

IN THE HIGH COURT OF MANIPUR AT IMPHAL

W.P.(Crl.) No. 56 of 2023

Letkhothang Haokip, aged about 45 years, Father of Jamgoulen Haokip, a resident of Kingkin Village, P.O., P.S. and District – Churachandpur, Manipur- 795128.

....Petitioner

- Versus -

1. The State of Manipur, represented by the Chief Secretary, Old Secretariat Building, Babupara, District- Imphal West, Government of Manipur- 795001.
2. The State of Manipur, represented by Special Secretary (Home), Old Secretariat Building, Babupara, District- Imphal West, Government of Manipur – 795001.
3. The Union of India, through the Deputy Secretary (PIT-NDPS), Department of Revenue, 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. Albert Keisham, Advocate
For the respondents	:	Mr. Phungyo Zingkhei, Dy. G.A. for respondent Nos. 1 & 2; and Mr. W. Darakeshwar, Sr. PCCG for respondent No. 3.
Date of Hearing	:	03.07.2023
Date of Judgment & Order	:	07.07.2023

JUDGMENT AND ORDER (CAV)

A. Guneshwar Sharma, J.

[1] In the present writ petition, the petitioner has challenged the order of detention dated 25.11.2022 passed by the Special Secretary (Home), Government of Manipur.

[2] Heard Mr. Albert Keisham, learned counsel for the petitioner; Mr. Phungyo Zingkhai, learned Dy. Government Advocate for respondent Nos. 1 & 2; and Mr. W. Darakeshwar, learned Sr. PCCG for the Central Government.

[3] Mr. Albert Keisham, learned counsel for the petitioner, submits that the detenu is the son of the petitioner and he was arrested on 09.05.2022 along with another person in connection with FIR No. 17(5)2022 KPI-PS u/s 21(c)/29/60(3)/ ND&PS Act and from their possession 212 soap cases containing suspected Heroin No. 4 of 2.131 kg were recovered. Vide order dated 09.11.2022, the learned Special Judge (ND&PS), Senapati, Manipur extended the period of investigation beyond 180 days. Vide order dated 25.11.2022, the Special Secretary (Home), Government of Manipur, issued a detention order detaining the detenu Shri Jamgoulen Haokip, under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND&PS Act), 1988 for preventing him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances and also bail application was filed in the Court of learned Special Judge (ND&PS), Senapati. Vide letter dated 05.12.2022, the Special

Secretary (Home), Government of Manipur furnished grounds of detention to the detenu. Vide order dated 01.02.2023, the Commissioner (Home), Government of Manipur, confirmed the detention order dated 25.11.2022. Thereafter, the detenu filed representation dated 28.02.2023 to the Chief Secretary, Government of Manipur, through the Superintendent of Manipur Central Jail, Sajiwa for revoking the detention order and with a request to send a copy of the representation to the Deputy Secretary (PIT-ND&PS), Ministry of Finance, Government of India, New Delhi. Vide order dated 10.03.2023, the State Government has rejected the representation submitted by the detenu. Vide memorandum dated 21.03.2023, the Central Government also rejected the representation submitted by the detenu.

[4] Mr. Albert Keisham, learned counsel for the petitioner, submits that the detention order was issued on 25.11.2022 and grounds of detention dated 05.12.2022 was furnished to the detenu on 06.12.2022 i.e., after 11 days. He draws the attention of this Court to the provisions of Section 3(3) of the PIT-NDPS Act, 1988 which mandates that ordinarily grounds of detention should be furnished within 5 days and in exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of detention. He further submits that in the present case grounds of detention was furnished after 10 days and no exceptional circumstances were recorded in the letter dated 05.12.2022 and such detention order is liable to be set-aside on this ground alone. He further submits that detention order dated 25.11.2022 was furnished to the Central Government on

09.12.2022. He also refers to Section 3(2) of the PIT ND&PS Act that detention order has to be forwarded to the Central Government within 10 days and in the present case, the same was forwarded after 10 days i.e. 14 days and the detention order can be set-aside on this ground also. Mr. Albert Keisham, learned counsel for the petitioner, further submits that the detenu has not filed any bail application, but in the detention order dated 25.11.2022, it was issued on the ground that the detenu filed a bail application and was likely to be released on bail and would continue in the illegal activities of the drug trafficking even after his release. Learned counsel submits that there is total non-application of mind on behalf of the detaining authority and prays that detention order dated 25.11.2022 and confirmation order dated 01.02.2023 be set-aside.

[5] Mr. Phungyo Zingkhai, learned Dy. G.A. for the State respondents, relying on the counter affidavit, submits that the detenu was taken into custody for transportation of Heroine No. 4 of commercial quantity and was a member of syndicate of drug trafficker. It is also stated that there are sufficient reasons to belief that detenu will filed bail application and possibility of releasing on bail. It is also submitted that the representation was submitted on 28.02.2023 and para wise comment was received on 09.03.2023 and representation was rejected by order dated 10.03.2023 and hence, there is no delay on the part of the State Government and prayed for rejection of the writ petition.

