

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 36 of 2022

Thoubalmayum Rafique @ Rafique Ahamed, aged about 43 years, S/o Th. Siraj Ahamed of Moijing Thoubalmayum Leikai, P.O & P.S. Thoubal, District Thoubal, Manipur.

..... Petitioner/s

- Versus -

1. Special Secretary (Home), Government of Manipur Babupara, Old Secretariat Building P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
2. State of Manipur, represented by Chief Secretary, Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
3. Deputy Secretary (PIT-ND & PS) Ministry of Finance, Department of Revenue, New Delhi-110001.
4. The Superintendent of Manipur Central Jail, Sajiwa near Khabeisoi, P.O. Porompat, P.S. Heingang, Imphal East District, Manipur.

.....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. Ch. Ngongo, Adv.
For the respondents	::	Mr. Th. Vashum, G.A. and Mr. BR. Sharma, CGC
Date of hearing	::	16.02.2023
Date of Judgment and Order	::	

JUDGMENT & ORDER **(CAV)**

A. Guneshwar Shar, (J)

[1] The petitioner was arrested on 19.06.2022 in connection with FIR No. 108(06)2022 TBL-PS U/S 21(b) ND & PS Act on the allegation of running drug vendor and selling illegal drugs to drug users and seized from him 17.10 grams of heroin (Brown Sugar) and Rs. 64,000/- in cash. He filed a bail application being Cril.Misc.(B) Case No. Nill of 2022 in the Court of Special Judge (ND & PS), Thoubal. Vide order dated 31.10.2022 issued by the Special Secretary, Home Department, Government of Manipur, the petitioner was detained 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 and he would continue his illegal activities including illicit trafficking of drugs even after his release on bail.

Vide letter dated 04.11.2022, The Special Secretary (Home), Government of Manipur, furnished the grounds of detention to the petitioner where it is stated that 17.10 grams heroin excluding the weight of container and Rs. 64,000/- was recovered from the the possession of the petitioner and his wife and both of them were arrested and it was found out that both the petitioner and his wife were running drug vendor and selling illegal drugs to drug abusers at their residence. It is also stated that they are habitually dealing and selling of drugs to the customers. Since, the petitioner is likely to be released on bail and he would continue in the illegal activities of drug trafficking and he was detained under Section 3 of the PIT – ND & PS Act.

[2] The petitioner submitted 3 (three) similar representations all dated 17.11.2022 to the Chief Secretary, Government of Manipur, to the

Deputy Secretary, (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India and to the State Advisory Board, ND & PS, Government of Manipur, through the Superintendent, Central Jail, Sajiwa, for revocation of the impugned detention order dated 31.11.2022 issued by the Special Secretary (Home), Government of Manipur on the ground that the grounds of detention are all concocted and fabricated stories and there is no single evidence against him and he was formally arrested on 19.11.2022 by Thoubal Police Station and he has been to judicial custody for more than 120 days. He was released from judicial custody on bail and while he was on bail, the detention order dated 31.10.2022 was issued against him and the Central Government did not consider the revocation of the detention order based on report submitted by the State Government.

[4] During the pendency of the 1st 3 (three) representations all dated 17.11.2022, the petitioner also submitted another representations all dated 21.11.2022 to the Chief Secretary, Government of Manipur, to the Deputy Secretary, (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India and to the State Advisory Board, ND & PS, Manipur through the Superintendent, Manipur Central Jail, Sajiwa, where it is stated that the 1st representation dated 17.11.2022, due to bonafide mistake, the FIR No. was wrongly mentioned and hence, the 2nd representation was submitted with the correct FIR No. In the 1st representation, FIR No. was wrongly mentioned as 115(7) TBL-PS U/S 21(b)/27(a)/29/60(3) ND & PS Act. In order to correct this mistake, the petitioner submitted the 2nd representation with the correct FIR No. as 108(6)2022 TBL-PS U/S 21(b)/29 ND & PS Act. It is stated that the representations are not duly disposed of by the State as well as the Central Authorities and as such, the detention order is liable to be set aside. The detention order is challenged on the following grounds:

