

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

W.P. (Crl.) No. 15 of 2022

Khangembam (O) Tombi Devi, aged about 60 years,
W/o Kh. Ibopishak Singh of Yairipok Ningel Maning Leikai,
Thoubal District, Manipur.

...Petitioner

- Versus -

1. Special Secretary (Home), Government of Manipur,
Babupara, Old Secretariat Building, P.O. & P.S. Imphal,
District Imphal West, Manipur – 795001.
2. State of Manipur, represented by Chief Secretary,
Government of Manipur, Old Secretariat Building,
P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.
3. Deputy Secretary (PIT-ND&PS), Ministry of Finance,
Department of Revenue, New Delhi – 1110001.
4. The Superintendent of Manipur Central Jail, Imphal, 1st M.R.
P.O. & P.S. Imphal, District Imphal West, Manipur.

...Respondents

B E F O R E

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the petitioner	:	Mr. Ch. Ngongo, Advocate
For the respondents	:	Mr. Th. Vashum, GA; Mr. S. Kaminikumar, CGSC
Date of order	:	27-01-2023

ORDER

Sanjay Kumar (C.J.),

[1] Challenge in this writ petition is to the order dated 04-10-2022 of the Special Secretary (Home), Government of Manipur, whereby the petitioner was subjected to preventive detention in exercise of power under

Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. She seeks a consequential writ of *habeas corpus* to set her at liberty forthwith.

[2] Heard Mr. Ch. Ngongo, learned counsel for the petitioner; Mr. Th. Vashum, learned Government Advocate, appearing for respondent Nos. 1, 2 & 4; and Mr. S. Kaminikumar, learned CGC, appearing for respondent No. 3.

[3] The primary ground of attack urged by Mr. Ch. Ngongo, learned counsel, is that the petitioner's representation against her detention has not been disposed of till date. The petitioner's representation is dated 26-10-2022. It was addressed to the Chief Secretary, Government of Manipur; the Deputy Secretary (PIT-ND&PS), Ministry of Finance, Department of Revenue, New Delhi; and the Advisory Board, ND&PS, Manipur. It was forwarded through the Superintendent, Manipur Central Jail, Imphal. The affidavit-in-opposition filed by Ms. Roji Rajkumari, Deputy Secretary (Home), Government of Manipur, reflects that the representation of the detenu was forwarded by the Inspector of Prisons, Manipur, and was received on 28-10-2022. According to the Deputy Secretary, the representation was disposed of as devoid of merit after due consideration by the Government and was communicated to the detenu through the Superintendent, Manipur Central Jail, Sajiwa, vide letter No. H-3301/89/2022-HD-HD dated 11-11-2022. She further stated that the report of the detention was forwarded to the Central Government by the Home Department under letter No. H-3301/89/2022-HD-HD dated 11-10-2022, as per rules.

[4] However, the Under Secretary, Ministry of Finance, Department of Revenue, Government of India, filed an affidavit-in-opposition stating that the representation of the petitioner was forwarded by the Deputy Secretary (Home), Government of Manipur, vide letter dated 02-11-2022 and the parawise comments of the State Government on the said representation were received vide e-mail dated 18-11-2022. After considering the same, the competent authority, viz., the Secretary (Revenue), Government of India, rejected the said representation on 22-11-2022 and the same was conveyed to the petitioner through the jail authority under the Memo dated 24-11-2022.

[5] The file of the detaining authority was produced by Mr. Th. Vashum, learned Government Advocate. Perusal thereof reflects that the petitioner's representation dated 26-10-2022 was forwarded by the Superintendent, Manipur Central Jail, Imphal, to the Inspector General of Prisons, Manipur, on the same day and it was also received on the very same day. It was then forwarded by the Inspector General of Prisons, Manipur to the Special Secretary (Home), Government of Manipur, under letter dated 28-10-2022 and was received on the same day. The Note File reflects that the Home Department addressed letter dated 02-11-2022 to the Police Department calling for parawise comments on the said representation and parawise comments were received on 03-11-2022 from the Superintendent of Police, Thoubal. Surprisingly, the letter dated 02-11-2022 addressed to the Police Department is not even available in the file but the undated parawise comments furnished by the Superintendent of Police, Thoubal, are available therein. The Note File further reflects that, after receiving the parawise comments from the police authorities under letter dated 03-11-2022, no steps were taken till 14-11-2022, when an

endorsement was made in the Note File to the effect that the representation of the detenu may be rejected as being devoid of merit. However, no steps were taken pursuant to the said endorsement and it appears that no order of rejection has been passed even till date.

