

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(Cril.) No. 10 of 2024

Shri Mehul Desai, aged about 48 years, S/o Late Manubhai Desai, a permanent resident of H. No. 4/26, The Nest Residency, near Shrushti Bungalows, Shastri Road, Dhamdol Lumbha, Bardoli, Surat, Gujarat – 395009 at present under detention at Manipur Central Jail, Sajiwa P.O. – Lamlong, P.S. Imphal East, District: Imphal East, Manipur – 795010.

... Petitioner

-Versus-

1. The Joint Secretary (PITNDPS), 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, Department of Revenue, Ministry of Finance, North Block, New Delhi – 110001.
3. The Superintendent, Manipur Central Jail, P.O. Lamlong, P.S. Imphal East, District: Imphal East, Manipur – 795010.

... 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. L. Shashibhushan, Sr. Advocate asstd. By Md. Fakruddin, Advocate
For the respondents	::	Mr. B.R. Sharma, CGSC & Mr. Th. Vashum, GA
Date of hearing	::	23-07-2024
Date of judgment & order	::	26-07-2024

JUDGMENT & ORDER***A. Bimol Singh, J.***

[1] Heard Mr. L. Shashibhushan, learned senior Advocate assisted by Md. Fakharuddin, learned counsel appearing for the petitioner; Mr. B.R. Sharma, learned CGSC appearing for the respondents No. 1 and 2 and Mr. Th. Vashum, learned GA appearing for the respondent No. 3.

The present petition has been filed challenging the order dated 28-02-2024 passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue (PITNDPS UNIT) in exercise of the power conferred by Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 directing to detain the petitioner and kept in Sajiwa Central Jail, Manipur, as well as the order dated 14-05-2024 passed by the Deputy Secretary to the Government of India confirming the order of the petitioner's detention and ordering for detaining the petitioner for a period of one year w.e.f. 29-02-2024.

[2] The facts of the present case, in a nutshell, are that the petitioner was arrested by a combined team of Narcotic Crime Bureau, Imphal and Narcotic Crime Bureau, Guwahati on 05-08-2023 from his residence in connection with a case being NCB Crime No. 02/NCB/Imp/2023 u/s 8(c) and 9(a) read with Section 21(c), 25A and 29 of the ND & PS Act, 1985 registered by the Narcotic Crime Bureau at Imphal, Manipur. The said case was registered in connection with seizure of a commercial quantity of pseudoephedrine tablets. Subsequent to his arrest, the petitioner was produced before the Special Judge, ND & PS Court on 09-08-2023, which

remanded him to police custody and thereafter to judicial custody and the petitioner is still kept in Sajiwa Central Jail, Manipur.

[3] While the petitioner was under judicial custody, the petitioner filed a bail application before the Special Judge, ND & PS, Manipur, for releasing him on bail, however, the same was rejected by the said court by an order dated 30-11-2023. Thereafter, the petitioner again filed another bail application before this court for releasing him on bail and the said bail application is still pending. While the petitioner was still in judicial custody in connection with the above mentioned criminal case, the respondent No. 1 passed the Detention Order dated 28-02-2024 directing for detaining the petitioner in Sajiwa Central Jail, Manipur, in exercise of the power conferred by Section 3(1) of the PITND & PS Act, 1988.

After rejecting all the representation submitted by the petitioner against his detention order and after obtaining the report from the Advisory Board constituted under section 9 of the PIT ND&PS Act, 1988, the Central Government confirmed the detention order passed against the petitioner by issuing the order dated 14-05-2024 and ordering for detention of the petitioner for a period of one year w.e.f. 29-02-2024. Having been aggrieved, the petitioner assailed his detention orders by filing the present petition.

[4] Mr. L. Shashibhushan, learned senior counsel appearing for the petitioner raised only one ground in assailing the impugned detention orders. The learned senior counsel submitted that the detaining authority has knowledge that the petitioner was in judicial custody in connection with

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a criminal case involving seizure of a commercial quantity of contraband drugs, however, while passing the impugned detention order, nothing has been mentioned or indicated in the said detention order as well as in the grounds of detention that the petitioner was likely to be released on bail. It has also been submitted that there was no cogent material before the detaining authority to arrive at its subjective satisfaction that there was / is a real possibility of the petitioner being released on bail, in the face of the provisions of Section 37 of the ND & PS Act, 1985. The learned counsel strenuously submitted that there was total non-application of mind on the part of the detaining authority and the impugned detention order had been passed in a mechanical manner and as such, the same is liable to be quashed and set aside.

