03.2023. Vide order dated 03.03.2023, the representation submitted by the

detenu was rejected by the State Government. It is submitted that there has been compliance of Sections 3, 9 and other mandatory provision of the PIT-ND & PS Act. There is no delay in disposal of the representation and the time taken while dealing with the representation has been explained. It is prayed that the writ petition be dismissed being devoid of any merit.

[8] The Central Government has not filed counter affidavit in spite of affording many opportunities. During the course of hearing, Mr. BR. Sharma, learned CGSC for the Central Government submits that para-wise comment from the State Government with respect to the representation was received on 04.03.2023 and the Central Government rejected the representation submitted by the detenu vide memorandum dated 12.04.2023. Mr. BR. Sharma, learned CGSC, submits that the time taken by the Central Government in disposing of the representation is not fatal and it occurs in normal dealing of the file. He has prayed that the writ petition may be rejected.

[9] We have considered the rival submissions made at the bar, the materials on record and the relevant case record.

[10] It is seen that the detention order dated 19.12.2022 could be executed only on 14.02.2023 as the detenu was not available at her residence and grounds of detention dated 14.02.2023d was furnished to her on 15.02.2023. The State Government received para-wise comment from the SP-NAB on 01.03.2023 and the State Government rejected the representation vide order dated 03.03.2023. We are of the view that there is no violation of

mandatory provisions of PIT-ND & PS Act and 5 (five) days time taken in disposing of the representation is satisfactorily explained. Hence, there is no lapse on the part of the State Government. With respect of the Central Government, Mr. BR. Sharma, learned CGSC for the Central Government, has stated at the bar that the para-wise comment to the representation of the detenu was received from the State Government on 04.03.2023 and the representation was rejected vide memorandum dated 12.04.2023 but there is no explanation of 39 days time taken by the Central Government in disposing of the representation dated 27.02.2023 submitted by the detenu even after receive of the para-wise comment from the State Government on 04.03.2023.

[11] In a catena of cases 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** where it was held that unexplained delay in disposal of the representation by the detaining authorities and the competent authorities vitiates the detention order.

[12] In the present case, the Central Government could not explain effective 39 days time taken in disposal of the representation submitted by the detenu even after receive of the para-wise comment from the State Government. It is settled proposition of law as held in the case of **Pramod Singla Vs. Union of India (UOI) & ors.**, reported in **MANU/SC/0349/2023** that ".... Every procedural rigidity, must be followed in entirety by the Government in cases of preventive detention, and every lapse in procedure must give rise to a benefit

to the case of the detenu. The Courts, in circumstances of preventive detention, are conferred with the duty that has been given the utmost importance by the Constitution, which is the protection of individual and civil liberties.'. In the case of **Prakash Chandra Yadav @ Mungeri Yadav v. The State of Jharkhand & Ors.: Civil Appeal No. 4324 of 2023: [2023 Live Law (SC) 529]**, it has been held that procedure is to be strictly interpreted in a case of preventive detention and the unexplained delay in disposal of the representation of the detenu would be violative of the constitutional imperative and it would render the continued detention unauthorized and illegal.

[13] Accordingly, the detention order dated 19.12.2022 is set aside and the detenu, namely Ms. Rose Gangte @ Kim, be released forthwith from detention, if not required in any other case.

[14] Writ petition is allowed. Not cost.

[15] Send a copy of this order to the Commissioner (Home), Government of Manipur and Superintendent, Manipur Central Jail, Imphal for information and for necessary action.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

joshua

KH.
JOSHUA
MARING

Digitally signed by
KH. JOSHUA
MARING
Date: 2023.08.08
11:07:14 +05'30'