

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

WP(Cril.) No. 46 of 2023

Md. Abdul Matalib

... Petitioner

Vs.

State of Manipur & ors.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

16-06-2023

A. Bimol Singh, J.

[1] Heard Mr. Shakir Khan, learned counsel appearing for the petitioner, Mr. Phungyo Zingkhei, learned Dy. GA appearing for the respondents No. 1, 2 and 5 and Mr. Kh. Samarjit, learned DSGI assisted by Mr. Y. Paikhomba, learned counsel appearing for the respondents No. 3 and 4.

[2] The present petition had been filed by the father of the detenu assailing the order dated 12-01-2023 passed by the Commissioner (Home), Government of Manipur, thereby detaining the detenu under sub-section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, as well as the order dated 24-02-2023 passed by the Commissioner (Home), Government of Manipur thereby confirming the detention of the petitioner and fixing the period of detention for 12 (twelve) months from the date of detention.

[3] The brief facts of the present case is that the detenu was arrested by a Police team of Thoubal P.S. on 08-08-2022 and an FIR being FIR No. 134(8)2022 TBL-P.S. u/s 21 (b)/ 29 ND & PS Act was registered against the detenu. While the detenu was in custody, the Commissioner (Home), Government of Manipur issued the impugned detention order dated 12-01-2023 thereby detaining the petitioner's son under sub-section (1) of Section 3 of the Prevention of Illicit Traffic in ND & PS Act, 1988. The grounds of detention was furnished to the detenu on 17-01-2023 and on receiving the said grounds of detention, the detenu submitted a representation dated 14-02-2023 to the Commissioner (Home),

Government of Manipur with a request for taking a photocopy of the said representation and forwarding it to the Deputy Secretary (PIL-ND & PS) Ministry of Finance, Department of Revenue, New Delhi. On receiving the said representation and after considering it, the State authorities disposed of the representation submitted by the petitioner by an order dated 20-02-2023 issued by the Commissioner (Home), Government of Manipur thereby rejecting the said representation as being devoid of merit. After rejection of the representation submitted by the detenu, the Commissioner (Home), Government of Manipur issued another order dated 24-02-2023 confirming the detention of the petitioner's son and fixing the period of detention for 12 (twelve) months from the date of his detention.

It is the case of the petitioner that the representation submitted by the detenu was forwarded by the State authorities to the respondents No. 3 and 4 on 17-02-2023 through an e-mail and the respondents No. 3 and 4 disposed of the representation submitted by the detenu only on 13-03-2023 after a delay of about 27 (twenty seven) days.

[4] The impugned detention order as well as the impugned confirmation order have been challenged by the petitioner on various grounds. One of the grounds raised by the counsel for the petitioner is that the representation dated 14-02-2023 submitted by the petitioner was disposed of by the concerned authorities of the Central Government after about 27 (twenty seven) days delay and that no explanation whatsoever had been given by the respondents No. 3 and 4 about the delay in disposing of the representation submitted by the petitioner. The learned counsel for the petitioner vehemently submitted that the unexplained delay in disposing of the representation submitted by the petitioner vitiates the impugned detention order and that only on this ground, the impugned detention order is liable to be quashed and set aside. In support of his contention, the learned counsel for the petitioner cited the judgment of the Hon'ble Apex Court in the case of "**Rajammal Vs. State of Tamil Nadu & anr.**" reported in (1999) 1 SCC 417 wherein it has been held as under:-

“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. 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.”

“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. 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."

[5] Mr. Kh. Samarjit, learned DSGI, by drawing the attention of this court at para 4 of the affidavit-in-opposition filed on behalf of the respondents No. 3 and 4, submitted that the representation dated 14-02-2023 submitted by the detenu was received by the Ministry from the State Government of Manipur through an e-mail on 17-02-2023 and subsequently, parawise comments on the representation was forward to the Ministry by the State Government of Manipur through an e-mail dated

23-02-2023. It is also submitted that on receiving the said parawise comments, the concerned authorities examined the representation along with the facts of the case and the relevant materials provided by the State Government of Manipur and the same was submitted to the Secretary (Revenue) on 01-03-2023 and thereafter, the Secretary (Revenue) on behalf of the Central Government, after carefully considering the material facts on record, disposed of the representation submitted by the detenu on 13-03-2023 by issuing a Memorandum and the said Memorandum was sent to the State authorities by sending an e-mail dated 13-03-2023 for due communication to the detenu. The learned DSGI further submitted that the authorities have expeditiously and with due diligence consider the representation submitted by the detenu and there is no lapses on the part of the authorities.

[6] We have heard the rival submissions advanced by the learned counsel appearing for the parties and also carefully examined the materials available on record.

[7] In the present case, it is admittedly on record that the representation dated 14-02-2023 submitted by the detenu was forwarded by the State authorities to the respondents No. 3 and 4 on 16/17-02-2023 and subsequently, parawise comments was also forwarded to the Ministry by the State Government of Manipur through an e-mail dated 22/23-02-2023. It is also an admitted fact that the representation dated 14-02-2023 along with the parawise comments which was received on 22/23-02-2023 was placed before the concerned authorities of the Central Government i.e., the Secretary (Revenue) only on 01-03-2023, after about 7 (seven) days from the date of receipt of the parawise comments and thereafter, the Secretary (Revenue) of the Central Government disposed of the said representation only on 13-03-2023 after about 13 (thirteen) days from the date of receipt of the said representation by issuing a Memorandum dated 13-03-2023.

[8] On careful examination of the record as well as the affidavit-in-opposition filed by the respondents No. 3 and 4, we do not find any

explanation given by the respondents No. 3 and 4 about the delay in disposing of the representation submitted by the petitioner. It has been clearly held by the Hon'ble Apex Court in the case of *Rajammal (supra)* that Article 22(5) of the Constitution mandates that the authority concerned to whom detenu submitted his representation should be considered and disposed of the same as expeditiously as possible and with a sense of urgency without an avoidable delay. It has also been held by the Hon'ble Apex Court that unexplained delay in disposal of the representation will be a breach of the constitutional imperative and it will render the continued detention impermissible and illegal.

[9] In the present case, since no explanation had been given by the concerned authorities for the delay in disposing of the representation, we are of the considered view that such unexplained delay violates the fundamental right of the detenu guaranteed under Article 22(5) of the Constitution of India and it vitiates the detention orders and renders the detention impermissible and illegal. Accordingly, we hereby quashed and set aside the impugned detention orders dated 12-01-2023 and the impugned confirmation order dated 24-02-2023 issued by the Commissioner (Home), Government of Manipur. We further direct the respondents to release the detenu forthwith if his further detention is not required in connection with any other cases.

With the aforesaid directions, the present petition is disposed of.

JUDGE

JUDGE

Devananda