

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

W.P.(Cril.) No.24 of 2023

SR Angam Chiru, aged about 68 years, S/o AR Roirueng Chiru of
Chawangkening, Village Thonglang, PO & PS Kangpokpi,
Kangpokpi District, Manipur – 795129.

..... *Petitioner/s*

– Versus –

1. The State of Manipur, represented by the Chief Secretary,
Government of Manipur, Babupara, PO & PS Imphal, Imphal West
District, Manipur – 795001.
2. The Special Secretary (Home), Government of Manipur,
Babupara, PO & PS Imphal, Imphal West District, Manipur –
795001.
3. The Deputy Secretary (PIT-ND&PS), Ministry of Finance,
Department of Revenue, near North Block, Room No.26, Church
Road, RFA – Barrack, New Delhi – 110001.

.... *Respondent/s*

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner : Mr. Ph. Sanajaoba, Advocate
For the Respondents : Mr. O. Ratankumar, Deputy GA for the State Govt.
Mr. S. Samarjeet, Sr. PCCG for the Central Govt.
Date of Hearing : 20.03.2023
Date of Judgment & Order : **04.04.2023**

JUDGMENT & ORDER
(CAV)

(A. Guneshwar, J.)

The detenu Mr. Sevan Raja Athoi Chiru was arrested on 12.06.2022 in connection with FIR No.17(06)2022 Jiribam Police Station U/S 21(c)/60(3) ND&PS Act. He is accused No.3 in the FIR. From their possession, 1.073 kgs of brown sugar was seized. The detenu was remanded to judicial custody on 18.06.2022 by the Special Court (ND&PS), Manipur.

The detenu filed Bail Application No.25 of 2022 before the High Court of Manipur. Vide order dated 07.11.2022, Special Secretary (Home), Govt.

of Manipur issued detention order under Section 3(1) of PIT-ND&PS for detaining the detenu for preventing from further involvement in illicit trafficking of narcotic drugs. On 11.11.2022, Special Secretary (Home), Govt. of Manipur furnished ground of detention under Section 3(3) of the PIT-ND&PS Act to the detenu and stated that he was a habitual offender indulging in transport of brown sugar in commercial quantity from Manipur to Silchar and earning huge amount of profit and belonging to a drug racket. If he was to be released on bail, he would likely to continue indulging in the illicit trafficking of drugs. As an alternative measure, he was taken into preventive detention.

[2] The detenu submitted common representation dated 19.11.2022 to (i) Chief Secretary, Govt. of Manipur; (ii) Special Secretary (Home), Govt. of Manipur; (iii) Deputy Secretary (PIT-ND&PS), Ministry of Finance, Department of Revenue, Govt. of India, New Delhi; and (iv) Advisory Board, ND&PS for revoking his detention order. It is stated that the detenu is innocent and he has just accompanied his illiterate brother (accused No.1 in the FIR). On the way, he and his brother were arrested along with other and the car they were travelling. He is just a good student and has no other previous involvement in any criminal case. Vide letter dated 23.11.2022, Deputy Secretary (Home), Govt. of Manipur forwarded the representation submitted by the detenu to the Central Government. Vide letter dated 16.12.2022, Deputy Secretary (Home), Govt. of Manipur informed the detenu that his representation was rejected being devoid of merit. Vide memorandum dated 27.12.2022, the Central Government rejected

the representation dated 19.11.2022 submitted by the detenu. Vide letter dated 17.01.2023 issued by the Commissioner (Home), Government of Manipur, the detention order dated 07.11.2022 was confirmed and fixed the period of detention for a period of 12(twelve) months from the date of detention.

The detention order is challenged amongst the following grounds:-

- a) the detention order was issued mechanically without application of mind;
- b) no cogent material was shown involving the detenu in illicit trafficking of narcotic drugs;
- c) failure to compliance Section 3(2) of the Act of involving the Central Government about the detention order within 10(ten) days;
- d) there was inordinate delay on the part of both the State and Central Governments in disposing the representation submitted by the detenu;
- e) the detention order was based on the solitary activity by the detenu.

[3] The State Government filed counter affidavit and it is stated that as the petitioner was habitual offender and has been indulging in illicit trafficking of drugs, he was taken into preventive detention. It is stated that the representation dated 19.11.2022 was forwarded by IG of Prisons vide letter dated 21.11.2022 and received on the same day and parawise comment was sought from DGP, Manipur vide letter dated 23.11.2022 and the parawise comments dated 01.12.2022 was received on 05.12.2022 and rejected on 16.12.2022. It is further

stated that the detention order dated 07.11.2022 and ground of detention dated 11.11.2022 were intimated to the Central Government vide e-mail dated 14.11.2022, i.e., within 10 days of the time line issued under Section 3(2) of the PIT-ND&PS Act. It is stated that there is no inordinate delay on the part of the State Government in dealing with the detention of the detenu and prayed that the writ petition be dismissed.

