

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

WP (Crl.) No. 24 of 2022

Ph. Saliwan, aged about 24 years, brother of Md. Rizwan,
a resident of Lilong Leihakhong, P.O., P.S. Lilong and District
– Thoubal, Manipur – 795009.

Petitioner

Vs.

- 1.** The State of Manipur, represented by the Chief Secretary,
Old Secretariat Building, Babupara, District – Imphal West,
Government of Manipur – 795001.
- 2.** The State of Manipur, represented by Special Secretary
(Home), Old Secretariat Building, Babupara, District –
Imphal West, Government of Manipur, 795001.
- 3.** The Union of India, through the Deputy Secretary (PIT-
NDPS), Department of Revenue, New Delhi – 110001.

Respondents

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

For the Petitioner	: Mr. H. Kenajit, Advocate
For Respondent Nos. 1 & 2	: Mr. Th. Vashum, Government Advocate
For Respondent No. 3	: Mr. S. Vijayanand Sharma, Sr. PCCG
Date of Order	: 10.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] Challenge in this writ petition is to the order of detention dated
20.09.2022 issued by the Special Secretary (Home), Government of Manipur,
whereby the petitioner's elder brother, Md. Rizwan, was subjected to preventive

detention in exercise of power under Section 3(1) of the Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act, 1988.

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

[3] The main ground urged by Mr. H. Kenajit, learned counsel, is that there is unexplained delay on the part of the State authorities in disposing of the representation made by the petitioner's brother against his detention. Be it noted that the detenu's representation was dated 10.10.2022 and the same was rejected by the State Government on 31.10.2022.

[4] The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that the representation dated 10.10.2022 was received by the authorities of the Home Department on 12.10.2022. Para-wise comments were called for from the police department upon the said representation and the same were received on 24.10.2022 leading to rejection of the representation on 31.10.2022. The affidavit-in-opposition, however, offered no explanation for the time lags in dealing with the said representation.

[5] The file of the detaining authority, produced by Mr. Th. Vashum, learned Government Advocate, reflects that the Inspector General of Prisons, Manipur, forwarded copies of the detenu's representation dated 10.10.2022 to the Special Secretary (Home) Government of Manipur, on 12.10.2022 and they were received on the very same day. The Superintendent of Police, Thoubal District, furnished para-wise comments on the said representation under his letter dated 21.10.2022, which was received by the State Home Department on 24.10.2022.

The para-wise comments were furnished in response to the letter dated 19.10.2022 addressed by the Deputy Secretary (Home), Government of Manipur, to the Director General of Police, Manipur, requesting that para-wise comments may be furnished on the representation on or before 21.10.2022. The letter also sounded the caution that representations are required to be considered and disposed of by the Government immediately to avoid legal complications. However, no explanation is forthcoming either from the affidavit-in-opposition or from the original file as to why para-wise comments were not even solicited till 19.10.2022 when the detenu's representation was received on 12.10.2022 itself. Even in the Note-file, there is no evidence of consideration of the said representation at any level within the Home Department between the dates 12.10.2022 and 19.10.2022. It is well settled that procedural safeguards provided under the Constitution and preventive detention laws must be scrupulously adhered to. Delay in disposal of the representation made by a detenu against his detention order would be violative of the rights guaranteed to such detenu.

[6] 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. Be it noted that 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 the 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 somnolence on the part of the State authorities in dealing with the detenu's representation dated 10.10.2022 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 20.09.2022 issued by the Special Secretary (Home), Government of Manipur, is accordingly set aside. All consequential proceedings based thereon shall also stand set aside. The detenu, Md. Rizwan, 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 (Crl.) No. 24 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 under preventive detention laws.

JUDGE

CHIEF JUSTICE

Sandeep