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

W.P.(Cril.) No.62 of 2023

Md. Aslam Khan, aged about 35 years, S/o Md. Jalaruddin, resident of Sikhong Thongthabi, Thoubal District, Manipur (Now a detenu under PIT-NDPS Act).

..... *Petitioner/s*

– Versus –

1. The State of Manipur, represented by Chief Secretary, Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
2. The State of Manipur, represented by the Special Secretary (Home), Govt. of Manipur, Babupara, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
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.
4. The Superintendent of Manipur Central Jail, Sajiwa Jail, Imphal, Manipur.

.... *Respondent/s*

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner : Mr. Jiaulhaque, Advocate
For the Respondents : Mr. Th. Vashum, GA for Respondent Nos.1, 2 & 4
Mr. S. Vijayanand Sharma, Sr. PCCG for Respondent No.3
Date of Hearing : 14.08.2023
Date of Judgment & Order : **23.08.2023**

JUDGMENT & ORDER
(CAV)

(A. Guneshwar Sharma, J)

[1] By the present writ petition under Article 226 of the Constitution of India, the detenu, Md. Aslam Khan, is challenging the detention order dated 02.09.2022 and confirmation order dated 02.12.2022 issued by the Special Secretary (Home), Government of Manipur for detaining the detenu under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT-ND&PS) Act, 1988.

[2] Heard Mr. Jiaulhaque, learned counsel for the detenu; Mr. Th. Vashum, learned GA for the State respondents; and Mr. S. Vijayanand Sharma, learned Sr. PCCG for the Central Government.

[3] Mr. Jiaulhaque, learned counsel for the detenu submits that the detenu was arrested on 05.07.2022 in connection with FIR No.104(6)2022 TBL-PS U/S 21(C) ND&PS Act where one Ahamadi Bibi was arrested as kingpin for manufacturing and preparation of narcotic drugs and psychotropic substances in commercial quantity and the detenu, who is a VDF police personnel, was arrested as one of the persons involved in this syndicate of manufacturing drugs. Later on, offence under Section 29 of ND&PS was added in the FIR. When the detenu was in custody, vide order dated 02.09.2022, Special Secretary (Home), Government of Manipur issued detention order under Section 3(1) of PIT-ND&PS Act, 1988 for detaining the detenu for a period of 3(three) months to prevent him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances. Vide letter dated 06.09.2022, grounds of detention was furnished to the detenu. On 01.12.2022, charge-sheet was submitted by Thoubal Police before the Special Judge (ND&PS), Thoubal for offence punishable under Section 21(c) and 29 of the ND&PS Act. Vide another

dated 02.12.2022 issued by the Special Secretary (Home), Government of Manipur, the detention order dated 02.09.2022 was confirmed and the period of detention was fixed for 12(twelve) months from the date of detention. However, the detenu did not file any representation against his detention order. The detention order is challenged amongst on the following grounds:

- A. That there is gross violation of Article 22(5) of the constitution of India as the detenu was never informed about his right to make representation against the detention order and that the authorities have failed his interest of freedom and also the interest of the larger society to effectively prosecute criminals and drug dealers.*
- B. That even after informing verbally to the jail authority by the detenu that he does not know how to read and write English, the detenu was never provided with vernacular translation or explained in regional language as he could not read and understand English.*
- C. That the extension of detention order dated 02.12.2022 does not mention that date of reference to the advisory board and only mentions about the sitting of advisory board held on 12.11.2022,*

hence there is clear violation of Section 9(b) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988 which stated that the appropriate government shall give reference within five weeks from the detention order to the advisory board i.e. 02.09.2022.

- D. That the extension of detention order dated 02.12.2022 has been misrepresented with malafide intention stating that the detenu's representation was rejected but in reality he never made a representation as he was never informed about his right to make representation.*
- E. That there is a violation of Article 14 and 21 of the Constitution of India as the Detenu was never informed about his right to make representation against his detention order and even after informing that he could not read English, the detenu was never explained or provided with vernacular translation in regional language so as to afford him to challenge his detention order, thereby affecting his personal right to freedom and liberty and also equal treatment of law.*

F. That even though he was handed over a copy of detention order and grounds for detention yet he was never able to understand as he could not properly read and understand the same.

G. That the detenu was never caught with any possession of illegal contrabands, instead he was summoned by way of phone call by the investigation authority and being a VDF he immediately responded and appeared before the investigating officer but to his shock he was immediately arrested without any explanation.

[4] Mr. Jiaulhaque, learned counsel for the detenu submits that the detenu attended regular class up to class – VIII and passed matriculation from the National Institute of Open Schooling and as such, he has no working knowledge of English and could not understand the grounds of detention furnished in English language. Hence, the detenu has no knowledge of submitting the representation to the authorities for revoking the detention order. It is stated in ground B that the detenu verbally informed the jail authority that he does not know how to read and write English and was never provided a vernacular translation of the grounds of detention or explained in regional language. Such violation of the mandatory

provisions has taken away a valuable right of life of the detenu and hence, the detention order ought to be set aside on this ground alone.

[5] Mr. Jiaulhaque, learned counsel for the detenu refers to a five judges' decision of the Hon'ble Supreme Court in the case of ***Harikisan Vs. State of Maharashtra & Others reported as AIR1962 SC 911*** at Para 7 which reads as follows:

"7. In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfill the requirements of the law.

