

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 17 of 2023

Shyam Bahadur Basnet, aged about 59 years of Kanglatongbi,
Hathikhuwa, Imphal West-District, Manipur - 795136

..... Petitioner/s

- Versus -

1. The State of Manipur represented by Chief Secretary, Government of Manipur, Babupara, Old Secretariat Building, P.O. & P.S. Imphal, District-Imphal West, Manipur-795001.
2. Special Secretary (Home), Govt. of Manipur, Babupara, Old Secretariat Building, P.O. & P.S. Imphal, District-Imphal West, Manipur-795001.
3. The Superintendent of Manipur Central Jail, Sajiwa, at Sajiwa near Khabeisoi, P.O. Porompat, P.S. Heingang, Imphal East District, Manipur-795010.
4. The Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, Near North Block, Room No. 26, Church Road, RFA-Barrak, New Delhi-110001.

.....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. L. Seityandra, Advocate.
For the respondents	::	Mr. Th. Vashum, G.A. for the State respondents and Mr. W. Darakishwor, Sr.PCCG for the Union of India.
Date of Order	::	28.02.2023

ORDER (ORAL)

A. Guneshwar Sharma, (J)

[1] On 22.04.2022, a police team of Saikul Police station seized 10 bags of cannabis (ganja) from a rented house at Govajang, Lhungtin Village which was occupied by the petitioner herein, namely Shyam Bahadur Basnet and now presently occupied by his son-in-law, namely Raj Kumar Thapa. It was revealed that the seized cannabis (ganja) belonged to the petitioner and he was arrested on the same day in connection with FIR No. 14(4)2022 SKL-PS u/s 20(b)(ii) & 18(a) ND & PS Act. Then, he was sent to judicial custody. The petitioner filed a bail application being Cril.Misc.Case No. 45 of 2022 in the Court of Special Judge (ND & PS), Senapati.

[2] When the petitioner was in judicial custody, vide order dated 29.08.2022 issued by the Special Secretary (Home), Government of Manipur, he was taken into preventive detention for effectively preventing him from involvement in illicit poppy/ganja cultivation and trafficking of narcotic drugs and psychotropic substances for a period of 3 months until further orders. It was also stated that the detenu was likely to be released from jail on bail in connection with Cril.Misc.Case No. 45 of 2022 by the Special Judge (ND & PS), Senapati and he would continue his illegal activities in illicit cultivation and trafficking of poppy/ganja after his release.

[3] Vide letter dated 02.09.2022, the Special Secretary (Home), Government of Manipur, furnished the grounds of detention to the petitioner under Section 3(3) of the PIT-ND & PS Act, 1988. It was stated that he was involved in cultivation of poppy/ganja and opium for a long period and after release on bail, he would likely continue in illegal activities of illicit cultivation and trafficking of drugs and as such, alternative preventive measure is taken.

[4] The petitioner submitted 3 (three) similar representations all dated 07.09.2022 to the Special Secretary (Home), Government of Manipur, the Deputy Secretary (PIT-ND & PS), Department of Revenue, New Delhi and to the Advisory Board, through the Superintendent, Manipur Central Jail, Sajiwa for revoking the detention order dated 29.08.2022. It was stated that the petitioner/detenu was not involved in the present case and the contraband ganja was not seized from his possession and prayed to revoke the detention order.

[5] Vide order dated 29.11.2022, the Special Secretary (Home), Government of Manipur rejected the representation dated 07.09.2022 and confirmed the detention order dated 29.11.2022 and fixed the period of detention for 12 months as provided under Section 11 of the PIT-ND & PS Act. It was stated that after perusing the materials on record including the representations submitted by the detenu, the State Advisory Board unanimously held that there were sufficient causes for detention of the detenu.

[6] Vide letter dated 06.02.2023 issued by the Deputy Secretary (Home), Government of Manipur, to the detenu wherein it was informed that the representation dated 07.09.2022 was deemed to be rejected on 29.11.2022 when the detaining authorities considered the representation at the time of confirmation order dated 29.11.2022. Para-wise comment was called on 15.09.2022 and the same was submitted to DGP by the Deputy Secretary (Home), Government of Manipur and again the same was submitted to the Home Department by the State Police on 04.02.2023.

[7] The petitioner challenged the detention order mainly on the ground that:

- (i) The detaining authority did not frame the grounds of detention before passing the detention order;
- (ii) There was no material before the detaining authority to pass the detention order;
- (iii) There was total non-application of mind and the petitioner never applied for any regular bail before any Court after his released and hence, there is no likely to be released on bail and there is violation of mandatory provision of the PIT-ND & PS Act such as non-disposal of the representation dated 07.09.2022 by the Central Government.

