

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

W.P. (CrI.) No. 47 of 2023

Wangkhem Sarkar Meitei aged about 38 years S/o (late) W. Nageshwar Meitei of Wapokpi Chingol Leikai, P.O. & P.S. Sugnu, Kakching District, Manipur Pin-795101.

... *Petitioner*

- Versus -

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

... *Respondents*

B E F O R E

**HON'BLE THE ACTING CHIEF JUSTICE MR. MV MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the petitioner : Mr. Th. Tolpishak, Advocate.
For the respondents : Mr. Th. Vashum, G.A. for
respondent Nos. 1,2,3 & 5.
Mr. W. Darakeshwar, Sr.PCCG for
respondent No. 4.

Date of Hearing : 23.05.2023

Date of Judgment & order : 31.05.2023

ORDER

A. Guneshwar Sharma, J.

[1] Heard Mr. Th. Tolpishak, learned counsel for the petitioner; Mr. Th. Vashum, learned Deputy Government Advocate, appearing for respondent Nos. 1,2,3 & 5; and Mr. W. Darakeshwar, learned Sr. PCCG, appearing for respondent No. 4.

[2] Mr. Th. Tolpishak, learned counsel for the petitioner/detenu, submits that the detenu Wangkhem Sarkar Meitei was arrested on 24.05.2022 in connection with FIR No. 8(5)2022 SGN-PS under Section 21(c)/27A/29/60(3) of ND&PS Act by a police team of Sugnu-PS and from the car belonging to him, 22 (twenty two) nos. of soap cases containing brown color powder suspected to be heroin was recovered. The accused was produced before the Court and remanded to police and then to judicial custody. The detenu filed a bail application under Section 37 of the ND&PS Act read with Section 167(2) Cr.P.C for releasing him on default bail as the investigator could not complete the investigation within the stipulated period of 180 days. Vide order dated 05.12.2022 in Cril. Misc. (B) Case No. 388 of 2022, the learned Special Judge, ND&PS, Thoubal, allowed the default bail application.

[3] During the pendency of the bail application vide order dated 02.12.2022 passed by the Special Secretary (Home), Government of Manipur, detention order under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND&PS Act), 1988, was issued for detaining detenu for preventing him from further involvement in illicit trafficking of narcotic drugs and psychotropic substances for a period of three months until further orders. Vide letter dated 05.12.2022, the Special Secretary (Home), Government of Manipur, furnished

grounds of detention under Section 3(3) of the PIT-NDPS Act, 1988, to the detenu and stated that he was involved in the conspiracy and took major role in selling and transportation of drugs within and outside the State of Manipur, and he was likely to release on bail in connection with Cril. Misc.(B) Case No. 388 of 2022, and on released from bail he would likely continue in the illicit traffic of drugs. The detenu submitted common representation dated 10.01.2023 to the Chief Secretary, Government of Manipur, and Deputy Secretary (PIT-ND&PS), Government of India, through the Superintendent, Manipur Central Jail, Sajiwa, for revoking the detention order on the ground that the detention order was issued to frustrate the orders of granting bail; there was no cogent reason for detention; no legible copy was submitted; and the detention order violates personal liberty under Article 21 of the Constitution. Vide order dated 13.01.2023, the State Government, rejected the representation submitted by the detenu and vide memorandum dated 07.03.2023, the Central Government rejected the representation submitted by the detenu.

[4] Mr. Th. Tolpishak, learned counsel for the petitioner, submits that there is an unexplained delay of 48 effective days on the part of the Central Government in disposing the writ petition and hence, the detention order is liable to be set-aside on this ground alone.

[5] State respondent Nos. 2 & 5 filed separate counter affidavit. Relying on the counter affidavits, Mr. Th. Vashum, learned Government Advocate for the State, submits that the detenu was taken into preventive detention as he was involved in a syndicate of inter-state drug trafficking and his case could not be handled by normal proceedings. He further submits that there is no delay on the part of the State Government. It is stated that detention order dated 02.12.2022 was issued after

getting proposal from Police and after satisfaction of the detaining authority to the facts. Detention order and grounds of detention was furnished to the detenu as well as to the Central Government within the stipulated time. Representation dated 10.01.2023 submitted by the detenu was received on 11.01.2023 and a copy of the same was forwarded to the Central Government vide e-mail dated 12.01.2023 and para-wise comment was sent on 18.01.2023. Representation was referred to the Advisory Board on 12.01.2023. Para-wise comment from the DGP office was received on 13.01.2023 and on the same day, the State Government have disposed of the representation.