[6] Mr. Jiaulhaque, learned counsel for the detenu also relies on a decision of a Division Bench of Delhi High Court in the case of ***Sharafat Sheikh @ Md. Ayub Vs. Union of India & Another in W.P.(Crl.) No.1213 of 2021 dated 02.09.2022*** where Para 33, 34 & 35 read as below:

33. Where a detenue is illiterate, it has been held by the Hon'ble Supreme Court that the mandate of Article 22(5) would be served

only if the grounds of detention are explained to the detainee in a language that he understands, so as to enable him to avail the fundamental right of making an effective representation.

34. In our considered view, keeping in mind the constitutional mandate of Article 22(5) as well as a plethora of the Hon'ble Supreme Court decisions as also the decision of this Court in ***Jasvinder Kaur Vs. Union of India (W.P.(Crl) 1388/2021 decided on 18.02.2022***, emphasizing the necessity of furnishing the grounds of detention to the detainee in a language he understands. It is pointed out that the mere signing of documents in English does not automatically translate to the detainee having a working knowledge of English so as to fulfill the mandate of Article 22(5).
35. In the instant case, the respondents have miserably failed to show that the grounds of detention and relied upon documents were "communicated" to the detainee in Hindi, i.e., the language known to him. Accordingly, the impugned detention order dated 01.04.2021 falls foul of the constitutional mandate contained in Article 22 (5) of the Constitution of India as interpreted by the Hon'ble Supreme Court in various decisions referred hereinabove.

[6.1] Mr. Jiaulhaque, learned counsel for the detenu submits that the detention order be set aside as violative of mandatory provisions of Article

22(5) of the Constitution of India for not affording the detenu to provide an opportunity of submitting a representation against the detention order.

[7] Mr. Th. Vashum, learned GA for the State respondents submits that in the grounds of detention dated 06.09.2022 furnished to the petitioner, it is hereby informed in Para 13 that the detenu has a right to make representation to the Government of Manipur as well as the Central Government against the detention order and provided the authorities to whom, such representation is to be submitted. Mr. Th. Vashum, learned GA also refers to the certificate and mark-sheet produced by the learned counsel for the detenu in the course of hearing. In the statement of mark-sheet issued by the National Institute of Open Schooling, Serial No.42472, Roll No.- A12320370 Examination of 2003, the detenu scored 62 marks in English out of the total of 100 marks. It is submitted that it cannot be said that the detenu has no working knowledge of English and 62 marks out of 100, is a good score and says that the petitioner/detenu is well conversant with English language. It is further stated that that all other mandatory provisions prescribed under Section 3 and 9 of the PIT-ND&PS Act have been complied and there is no lapse on the part of the State Government and he prays that the writ petition be rejected being devoid of merit.

[8] Mr. S. Vijayanand Sharma, learned Sr. PCCG for the Central Government submitted that detention order dated 02.09.2022 issued by the Special Secretary (Home), Government of Manipur was furnished to the Ministry vide letter dated 09.09.2022 and received by e-mail on 10.09.2022 and hence, the report was within the parameters provided under Section 3(2) of PIT-ND&PS Act. Since no representation has been submitted by the detenu, the Central Government has no role in this petition and prays that the writ petition be dismissed being devoid of merit.

[9] We have heard the learned counsels for the parties, perused the materials on record in this regard. It is settled proposition of law that in case of preventive detention every procedural rigidity must be complied by the detaining authority and any lapse should be in favour of the detenu.

[10] In the case of ***Pramod Singla Vs. Union of India (UOI) & Others reported as MANU/SC/0349/2034***, the Hon'ble Supreme Court held in Para Nos.42 and 44 which read as follows:

42. At the sake of repetition, we find it important to state that in cases of preventive detention, every procedural irregularity, keeping in mind the principles of Article 21 and Article 22(5) of the Constitution of India, must be accrued in favour of the

detenue. In the present case at hand, the Appellant detenue herein has been supplied with illegible documents in a foreign language. It is also important to note that these are the very same documents that the authorities have relied upon to detain the Appellant herein.

44. As has been mentioned above, preventive detention laws in India are a colonial legacy, and as such, are extremely powerful laws that have the ability to confer arbitrary power to the state. In such a circumstance, where there is a possibility of an unfettered discretion of power by the Government, this Court must analyze cases arising from such laws with extreme caution and excruciating detail, to ensure that there are checks and balances on the power of the Government. 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 detenue. 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. This act of protecting civil liberties, is not just the saving of rights of individuals in person and the society at large, but is also an act of preserving our Constitutional ethos, which is a product of a series of struggles against the arbitrary power of the British state.

[11] In the case in hand in the grounds of detention furnished by the detaining authority in Para 13, it was clearly mentioned that the detenu has a right to make representation against the detention order and such representation has to be submitted. It is the case of the detenu that he has no working knowledge of English and passing of matriculation from the National Institute of Open Schooling cannot construe that he understands English even if he scored 62 marks in that subject. However, the detenu never submitted a representation for furnishing necessary information and documents in Manipuri or in vernacular language understood by him. It is only in the ground B of the writ petition that he made an oral complaint to the superintendent of jail.

[12] On perusal of the Vakalatnama, the detenu appended his signature in English in a free flow handwriting. On bear perusal of the signature, it does not look like signed by a person who has no knowledge in English and the same seems to be signed by a person who has enough knowledge of English. Scoring 62 marks in English in matriculation examination does not support the plea of the detenu that he has no working knowledge of English.

[13] On perusal of the case record, we do not find any infirmities on the part of the detaining authority in dealing with the detention order specially, the mandatory provisions of Section 3 & 9 of the PIT-ND&PS Act. Accordingly, we do not find any merit in the case of the detenu. In the result, the writ petition is dismissed. No costs.

JUDGE

ACTING CHIEF JUSTICE

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