

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

WP (Crl.) No. 25 of 2022

Rebita, aged about 25 years, wife of Md. Noor, a resident of Thoubal Moijing Awang Leikai, P.O., P.S. and District - Thoubal, Manipur-795138.

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. Athouba Khaidem, Government Advocate
For Respondent No. 3	: Mr. W. Darakeshwar, Sr. PCCG
Date of Order	: 11.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] The petitioner is the wife of one Md. Noor, who was subjected to preventive detention, *vide* order dated 06.09.2022 of the Special Secretary (Home), Government of Manipur, in exercise of power under Section 3(1) of the Prevention

of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. By way of this writ petition, she assails the said order and seeks a writ of *habeas corpus* to set her husband at liberty forthwith.

[2] Heard Mr. H. Kenajit, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, appearing for respondents No. 1 & 2; and Mr. W. Darakeshwar, learned Sr. PCCG, appearing for respondent No. 3.

[3] The main ground of attack is that there is unexplained delay on the part of the State in dealing with the representation filed by the petitioner's husband against his detention. The detenu submitted his representation dated 04.10.2022 to various authorities through the Superintendent, Manipur Central Jail, Sajiwa. The said representation was rejected as being devoid of merit by the Home Department of the State Government on 03.11.2022. The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, does not shed any light on the time taken to dispose of the representation.

[4] The file of the detaining authority was produced by Mr. Athouba Khaidem, learned Government Advocate. Perusal thereof reflects that the Superintendent, Manipur Central Jail, Sajiwa, forwarded the representation submitted by the detenu to the Director General of Prisons, Manipur, on the very same day, *i.e.*, on 04.10.2022, and it was received by the Directorate of Prisons on 05.10.2022. The Inspector General of Prisons, Manipur, forwarded 5(five) copies of the said representation dated 04.10.2022 to the Special Secretary (Home), Government of Manipur, on 07.10.2022 and the same were received on that day itself. It appears that the detenu again submitted another representation dated 07.10.2022 which was forwarded by the Superintendent, Manipur Central Jail,

Sajiwa, on the very same day to the Inspector General of Prisons, Manipur, and the same was received on 10.10.2022. In turn, the Inspector General of Prisons, Manipur, forwarded 5(five) copies of the representation dated 07.10.2022 to the Special Secretary (Home), Government of Manipur, on 10.10.2022 and the same were received on that day itself. Be it noted that the representation dated 07.10.2022 was much shorter, being only 5 (five) pages in length, as compared to the representation dated 04.10.2022, which was 8 (eight) pages in length.

[5] The Note-file in the file of the detaining authority reflects that it was only on 11.10.2022 that para-wise comments were solicited from the police department on the representation submitted by the detenu. There is no indication as to why the Home Department took that length of time just to address a letter to the police department seeking para-wise comments. In any event, the Superintendent of Police, Thoubal District, furnished para-wise comments under his letter dated 14.10.2022 addressed to the Deputy Secretary (Home), Government of Manipur. However, no decision was taken thereon by the Home Department till 03.11.2022. Again, no explanation is forthcoming as to why this length of time was taken to consider the comments received and to reject the representation. There is no evidence of application of mind to the comments received at any level within the Home Department between the aforestated two dates. It is well settled that unexplained delay in dealing with and disposing of the representation submitted by a detenu against his detention would be fatal.

[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 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.

[11] The order of detention dated 06.09.2022 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. Noor, 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. 25 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 and the police 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.

JUDGE

CHIEF JUSTICE

Sandeep