[6] Mr. Vashum, learned Government Advocate, submits that there was no delay on the part of the State Government and the detenu was taken into preventive detention to prevent him from further involvement in illegal activities of drug trafficking. He prays that the writ petition may be rejected.

[7] Mr. W. Darakeshwar, learned Sr. PCCG, appearing for the Central Government, submits that detention order dated 02.12.2022 was sent by the Special Secretary (Home), Government of Manipur, to the Ministry vide letter dated 06.12.2022 and the same was received by the Ministry through e-mail dated 08.12.2022. The representation dated 10.01.2023 submitted by the detenu was received by the Ministry from the State Government through e-mail dated 12.01.2023 and para-wise comments was furnished by the State Government through e-mail dated 18.01.2023. The representation was examined along with facts of the case and the relevant materials provided by the Government of Manipur and the same was submitted to the Competent Authority, i.e., Secretary (Revenue), Government of India on 01.03.2023. Vide memorandum dated 07.03.2023, the Central Government

rejected the representation submitted by the detenu. It is submitted that time taken by the Central Government in consideration and disposal of the representation does not appear to be fatal. Mr. W. Darakeshwar, learned Sr. PCCG, prays that the writ petition may be rejected.

[8] We have considered the rival submissions made by the parties and perused the materials on record. It is seen that the grounds of detention was furnished to the detenu within 5(five) days as stipulated under Section 3(3) of the PIT-ND&PS Act. The representation dated 10.01.2023 submitted by the detenu was received on 11.01.2023 by the State Government and the para-wise comments from the Police was received on 13.01.2023. On the same day i.e., on 13.01.2023, the State Government disposed of the representation. Hence, there is no delay on the part of the State Government and the detention order was disposed of within 3(three) days of the receipt of the same. On the otherhand, the Central Government received the representation dated 10.01.2023 submitted by the detenu on 12.01.2023 by e-mail from the State Government and para-wise comments on the representation was received by the Ministry from the State Government through e-mail dated 18.01.2023. The file was put up to the Competent Authority i.e., Secretary Revenue, Government of India only on 01.03.2023 and the representation was rejected vide memorandum dated 07.03.2023.

[9] From the date of representation i.e., 10.01.2023 till the date of disposal of the representation vide memorandum dated 07.03.2023, it took a total of 56 days by the Central Government for disposal of the representation. However, the period from 10.01.2023 to 18.01.2023 i.e., 8 days, has been explained as time taken in receiving the representation and the para-wise comments from the State Government.

However, there is no explanation for the period from 18.01.2023 to 01.03.2023 during which the file was laying in the Ministry. Further, the time taken from 01.03.2022 to 07.03.2023 by the Secretary (Revenue) in disposing is not properly explained. Hence, there is an unexplained delay of 48 effective days (out of 56 days) by the Central Government for time taken in disposal of the representation. In a case of preventive detention, every procedural rigidity, must be followed in entirety by the Government and every lapse in procedure must give rise to a benefit to the case of the detenu. In the preventive detention, person has been taken into detention without any fair trial and strict interpretation of the statute is required as it effects the right and liberty of a person enshrined under Article 21 of the Constitution. In a recent case of **Pramod Singla Vrs. Union of India (UOI) & ors.** decided on 10.04.2023, reported in **MANU/SC/0349/2023**, the Honb'e Supreme Court observed in para 44 as follows:

"44. As has been mentioned above, preventive detention laws in India are a colonial legacy, and such, are extremely powerful laws that have the ability to confer arbitrary power to the State. In such a circumstances, where there is 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 detenu. 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."

[10] In the case of **Sarabjeet Singh Mokha Vs. the District Magistrate, Jabalpur** reported in **MANU/SC/1011/2021**, the Hon'ble Supreme Court held that unexplained delay in considering representation and the failure of the Central Government to communicate the rejection of the representation of the detenu in timely manner vitiates the detention order.

[11] In the present case, the Central Government has not able to explain the effective time of 48 days taken by it while disposing the representation submitted by the detenu and hence, the memorandum dated 07.03.2023 is bad in terms of the above judgments of **Pramod Singla (supra)** and **Sarabjeet Singh Mokha (supra)**.

[12] Accordingly, detention order dated 02.12.2022 issued by the Special Secretary (Home), Government of Manipur and the confirmation order dated 25.01.2023 issued by the Commissioner (Home), Government of Manipur are set-aside. The Detenu, Wangkhem Sarkar Meitei, be released from detention forthwith, if not required in any other case.

[13] Writ petition is allowed.

[14] No costs.

[15] Sent a copy of this order to the Commissioner (Home), Government of Manipur and the Superintendent, Manipur Central Jail Sajiwa for information and necessary compliance.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Indrajeet