

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

W.P. (Crl.) No. 50 of 2023

Md. Nurul Huda (32 yrs.), S/o late Md. Noorjaman of Lilong Turel Ahanbi
Lou Manga, P.O. & P.S. Lilong, Thoubal District, Manipur – 795130.

... *Petitioner*

- Versus -

1. Commissioner (Home) Govt. of Manipur, Babupara, Old Secretariat Building, P.O. & P.S. Imphal, District- Imphal West, Manipur – 795001.
2. The State of Manipur, represented by the Chief Secretary, Government of Manipur, Babupara, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.
3. The Superintendent of Manipur Central Jail, at Sajiwa near Khabeisoi, P.O. Porompat, P.S. Heingang, Imphal East District, Manipur- 795001.
4. The Deputy Secretary (PIT-NDPS) 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. L. Diko, Advocate.
For the respondents	:	Mr. Phungyo Zingkhai, Dy. G.A. for respondent Nos. 1, 2 & 3. Mr. S. Vijayanand, Sr.PCCG for respondent No. 4.
Date of Hearing	:	12.06.2023
Date of Judgment & order	:	21.06.2023

JUDGMENT & ORDER (CAV)

A. Guneshwar Sharma, J.

[1] Heard Mr. L. Diko, learned counsel for the petitioner; Mr. Phungyo Zingkhei, learned Dy. Government Advocate, appearing for respondent Nos. 1 , 2 & 3; and Mr. S. Vijayanand, learned Sr. PCCG, appearing for respondent No. 4.

[2] By the present petition, under Article 226 of the Constitution, the detenu has challenged the detention order dated 08.09.2022 issued by the Special Secretary(Home), Government of Manipur, detaining him under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND&PS), 1988.

[3] The points for determination involved in the present petition are:

(a) Whether the detention order ought to be confirmed before expiry of the period of 3 months for further detention as mandated by Article 22(4) of the Constitution?

(b) Whether unexplained delay in disposal of the representation submitted by the detenu vitiates the detention as provided under Article 22(5) of the Constitution?

[4] Mr. L. Diko, learned counsel for the petitioner, submits that the petitioner/detenu was arrested on 28.04.2022 in connection with F.I.R. No. 71(4)2022 SJM PS U/S 21(b)/60(3) ND&PS Act on alleged possession of heroin No. 4 from his vehicle and he was remanded to police custody and then to judicial custody. Vide order dated 31.08.2022, passed by the learned Judge, Special Court (ND&PS), Manipur in Cril. Misc. (B) Case No. 239 of 2022, the detenu was released on default

bail as the prosecution could not file charge-sheet within the stipulated time. Thereafter, vide impugned order dated 08.09.2022, the Special Secretary (Home), Government of Manipur, issued a detention order detaining the detenu under Section 3(1) of PIT-ND&PS Act for preventing him from further involvement in illicit trafficking of drugs and after released on bail he would likely continue with the illegal activities. By letter dated 12.09.2022, the Special Secretary (Home), Government of Manipur, furnished grounds of detention under Section 3(3) of PIT-NDPS Act to the detenu. Vide order dated 23.12.2022, the Commissioner (Home), Govt. of Manipur, confirmed the detention order dated 08.09.2022 and fixed the period of detention for 12(twelve) months from the date of detention. Mr. L. Diko, learned counsel, also submitted that the detenu make common representation dated 01.03.2023 to the Deputy Secretary (PIT-ND&PS), Government of India and the Chief Secretary, Government of Manipur, through the Superintendent, Manipur Central Jail, Sajiwa, for revocation of the detention order. Vide order dated 10.03.2023 issued by the Commissioner (Home), Government of Manipur, the representation dated 01.03.2023 submitted by the detenu was rejected. It is submitted that at the time of filing of the writ petition, there is no information regarding the disposal of the representation by the Central Government. The detention order is challenged mainly on the ground that there is total non-application of mind, mandatory provisions of the PIT-ND&PS Act have not been complied, the Central Government has failed to dispose of the representation.

