

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

W.P. (CrI.) No. 28 of 2022

Kamneilung Vaiphei @ Khai, aged about 52 years, S/o. Lalnek Vaiphei of New Kannan Village, Kangpokpi District, Manipur A/P Henjang Village, Tengnoupal, Machi PS, Manipur (Now a detenu under PIT-ND & PS Act.)

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, 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. S. Nepolean, Government Advocate
For Respondent No. 3	: Mr. W. Darakeshwar, Sr. PCCG
Date of Order	: 25.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] The petitioner assails the order dated 30.08.2022 of the Special Secretary (Home), Government of Manipur, subjecting him 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. S. Nepolean, learned Government Advocate, appearing for respondent Nos. 1 & 2; and Mr. W. Darakeshwar, learned Sr. PCCG, appearing for respondent No. 3.

[3] The primary ground of attack urged by Mr. Th. Jugindro, learned counsel, is that there is unexplained delay on the part of the State Government in disposing of the petitioner's representation against his detention. The petitioner's representation is dated 09.09.2022 and it was rejected on 04.10.2022. The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that the said representation was received on 12.09.2022 and was rejected on 04.10.2022 after consideration. No explanation was offered as to what steps were taken during the interregnum for its expeditious disposal.

[4] The file of the detaining authority is produced by Mr. S. Nepolean, learned Government, and it shows that the Superintendent, Manipur Central Jail Sajiwa, forwarded 5 copies of the petitioner's representation dated 09.09.2022 to the Inspector General of Prisons, Manipur, on the very same day and they were received in the Directorate of Prisons, Manipur, on that day itself. The petitioner's representation dated 09.09.2022 was then forwarded to the Home Department by

the Inspector General of Prisons, Manipur, only on 12.09.2022. There is no explanation forthcoming from the file as to why 3 days were taken to merely forward the said representation. Having received the same on 12.09.2022, the Deputy Secretary (Home), Government of Manipur, addressed a letter to the Director General of Police, Manipur, only on 15.09.2022, soliciting para-wise comments thereon. Again, no explanation is offered as to why 3 days were taken for 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. However, no action was taken thereon till 04.10.2022. The Note-file reflects that an entry was made therein on 23.09.2022, adverting to the receipt of para-wise comments from the Police Department and recommending that the petitioner's representation may be rejected. However, there appears to have been no application of mind thereafter, till the rejection on 04.10.2022. Delays at every stage therefore remain largely unaccounted for.

[5] 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.

[6] 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.

[7] 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.

[8] 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.

[9] 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. Further, the

complete failure of the Central Government, viz., respondent No.4, in acting upon the representation sounds a death knell for the impugned detention order.

[10] Before parting with the case, we may note that the petitioner also raised the contention that his detention order had not been approved by the competent authority under Section 9 (c) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. He asserted that non-compliance with this statutory provision would render the detention order unsustainable. In his affidavit-in-opposition, Dr. Mayengbam Veto, the Deputy Secretary (Home), Government of Manipur, stated that the final recommendation of the Advisory Board was yet to be received and that the final opinion as to whether or not there was sufficient cause for the petitioner's detention could not be arrived at.

Significantly, this affidavit was filed by the Deputy Secretary on 20.12.2022. The file of the detaining authority however disclosed that the Advisory Board considered the petitioner's representation in its sitting held on 07.11.2022 and furnished its Report on 11.11.2022 rejecting his representation and unanimously holding that there were sufficient grounds to detain him under the provisions of the statute. Upon considering the said Report, the petitioner's preventive detention order was confirmed by the Government of Manipur on 30.11.2022 itself.

These facts reflect the level of care and attention that is being given by the State authorities while preparing replies and filing them before this Court. A far greater level of responsibility requires to be taken by the State authorities and an effort should be made by them not to suppress relevant facts and information, be it for whatsoever reason or consideration. We need say no more.

[11] 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, Kamneilun Vaiphei @ Khai, 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. 28 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 and temporal norms that they need to adhere to while exercising power and jurisdiction under preventive detention laws. Necessary guidance may also be given to the authorities who depose to the affidavits to be filed before this Court to do so with a greater sense of responsibility and with due regard to presenting the correct picture before this Court. Again, we need say no more.

JUDGE

CHIEF JUSTICE

Sapana