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

**W.P(Criminal) No.2 of 2020**

Amar Khan, aged about 28 years, s/o Md. Abdul Salam of  
Uchiwa Mayai Leikai, District Imphal West, Manipur.

***....Petitioner***

**- Versus -**

1. Special Secretary (Home), Govt. of Manipur, Babupara, Old Secretariat Building PO & PS Imphal, District Imphal West, Manipur-795001.
2. State of Manipur represented by Chief Secretary, Govt. of Manipur, Babupara, Old Secretariat Building PO & PS Imphal, District Imphal West, Manipur-795001.
3. The Superintendent of Manipur Central Jail, Sajiwa, at Sajiwa near Khabeisoi, PO Porompat & PS Heingang, Imphal East District, Manipur.

***... Respondents***

**B E F O R E**

**HON'BLE MR. JUSTICE KH NOBIN SINGH  
HON'BLE MR. JUSTICE MV MURALIDARAN**

For the Applicant        :: Mr Ch Ngongo, Adv.

For the respondent.    :: T. Vashum, GA.

Date of hearing and  
Reserved.                :: 14.10.2020.

Date of delivery of  
Judgment and order    :: 25.11.2020

**JUDGMENT & ORDER**

(CAV)

J, M.V MURALIDARAN

**[1]** This Writ petition has been filed by the petitioner in the nature of Habeas Corpus seeking to quash the order of detention dated 17.01.2020 passed by the first respondent.

**[2]** The case of the petitioner is that he was arrested on 2.10.2019 by a team of NAB police personnel with 553 gm of illegal No.4 heroin powder from Maruti Brezza near All India Radio, Mayang, Imphal along with two other persons viz. (i) Md. Tayas Khan, (ii) Md. Salimuddin in connection with FIR No 62(10)2019 under Section 21(C), 29, 60(3) of ND & PS Act. Though he was arrested by the NAB police personnel, no charge sheet has yet been filed till date.

**[3]** Further case of the petitioner is that while he was in judicial custody, the first respondent issued an order for detention under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drug and Psychotropic Substances Act, 1988 on the allegation that he is serious threat to the society. On 17.1.2020, the third respondent furnished a copy of grounds of detention to the petitioner issued by the first respondent.

**[4]** According to the petitioner, the detaining authority did not formulate the ground of detention before passing of detention order and formulation of grounds of detention before passing of detention order is a pre-condition and in fact, the grounds are not formulated before passing the detention order. It is alleged that there is no material before the detaining authority for coming to a conclusion that the petitioner is likely to be released on bail. The series of decision of the Hon'ble Apex Court struck down the detention order and confirmation order on the ground of the subjective satisfaction of the detaining authority regarding the likelihood and the contention of the detaining authority that the bail is granted by normal Criminal Court in similar cases are totally facts statement. Normally, common Criminal Court did not release such types of cases.

**[5]** Further case of the petitioner is that nothing has been mentioned with regard to the officer to whom the representation in respect of Central Government is to be submitted. On 25.01.2020, the petitioner submitted a representation through his counsel to the first respondent for revocation of the detention order and requesting to give information regarding address/specific designation about the competent authority of the Central Government to whom the petitioner had to make representation. Again on 29.01.2020, the petitioner submitted a

representation through his counsel to respondent No.2 for revocation of the detention order. Since the address and designation of the officer of the Central Government has not been mentioned in the grounds of detention order, the petitioner could submit effective representation to the Central Government. It is stated that the petitioner has not filed any bail application before any Court. Further, the first respondent did not consider the representation dated 25.1.2020 of the petitioner till today. Likewise, the second respondent also did not consider the representation dated 29.01.2020 of the petitioner. Hence, the impugned detention order is liable to be quashed.

**[6]** Resisting the writ petition, the first respondent filed affidavit-in-opposition stating that the State Government passed the detention order dated 17.01.2020 after considering the grounds of detention and other relevant documents furnished by the SP(NAB) with due application of judicial mind and the same was also communicated to the Central Government as well as the Chairman, Advisory Board of NSA on the same day along with all relevant documents.

