

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(Cril.) No. 61 of 2023

Mohammad Manojuddin, aged about 35 years, S/o Mohammad Samddin of Kshetri Awang Leikai, P.S. Porompat, Imphal East District, Manipur (Now in the custody of Manipur Central Jail, Sajiwa).

..... *Petitioner/s*

- *Versus* -

1. The Commissioner (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.

Through 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 MR. MV MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Petitioner	::	Mr. Th. Jugindro, Adv.
For the respondents	::	Mr. Phungyo Zingkhai, Dy. G.A. and Mr. Boboy Potsangbam, CGSC
Date of hearing	::	07.08.2023
Date of Order	::	23.08.2023

ORDER (CAV)

A. Guneshwar Sharma, J.

[1] By the present petition under Article 226 of the Constitution of India, the detenu herein challenged the detention order dated 19.12.2022 issued by the Commissioner (Home), Government of Manipur 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 3 (three) months until further orders.

[2] Heard Mr. Th. Jugindro, learned counsel for the petitioner, Mr. Phungyo Zingkhai, learned Dy. G.A. for the State respondent and Mr. Boboy Potsangbam, learned CGSC for the Central Government.

[3] Mr. Th. Jugindro, learned counsel for the petitioner, submits that the detenu was arrested on 04.07.2022 in connection with FIR No. 28(07)2022 NAB PS u/s 21(b) ND & PS Act. Vide order dated 10.11.2022 passed by the Special Court (ND & PS), Manipur in Cril.Misc.(B) Case No. 302 of 2022, the detenu was released on bail. Then, the detenu was taken into custody in pursuance to the detention order dated 19.12.2022 issued by the Commissioner (Home), Government of Manipur under Section 3(1) of the PIT-ND & PS Act. The grounds of detention was furnished to the detenu vide letter dated 22.12.2022. Vide order dated 22.02.2023 issued by the

Commissioner (Home), Government of Manipur, the detention order dated 19.12.2022 was confirmed and fixed the period of detention as 12 (twelve) months. Thereafter, after the confirmation order, the detenu submitted 3 (three) similar representations all dated 27.04.2023 through the Superintendent, Manipur Central Jail, Sajiwa to (i) The Chief Secretary, Government of Manipur, (ii) The Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India and (iii) The Commissioner (Home)/Special Secretary (Home), Government of Manipur for revoking the detention order.

[4] Vide order dated 09.05.2023, the representation dated 27.04.2023 submitted by the detenu was rejected by the State Government and vide memorandum dated 21.07.2023, the Central Government rejected the representation.

[5] The detention order is challenged amongst on the following grounds that:

- (i) non-application of mind while passing the detention order;
- (ii) violation of mandatory provisions of PIT-ND & PS Act;
- (iii) relevant documents are not furnished along with the ground of detention; and
- (iv) delay and non-disposal of the representation by the authorities.

[6] Mr. Th. Jugindro, learned counsel for the petitioner, submits that the detention order is liable to be set aside for violation of the mandatory provisions as mentioned above.

[7] Mr. Phungyo Zingkhai, learned Dy. G.A. for the State respondent, submits that the detenu was taken into custody as he was a habitual offender and there is no alternative means. The representation dated 27.04.2023 was received on 02.05.2023, para-wise comment was received from the SP/NAB on 08.05.2023 and the representation was rejected immediately on the next day (i.e. 09.05.2023). Hence, there is no delay on the part of the State Government and it is prayed that the writ petition be dismissed.

[8] Mr. Boboy Potsangbam, learned CGSC for the Central Government, relies upon the counter affidavit and submits that the representation dated 27.04.2023 was received by the Ministry from the State Government by e-mail dated 15.05.2023 and para-wise comment was received by e-mail on 09.05.2023. As there was some inconsistency of fact vide e-mail dated 15.05.2023, the Central Government requested the State Government to send revised comment and vide e-mail dated 07.07.2023, the State Government sent clarification and the matter was put up to the Secretary (Revenue) on 12.07.2023. Vide memorandum dated 21.07.2023, the representation submitted by the detenu was rejected. It is submitted that

the time taken by the Central Government for consideration and disposal of the representation is reasonable and it is prayed that the writ petition be dismissed.

[9] We have considered the submissions made by the learned counsel for the parties, perused the materials on record and considered the relevant law in this regard.

[10] From the record, it is seen that it took one effective day for the State Government in disposal of the representation submitted by the detenu. The para-wise comment was received from the SP/NAB on 08.05.2023 and the representation was rejected on 09.05.2023. The period between 27.04.2023 to 08.05.2023 has satisfactorily been explained by the State respondent. Hence, there is no delay on the part of the State Government. On perusal of the counter affidavit filed by the Central Government, it took a total of 85 days in disposal of the representation submitted by the detenu from the date of representation. However, the period from 27.04.2023 to 07.07.2023 has been explained as time taken in receiving the representation and revised para-wise comment from the State Government. Hence, after deducting this period, it took 14 effective days for the Central Government in disposal of the representation and the para-wise comment was received on 07.07.2023. However, the file was put up after 5 days to the Secretary (Revenue) only on 12.07.2023 and after a period of 9 days, the Secretary (Revenue) rejected the

representation vide memorandum dated 21.07.2023. In short, a total of 14 days have not been explained by the Central Government at all. It is settled principle of law that it is not the length of delay but the sufficient explanation provided by the authority and the failure to explain the delay will vitiate the detention order as the mandatory provisions are to be construed strictly in a case of preventive detention, as this affects the life and liberty of a person who is detained without following the usual procedure prescribed in the normal criminal law. It was held in the case of **Rajammal v. State of T.N.** reported in **(1999) 1 SCC 417: 1999 SCC (Cri) 93, at page 421** and **Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur** reported as **MANU/SC/1011/2021** that delay can be explained but unexplained delay in disposal of the representation vitiates the detention order. Accordingly, we are of the view that the Central Government could not explain the delay of 14 effective days in disposing of the representation submitted by the detenu after deducting the time taken in receiving the necessary information from the State Government.

[11] Accordingly, the detention order dated 19.12.2022 and the confirmation order dated 22.02.2023 are set aside for the delay in disposal of the representation by the Central Government. Writ petition is allowed. No cost.

[12] It is directed that the detenu, namely Mohammad Manojuddin be released from detention forthwith, if not required in any other case.

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

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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