

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(Cril.) No. 48 of 2023

Gimmuanlian Zou aged about 33 years, S/o Nengkhanthang Zou of Lhangnem Village P.O. & P.S. Churachandpur, District- Churachandpur, Manipur.

..... Petitioner/s

- Versus -

1. The State of Manipur represented by Chief Secretary Government of Manipur, Old Secretariat Building, P.O. & P.S.-Imphal, District- Imphal West, Manipur-795001.
2. Special Secretary (Home), Government of Manipur Babupara, Old Secretariat Building. P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
3. The Commissioner (Home), Government of Manipur, Old Secretariat Building, P.O. & P.S.- Imphal, District Imphal West, Manipur-795001.
4. Deputy Secretary (Home), Government of Manipur Babupara, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
5. Under Secretary, to the Govt. of India (PIT-ND & PS), Ministry of Finance, Department of Revenue, PIT ND & PS Division Second Floor, Room No. 202 Jeevan Tara Building, Parliament Street, New Delhi-110001.

6. The Superintendent of Manipur Central Jail, Sajiwa near Khabeisoi, P.O. Porompat, P.S. Heingang, Imphal East District, Manipur.**Respondent/s**

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. Tolpishak, Adv.
For the respondents	::	Mr. Phungyo Zingkhai, Dy. G.A. and Mr. S. Kaminikumar, CGSC
Date of hearing	::	07.08.2023
Date of Order	::	23.08.2023

ORDER (CAV)

A. Guneshwar Sharma, J.

[1] By the present petition under Article 226 of the Constitution of India, the detenu herein challenged the detention order dated 28.09.2022 issued by the Special Secretary (Home), Government of Manipur under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND & PS Act), 1988 for effectively preventing him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of 3 (three) months until further orders.

[2] Heard Mr. Th. Tolpishak, learned counsel for the petitioner, Mr. Phungyo Zingkhai, learned Dy. G.A. for the State respondent and Mr. S. Kaminikumar, learned CGSC for the Central Government.

[3] Mr. Th. Tolpishak, learned counsel for the petitioner, submits that the detenu was arrested on 28.03.2022 in connection with FIR No. 60(03)2022 TBL-PS u/s 21(c)60(3) ND & PS Act and recovered 34 (thirty four) numbers of soap cage containing suspected Heroin No. 4 of 441 grams. On 26.09.2022, the detenu filed a bail application being Cril.Misc.(B) Case No. 339 of 2022 before the Special Judge (ND & PS), Thoubal for releasing him on default bail under Section 167(2) of Cr.PC and he was released on 29.12.2022.

[4] The Special Secretary (Home), Government of Manipur issued the detention order dated 28.09.2022 under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND & PS Act), 1988 for effectively preventing him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of 3 (three) months until further orders as he was likely to be released on bail and would continue to indulge in illicit business even after release on bail. Vide order dated 29.09.2022, the Special Secretary (Home), Government of Manipur furnished the grounds of detention under Section 3(3) of the PIT-ND & PS Act to the detenu.

[5] Vide common representation dated 24.10.2022 submitted through the Superintendent, Manipur Central Jail, Sajiwa, the detenu make representations to (i) The Chief Secretary, Government of Manipur and (ii) The Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India for revoking the detention order. Vide letter dated 17.11.2022, the Deputy Secretary (Home), Government of Manipur informed the detenu through the Superintendent, Manipur Central Jail, Sajiwa that his representation was rejected being devoid of merit. The State Government forwarded the representation dated 24.10.2022 to the Central Government on 02.11.2022. Vide order dated 22.12.2022, the Commissioner (Home), Government of Manipur confirmed the detention order dated 28.09.2022. Vide memorandum dated 02.03.2023, the Under Secretary, Government of India informed that the representation dated 24.10.2022 was rejected being devoid of merit.

[6] The detention order is challenged amongst on the following grounds that:

- (i) The detaining authority did not formulate the ground of detention before passing the detention order dated 28.09.2022 and the same was formulated on 29.09.2022;
- (ii) The detaining authority supplied illegible and blurred documents at the time of furnishing grounds of detention

violating the provisions of Article 22(5) of the Constitution of India;

- (iii) The detaining authority violates mandatory provision of PIT-ND & PS Act;
- (iv) Representation was not forwarded to the Advisory Board even after 14 days; and
- (v) There was delay in disposal of the representation both by the State Government and Central Government.