**[7]** It is further stated that the grounds of detention was formulated on the same day i.e. 17.01.2020 and the same was submitted to the detenu on 18.01.2020. The detenu being habitual

illegal drug trafficking offender for the past many years, the first respondent presumed that the detenu is likely to be released on bail in near future and after releasing on bail, he will continue on the same manner, which is prejudicial and threat to the society. The detention order was passed after following the due process of law. The representation of the detenu has been submitted to the Central Government vide letter dated 11.2.2020 pursuant to the request of the petitioner. The first respondent while disposing of the representation of the detenu, in para 2, he has mentioned the officers to whom a representation can be sent viz., Deputy Secretary, Ministry of Finance, Department of Revenue, near North Block, New Delhi-1. Further, the representation of the detenu dated 25.1.2020 was forwarded by the S.P Sajiwa Jail through the Additional Director General of Police (prison) and from Additional Director General of Police to the Home Department and the same was disposed of by the Home Department vide letter dated 11.2.2020 mentioned in the first para that the representation has been considered carefully by the State Government and was regretted to inform that his request for revocation of the detention order could not be acceded to, as the representation was found to be devoid of merits. It is stated that all the mandatory provisions was duly complied with

while passing the detention order. Hence, prayed for dismissal of the writ petition.

**[8]** Challenging the detention order, the learned counsel for the petitioner submitted that there was misapplication of law by the detaining authority while passing the detention order and as such the detention order is liable to be set aside. He would submit that the detaining authority did not formulate the grounds of detention before passing the detention order and there was no material before the detaining authority for coming to the conclusion that the petitioner is likely to indulge in the prejudicial activity, if released from detention.

**[9]** The learned counsel further submitted that the first respondent is not aware about the likelihood of continuance of prejudicial activity after releasing on bail and the respondents have violated the mandatory provision of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act( PIT-ND & PS Act). He would submit that the first respondent did not provide the specific designation and address of the competent authority of Central Government and therefore, petitioner could not implead the Central Government as a respondent and that the first respondent did not supply the copy of the grounds of detention within the stipulated time.

Further the first respondent did not dispose of the representation dated 25.1.2020 till today and likewise, the second respondent also did not dispose of the representation dated 29.1.2020 till today, which vitiates the detention order.

**[10]** On the other hand, the learned counsel for the State submitted that when the detention order was passed, the Special Secretary(Home) Government of Manipur has clearly mentioned his subjective satisfaction that the detenu was involved in trafficking of Narcotics Drugs and Psychotropic Substance Act. The grounds of detention was furnished by sponsoring authority before detention order was passed on 17.1.2020 and the Special Secretary formulated the grounds of detention on the same date i.e. 17.1.2020.

**[11]** The learned counsel for the State submitted that the Special Secretary (Home), Government of Manipur has clearly mentioned that the detenu is likely to be released on bail and after releasing on bail, he will indulge in similar activities. As such, the normal Criminal Court will not be sufficiently empowered to prevent the detenu from involving in such activities any further. He would submit that the State Government vide letter dated 11.2.2020 to the detenu clearly gave the address of the competent authority of the Central

Government to whom the representation can be submitted. In fact, the representation of the petitioner dated 25.1.2020 was rejected as devoid of merits by the Home Department vide letter dated 11.2.2020. The learned counsel for the State submitted that while passing the detention order, all mandatory provisions of the Act were complied with and therefore, there is no illegality in the detention order and its subsequent grounds of detention and confirmation order.

**[12]** This Court considered the submissions raised by both the counsels and also perused the materials available on record.

**[13]** The impugned detention order was issued by the first respondent, while the petitioner was in judicial custody in connection with FIR No. 62(10) 2019. Admittedly in the detention order dated 17.1.2020, the subjective satisfaction of the detaining authority is not reflected.

**[14]** On a perusal of the detention order, it is seen that the detaining authority did not formulate the grounds of detention before passing the same. Formulation of grounds of detention before passing of the detention order is a pre-condition.