[6] Mr. W. Darakeshwar, learned Sr. PCCG on behalf of the Central Government, states that detention order dated 25.11.2022 was furnished to the Ministry vide letter dated 08.12.2022 and the same was received on 09.12.2022 by e-mail. Since the same was submitted after 4 days from the stipulated 10 days under Section 3(2) of the ND&PS Act, the State Government was requested to furnish the reasons for late submission and till date, no reply has been submitted. It is also stated that representation dated 28.02.2023 was received by the Ministry from the State Government through e-mail dated 06.03.2023 and para-wise comments was received on 10.03.2023 by e-mail. The representation was examined and submitted to the competent authority i.e., Secretary (Revenue) on 16.03.2023 and vide Memorandum dated 21.03.2023, the same was rejected. It is also stated that there is no delay on the part of the Central Government in processing the representation and the writ petition may be rejected.

[7] We have considered the submissions made by the counsel for the parties, the materials on record and the original file submitted by the State Government.

[8] It is seen that in pursuance to the detention order dated 25.11.2022, the Special Secretary (Home), Government of Manipur, furnished the grounds of detention dated 05.12.2022 to the detenu and the same was received on 06.12.2022. It is clear that the ground for detention was furnished after 11 days. As per the provisions of Section 3(3) of the PIT-NDPS Act, ordinarily the ground of detention should be furnished within 5

days and in exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of detention. On perusal of the grounds for detention dated 05.12.2022, no explanation is given for failure to furnish the same within the stipulated 5 days. It is not stated in the grounds of detention and nor in the counter affidavit submitted by the State Government. This Court is of the view that detention order is bad for violation of the mandatory provisions of Section 3(3) of the PIT-NDPS Act. Moreover, detention order dated 25.11.2022 was furnished to the Central Government vide letter dated 08.12.2022 and the same was received on 09.12.2022 by the Central Government. There is 4 days delay in furnishing the detention order to the Central Government and as per Section 3(2) of PIT ND&PS Act, such information should be forwarded to the Central Government within 10 days. So, there is a violation of the mandatory provisions of Section 3 (2) of the Act. In the detention order dated 25.11.2022, the main ground for detention is filing of the bail application by the detenu and likely to be released on bail. Mr. Albert Keisham, learned counsel, submitted that the detenu has not filed any bail application and there is total non-application of mind in the present case. In the detention order dated 25.11.2022, details of the bail application is also not mentioned. This Court is of the view that there is a non-application of mind on behalf of the State Government. The Central Government disposed of the representation dated 28.02.2023 submitted by the detenu on 25.03.2023. The period from 25.11.2022 to 06.03.2023 has been explained as the representation was received by the Central Government on 06.03.2023 and the period from 06.03.2023 to

10.03.2023 has been explained as time taken in receiving the para wise comments. However, the representation was rejected on 21.03.2023 as such 11 days delay has not been properly explained by the Central Government.

[9] In the recent case of **Pramod Singla Vs. Union of India (UOI) & ors.**, reported in **MANU/SC/0349/2023**, the Honb'e Supreme Court held in Para 44 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 detainee. Para 44 reads 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 detainee. 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.'

[10] In the present case, there is a violation of mandatory provisions of Section 3(2) of PIT ND&PS Act as the State Government could not furnished the detention order dated 25.11.2023 to the Central Government within prescribed 10 days and the State Government failed to furnished any reason for not able to do the same. Moreover, the provisions of Section 3(3) of the Act has not been complied as the grounds of detention was furnished beyond the normal stipulated 5 days and no reasons were given in writing for the same. In view of the ratio of the **Pramod Singla (Surpa)**, the detention order is liable to be set-aside for failure to comply the mandatory

provisions of the statute. The main ground for detention is the filing of the bail application by detenu and he is likely to be released on bail but on record, there is no bail application. In the detention order dated 25.11.2022, the details of the bail application is not given and the learned counsel for the petitioner fairly submits that the detenu has not filed any bail application. There is total non-application of mind on the part of the detaining authority in issuing the detention order and the same is liable to be set-aside on this ground alone also. There is failure on the part of the Central Government to explain effective 11 days delay while disposing the representation. As held 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 unexplained delay in disposing the representation vitiates the detention order. In view of the above, we are of the view that detention order is issued in violation of the mandatory provisions and there is unexplained delay in the disposal of the representation by the Central Government.

[11] Accordingly, detention order dated 25.11.2022 and the confirmation order dated 01.02.2023 are set-aside. Detenu be released forthwith, if not required in any other case.

[12] Return the original file.

[13] Writ petition is allowed and disposed of.

[14] No costs.

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

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Indrajeet