

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

WP (Crl.) No. 29 of 2022

Khular Peiling Lamkang, aged about 44 years,
W/o (L) J. Renghon Lamkang of Lamkang Centre, residing at
Thamlakhuren Villagem P.O. Pallel, P.S. Chandel,
District-Chandel, Manipur.

Petitioner

Vs.

- 1.** The State of Manipur, represented by the Chief Secretary,
Government of Manipur, office at Old Secretariat Building,
P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.
- 2.** The Special Secretary (Home), Government of Manipur,
Babupara, Old Secretariat Building, P.O. & P.S. Imphal,
District Imphal West, Manipur – 795001.
- 3.** 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.
- 4.** The Superintendent of Manipur Central Jail, Sajiwa, near
Khabeisoi, P.O. Porompat, P.S. Heingang, Imphal East
District, Manipur.

Respondents

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

For the Petitioner : Ms. Rinika Maibam, Advocate
For Respondent Nos. 1, 2 & 4 : Mr. Athouba Khaidem, Government Advocate
For Respondent No. 3 : Mr. S. Vijayanand Sharma, Sr. PCCG
Date of Order : 19.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] The petitioner assails the order dated 04.10.2022 of the Special Secretary (Home), Government of Manipur, subjecting her 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. She seeks a consequential writ of *habeas corpus* to set her at liberty forthwith.

[2] Heard Ms. Rinika Maibam, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, appearing for respondents No. 1, 2 & 4; and Mr. S. Vijayanand Sharma, learned Sr. PCCG, appearing for respondent No. 3.

[3] The main ground of attack urged by Ms. Rinika Maibam, learned counsel, is that there is unexplained delay in the disposal of the petitioner's representation made against her detention. The petitioner's representation is dated 11.11.2022 and was sent to various authorities through the Superintendent, Central Jail, Imphal. The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that the said representation was forwarded to the Home Department of the State Government by the Inspector General of Prisons, Manipur, under letter dated 14.11.2022 and was received on 15.11.2022. Para-wise comments were solicited from the police Department by the Home Department under letter dated 16.11.2022. Thereupon, the police department submitted its comments/views on 16.12.2022 and acting on the same, the petitioner's representation was rejected after due consideration, under letter dated 16.12.2022.

[4] Perusal of the file of the detaining authority produced by Mr. Athouba Khaidem, learned Government Advocate, reflects that the para-wise comments received from the police department on 16.12.2022 do not even find place therein. This Court had occasion to comment earlier also on the sorry state of affairs prevailing in the State of Manipur in so far as the maintenance of official files is concerned. The case on hand presents another instance of how shoddily the files of detaining authorities are being maintained.

[5] In any event, the Note-file in the detaining authority's file states that the police department furnished its views/comments under the letter dated 13.12.2022 of the Superintendent of Police, Kakching. Significantly, the letter addressed by the Superintendent of Police, Kakching, to the Deputy Secretary (Home), Government of Manipur, is annexed to the affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur. This letter clearly bears the date 16.12.2022 and is a further indication of the carelessness with which the Note-file in the file of the detaining authority is being maintained, as the date of this letter is wrongly shown therein as 13.12.2022.

[6] However, no explanation has been offered in the affidavit-in-opposition and no explanation is forthcoming from the file of the detaining authority as to why the police authorities took a month to send their para-wise comments upon the petitioner's representation.

[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 lethargy on the part of 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 04.10.2022 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, Mrs. Khular Paileng Lamkang, presently incarcerated in Manipur Central Jail, Imphal, shall be set at liberty forthwith unless her continued incarceration is validly required in connection with any other case.

WP (Crl.) No. 29 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