

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

W.P. (Crl.) No. 52 of 2023

Md. Rahamad Ali @ Amuba

Petitioner

Vs.

Special Secretary (Home); & Ors.

Respondents

BEFORE

**HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

09.06.2023

A. Bimol Singh, Judge:

[1] Heard Mr. Ch. Ngongo, learned senior counsel, assisted by Mr. N. Gojen, learned counsel appearing for the petitioner; Mr. Phungyo Zingkhai, learned Dy. Government Advocate, appearing for respondent Nos. 1, 2 & 4; and Mr. S. Kaminikumar, learned CGSC, appearing for respondent No. 3.

[2] The brief facts of the present case is that the petitioner was arrested on 27.08.2022 in connection with FIR No. 02(01)2021 NAB-PS U/S 18(b)/29/60/03 ND&PS Act and he was detained in judicial custody. While the petitioner was in judicial custody, the Special Secretary (Home) Government of Manipur, issued an order dated 13.09.2022 thereby detaining the petitioner in exercise of the power conferred under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The grounds of detention was furnished to the petitioner on 16.09.2022 and on receiving the said grounds of detention, the petitioner submitted three separate representations dated 11.10.2022 addressed to the Chief Secretary, Government of Manipur, the Special Secretary (Home), Government of Manipur, and the Deputy Secretary (PIT ND&PS), Department of Revenue, New Delhi. Subsequently, the Special

Secretary (Home), Government of Manipur issued another order dated 02.12.2022 thereby confirming the detention order of the petitioner under the provisions of PIT-ND&PS Act, 1988 and fixing the period of detention for twelve months from the date of his detention.

[3] Having been aggrieved, the petitioner approached this Court by filing the present writ petition for redressing his grievance. Mr. Ch. Ngongo, learned senior counsel, appearing for the petitioner, challenged the detention order only on the ground that the representations dated 11.10.2022 submitted by the petitioner to three different authorities of the Government have not yet been considered and disposed of by the authorities till today. The learned senior counsel submitted that such inaction on the part of the authorities violates the fundamental rights of the petitioner guaranteed under Article 22(5) of the Constitution of India and accordingly, such inaction on the part of the authorities vitiates the impugned detention order. In support of his contention, the learned senior counsel relied on the following judgments of the Hon'ble Apex Court:-

- (i) **Ashok Kumar Vs. State of Jammu & Kashmir** reported in **AIR 1981 SC 851**, wherein the Hon'ble Apex Court held that non-consideration and disposal of the representation submitted by the detenu violates the constitutional safeguards enshrined in Article 22(5) of the Constitution of India and the continued detention of the detenu is unconstitutional and it vitiates the detention order.
- (ii) **Smt. Gracy Vs. State of Kerala** reported in **AIR 1991 SC 1090**, wherein it has been held by the Hon'ble Apex Court as under:-

“the nature of duty imposed on the detaining authority under Article 22(5) in the context of the extraordinary power of preventive detention is sufficient to indicate that strict compliance is necessary to justify interference with personal liberty. It is more so since the liberty involved is of a person in

detention and not of a free agent. Article 22(5) casts an important duty on the detaining authority to communicate the grounds of detention to the detenu at the earliest to afford him the earliest opportunity of making a representation against the detention order which implied the duty to consider and decide the representation when made, as soon as possible. Article 22(5) speaks of the detenu's 'representation against the order', and imposes the obligation on the detaining authority. Thus, any representation of the detenu against the order of his detention has to be considered and decided by the detaining authority."

[4] Despite adequate opportunities given to the respondents, none of the respondents have filed any counter affidavit refuting the statement made by the petitioner in the present writ petition. However, Mr. S. Kaminikumar, learned CGSC, appearing for respondent No. 3, placed before this Court a photocopy of the affidavit-in-opposition on behalf of respondent No. 3.

[5] Mr. Phungyo Zingkhai, learned Dy. Government Advocate, appearing for respondent Nos. 1, 2 & 4, placed before this Court the relevant official files in connection with the present detention order and the learned Dy. Government Advocate fairly submitted that on perusal of the said official records, there is nothing to indicate that the aforesaid three representations submitted by the petitioner have been duly forwarded to the concerned authorities and that the concerned authorities have considered and disposed of the said representations.

In the affidavit-in-opposition filed on behalf of respondent No. 3, it has been specifically averred at para 3 that the Ministry, i.e., respondent No. 3 herein, had not received any representation from or on behalf of the petitioner till date as per the records available in PIT-NDPS, Wing of Department of Revenue.

[6] In the present case, it is an admitted fact that as soon as the detenu received the grounds of detention, he submitted three separate representations to three different authorities against his detention order and that the said three representations have not yet been considered by any of the said

three authorities till today. It is also an admitted fact that the said representations submitted by the detenu have not yet been disposed of till today.

[7] Taking into consideration such undisputed facts, we are of the considered view that such inaction on the part of the respondents clearly violates the fundamental rights of the detenu guaranteed under Article 22(5) of the Constitution of India and thereby vitiates the detention of the petitioner.

[8] Accordingly, we have no hesitation to interfere with the impugned detention order passed against the petitioner. In the result, the present writ petition is allowed by quashing and setting aside the impugned detention order dated 13.09.2022 and the confirmation order dated 02.12.2022. The respondents are further directed to release the petitioner forthwith, if his further detention is not required in connection with any other case.

[9] With the aforesaid direction, the present writ petition is disposed of.

Sandeep

JUDGE

JUDGE