[4] At the time of hearing, Mr. Salam Samarjeet, learned Sr. PCCG for the Central Government handed over a copy of the counter affidavit dated 10.03.2023 sworn by Under Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi. It was stated that the detention order dated 07.11.2022 issued by the Special Secretary (Home), Government of Manipur was furnished to the Government of India vide letter dated 14.11.2022 by e-mail on the same day; representation dated 19.11.2022 submitted by the detenu was received by the Central Government from the State Government through e-mail dated 24.11.2022 parawise comments on the representation submitted by the detenu was received by the Ministry vide e-mail dated 14.12.2022 and it was placed before the competent authority, i.e., Secretary (Revenue), Government of India on 20.12.2022 and rejection was conveyed to the petitioner vide memorandum dated 27.12.2022. It is stated that the effective time taken by the Central Government is not fatal and prayed for rejection of the writ petition.

[5] Heard Mr. Sanajaoba, learned counsel for the detenu, Mr. O. Ratankumar, learned Dy. GA for the State and Mr. S. Samarjeet, learned Sr. PCCG for the Central Government.

[6] Mr. Sanajaoba, learned counsel for the detenu submits that the detenu has no previous involvement in criminal case and he has been wrongly implicated in the present case. It is stated that it took 28 days for the State Government to dispose the representation dated 19.11.2022 on 16.12.2022. Out of this, 11 days, i.e., from 05.12.2022 (the day parawise comments was received from the State police) to 16.12.2022 (the day rejecting the representation) has not been properly explained. He draws the attention of this Court to the judgment passed by the Hon'ble Supreme Court in the case of 1999 (1) SCC 417 in the case of Rajammal v. State of T.N. reported as Para 7, 8, 9, 10 and 11. It was held that even though no period is prescribed by Article 22(5) of the Constitution, the representation should be considered and disposed at the earliest. However, the authority may explain any delay which had occasion in the disposal of the writ petition. If the delay is not properly explained, detention order can be set aside. In that case, the authority cannot explain the delay of 5 days and accordingly, detention order was set aside.

[7] Mr. Sanajaoba, learned counsel for the detenu further relies on a case of Prof. Khaidem Ibocha Singh vs. State of Manipur (1972) 2 SCC 576 where the Hon'ble Supreme Court held that any unexplained delay in the disposal of representation amounts to violation of Article 22(5) of the Constitution and the

same renders the detention order illegally. The learned counsel also relies on the orders passed by this Court in W.P.(Crl) No.51 of 2022 and 31 of 2022 where detention order was set aside for unexplained delay in the disposal of the representation. He also submitted that there is no explanation for the Central Government for delay in the disposal of the representation and it took 38 days in disposing the representation submitted by the detenu. He prays that detention order be set aside for the undue and unexplained delay on the part of the authorities in disposing the representation submitted by the detenu.

[8] Mr. O. Ratankumar, learned Dy. GA for the State submits that the delay has been duly explained in the counter affidavit filed by the State Government. It is stated that the detention order dated 07.11.2022 and the ground of detention dated 11.11.2022 were furnished to the Central Government on 14.11.2022 within 10 days as stipulated under Section 3(2) of the PIT-ND&PS Act. The time taken in processing the representation submitted by the detenu has been explained in Para 6 of the counter affidavit. It is stated that the representation dated 19.11.2022 was received from the Office of the IG Prisons on 21.12.2022. The same was forwarded to the Central Government on 23.11.2022 and on the same day, parawise comments was called from the DGP, Manipur. Parawise comments dated 01.12.2022 was received by the Dy. Secretary (Home), Government of Manipur on 05.12.2022 and the same was forwarded to the Central Government also and the representation was rejected on 16.12.2022.

Mr. O. Ratankumar, learned Dy. GA says that it took only effective 11 days for the State Government, i.e., from 05.12.2022 to 16.12.2022 in disposing the representation submitted by the State Government. He further clarifies that 11 days' time taken by the State Government is due to the communication between the Offices and proceeding of file and getting approval. At the same time, the officers/officials were dealing with the urgent matter and dealing with similar cases and other time bound Court matters and Home Department related issues like protocol duties, etc. Mr. O. Ratankumar, learned Dy. GA submits that there is no inordinate delay and the effective 11 days has been explained as above. He prays that the writ petition may be rejected.

[9] Mr. S. Samarjeet, learned Sr. PCCG for the Central Government submits that the representation dated 19.11.2022 was received by the Central Authority on 07.11.2022 along with the ground of detention was received on 14.11.2022 by the Central Government. Again, the representation dated 19.11.2022 was forwarded by e-mail and the same was received on 24.11.2022 and parawise comments from the State Government was received on 14.12.2022 and the same was placed before the competent authority, i.e., Secretary, Revenue Department, Government of India on 20.12.2022 and it was rejected on 27.12.2022. He submits that there is no delay on the part of the Central Government and the writ petition be rejected.

[10] Considered the submissions of the learned counsels for the parties and perused the documents on record including the original file submitted by the State Government.

