

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

W.P. (Crl.) No. 51 of 2023

Md. Sajid Ahamed, aged about 20 years, S/o (L) Md. Rashid Ahamed of
Lilong Ushoipokpi Tharaorok, P.O. & P.S. Lilong, Thoubal-District,
Manipur.

... *Petitioner*

- Versus -

1. The State of Manipur, represented by the Chief Secretary, Govt. 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- 795001.
4. 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.

... *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. L. Diko, Advocate.
For the respondents	:	Mr. Th. Vashum, G.A. for respondent Nos. 1, 2 & 3. Mr. S. Samarjeet, Sr.PCCG for respondent No. 4.
Date of Hearing	:	12.06.2023
Date of Judgment & order	:	21.06.2023

JUDGMENT & ORDER (CAV)

A. Guneshwar Sharma, J.

[1] Heard Mr. L. Diko, learned counsel for the petitioner; Mr. Th. Vashum, learned Government Advocate, appearing for respondent Nos. 1, 2 & 3; and Mr. S. Samarjeet, learned Sr. PCCG, appearing for respondent No. 4.

[2] By the present petition, under Article 226 of the Constitution, the detenu Md. Sajid Ahamed has challenged the detention order dated 29.08.2022 issued by the Special Secretary(Home), Government of Manipur.

[3] Mr. L. Diko, learned counsel for the petitioner, submits that the petitioner/detenu was arrested on 25.04.2022 in connection with F.I.R. No. 25(04)2022 LIL-PS U/S 21(b)/60(3)/29 ND&PS Act on alleged possession of 12 grams of heroin from him and 13 grams from co-accused Khullakpham Shahid Rahaman. He was remanded to police and then to judicial custody. Vide order dated 26.08.2022 in Cril.Misc.(B) Case No. 268 of 2022, the learned Special Judge (ND&PS), Thoubal, released the detenu on default bail as charge-sheet could not be filed within the statutory period. Thereafter, the detenu was taken into preventive detention under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT-ND&PS Act), 1988, vide order dated 29.08.2022 issued by the Special Secretary (Home), Government of Manipur, for preventing him from further involvement in illicit trafficking of drugs and he would likely continue the same after release on bail. Vide letter dated 02.09.2022, grounds of detention was furnished to the detenu. Vide order dated 29.11.2022, the Special Secretary (Home), Govt. of

Manipur, confirmed the detention order dated 29.08.2022 and fixed the period of detention for 12(twelve) months from the date of detention. Thereafter, the detenu submitted a common representation dated 16.03.2023 to the Deputy Secretary (PIT-ND&PS), Government of India, and to the Chief Secretary, Government of Manipur for revocation of the detention order dated 29.08.2022.

[4] Mr. L. Diko, learned counsel for the petitioner has challenged the detention order amongst on the ground that there is non-application of mind in issuing the detention order, detention order was issued to negate the default bail order, the Central Government has failed to dispose the representation submitted by the detenu and prays that detention order may be set-aside.

[5] Mr. Th. Vashum, learned Government Advocate for the State respondents, submits that the detenu was taken into preventive detention on the basis of the available materials and after released on bail he would likely continue in the illegal activities of illicit trafficking in drugs. He also submits that there is no delay on the part of the State Government. Grounds for detention was furnished within 5 days and the confirmation order was issued within the statutory period of 3 months. He submits that representation dated 16.03.2023 was submitted by the detenu very late after confirmation order, on 21.03.2023 called for parawise comment and on 23.03.2023 parawise comment was submitted and the representation was rejected by speaking order on 24.03.2023. It is also stated that the representation was forwarded to the Central Govt. on 21.03.2023 by email. Mr. Th. Vashum, learned Government Advocate, submits that there is no delay on the part of the State Government in

dealing with the detention and disposal of the representation submitted by the detenu and it is prayed that writ petition may be rejected.

[6] Mr. S. Samarjeet, learned Sr. PCCG for the Central Government submits that the representation dated 16.03.2023 was received by the Ministry from the State Government through e-mail dated 21.03.2023 and the parawise comment was received by e-mail dated 25.03.2023. Thereafter, the matter was put before the competent authority i.e., Secretary (Revenue) on 28.03.2023 and the representation was rejected vide memorandum dated 05.04.2023. Mr. S. Samarjeet, learned Sr. PCCG, submits that there is no delay on the part of the Central Government and the time taken in disposing the same has been explained and the same has occurred as per normal file process and he prays that the writ petition may be rejected.

[7] We have considered the submissions made by the parties at the bar, perused the documents on record and relevant case laws. On the perusal of the case record, it is seen that there is no unexplained lapse on the part of the State authority. It took a total of 8 days for the State Government in disposal of the representation submitted by the detenu and the same has been explained. Parawise comment was received on 23.03.2023 and representation dated 16.03.2023 was disposed on the next date i.e. 24.03.2023.

[8] On the other hand, the Central Government received the representation dated 16.03.2023 on 21.03.2023 and the parawise comment on 25.03.2023 and the file was put up before the Secretary (Revenue) on 28.03.2023, and the representation was rejected vide Memorandum dated 05.04.2023. The Central Government took a total of 20 days in disposing the representation from the date of representation. The

period from 16.03.2023 to 21.03.2023 is explained as the time taken in receiving the representation from the State Government and the period from 21.03.2023 to 25.03.2023 as the period for time taken in receiving the parawise comment from the State Government. However, there is no explanation for the time taken from 25.03.2023 to 28.03.2023 and 28.03.2023 to 05.04.2023. Out of 20 days, a delay of 10 days has been explained and there is an unexplained delay of 10 days. During the course of hearing, Mr. S. Samarjeet, learned Sr. PCCG, explained that one Saturday and Sunday have to be deducted from this 10 days. In spite of doing so, there is an unexplained delay of 8 days.

[9] In the case of **Rajamal Vrs. State of Tamil Nadu** reported as **1999 (1) SCC 417**, Hon'ble Supreme Court held that the representation should be disposed of at the earliest and any unexplained delay will vitiate the detention order.

[10] In the case of **Sarabjeet Singh Mokha vs. the District Magistrate, Jabalpur** reported in **MANU/SC/1011/2021**, the Hon'ble Supreme Court also held that detention order can be set-aside on the ground of unexplained delay on the part of the authority in deciding the representation and for failure to communicate rejection of the representation in timely manner. The same was held by the Hon'ble Apex Court in **Uma Sabeena vs. State of Kerala and ors.** reported in **2011 10 SCC 781**, that unexplained delay in consideration and disposal of representation will vitiate the detention order.

[11] We are of the view that Central Government could not explain effective delay of 8 days while disposing the representation submitted by the detenu.

[12] Accordingly, detention order dated 29.08.2022 issued by the Special Secretary(Home), Government of Manipur and the confirmation order dated 29.11.2022 issued by the Special Secretary (Home), Govt. of Manipur are set-aside. The detenu Md. Sajid Ahamed, be released from detention forthwith, if not required in any other case.

[13] Writ petition is allowed.

[14] No costs.

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

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Indrajeet