[7] Mr. Th. Tolpishak, learned counsel for the petitioner, submits that the detention order dated 28.09.2022 be set aside and the petitioner be released from custody.

[8] Mr. Phungyo Zingkhai, learned Dy. G.A. for the State respondent, relies upon the counter affidavit and submits that the detenu is a habitual offender involved in transportation of Heroin No. 4 in huge quantities and is a member of the drug racket. There is sufficient ground to be released on bail and he would indulged in the same activity of illicit trafficking of drug. He was taken into preventive detention as an alternative measure. During proceeding before the Advisory Board, the detenu never complain about illegible and blurred document. It is also stated that the representation dated 24.10.2022 was received on 26.10.2022 and the same was forwarded to the Central Government by e-mail dated 02.11.2022 and the para-wise comment

was submitted on 16.11.2022. Para-wise comment was called from the DGP on 28.10.2022 and SP, Thoubal submitted the para-wise comment on 31.10.2022. It is also stated that the time gap in between arising out of the communication between Offices and the normal processing of file, approval and there is no inordinate delay on the part of the State Government. It is submitted that the writ petition be rejected being devoid of merit.

[9] Mr. S. Kaminikumar, learned CGSC for the Central Government, submits that the detention order dated 28.09.2022 was furnished to the Ministry vide letter dated 04.10.2022 and received on 06.10.2022 by the Ministry within the time stipulated by Section 3(2) of PIT-ND & PS Act, 1988. He further submits that the representation dated 24.10.2022 along with the comments was received by the Ministry from the State Government through e-mail dated 16.11.2022 and the matter was kept in abeyance as per the judgment and order of the Hon'ble Supreme Court in the case of **Ankit Ashok Jalan vs. Union of India** during its pendency before the Advisory Board. However, the confirmation order dated 22.12.2022 by the State Government on the basis of the report of the Advisory Board was received only on 08.02.2023 and the representation was submitted to the competent authority i.e. Secretary (Revenue), on 22.02.2023 along with the relevant documents and the Secretary (Revenue) rejected the same vide memorandum dated 02.03.2023. It is submitted that the time taken by the Central Government in

disposal of the representation is not fatal and reasonable. It is prayed that the writ petition be dismissed.

[10] We have considered the submissions of the learned counsel for the parties and perused the materials on record.

[11] In the present case, it took a total of 24 days for the State Government in disposing of the representation submitted by the detenu from the date of representation. However, after deducting the time taken in receiving the detention order from the jail authority and para-wise comment from the police, 17 effective days is taken by the State Government in disposing of the representation. This delay of 17 effective days has not been properly explained by the State Authority. As held in the case 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** that unexplained delay in disposal of the representation vitiates the detention order. Similarly, it took 129 days in total for the Central Government in disposal of the representation from the date of representation. However, after deducting the time taken in receiving the representation, the para-wise comment from the State Government, the confirmation order dated 22.12.2022 was received on 08.02.2023 and the file was put up to the Secretary (Revenue) only on 22.02.2023 and the Secretary (Revenue) rejected the representation vide memorandum dated 02.03.2023. It

is evident that there is no explanation for the period from 08.02.2023 to 02.03.2023 (i.e. 22 days) that is the effective time taken by the Central Government in disposing of the representation and hence, there is unexplained delay on the part of State Government also.

[12] Accordingly, the detention order dated 28.09.2022 issued by the Special Secretary (Home), Government of Manipur and the confirmation order dated 22.12.2022 issued by the Commissioner (Home), Government of Manipur are set aside. It is directed that the detenu, namely Mr. Gimmunlian Zou, be released from detention forthwith, if not required in any other case.

[13] Writ petition is allowed. No cost.

[14] Send a copy of this order to the Commissioner (Home), Government of Manipur and the Superintendent, Manipur Central Jail, Sajiwa for information and doing the needful.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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