

IN THE HIGH COURT OF MANIPUR AT IMPHAL

W.P.(Crl.) No. 58 of 2023

Md. Jahiya Khan aged about 33 years, S/o Jakir Khan @ Hussain, a resident of Kshetrigao Awang Leikai, P.O. & P.S.- Porompat, District- Imphal East, Manipur- 795008. (Now a detenu under PIT-ND&PS Act).

....Petitioner

- Versus -

1. The Union of India represented by the Joint Secretary (PIT-NDPS), Government of India, Ministry of Finance, Department of Revenue, Room No. 202, 2nd Floor, Jeevan Tara Building, Parliament Street, New Delhi-110001.
2. The Secretary, Government of India, Department of Revenue, Ministry of Finance, New Delhi -110001.
3. 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.

...Respondents

B E F O R E

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

For the petitioner	:	Mr. Th. Jugindro, Advocate.
For the respondents	:	Mr. S. Samarjeet, Sr. PCCG for respondent Nos. 1 & 2; and Mr. Phungyo Zingkhei, Dy. G.A. for respondent No. 3.
Date of Hearing	:	07.07.2023
Date of Judgment & Order	:	25.07.2023

JUDGMENT AND ORDER (CAV)

A. Guneshwar Sharma, J.

[1] By the present petition under Article 226 of the Constitution, the petitioner has challenged the impugned detention order dated 28.12.2022 issued by the Joint Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi, under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND&PS Act), 1988 whereby detaining the detenu under preventive detention on the ground of non-application of mind and violation of mandatory provisions of the PIT-ND&PS Act. Heard Mr. Th. Jugindro, learned counsel for the petitioner; Mr. S. Samarjeet, learned Sr. PCCG for respondent Nos. 1 & 2; and Mr. Phungyo Zingkhei, learned Dy. Government Advocate for respondent No. 3.

[2] Mr. Th. Jugindro, learned counsel for the petitioner, submits that the detenu was arrested earlier on 01.07.2017 in connection with FIR No. 214(7) 2017 PRT-PS u/s 21(b) ND&PS Act on allegation of possession of 150 grams of Heroin No. 4 and charge sheet was filed on 22.09.2022 and he is facing trial in connection with Spl. Trial No. 5 of 2022 in the Court of Special Judge, ND&PS, Manipur at Lamphelpat. He was released on bail in this F.I.R. It is also alleged that on 08.12.2021, officers of NCB, Imphal, recovered 10.39 kg of Methamphetamine Crystal from the possession of two persons at Imphal International Airport while going to Chennai and it was alleged that

the contrabands were given by the detenu to these two persons. On the basis of the recommendation of the Sponsoring Agency i.e. NCB, Guwahati, the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue (PITNDPS UNIT) issued detention order dated 28.12.2022 for taking into prevention of the detenu under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND&PS Act), 1988 for preventing from engaging in illicit trafficking of narcotic drugs & psychotropic substances. Since the detenu was on bail and was not residing at his given addresses, the detention order could not be served to him and he was taken into custody only on 06.03.2023 from the Lamphel Court Complex when he came to appear for the trial before the Court. The grounds of detention dated 28.12.2022 was furnished to him on 08.03.2023. Vide letter dated 17.03.2023, the Under Secretary, Government of India, Ministry of Finance, Department of Revenue, PIT-NDPS Division, referred the matter to the Advisory Board, Manipur under Section 9(b) of the PIT-NDPS Act, 1988 and vide opinion dated 25.04.2023 the Board found sufficient reasons for detaining the detenu. The detenu submitted three separate representations all dated 30.03.2023 through the Superintendent, Manipur Central Jail, Sajiwa to (i) the Joint Secretary (PIT NDPS), Government of India; (ii) the Secretary, Government of India, Department of Revenue, Ministry of Finance; and (iii) the Chairman, PIT NDPS Advisory Board, Manipur. Vide memorandum dated 20.04.2023, the Detaining Authority rejected the representation dated 30.03.2023 submitted by the detenu and again vide memorandum dated 26.05.2023, Secretary (Revenue),