[8] The State respondents filed counter affidavit wherein it was stated that the detenu was involved in illegal cultivation of poppy/ganja since long time and he was likely to be released on bail. On release on bail, he would continue in illegal activities of illicit cultivation and trafficking of drugs. His detention order was confirmed by the Advisory Board on the basis of the report of the Board and other materials and the detaining authority has confirmed the detention order. There was no undue delay on the part of the State respondents to dispose of the representation. The Central Government did not file any counter affidavit. But during the course of hearing, Mr. W. Darakishwor, learned Sr.PCCG for the Central Government, submitted copies of the e-mails dated 19.01.2023, 08.02.2023 and 23.02.2023 wherein it is shown that para-wise comments from the State Government with respect to the petitioner and others were still awaited.

[9] Heard Mr. L. Seityandra, learned counsel for the petitioner, Mr. Th. Vashum, learned G.A for the State respondents and Mr. W. Darakishwor, learned Sr. PCCG for the Union of India.

[10] Mr. L. Seityandra, learned counsel for the petitioner, submits that the petitioner had submitted 3 (three) representations all dated 07.09.2022 to the Special Secretary (Home), Government of Manipur, The Deputy Secretary (PIT-ND & PS), Department of Revenue, New Delhi and to the Advisory Board, through the Superintendent, Manipur Central Jail, Sajiwa, for revoking

the detention order dated 29.08.2022. However, the State Government issued the confirmation order dated 29.11.2022 and fixed the period of detention for one year. Vide order dated 06.02.2023 issued by the Deputy Secretary (Home), Government of Manipur, informed and clarified to the detenu that his representation was deemed to be disposed of on 29.11.2022 when the detaining authority confirmed the detention order by considering his representation.

Mr. L. Seityandra, learned counsel further submits that the effective date of disposal by the State Government is after 152 days (as on 06.02.2023) and 83 days (as on 29.11.2022, i.e., date of confirmation order). Even if assuming that the representation was deemed to be rejected on 29.11.2022, there is a delay of 82 days in disposal of the representation and there is no explanation for such long delay. He submits that the detention order is bad on this ground only. He further submits that there is total non-application of mind as the detenu has not filed any bail application after his judicial custody and the ground of likely to be released on bail does not exist. It is stated that the Central Government has not disposed of the representation dated 07.09.2022 submitted by the detenu and the detention order ought to be set aside on this ground.

[11] Mr. Th. Vashum, learned G.A. for the State respondents, submits that the representation was considered by the State Advisory Board and then, by the detaining authority while passing the confirmation order dated

29.11.2022. There is no undue delay on the part of the State Government. He relies on the judgment of the Hon'ble Supreme court reported as **(2006) 5 SCC 676** wherein it was stated that delay of 12 days for disposing of the representation was held to be acceptable as the same was explained by the detaining authority. He prays that the writ petition may be rejected.

[12] Mr. W. Darakishwor, learned Sr.PCCG for the Central Government, submits that even though no counter affidavit has been filed by the Central Government, he produces copies of the e-mails dated 19.01.2023, 08.02.2023 and 23.02.2023 sent by the Deputy Secretary (PIT-ND & PS) to the State Government and requesting to send para-wise comments and the same is still awaited. The Central Government cannot pass any effective order in absence of the para-wise comments from the State Government. He prays that appropriate order may be passed by this Court.

[13] On consideration of the materials available on record, it is seen that there is a delay of almost 83 days in disposing of the representation of the detenu. This delay of 83 days (actually 152 days) is as calculated from the confirmation order dated 06.02.2023 and there is no explanation for this 83 days (152 days) taken by the State Government for disposing of the representation.

[14] In the present case, there is a long period of 157 days taken by the police department in furnishing the para-wise comments to the State Home Department. Vide letter dated 15.09.2022, the Deputy Secretary

(Home), Government of Manipur requested the DGP for para-wise comments on the representation submitted by the detenu and the same was submitted by the Addl. SP, Kangpokpi vide letter dated 04.02.2023. The 157 days taken in supplying para-wise comments is totally non-acceptable while dealing with preventive detention where the life and liberty of a person under Article 21 of the Constitution is involved. The Central Government also could not dispose of the representation submitted by the detenu as it is yet to receive the para-wise comments from the State Government. In this case, there is total lack of promptness on the part of the State Authority and accordingly, the detention order dated 29.11.2022 is set aside and the detenu, namely Mr. Shyam Bahadur Basnet, be released immediately from detention if not required in any other case.

[15] Accordingly, writ petition is allowed and disposed of. No cost.

Send a copy of this order to the Chief Secretary, Government of Manipur for information.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

joshua

KH. JOSHUA MARING
Digitally signed by KH.
JOSHUA MARING
Date: 2023.03.30
13:32:33 +05'30'