[6] This Court is appalled, to say the least, at the carelessness with which Ms. Roji Rajkumari, Deputy Secretary (Home), Government of Manipur, filed a sworn affidavit before this Court furnishing incorrect factual information. She specifically stated that the petitioner's representation was rejected as being devoid of merit and was communicated to her vide letter No. H-3301/89/2022-HD-HD dated 11-11-2022. A copy of the aforesaid letter dated 11-11-2022 has neither been placed on record along with affidavit-in-opposition nor is it available in the file of the detaining authority. Mr. Ch. Ngongo, learned counsel for the petitioner, would assert that no such order of rejection was ever communicated to the petitioner. The Note File endorsement dated 14-11-2022 recommending that a letter of rejection may be prepared and communicated clearly shows that there could not have been any rejection of the petitioner's representation on 11-11-2022. Further, the question of the Superintendent, Manipur Central Jail, Sajiwa, communicating the rejection to the detenu does not arise as the detenu, being a woman, was incarcerated at the Manipur Central Jail at Imphal and not at Sajiwa.

[7] In addition thereto, there is no explanation forthcoming as to why the State Government did not furnish parawise comments to the Central Government till 18-11-2022, when it had received parawise comments from the Police Department on 03-11-2022 itself. There are, thus, unexplained delays at each and every stage.

[8] Be it noted that in **Rajammal vs. State of T.N. and another [(1999) 1 SCC 417]**, the Supreme Court observed that if delay is caused in consideration of the detenu's representation owing to indifference or any other lapse, such delay would adversely affect further detention of the prisoner. According to the Supreme Court, it is for the authority concerned to explain the delay, if any, in disposing of the representation and it is not enough to say that the delay is very short, as even longer delay can as well be explained and so, the test is not the duration or range of delay, but how it is explained by the authority concerned. The unexplained delay in that case was a mere 5 days.

[9] Earlier, in **Professor Khaidem Ibocha Singh vs. The State of Manipur [AIR 1972 Supreme Court 438]**, the Supreme Court set aside an order of detention on the ground that there was unexplained delay of 17 days in the passing of an order on the representation made by the detenu.

[10] More recently, in **Sarabjeet Singh Mokha vs. The District Magistrate, Jabalpur, and others [(Criminal Appeal No. 1301 of 2021, decided on 29.10.2021 = 2021 SCC OnLine SC 1019)]**, the Supreme Court held that by delaying a decision on such representation, the State Government denied the detenu a valuable statutory right. The Supreme Court observed that the delay by the State Government in disposing of such representation strikes at the heart of the procedural rights and guarantees granted to a detenu.

[11] Though it is laudable that the Government of Manipur is waging a 'war on drugs' and initiating stringent measures to arrest the menace of illicit drug manufacture, trafficking and marketing in and through the State of

Manipur, it is equally its responsibility to ensure that procedural safeguards are taken note of strictly so as to protect the Constitutional and statutory rights of persons detained under preventive detention laws. Despite this Court stating to this effect time and again, scant regard is shown by the authorities concerned to compliance with the prescribed norms.

[12] The unexplained lethargy on the part of the State authorities in dealing with the detenu's representation clearly indicates a lackadaisical and casual approach on their part, which is inimical to the mandatory legal requirements in a matter of this nature. The same would also be fatal to the very validity and continuance of the impugned detention order.

[13] The order of detention dated 04.10.2022 issued by the Special Secretary (Home), Government of Manipur, is accordingly set aside. All consequential proceedings based thereon shall also stand set aside. The petitioner, Khangembam (O) Tombi Devi, presently incarcerated in Manipur Central Jail, Imphal, shall be set at liberty forthwith unless her continued incarceration is validly required in connection with any other case.

W.P. (Crl.) No. 15 of 2022 is accordingly allowed.

In the circumstances, there shall be no order as to costs.

A copy of this order shall be sent to the Chief Secretary, Government of Manipur, for information and necessary further action in the context of educating the detaining authorities in the State of Manipur as to what are the procedural norms that they need to adhere to while exercising power and jurisdiction under preventive detention laws and also cautioning the officials of the State Government, and more particularly, the Deputy

Secretaries in the Home Department, as to the level of responsibility and honesty that they must adopt while filing affidavits in opposition before this Court.

JUDGE

CHIEF JUSTICE

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