Government of India, also rejected the representation dated 30.03.2023 submitted by the detenu. Vide order dated 16.05.2023 issued by the Deputy Secretary, Government of India, Ministry of Finance, Department of Revenue, PITNDPS Division, the detention order dated 28.12.2022 was confirmed and fixed the period of detention for a period of one year from the date of detention i.e. 06.03.2023. The detention order dated 28.12.2022 has been challenged mainly on the grounds that: - (i) there were no materials and non-application of judicial mind for issuing the detention order, (ii) detention order dated 28.12.2022 and grounds of detention dated 28.12.2022 were served on 07.03.2023 to the detenu, (iii) violation of the mandatory provision of Section 3(3) of the PIT-ND&PS Act, (iv) violation of the mandatory provision of Section 9(b) of the PIT-ND&PS Act, (v) non-mentioning of the period of detention in the detention order, (vi) the representations submitted by the detenue were not disposed of on the date of filing of the writ petition, (vii) the detention order was issued in order to frustrate the bail order.

[3] Mr. Th. Jugindro, learned counsel for the petitioner, submits that since there is violation of the mandatory provision of the PIT ND&PS Act and delay in disposal of the representations submitted by the detenu, the detention order ought to be set-aside.

[4] Mr. S. Samarjeet, learned Sr. PCCG, referring to the counter affidavit filed by the Central Government, submits that the petitioner is habitual offender and has to be taken into preventive detention as he could not be dealt by ordinary criminal proceedings. He has been involved in

multiple cases and is also facing trial under NDPS Act. Since the detenu was not residing at his given addresses, the detention order dated 28.12.2022 could be executed only on 06.03.2023 and grounds of detention along with documents were served to the detenu on 08.03.2023 within the stipulated period as prescribed by Section 3(3) of the PIT ND&PS Act. The matter was referred to the Manipur Advisory Board (PIT-ND&PS) on 17.03.2023 and after receiving opinion of the Board dated 25.04.2023 of having sufficient grounds to detain the detenu, the detaining authority issued confirmation order dated 16.05.2023 for the detention order dated 28.12.2022 and fixed the period of detention for one year from the date of detention i.e. 06.03.2023. Mr. S. Samarjeet, learned Sr. PCCG, further submits that regarding the representation dated 30.03.2023 submitted to respondent No. 1 (Detaining Authority), the comments from the Sponsoring Agency were sought and the same was received on 19.04.2023 and vide Memorandum dated 20.04.2023, the representation was rejected by the Detaining Authority i.e. respondent No. 1. It is further stated that the representation submitted to the Secretary (Revenue), Government of India, respondent No. 2, was kept in abeyance as per the judgment of the Hon'ble Supreme Court in the cases of Ankit Ashok Jalan and Golam Biswas, as the representation addressed to the Appropriate Government have to wait the opinion of the Advisory Board, and on receiving the opinion of the Board the Secretary (Revenue), Government of India, respondent No. 2, also rejected the representation dated 30.03.2023 by Memorandum dated 26.05.2023. It is submitted that there is no delay on the part of the Central Government, i.e., both the Detaining Authority and the

Competent Authority, in dealing with the detention and disposal of the representation. Mr. S. Samarjeet, learned Sr. PCCG, prays that writ petition be rejected being devoid of merit, keeping in view that the detenu is a habitual offender indulging in the illicit business of drugs & narcotic substances.

[5] Mr. Phungyo Zingkhai, learned Dy. G.A. for the State respondent, submits that since the Detaining Authority and the Competent Authority are from the Central Government, the State Government has no role and hence, no counter affidavit has been filed. It is prayed that relying on the available materials, this Court may pass appropriate orders.

[6] This Court have considered the materials on record, the grounds raised in the writ petition, the counter affidavit filed by the Central Government and the relevant case laws in this regard.

[7] From the pleadings, it is seen that the detenu is facing trial under ND&PS Act before the learned Special Court (ND&PS), Manipur at Lamphel and he was arrested in the subsequent case by the NCB also. Detention order dated 28.12.2022 could be executed only on 06.03.2023 when the detenu was arrested from the Lamphel Court Complex and grounds of detention dated 28.12.2022 was furnished on 08.03.2023 and hence, there is compliance of the mandatory provision of Section 3(3) of the PIT ND&PS Act which stipulates furnishing of the grounds of detention within 5(five) days and in exceptional case within 15(fifteen) days from the date of detention. In the present case, the detenu was taken into detention on