- (a) For that, the detention of the petitioner is liable to be set aside as there was misapplication of law by the detaining authority while passing the detention order as such the order in Annexure A/1 Order No. H-3301/105/2022-HD-HD dated 31.10.2022 is liable to be set aside.
- (b) For that, the detaining authority did not formulate the ground of detention before passing detention order as such liable to be set aside.
- (c) For that, there was no material as evident before the detaining authority for coming to the conclusion that the petitioner is likely to indulge in the prejudicial activity if released from detention and as such liable to be set aside.
- (d) For that, the respondent No. 1 is not aware of the likelihood of prejudicial activity after releasing on bail and as such liable to be set aside.
- (e) For that, the respondents are violating the mandatory provision of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act (PIT-ND & PS) Act, 1988 and as such the impugned order is liable to be set aside.
- (f) For that the detaining authority while passing detention order at Annexure A/1 did not indicate that the detainee is already in police custody and as such the impugned order is liable to be set aside.

- (g) For that the respondent No. 2 did not disposed the representations made by the petitioner till today and as liable to be set aside.
- (h) For that the respondent No. 3 did not disposed the representations made by the petitioner till today and as liable to be set aside.
- (i) For that the detaining authority did not indicate his livelihood of being released on bail and as such the impugned order is liable to be set aside.
- (j) For that the detaining authority did not specify the detenue about making representation to the detaining authority himself and as such the impugned order is liable to be set aside.
- (k) For that the detaining authority did not forward a report to Central Government within the specific time mentioned in section 3 (2) of the PIT-ND & PS and as such the impugned order is liable to be set aside.
- (l) For that the Central Government did not consider the revocation of detention order based on report submitted by the State Government under Section 3(2) of Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act (PIT-ND & PS) Act, 1988 independently and as such the detention order is liable to be set aside.

[5] In the reply filed by the State respondents, it is stated that the petitioner and his wife started to sell drugs to drug users in small quantities thereby earning profits for his personal gain from the drug users. It is also

stated that the petitioner is a notoriously clever, habitual offender and hardened criminal and has been involved in trafficking of illegal drugs and selling of Heroin No. 4 in huge quantity at his residence and there has been apprehension that he would continue the drugs business when he was out of bail and there was possibility of him of being released on bail. In order to prevent him from further indulging in illegal activities of drug trafficking, he was detained under the PIT-ND & PS Act. It is also submitted that the detention order dated 30.11.2022 was served to the detenu on 04.11.2022 within the timeline line as stipulated under Sub-Section 3 of Section 3 of PIT-ND & PS Act. Further, the detention order of the detinue was furnished to the Central Government vide letter dated 16.09.2022 within the stipulated time. It is also stated that the representation of the petitioner was forwarded to the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Government of India, New Delhi within time. It is also stated that the State Government duly considered the representation of the detinue and rejected the same vide letter dated 07.12.2022 after calling comments from the Police department. It is also stated that the delay in disposing the representation and forwarding copy to the Government of India was due to the high volume of proposals received and routine works of the department. It is prayed that the writ petition may be disposed of as the Union of India did not file any reply to the writ petition.

[6] Heard Mr. Ch. Ngongo, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A. for the State respondents and Mr. BR. Sharma, learned CGC for the Union of India.

[7] Mr. Ch. Ngongo, learned counsel for the petitioner, draws the attention of this Court that the 2nd representation has not been disposed of till date and no explanation has been given for the delay in the present case. He has also stated that the detention order was issued in the name of the Governor but the confirmation/rejection order was issued by the

Subordinate Officer, i.e., The Deputy Secretary (Home), Government of Manipur, which is subordinate and has no authority. The rejection order dated 07.12.2022 was issued by the Deputy Secretary (Home), Government of Manipur, and the same was not in the name of the Governor and confirmation was also vitiated. The 2nd representations are still pending waiting for disposal by the State and Central Authorities. It is also stated that there was 20 days delay in disposal of the 1st representation dated 17.11.2022 by the State Government and the delay has not been explained except being busy in high volume official works.