[5] Mr. B.R. Sharma, learned CGSC appearing for the respondents No. 1 and 2 submitted that even though nothing has been mentioned in the impugned detention order that the petitioner was likely to be released on bail, the detaining authority was aware that the application of the petitioner for granting bail is pending before this court and all such facts have been clearly mentioned at para No. 1.1(cc) and para No. 3 of the grounds of detention dated 28-02-2024. It has also been submitted by the learned counsel that the impugned detention orders have been issued by the detaining authority after duly complying with all the constitutional, statutory and procedural safeguards and after due application of mind and on the basis of the material facts available on record and after careful consideration of the facts and circumstances of the case, the nature of activities, materials collected, the propensity and potentiality of the

petitioner to indulge in such activities. The learned counsel, accordingly, submitted that there is no merit in the present petition and the same is liable to be dismissed.

[6] It is trite law that detention of a person under the preventive detention laws is not by way of punishment for committing an offence but to prevent the person from committing offences. If a person is already arrested and kept in custody for committing an offence, there is no possibility of committing any further offence by him while he is still in custody, therefore, there will be no need for passing a detention order for detaining him under the preventive detention laws. However, there is an exception to this rule, i.e. if the detaining authority arrived at his subjective satisfaction, based on cogent materials, that there is a real possibility of releasing the person on bail and that the person is likely to commit an offence while on bail, a detention order can be passed against the said person under the preventive detention laws in order to prevent the said person from committing any further offences.

[7] In the present case, the petitioner was already arrested and kept in judicial custody in connection with the seizure of a commercial quantity of narcotic drugs and therefore, Section 37 of the Narcotic Drugs and Psychotropic Substance Act, 1985 would have application and grant of bail would be subject to the stringent conditions provided thereunder. Nothing is mentioned in the impugned detention order that the detaining authority has arrived at his subjective satisfaction that the petitioner is likely to be released on bail. Only in the grounds of detention, the detaining authority

merely referred to the fact that a bail application had been filed without deciding whether there was a likelihood of the petitioner being released on bail, notwithstanding the applicability of Section 37 of the ND & PS Act, 1985 and passed the impugned detention order. Accordingly, we are of the considered view that the detaining authority passed the impugned detention order without application of mind and in a mechanical manner and on this ground alone, the impugned detention orders are liable to be quashed and set aside.

[8] We have arrived at the above conclusion taking into consideration the facts and circumstances of the present case and the judgment rendered by the Honble Apex Court in the case of **“Sayed Abul Ala Vs. Union of India & ors.”** reported in **(2007) 15 SCC 208**, wherein it has been held as under:-

“19. An application for bail is required to be filed and considered by the appropriate court in terms of Section 439 of the Code of Criminal Procedure but in cases involving the provisions of the NDPS Act, the detaining authority was required to take into consideration the restrictions imposed on the power of the court to grant bail having regard to the provisions of Section 37 thereof.

20. Section 37 reads as under:

"37. Offences to be cognizable and non-bailable (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable

grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail"

The statute, thus, puts limitation on the jurisdiction of the court in the matter of grant of bail. They cannot be ignored by any court of law, Several decisions of this Court and of the High Court operate in the field."

"21. Proper application of mind on the part of the detaining authority must, therefore, be borne out from the order of detention. In cases where the detenu is in custody, the detaining authority not only should be aware of the said fact but there should be some material on record to justify that he may be released on bail having regard to the restriction imposed on the power of the court as it may not arrive at the conclusion that there existed reasonable grounds for believing that he was not guilty of such offence and that the detenu could not indulge in similar activity, if set at liberty,"

"22. The detaining authority furthermore is required to bear in mind that There exists a distinction between the "likelihood of his moving an application for bail" and "likelihood to be released on bail", While arriving at his subjective satisfaction that there is likelihood of the detenu being released on bail, recording of the satisfaction on the part of the detaining authority that merely because an application for grant of bail had been filed, would not be enough. It would also not be sufficient compliance with the legal obligation that the detaining authority had informed himself that the detenu has retracted from his earlier confession."

"26. No doubt antecedents of the detenu would be a relevant factor but the same by itself may not be sufficient to press an order of detention inasmuch as the principles which govern the field so as to enable the court to arrive at a decision that the order of detention can be validly passed despite the detenu being in custody are:

- (1) if the authority passing the order is aware of the fact that he is actually in custody:*
- (2) if he had a reason to believe on the basis of reliable material*
 - (a) That there is a real possibility of his being released on bail, and*
 - (b) that on being released, he would in all probability indulge in prejudicial activities; and*
- (3) it is felt essential to detain him to prevent him from so doing."*

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[9] Having regard to the facts and circumstances of the present case and for the findings and reasons given hereinabove, we are of the considered view that the detention orders passed against the petitioner cannot be sustained. Accordingly, the impugned Detention Order dated 28-02-2024 and the impugned Confirmation Order dated 14-05-2024 are hereby quashed and set aside. Further, the petitioner, presently incarcerated in the Sajiwa Central Jail, Manipur, shall be set at liberty forthwith unless his continued detention is validly required in connection with any other cases. With the aforesaid direction, the present petition is allowed. Parties are to bear their own costs.

JUDGE

JUDGE

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Devananda