[5] The State Government filed counter affidavit and Mr. Phungo Zingkei, learned Dy. Government Advocate, submits that the detenu was arrested for possession and trafficking of the illegal drugs and after release on bail, he was continuing the illegal activities and for this reason he was detained after considering

materials submitted before the detaining authority. It is also submitted that there is no lapse on the part of the State Government in dealing with the detention and the disposal of the representation. Representation dated 01.03.2023 submitted by the detenu was received on 03.03.2023 from the IG(Prisons) and a copy of the same was forwarded to the Central Government on 06.03.2023 and parawise comment was also furnished to the Government of India on 10.03.2023. Parawise comment was received by the State Government on 09.03.2023 and the representation of the detenu was disposed of as rejected by order dated 10.03.2023. Mr. Phungyo Zingkhei, learned Dy. Government Advocate, submits that there is no delay on the part of the State Government and the writ petition may be rejected.

[6] Mr. S. Vijayanand, learned Sr. PCCG for the Central Government, relying upon the affidavit submits that the representation dated 01.03.2023 submitted by the detenu was received from the State Government by e-mail dated 06.03.2023 and the parawise comments were received from the State Government by e-mail on 10.03.2023. Thereafter, the matter was submitted to the competent authority i.e., Secretary (Revenue) on 16.03.2023 and after perusing all the materials on record, Secretary (Revenue) rejected the representation vide memorandum dated 21.03.2023. Mr. S. Vijayanand, learned Sr. PCCG, submits that time taken by the Central Government in disposal of the representation is not fatal and the same is due to normal office process and he prays that the writ petition may be rejected.

[7] Considered the submissions made by the parties, perused the materials on record and the relevant law in this regard. Grounds of detention were furnished within 5 days as stipulated under Section 3(3) of PIT-ND&PS Act and the detention order was furnished to the Central Government within 10 days as stipulated under

Section 3(2) of the PIT-ND&PS Act. On the advice of the Advisory Board vide opinion/report dated 22.11.2022, the detention order dated 08.09.2022 was confirmed by State authority vide order dated 23.12.2022. Representation dated 01.03.2023 was submitted by the detenu through the Superintendent, Manipur Central Jail, Sajiwa, and the same was received on 03.03.2023 from the office of IG(Prisons) and the parawise comments were received on 09.03.2023 and the representation was rejected vide order dated 10.03.2023. This Court is of the opinion that there is no delay on the part of the State Government while disposing the representation submitted by the detenu.

[8] However, there has been a serious lapse on the part of the State Government for its failure to confirm the detention order dated 08.09.2022 within the stipulated period of 3 months as mandated by Article 22(4) of the Constitution. In a catena of cases, Hon'ble Supreme Court held that the opinion of the Advisory of existence of the sufficient grounds for detaining the detenu beyond the period of 3 months, should be confirmed by the detaining authority before expiry of the stipulated period. Otherwise, any detention beyond the period of three months is illegal. Important case laws in this regard may be considered.

[9] In the case of **Ujjal Mandal v. State of W.B., (1972) 1 SCC 456**, Hon'ble Supreme Court held that the detention order is valid only for three months as mandated under Article 22(4) of the Constitution and unless it is confirmed before the expiry of three months, further detention would be without any authority of law. Relevant para are reproduced below:

8. Article 22(4) of the Constitution has specified the maximum limit of initial detention, and detention for a longer period than three months can only be made on the basis of the report of the Board. The Act authorises a possible detention

