

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 57 of 2023

Aribam Sidik Ali aged about 53 years S/o Md. Ibotombi of Sangaiyumpham Idigah Yangbi Leikai, P.S. & P.S. Thoubal, District- Thoubal, Manipur (Now a detenu under PIT-NDPS Act).
..... Petitioner/s

- Versus -

1. The Commissioner (Home)/Special Secretary (Home), Government of Manipur at Old Secretariat, Imphal P.O. & P.S.-Imphal, Imphal West, Pin Code-795001, Manipur.
2. The State of Manipur represented by Chief Secretary Government of Manipur at Old Secretariat, Imphal, P.O. & P.S.-Imphal, Imphal West, Pin Code-795001, Manipur.
3. The Union of India,

Though the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, near North Block, Room No.-26, Church Road, RFA-Barrack, New Delhi-110001.

.....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. Th. Jugindro, Adv.
For the Respondents	::	Mr. Th. Vashum, G.A. and Mr.W. Darakishwar, Sr. PCCG.
Date of hearing	::	03.07.2023
Date of Judgment and Order	::	07.07.2023

JUDGMENT & ORDER **(CAV)**

A. Guneshwar Sharma, (J)

[1] The detenu, namely Mr. Aribam Sidik Ali, was arrested on 06.08.2022 in connection with FIR No. 132(08)2022 TBL-PS U/S 21(b)/29 ND & PS Act and from his possession, 12.10 gms of heroin No. 4 was recovered. Vide order dated 09.12.2022, the Commissioner (Home), Government of Manipur issued the detention order 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 three months until further orders. It is mentioned that the detenu filed a bail application before the Court of Special Judge (ND & PS), Thoubal and likely to be released on bail and after release on bail, he would continue in illicit trafficking of drugs.

[2] Vide order dated 14.12.2022, the Commissioner (Home), Government of Manipur furnished the grounds of detention to the detenu. Thereafter, vide order dated 07.02.2023 issued by the Commissioner (Home), Government of Manipur, the detention order dated 09.12.2022 was confirmed and fixed the period of detention for a period of 12 months.

[3] The detenu submitted 3 (three) similar representations all dated 24.03.2023 through the Superintendent of Police, Manipur Central Jail, Sajiwa to (i) the Commissioner (Home), Government of Manipur, (ii) the Chief Secretary, Government of Manipur and (iii) the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India. The Government of Manipur rejected the representation dated 24.03.2023 on 28.03.2023 and the Government of India rejected the representation vide memorandum dated 12.04.2023.

[4] Heard Mr. Th. Jugindro, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A. for respondent Nos. 1 & 2 and Mr. W. Darakishwar, learned Sr. PCCG for respondent No. 3.

[5] Mr. Th. Jugindro, learned counsel for the petitioner, submits that there is violation of mandatory provisions of PIT-ND & PS Act, 1988 and inordinate delay on the part of the Central Government in disposing of the representation. He prays that the detention order be set aside and the detenu be released.

[6] Mr. Th. Vashum, learned G.A. for the State respondents, submits that there is no lapse on the part of the State Government in dealing with the detention of the detenu. It is stated that the grounds for detention of the detenu was furnished within the stipulated time and the representation was disposed of within 4 (four) days and necessary information was furnished to the Central Government expeditiously as possible. He prays that the writ petition be dismissed as being devoid of merit.

[7] Mr. W. Darakishwar, learned Sr. PCCG for the Union of India, submits that the detention order dated 09.12.2022 was received by the Central Government on 16.12.2022 within the stipulated period of 10 (ten) days. He further submits that the representation dated 24.03.2023 was received by e-mail on 27.03.2023 and the para-wise comment was received on 31.03.2023 and after that, the matter was submitted to the Secretary (Revenue) on 06.04.2023. Vide memorandum dated 12.04.2023, the representation was rejected by the Central Government. He submits that there is no delay on the part of the Central Government for dealing with the representation submitted by the detenu and the actual time taken in disposing of the representation by the Central Government is not fatal. He prays for rejecting the writ petition.

[8] We have considered the submissions made at the bar, perused the materials on record and official files submitted by the State Government.

[9] On the part of the State Government, there is no violation of the mandatory provisions of the PIT-ND & PS Act, the grounds of detention was furnished within 5 days as stipulated under Section 3 (3) of the Act and the detention order was forwarded to the State Government within 10 (ten) days as provided under Section 3(2) of the Act, it took only 4 (four) days for the State Government in disposing of the representation.

[10] We are of the view that there is no delay on the part of the State Government in dealing with the detention of the detenu. However, it took 19 days for the Central Government to decide the representation dated 24.03.2023. The period from 24.03.2023 to 31.03.2023 (i.e. 7 days) has been explained as the time taken for receiving the representation as well as para-wise comment from the State Government. Hence, it took 12 (twelve) effective days for the Central Government in disposal of the representation. These 12 days' delay has not been satisfactorily explained by the Central Government in the memorandum dated 12.04.2023 nor in the counter affidavit submitted before this Court.

[11] In the case of **Rajammal v. State of T.N.** reported in (1999) 1 SCC 417 at para 7, it was held that the authority is permitted to explain the delay which had occasioned in disposal of the representation and on failure to explain such delay, the detention order would be illegal. Similarly, it was held in the case of **Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur** reported as MANU/SC/1011/2021 that unexplained delay in considering the representation will invalidate the detention order.

[12] In the present case, the Central Government could not explain the delay of 12 (twelve) days time taken while disposing of the representation even after receive of para-wise comment. On this ground

alone, the detention order cannot be sustained. Accordingly, the detention order dated 09.12.2022 and the confirmation order dated 07.02.2023 issued by the Commissioner (Home), Government of Manipur are set aside and the detenu, namely Aribam Sidik Ali, be released forthwith from custody, 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 Superintendent of Police, Manipur Central Jail, Sajiwa for information and doing the needful.

[15] Return the original file to the State Government.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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