

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

W.P. (CrI.) No. 17 of 2022

Md. Fazlur Rahaman @ Abbas, aged about 41 years,
S/o. (L) Rejoul Haque of Lilong Leihaokhong, P.S. – Lilong,
District: Thoubal, Manipur

Petitioner

Vs.

- 1.** Special Secretary (Home), Government of Manipur at Old Secretariat, Imphal, P.O. and P.S. – Imphal, Imphal West, Pin Code – 795001.
- 2.** The State of Manipur, represented by the Chief Secretary, Government of Manipur, at Old Secretariat, Imphal, P.O. and P.S. – Imphal, Imphal West, Pin Code – 795001.
- 3.** The Union of India, through the Deputy Secretary (PIT-ND&PS), Ministry of Finance, Dept. of Revenue. Add: Near North Block, Room No. 26, Church Road, RFA-Barrack, New Delhi – 110001.

Respondents

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR. JUSTICE MV MURALIDARAN**

For the Petitioner	: Mr. L. Seityandra, Advocate
For Respondent Nos. 1 & 2	: Mr. Th. Vashum, Government Advocate
For Respondent No. 3	: Mr. S. Vijayanand Sharma, Sr. PCCG
Date of Order	: 01.02.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] By way of this writ petition, the petitioner assails the order dated 29.08.2022 of the Special Secretary (Home), Government of Manipur, whereby he 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. He seeks a consequential writ of *habeas corpus* to set him at liberty forthwith.

[2] Heard Mr. L. Seityandra, learned counsel for the petitioner; Mr. Th. Vashum, learned Government Advocate, for respondents No. 1 & 2; and Mr. S. Vijayanand Sharma, learned Sr. PCCG, appearing for respondent No. 3.

[3] The primary ground of attack urged by Mr. L. Seityandra, learned counsel, is that there is unexplained delay in the disposal of the petitioner's representation against his detention. The petitioner's representation was dated 21.09.2022 and it was rejected by the State Government on 26.10.2022. The Central Government rejected the said representation on 07.11.2022. The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that the petitioner's representation was received from the Inspector General of Prisons, Manipur, on 23.09.2022. It was forwarded to the Deputy Secretary (PIT-ND&PS), Department of Revenue, New Delhi, on 27.09.2022. No further details were furnished in the affidavit as to what transpired after receipt of the representation until its disposal more than a month later.

[4] The file of the detaining authority produced by Mr. Th. Vashum, learned Government Advocate, reflects that the representation submitted by the petitioner was forwarded by the Superintendent, Manipur Central Jail, Sajiwa, on 21.09.2022 itself and was received in the Directorate of Prisons, Manipur, on

22.09.2022. The Inspector General of Prisons, Manipur, thereupon addressed letter dated 23.09.2022 to the Special Secretary (Home), Government of Manipur, forwarding the representation and it was received by the Home Department on the very same day. However, it was only on 27.09.2022 that the Deputy Secretary (Home), Government of Manipur, addressed a letter to the Director General of Police, Manipur, seeking para-wise comments on the representation. The Superintendent of Police, Thoubal, furnished para-wise comments to the Deputy Secretary (Home), Government of Manipur, under his letter dated 29.09.2022. The Note File reflects that an entry was made therein only on 24.10.2022 referring to receipt of the comments from the police department. Surprisingly, this entry refers to receipt of the comments under letter dated 07.10.2022. However, there is no such letter dated 07.10.2022 in the file but, on the other hand, the letter dated 29.09.2022 of the Superintendent of Police, Thoubal, is very much there. Thereafter, an entry was made in the Note File only on 24.10.2022 that the representation of the petitioner may be rejected on the strength of the police recommendation. This led to the order dated 26.10.2022, rejecting the petitioner's representation.

[5] The affidavit-in-opposition filed by the Director (PITNDPS), Department of Revenue, Ministry of Finance, Government of India, discloses that the petitioner's representation dated 21.09.2022 was forwarded by the Home Department of the State of Manipur under letter dated 27.09.2022 and was received through e-mail on 29.09.2022. Para-wise comments were forwarded by the Deputy Secretary (Home), Government of Manipur, by e-mail on 26.10.2022. The relevant material was submitted to the competent/appropriate authority, viz., the Secretary (Revenue), on 02.11.2022 and upon consideration of the same, the

representation was rejected on 07.11.2022. No explanation is forthcoming as to why no action was taken from 26.10.2022 till 02.11.2022, when all that was required was to place the material before the competent authority. Further, there is no explanation as to why the competent authority needed five days to dispose of the representation, as it is not even required that any reasons be recorded for rejection thereof. It is therefore manifest that there was delay at every stage at the levels of the State Government as well as the Central Government.

[6] 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.

[7] 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.

[8] 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.

[9] 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.

[10] The unexplained delays on the part of the authorities in dealing with the detenu's representation dated 21.09.2022 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.

[11] The order of detention dated 29.08.2022 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, Md. Fazlur Rahaman @ Abbas, presently incarcerated in Manipur Central Jail, Sajiwa, shall be set at liberty forthwith unless his continued incarceration is validly required in connection with any other case.

WP (Cril.) No. 17 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.

Sandeep

JUDGE

CHIEF JUSTICE