of more than three months. It is because the appropriate Government wants to detain a person for more than three months that the matter is referred to the Board and it is only when the Board makes its report that the appropriate Government can fix the period of detention under sub-section (1) of Section 12. So, when the Government receives the report of the Board stating that there is sufficient cause for detention of a person, if the Government wants to detain him for a period beyond three months, it has to pass an order or make a decision under Section 12(1) to confirm the order of detention. The confirmation of the detention order without anything more would result in an automatic continuation of the detention, even if there is no separate decision to continue the detention for any specific period as held by this Court in *Dattatreya Moreshwar Pangarkar v. State of Bombay*. When Section 12(1) of the Act speaks of "and continue the detention of the person concerned for such period as it thinks fit", it can only mean continuance of detention from the point of time at which detention would become illegal if the order of detention is not confirmed, namely, the expiry of three months from the date of detention. It would not be necessary to confirm the order of detention even after the receipt of the report of the Board by the Government if the Government only wants to continue the detention for the period of three months from the date of detention, as the initial order of detention would authorise the continuance of detention for that period without any confirmation. Confirmation is necessary only to continue the detention after the expiry of three months. If that be so, it stands to reason to hold that the order of detention must be confirmed before the expiry of the three months.

9. To put the matter in a nut-shell: the State Government has power under the Act to detain a person without trial beyond a period of three months but limited to a period of one year. That power the State Government may exercise on the receipt of the opinion of the Board that there is sufficient cause for the detention. When the State Government receives that opinion, it has still the option to exercise the power and to continue the detention beyond the period of three months or not. **Confirmation is the exercise of the power to continue the detention after the expiry of three months. Unless that power is exercised within the period of three months from the date of detention, the detention after the expiry of that period would be without the authority of the Law.**

[10] In the case of **Deb Sadhan Roy v. State of W.B.: (1972) 1 SCC 308**, Hon'ble Supreme Court held that no person can be detained for any period beyond three months or for any period thereafter up to twelve months unless the Board's opinion is confirmed within three months from the date of initial detention.

[11] In the case of **Shibapada Mukherjee v. State of W.B.: (1974) 3 SCC 50**, Hon'ble Supreme Court held that the detention order has to be confirmed by the detaining authority before expiry of 3 months period after receiving the Board's report, otherwise further detention beyond 3 months is invalid.

[12] In the case of **Nirmal Kumar Khandelwal v. Union of India: (1978) 2 SCC 508**, the Hon'ble Supreme Court held that if the detention order is not confirmed within the period of 3 months as mandated by Article 22(4) of the Constitution after receiving the opinion of the Advisory Board finding sufficient grounds for detention, further detention will be without any authority. Para 9 & 10 are reproduced below:

"9. We do not find any merit in the contention that since the period prescribed for the Advisory Board to make its report has been increased from 10 weeks (as prescribed under MISA) to 11 weeks in COFEPOSA, leaving only a short period for the Government to take a decision under Section 8(f), the legislative intent was that the order of confirmation of the detention and its continuance could be made after the expiry of three months from the date of the detention. It is true that in certain situation when the Advisory Board makes its report in favour of the detention just before the expiry of 11 weeks from the date of the detention, the time left to the Government for taking a decision as to the confirmation of the detention and its continuance would be hardly two weeks. That only shows the anxiety on the part of the legislature to ensure that the Government continues the preventive detention of a person beyond three months after due application of mind and for that purpose acts with utmost promptitude. **The law does not lend its authority to the continuance of the detention even for a day more than the initial period of three months if the Government does not take a decision for that purpose on the report of the Advisory Board within three months of the commencement of the detention.**

10. There is no reason to doubt the law enunciated by this Court in the aforesaid decisions. Respectfully following the ratio of those decisions, we hold that **since no order of confirmation of the detention was made under clause (f) of Section 8 within three months of the date of detention by the appropriate Government, further detention of the petitioner after the expiry of that period is without the authority of law.**"

[13] From the above decisions of the Hon'ble Apex Court, it is the settled proposition of law with regard to the mandatory provision of Article 22(4) of the

Constitution that an order of detention issued under the preventive detention law will not be valid beyond a period of 3 months, if the opinion/report of the Advisory Board for existence of sufficient cause for such detention is issued before the expiration of the period of 3 months from the date of detention and that such opinion/report is confirmed by the detaining authority before the expiration of the stipulated period of 3 months.