06.03.2023 and the grounds of detention was furnished on 08.03.2023 and the same is within 5(five) days as stipulated under Section 3(3) of the Act. Section 9(b) of the Act provides that Detaining Authority shall make a reference to the Advisory Board within 5(five) weeks from the date of detention. Admittedly, the Detaining Authority made a reference to the Advisory Board, Manipur on 17.03.2023 and the same is within 5(five) weeks as stipulated under Section 9(b) of the PIT ND&PS Act. Hence, there is a compliance of this provision also. Regarding the plea of Mr. Th. Jugindro, learned counsel for the detenu that the detention order dated 28.12.2022 is void as the period of detention was not mentioned in the detention order, it may be noted that Article 22 (4) of the Constitution of India provides that detention shall not exceed 3(three) months, unless the Advisory Board gives an opinion that there are sufficient grounds for detention and detention order have to be confirmed by the detaining authority within the period of 3(three) months. We are of the considered opinion that in absence of any period mentioned in the detention order, the detention order shall be contrued to be valid only for 3(three) months, in view of the provisions of Article 22(4) of the Constitution and accordingly, the detention order cannot be faulted on this ground alone.

[8] In the present case, detention order is dated 28.12.2022, the detenu was taken into detention on 06.03.2023 and the confirmation order was issued vide order dated 16.05.2023 by the Detaining Authority. It is

required to examine whether the confirmation order was issued before the expiry of 3(three) months as stipulated by Article 22 (4) of the Constitution.

[9] On plain reading of the language of sub-clause 4 of Article 22 of the Constitution, it is clear that detention beyond 3(three) months is not permissible, unless the same is approved by the Board and confirmed by the Detaining Authority prior to the expiry of 3(three) months.

[10] 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 (/) 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."

[11] In para 10 of the above judgment of **Nirmal Kumar (Supra)**, it was held by the Hon'ble Supreme Court that the confirmation order has to be issued within 3(three) months from the date of detention by the appropriate Government. It is the settled proposition of law that the confirmation is to be issued within 3(three) months from the date of actual detention and not from the date of issuing detention order. In the present case, the detention order is dated 28.12.2022 and the detenu was actually taken into detention on 06.03.2023 and the confirmation order after receiving the opinion of the Advisory Board was issued on 16.05.2023. The period from 06.03.2023 to 16.05.2023 is admittedly within 3(three) months as stipulated by Article 22(4) of the Constitution and hence, there is no illegality in issuing the confirmation order dated 16.05.2023 and that too from the date of actual detention i.e., 06.03.2023.

[12] In the case of **Ankit Ashok Jalan v. Union of India: (2020) 16 SCC 127: MANU/SC/0276/2020**, the Hon'ble Supreme Court held that the detaining authority/specially empowered officer who passed the detention order, is not required to wait for the decision of the Advisory Board and has to consider the representation independently without waiting the report of the Advisory Board and to pass an appropriate order. Relevant Para Nos. 25 & 26 are reproduced below:

"25. Thus, if the law is now settled that a representation can be made to the specially empowered officer who had passed the order of detention in

accordance with the power vested in him and the representation has to be independently considered by such Detaining Authority, the concerned principles adverted to in paragraph 16 of the decision in ***K.M. Abdulla Kunhi*** MANU/SC/0511/1991: (1991) 1 SCC 476 would not be the governing principles for such specially empowered officer. It must be stated that the discussion in ***K.M. Abdulla Kunhi*** MANU/SC/0511/1991: (1991) 1 SCC 476 was purely in the context where the order of detention was passed by the appropriate Government and not by the specially empowered officer. The principle laid down in said paragraph 16 has therefore to be understood in the light of the subsequent decision rendered by another Constitution Bench of this Court in ***Kamleshkumar*** MANU/SC/0732/1995 : (1995) 4 SCC 51.

26. In the light of the aforesaid discussion, our answer to first two questions is that **the Detaining Authority ought to have considered the representation independently and without waiting for the report of the Central Advisory Board.**

We now come to the 3rd question. The facts in the instant case indicate that the comments of the Sponsoring Authority in respect of the representation were already received by the Detaining Authority. After receipt of letter on 27.11.2019 that the detainees were received in custody, the time for considering the representation started ticking for the Detaining Authority. But the representation was considered only on 14.01.2020 and the reason for such delayed consideration is that the report of the Central Advisory Board was awaited. We have already found that the Detaining Authority was obliged to consider the representation without waiting for the opinion of the Central Advisory Board. Thus, there was no valid explanation for non-consideration of the representation from 27.11.2019 till 14.01.2020. We must, therefore, hold that complete inaction on part of the Detaining Authority in considering the representation caused prejudice to the detainees and violated their constitutional rights."