[15] In **Krishna Murari Aggarwala v. Union of India and Others, AIR 1975 SC 1877**, the Apex Court held:

*“7. .... Further more, since the order is based on grounds to be served on the detenu, the order of detention could be passed only if the grounds are in existence and are prepared contemporaneously, otherwise the order of detention becomes purely illusory. ”*

[16] **In Kamaarunnissa v. Union of India, (1991) 1 SCC 128**, the Hon’ble Apex Court settled that a person in custody can be detained under preventive detention in the following conditions:

*“(1) if the authority passing the order is aware of the fact that he is actually in custody;*

*(2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail and (b) that on being so released he would in all probability indulge in prejudicial activity; and*

*(3) if it is felt essential to detain him to prevent him from so doing.”*

[17] In **Union of India v. Paul Manickam, (2003) SCC 342**, the Honble Apex Court, relying on the judgment in the case of **Kamaarunnissa** (supra), observed that where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated.

[18] In the instant case, the detention order does not reflect the awareness of the detenu being in custody; likelihood of being released on bail; real possibility of being released on bail, and on being so released, he would in all probability indulge in prejudicial activities. The aforesaid would clearly indicate that the detaining authority has not satisfied himself before passing the detention order, as there was no subjective satisfaction of the detaining authority in the detention order. Further the detaining authority, while passing the detention order has failed to follow the procedure laid down in the cases in **Kamaarunnissa** (supra) and **Paul Manickam** (supra).

[19] Secondly, the detaining authority did not inform the detenu the address of the competent authority of the Central Government for making representation. It is admitted by the respondents that in the grounds of detention, the first respondent has not mentioned to whom the representation to the Central Government has to be submitted.

[20] The learned counsel for the State submits that the State Government vide letter dated 11.2.2020 addressed to the detenu, it has given the address of the competent authority of the Central Government to whom the representation is to be submitted. Therefore,

question of mentioning the address of the competent authority of the Central Government in the detention order does not arise.

**[21]** On a perusal of the grounds of detention dated 17.1.2020 issued by the Government of Manipur, it has been stated as under:

*“7. You are hereby informed that you have a right to make representation to the Government of Manipur as well as the Central Government against this order of detention passed against you and you are hereby given the earliest opportunity from making such representation if you wish to do so. Your representation is to be sent through the Superintendent of Manipur, Central Jail, Sajiwa to the Chief Secretary, Government of Manipur in respect to the State Government. ...”*

**[22]** However, the detaining authority has failed to mention the address of the competent authority of the Central Government to whom the representation is to be addressed. Since the detaining authority did not provide the address of the competent authority of the Central Government, the petitioner could not make any representation to the Central Government, which is in violation of Article 22(5) of the Constitution of India.

**[23]** In **Puranlal Lakhanpal v. Union of India, AIR 1958 SC 163**, the Hon'ble Apex Court observed that the right to make a representation

implies that the detenu should have such information as will enable him to make a representation and if the grounds supplied are not sufficient to enable the detenu to make a representation, he can rely on the second right.

**[24]** In the instant case, the petitioner submitted a representation dated 25.1.2020 requesting the detaining authority to provide the address of the Central Government to whom the representation is to be submitted. Though the detaining authority vide letter dated 11.2.2020 furnished the address of the competent authority of the Central Government, the said information was furnished with a delay of 25 days and the delay on the part of the detaining authority has not been properly explained. The unexplained delay on the part of the detaining authority in informing the address of the competent authority of the Central Government is in clear violation of Article 22(5) of the constitution of India.

**[25]** In **Tara Chand v. State of Rajasthan and others, (1980) 2 SCC 321**, the Hon'ble Apex Court held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

[26] In **Rajammal v. State of Tamil Nadu and another, (1999) 1 SCC 417**, the Hon'ble Supreme Court held that unexplained delay of five days was fatal and the decision order would be bad in law and contrary to the constitutional obligation on the Central Government to consider and decide the representation of the detenu without any delay.

