

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

W.P.(Crl.) No. 27 of 2022

Md. Ajmir Hussain, aged about 28 Years S/o Md. Siraj Ahmed of Lilong Leihakhong Mathak Leikai, P.O. & P.S. – Lilong, Thoubal District, Manipur, now in judicial custody at Manipur Central Jail, Sajiwa.

...Petitioner

Vs.

1. The Special Secretary (Home), Government of Manipur, at Old Secretariat, Imphal, P.O. & P.S. Imphal, Imphal West, Pin Code- 795001, Manipur.
2. The State of Manipur, represented by the Chief Secretary, Government of Manipur, at Old Secretariat, Imphal, P.O. & P.S.- Imphal, Imphal West Pin Code - 795001, Manipur.
3. The Union of India, through the Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department 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. Th. Jugindro, Advocate
For Respondent Nos. 1 & 2	: Mr. Athouba Khaidem, Government Advocate
For Respondent No. 3	: Mr. S. Samarjeet, Sr. PCCG
Date of Order	: 24.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] Challenge in this writ petition is to the order dated 30.08.2022 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. He seeks a consequential writ of *habeas corpus* to set him at liberty forthwith.

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

[3] Despite time being granted on 01.12.2022, 16.12.2022, 21.12.2022, 10.01.2023 and again on 17.01.2023, respondent No. 3 is yet to file its reply. Mr. S. Samarjeet, learned Sr. PCCG, appearing for respondent No. 3, states that the reply is still in the process of being prepared. This Court is at a loss to understand as to why the Central Government is not in a position to file its replies with expedition at least in *habeas corpus* matters. Be it noted that the Rules framed by this Court require disposal of such cases within a time frame and it is not open either to the State Government or the Central Government to be causal in their approach to such cases and seek adjournments time and again to file their replies.

[4] Mr. Th. Jugindro, learned counsel, would assert that the matter is amenable to disposal on the strength of the reply filed by the State Government. He would contend that the unexplained delay in the disposal of the petitioner's representation against his detention is sufficient in itself to invalidate the detention order. The petitioner's representation was dated 09.09.2022. It was rejected by the State Government on 04.10.2022.

[5] The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, states that the petitioner's representation was forwarded to the Home Department by the Inspector General of Prisons, Manipur, on 12.09.2022 and after considering the comments offered by the Police Department, it was rejected as being devoid of merit on 04.10.2022. No explanation or details were offered as to what transpired during that period.

[6] The file of the detaining authority produced by Mr. Athouba Khaidem, learned Government Advocate, indicates that the Superintendent, Manipur Central Jail, Sajiwa, forwarded 5 copies of the petitioner's representation to the Inspector General of Prisons, Manipur, on 09.09.2022 and they were received on the very same day itself. However, the Inspector General of Prisons, Manipur, did not forward the 5 copies of the petitioner's representation to the Special Secretary (Home), Government of Manipur, till 12.09.2022. No reason is forthcoming as to why the Inspector General kept the same with him for nearly 3 days without forwarding them to the Home Department. Having received the said representation, the Deputy Secretary (Home), Government of Manipur, addressed letter dated 15.09.2022 to the Director General of Police, Manipur, calling for para-wise comments on the representation. Again, no explanation is offered as to why 3 days were required by the Home Department to take this simple step. Para-wise comments were furnished by the Additional Director General of Police (Intelligence), Manipur, to the Home Department under letter dated 19.09.2022. Action was taken thereon by rejecting the petitioner's representation only on 04.10.2022. The Note File in the file of the detaining authority indicates that an entry was made on 23.09.2022 in relation to the comments offered by the Police Department, under letter dated 19.09.2022, with a recommendation that the representation may be rejected as being devoid of merit. However, no steps were taken thereon till 04.10.2022.

[7] 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.

[8] 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.

[9] 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.

[10] 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.

[11] The unexplained somnolence on the part of the State and the Police 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.

[12] The order of detention dated 30.08.2022 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, Mr. Md. Ajmir Hussain, 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. 27 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 and temporal norms that they need to adhere to while exercising power and jurisdiction under preventive detention laws.

JUDGE

CHIEF JUSTICE

Indrajeet