[14] In the present case, the detention order was issued on 08.09.2022. The Advisory Board held its sitting on 17.11.2022 and made the opinion/report on 22.11.2022. After considering the report of the Board, the detention order dated 08.09.2022 was confirmed by the State authority vide order dated 23.12.2022. It is seen that the opinion/report of the Board was made on 22.11.2022 before expiry of the stipulated period of 3 months, but the State authority confirmed the detention order only on 23.12.2022, ie, after 15 days of the expiration of the stipulated period of 3 months. There is no controversy in this regard that the detention order should be confirmed by the detaining authority before the expiry of 3 months as contemplated by Article 22(4) of the Constitution. We are of the considered view that as the confirmation order was issued after expiry of 3 months from the date of initial detention, further detention beyond 08.012.2022 is without any authority. The detention order is liable to be set aside on this ground alone.

[15] On the other hand, the representation dated 01.03.2023 submitted by the detenu was received by the Central Government on 06.03.2023 by e-mail and the parawise comments were received on 10.03.2023 from the State Government by e-mail. On 16.03.2023, the file was put up before the competent authority i.e. Secretary (Revenue), Government of India, for passing an appropriate order and vide

Memorandum dated 21.03.2023, the representation dated 01.03.2023 submitted by the detenu was rejected. It took 20 days for the Central Government in disposal of the representation. However, the period from 01.03.2023 to 06.03.2023 is explained as the time taken in receiving the representation from the State Government. Further, the period from 06.03.2023 to 10.03.2023 has been explained as time taken in receiving parawise comments from the State Government. Hence, the Central Government took 11 effective days in disposal of the representation. There is no explanation for pending of the file for 6 days in the Ministry and 5 days' time taken by the Secretary (Revenue) in passing the memorandum dated 21.03.2023. In short, delay of 11 days has not been explained by the Central Government while disposing the representation.

[16] In the case of **Rajammal vs. State of Tamil Nadu** reported as **1999 (1) SCC 417**, the Hon'ble Supreme Court held that though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the word 'as soon as may be' in clause 5 of Article 22 conveyed the message that representation should be considered and disposed of at the earliest. It was further held that authority is permitted to explain the delay occasioned in the disposal of the representation. If the delay is not explained properly, the detention order is vitiated for violation of the fundamental rights enshrined under Articles 21 and 22(5) of the Constitution.

[17] In the case of **Sarabjeet Singh Mokha Vs. the District Magistrate, Jabalpur** reported in **MANU/SC/1011/2021**, the Hon'ble Supreme Court held that detention order can be invalidated on the grounds of- (1) unexplained delay on the

part of the authority in deciding the representation, and (2) failure of the authority to communicate the rejection of the representation in timely manner.

[18] In a very recent case of **Pramod Singla Vs. Union of India (UOI) & ors.**, reported in **MANU/SC/0349/2023**, the Honb'e Supreme Court observed in para 44 as follows:

'44. 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.'

[19] From the above decisions of the Hon'ble Apex Court, it is clear that compliance of the statutory provisions should be construed strictly and for any lapses on the part of the authorities, the benefit of the same be given to the detenu. This principle is propounded on the presumption that in a preventive detention a person is confined in custody without facing a trial and on the basis of the subjective satisfaction of the authority only.

[20] In the present case, Central Government cannot explain the effective period of 11 days taken while disposing the representation submitted by the detenu. As already observed above, the State Government also did not confirm the detention order within the stipulated period of 3 months as prescribed by Article 22(4) of the Constitution. In the circumstance, we are of the considered opinion that detention order cannot be sustained in the eyes of the law as it infringes the fundamental rights conferred on a citizen by Articles 21 & 22 of the Constitution.

[21] Accordingly, detention order dated 08.09.2022 and the confirmation order dated 23.12.2022 are set-aside. The detenu Md. Nurul Huda, be immediately released from detention forthwith, if not required in any other case.

[22] Writ petition is allowed.

[23] No costs.

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

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Indrajeet