[27] It is well settled by a catena of decisions that an unexplained delay in onward transmission of the representation against a preventive detention order violates the fundamental right of a detenu guaranteed under Article 22(5) of the Constitution of India, thereby rendering the continued detention illegal (**vide Pebam Ningol Mikoi Devi V. State of Manipur, (2010) 9 SCC 618; Abdul Nasar Adam Ismail V. State of Maharashtra, (2013) 4 SCC 435**).

[28] The rationale behind the above view is, if the representation is not promptly sent to the authority competent to decide, to whom it is addressed, the phrase "shall afford him(detenu) the earliest opportunity of making representation against the order", as contained in Article 22(5) of the Constitution of India, would be rendered nugatory.

[29] The law of preventive detention is the offshoot of Article 22(5) of the Constitution of India and right to make representation

against the detention order either to State Government, Central Government or the detaining authority is the constitutional mandate of Article 22(5) of the Constitution of India. Whatever the decisions taken in any preventive laws shall be applicable to any other preventive laws. As rightly argued by the learned counsel for the petitioner, a person who is already in detention cannot be detained under the preventive detention laws as preventive detention laws are not punitive detention.

**[30]** At this juncture, the learned counsel for the State submitted that the writ petition lacks proper pleadings. In reply, the learned counsel for the petitioner submitted that the petitioner has set out all pleadings in his writ petition and therefore, there is no substance in the argument of the learned counsel for the State.

**[31]** In a catena of decisions, the Hon'ble Supreme Court held that it is not proper to disallow the writ petition on the ground of imperfect pleadings. Normally, writ petitions are decided on the basis of affidavits and the petitioner cannot be permitted to raise grounds not taken in the petition at the hearing. The same rule cannot be applied to a petition for grant of a writ of habeas corpus.

**[32]** It is settled that strict rules of pleadings are not be applied in case an application for a writ of Habeas Corpus is filed (**Vide: Icchu**

**Devi Choraria v. Union of India, (1980) 4 SCC 531; Mohinuddinn v. D.M, (1987)4 SCC 58).**

[33] Thus, it is clear that in the case of Habeas Corpus, the practice evolved by the Hon'ble Supreme Court is not to follow strict rules of pleading nor place undue emphasis on the question as to whom the burden of proof lies. Even a postcard written by a detenu from jail has been sufficient to activate the Court into examining the legality of detention. It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the Court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. In the instant case, admittedly, there was no proof to come to a conclusion that there is lack of pleadings or improper pleadings.

[34] It is incumbent on the State to satisfy the Court that the detention of the detenu was legal and in conformity not only with the mandatory provisions of the act, but also strictly in accordance with the constitutional safeguards embodied under Article 22(5) of the Constitution of India. Admittedly, in the instant case, the State has not satisfied properly that the detention of the detenu was legal and in conformity with the mandatory provisions of the Act. In the instant case the unexplained delay in onward transmission of the representation has not been properly

explained by the State and therefore, the detention order violates the fundamental right of the petitioner/detenu guaranteed under Article 22(5) of the Constitution of India.

**[35]** For the foregoing discussions, this Court is of the view that the subjective satisfaction of the detaining authority has not been reflected in the detention order and thus, there is absence of subjective satisfaction of the detaining authority while passing the detention order. Further, the detaining authority did not provide the address of the Central Government to whom the representation has to be sent. Though the detaining authority furnished the address of the Central Government, the same has been furnished with a delay of nearly 25 days, more so, the same was not properly explained and as per the law, the delay is not acceptable and non-furnishing of the address of the Central Government by the detaining authority is clearly in violation of Article 22(5) of the Constitution of India. For all the reasons stated above, the detention order dated 17.01.2020 is in violation of law and the same is liable to be set aside.

**[36]** In the result, the writ petition is allowed and the impugned detention order dated 17.01.2020 is quashed. The petitioner/detenu, namely Amar Khan, son of Md. Abdul Salam, age 28 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

**JUDGE**

**JUDGE**

**FR/NFR**

*John kom*