[13] In the case of **Sarabjeet Singh Mokha Vs. the District Magistrate, Jabalpur** reported in **MANU/SC/1011/2021**, Hon'ble Supreme Court held in para 33 that the appropriate authority is to consider the representation independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Relevant para is reproduced below:

"33.

20. Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. **Secondly, the**

consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast Rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly...."

[14] In para 55 of **Sarabjeet Singh Mokha (*supra*)**, the Hon'ble Supreme Court also held that the order of detention can be invalidated on two grounds: first, the unexplained delay on the part of the authority in deciding the representation and second, the failure to communicate the rejection of the representation in a timely manner.

[15] In the case of **Rajammal vs. State of Tamil Nadu** reported as **1999 (1) SCC 417**, Hon'ble Supreme Court held that the representation submitted by the detenu ought to be disposed of as expeditiously as possible and the authority is permitted to explain the delay occasioned in the disposal of the representation. Failure to explain the delay will invalidate the detention order.

[16] In a recent case of **Pramod Singla Vs. Union of India (UOI) & ors.**, reported in **MANU/SC/0349/2023**, the Honbl'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.'

[17] In another recent case of **Prakash Chandra Yadav @ Mungeri Yadav v. The State of Jharkhand & Ors.: Civil Appeal No. 4324 of 2023: [2023 Live Law (SC) 529]**, it has been held that procedure is to be strictly interpreted in a case of preventive detention and the unexplained delay in disposal of the representation of the detenu would be violative of the constitutional imperative and it would render the continued detention unauthorized and illegal.

[18] In the case in hand, the Detaining Authority i.e. respondent No. 1, Joint Secretary (Revenue), Government of India, rejected the representation dated 30.03.2023 vide Memorandum dated 20.04.2023. It has been explained that the para-wise comments from the Sponsoring Agency was received on 19.04.2023 and the representation was rejected vide Memorandum dated 20.04.2023 on the next day itself and hence, there is no delay. However, it is not clearly stated in the counter affidavit filed by the Central Government the exact date on which the para-wise comment was sought for from the Sponsoring Agency. We are of the view that the delay in waiting the para-wise comment from the Sponsoring Agency has not been explained satisfactorily. The Secretary (Revenue), Government of India, rejected the representation dated 30.03.2023 vide memorandum dated 26.05.2023. It is explained in the counter affidavit that the Secretary (Revenue), was to wait the opinion of the Advisory Board as per the decisions of Hon'ble Supreme Court in **Golam Biswas (Supra) & Ankit Ashok**

Jalan (Supra). From the record, it is seen that the Advisory Board gave his opinion on 25.04.2023. There is no explanation for the period of more than 1(one) month after receiving the opinion of the Advisory Board (even if presumed as required) in disposing the representation of the detenu by the Appropriate Government i.e., Secretary (Revenue). In the case of **Sarabjeet Singh Mokha (Supra)**, it has been held by the Hon'ble Supreme Court that appropriate authority has to consider the representation submitted by the detenu independent of any action by the Advisory Board. It is crystal clear that the Central Government has not explained satisfactorily the delay in disposal of the representation by the Detaining Authority as well as the Appropriate Government. In view of the settled provisions of law as considered above that in a preventive detention, every lapse in procedure must give benefit to the detenu and unexplained delay in disposing the representation invalidated the detention order, we are of the opinion that the detention order cannot be sustained.

[19] Accordingly, the detention order dated 28.12.2022 and the confirmation order dated 16.05.2023 are set-aside. Detenu be released forthwith from detention, if not required in any other case. We do not express any opinion on the merit of the pending cases against the detenu except for examining the compliance of the mandatory statutory requirements as imposed by the PIT-ND&PS Act, the Constitution of India, and decisions of the Hon'ble Apex Court.

[20] Writ petition is allowed and disposed of. No costs.

[21] Send a copy of this order to the Joint Secretary (Revenue), Government of India, Ministry of Finance, Department of Revenue; and Superintendent, Manipur Central Jail, Sajiwa for information and doing the needful.

JUDGE

JUDGE

FR/NFR

Indrajeet