Mr. Ch. Ngongo, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Rajammal –vs- State of Tamil Nadu** reported in **(1999) 1 SCC 417** where it was held that the obligation of the State Government to consider the representation forwarded by the detainee without any unexplained delay and any delay in the disposal of representation would be a breach of the constitutional safeguards and it would render the continued detention impermissible and illegal. He prays that the detention order be set aside as the 2nd representation has not been disposed of till date and 20 days delay in disposal of the 1st representation has not been duly considered.

[8] Mr. Th. Vashum, learned G.A., submits that there is no undue delay on the part of the State Authorities. The ground for detention was intimated within the stipulated time and the detention order was forwarded to the Central Government. The representation submitted by the detainee was also forwarded to the Central Government on time and the delay in disposal of the 1st representation was due to the overburden in the department and was explained. The learned G.A. relies upon the Judgment of the Hon'ble Supreme Court in the case of **Senthamil Selvi –vs- State of Tamil Nadu** reported in **(2006) 5 SCC 676** where it was held that the delay of 12 days was duly explained and condoned and the detention order was

upheld. He submits that the petitioner, being habitually indulged in selling of drugs from his residence to drug users, was detained as Normal Criminal Court cannot deal with his case.

[9] On perusal of the original case record, it is seen that the State Authorities as well as the Advisory Board consider only the 1st representation dated 17.11.2022 and there is no whisper of the 2nd representation dated 21.11.2022.

[10] Vide Order dated 13.01.2022, the Commissioner (Home), Government of Manipur, rejected the representation of the detainee after considering the opinion of the Advisory Board confirming the detention order and fixed the period of detention as 12 months as provided under Section 11 of the PIT-ND & PS Act.

[11] Mr. BR. Sharma, learned CGC for the Union of India, has adopted the counter affidavit of the State Government. However, he submits that no instruction has been received with respect to the allegation made against the Central Government in the writ petition.

[12] From the perusal of the case record, it is seen that the 2nd representation dated 21.11.2022 has not been considered by the Advisory Board nor by the State Government and rejection order is with respect to the 1st representation dated 17.11.2022. Both the State Government and the Central Government have not dealt with the 2nd representation dated 21.11.2022. Besides, the Central Government has also not passed any order on the 1st representation dated 17.11.2022. Non-disposal of the representation in the case of preventive detention of a person, who has been detained without any trial, is impermissible and illegal as per the various judgments of the Hon'ble Apex Court. It will be appropriate to reproduce para Nos. 7, 8 & 9 of the judgment passed by the Honb'e Supreme Court in the case of **Rajammal v. State of T.N.** reported in

(1999) 1 SCC 417: 1999 SCC (Cri) 93, at page 421 , which reads as under:

"7. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K.M. Abdulla Kunhi v. Union of India⁵. The following observations of the Bench can profitably be extracted here: (SCC p. 484, para 12)

"It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency⁴²¹ without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

8. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

9. What happened in this case was that the Government which received remarks from different authorities submitted the relevant files before the Under-Secretary for processing it on the next day. The Under-Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9-2-1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

It may be relevant to point out another judgment of the Hon'ble Supreme Court in the case of **Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur** reported as **MANU/SC/1011/2021**, it was held that unexplained delay on the part of the State Government in deciding the representation of the detenu and failure of the Central and State Government to inform rejection of the representation in timely manner rendered the detention order as invalid.

[13] So, we are of the view that non-decision on the 2nd representation by the State Government as well as the 1st and 2nd representation by the Central Government has impeached the right of personal liberty of the detenu and also there was unexplained delay on the part of the State Authorities in disposal of the 1st representation. Accordingly, the detention order dated 31.10.2022 passed by the Special Secretary (Home), Government of Manipur, as well as confirmation order dated 13.01.2022 passed by the Commissioner (Home), Government of Manipur are set aside and the detenu is to be released from detention if not required in any other case.

Writ petition is allowed in terms of the above order. No cost.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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