[11] In the case of **Rajammal v. State of T.N.: (1999) 1 SCC 417 : 1999 SCC (Cri) 93**, Hon'ble Supreme Court held that even though no period is prescribed for disposal of the representation submitted by the detenu, the authorities should dispose the same as expeditiously as possible. The unexplained delay in disposal of the representation shall vitiate the detention order. Relevant para are reproduced below:

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 India ⁵. 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 urgency 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.

10. Mr V.R. Reddy, learned Senior Counsel for the State of Tamil Nadu, referred to a decision of this Court in U. Vijayalakshmi v. State of T.N.⁶ to contend that it could not be said that there was any delay in considering the representation from 9-2-1998 to 14-2-1998. In that case also, the detention was under Section 3(1) of the Act. The detenu made a representation against the detention which was received by the State Government on 18-5-1992 and the State Government conveyed the rejection of the representation on 23-6-1992. The detenu received the rejection order on 26-6-1992. It was submitted that there was an inordinate long delay in dealing with the representation and that the detenu was entitled to have the detention order quashed. This Court noticed that in the counter-affidavit filed by the Deputy Secretary to the State Government, the manner in which the representation was dealt with after its receipt on 18-5-1992 had been stated in detail. The Court then observed:

“We have perused the stages through which the file containing the representation was dealt with promptly and there was no indifference, lethargy or negligence in dealing with the same. The file was not unnecessarily held up at any level but moved from level to level promptly. We are, therefore, satisfied that the explanation tendered by the Deputy Secretary in this behalf is acceptable and does not betray any lack of sense of urgency in dealing with the representation. We, therefore, do not see any merit in the first contention.”

In the present case, however, there is no explanation forthcoming as to why the representation could not be dealt with by the Minister concerned from 9-2-1998 to 14-2-1998.

11. We are, therefore, of the opinion that the delay from 9-2-1998 to 14-2-1998 remains unexplained and such unexplained delay has vitiated further detention of the detenu. The corollary thereof is that further detention must necessarily be disallowed. We, therefore, allow this appeal and set aside the impugned judgment. We direct the appellant-detenu to be set at large forthwith.

From the decision of the **Rajammal** (supra), it is settled proposition of law that the representation ought to be disposed of as expeditiously as possible even though no time period is prescribed under Article 22(5) of the Constitution. It is further held that if the delay caused in disposal is due to the lapse on the part of the authority, it will adversely affect further detention of the prisoners. The test is in the duration on rest of the delay, but how it is explained by the authority concerned. The authority may explain the delay in disposal and the Court is bound to consider the explanation. In that case, the delay of 5 days while the file was pending before the concerned Minister could not be explained and detention order was set aside on that ground.

In the present case, State Government has explained the movement of the file from one office to another and the parawise comments from the police department was received on 05.12.2022 and the representation was disposed on 16.12.2022. However, there is no explanation for the 11 days' time (from 05.12.2022 to 16.12.2022) taken after receipt of the parawise comments and till the disposal of the representation, there is no plausible. However, in Para 6 of the

counter affidavit filed by the State Government, it is vaguely stated that this 11 days were taken in movement of the file from one office to another and getting approval and many officials were engaged in other compelling urgent works. We are of the opinion that such vague explanations are not reasonable when it concerns with the personal liberty of a person as guaranteed by Article 21 of the Constitution. Hence, the detention order is liable to be set aside on this ground alone.

In the counter affidavit filed by the Central Government, it is stated that parawise comments was received on 14.12.2022 and it was placed before the competent authority/Secretary (Revenue), Government of India on 20.12.2022 and the representation was rejected on 27.12.2022. It took 13 effective days out of (38 days) for the Central Government in disposing the representation submitted by the detenu. There is explanation for the period 19.11.2022 to 24.12.2022 as the representation was received on that day. The period from 24.11.2022 to 14.12.2022 as the time taken in receiving parawise comments from the State Government and the same is duly explained. However, there is no explanation for the period of 6 days, i.e., from 14 to 20 December, 2022 in placing the file before the Secretary (Revenue) and also for the period of 7 days, i.e., from 20 to 27 December, 2022, the time taken by the Secretary (Revenue) in disposing the representation submitted by the detenu. The Central Government could not explain the effective 13 days' time taken from the date of

receipt of the representation till the date of disposal of the detention order is also vague on this ground also.

[12] Accordingly, detention order dated 07.11.2022 and the confirmation order dated 17.01.2023 are set aside for delay in disposal of representations by both the State and Central Governments. The detenu SR Athoi Chiru, aged about 23 years, S/o SR Angam Chiru of Chawangkinging, Village Thonglang, be set at liberty if not required in any other case.

[13] Copy of the order be sent to the Superintendent of Manipur Central Jail, Sajiwa for information.

[14] Return the original file to the State Government.

[15] The writ petition is allowed. No cost.

JUDGE

ACTING CHIEF JUSTICE

-Larson

FR/NFR