

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

WP (Crl.) No. 31 of 2022

Mrs. Thanglalnei Haokip, aged about 38 years,
W/o Mangkholien Haokip of Torbung Village near SDO Office,
P.O. & P.S. Churachandpur, District-Churachandpur,
Manipur, 795128.

Petitioner

Vs.

1. The State of Manipur, represented by the Chief Secretary, Government of Manipur, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, 795001.
2. The Special Secretary (Home), Government of Manipur, Babupara, P.O. & P.S. Imphal, Imphal West District, 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.

Respondents

BEFORE

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

For the Petitioner	: Ph. Sanajaoba, Advocate
For Respondent Nos. 1 & 2	: Mr. Athouba Khaidem, G.A.
For Respondent No. 3	: Mr. S. Kaminikumar, CGC
Date of Order	: 11.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] By order dated 30.08.2022 of the Special Secretary (Home), Government of Manipur, Mangkholien Haokip was subjected to detention in exercise of power under Section 3(1) of the Prevention of Illicit Traffic in Narcotic

Drugs and Psychotropic Substances Act, 1988. His wife filed the present writ petition assailing the said order and seeking a writ of *habeas corpus* to set her husband at liberty forthwith.

[2] Heard Mr. Ph. Sanajaoba, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, appearing for respondent Nos. 1 & 2; and Mr. S. Kaminikumar, learned CGC, appearing for respondent No. 3.

[3] The primary ground of challenge urged by Mr. Ph. Sanajaoba, learned counsel, is that there is inordinate delay on the part of the State in dealing with the representation submitted by the petitioner's husband against his detention. The detenu submitted 3 (three) representations in all. His first representation is dated 24.09.2022, whereby he sought revocation/cancellation of the detention order dated 30.08.2022. By way of his second representation dated 04.10.2022, he sought a particular document which found mention in the detention order and the grounds of detention, so as to enable him to make an effective and purposeful representation to the authorities concerned. Having received the said document, he then submitted representation dated 24.10.2022, reiterating his request to revoke the detention order dated 30.08.2022.

[4] The Deputy Secretary (Home), Government of Manipur, filed an affidavit-in-opposition. Therein, he stated that the first representation dated 24.09.2022 submitted by the detenu was not found in the records of the Home Department and, as such, no action was taken upon the same. He admitted receipt of the second representation dated 04.10.2022 and stated that the document sought by the detenu was furnished to him. As regards the third representation dated 24.10.2022, he stated that the same was forwarded to the Director General

of Police, Manipur, for para-wise comments, under letter dated 02.11.2022, but no comments were received till date.

[5] The file of the detaining authority was produced by Mr. Athouba Khaidem, learned Government Advocate. Perusal thereof reflects that the file has been maintained in a most casual and careless manner and no documents are available with regard to how the representation dated 24.10.2022 was dealt with. However, the Note-file therein discloses that a decision was taken on 02.11.2022 to request the Police Department to furnish para-wise comments upon the representation submitted by the detenu. Thereafter, no action seems to have been taken by the Home Department to follow up with the Police Department and, in turn, the Police Department seems to have forgotten the matter altogether.

[6] In effect, the representation submitted by the detenu as long back as on 24.10.2022 has not even been disposed of till date. In this regard, reference may be made to the observations of a Constitution Bench, in **K.M. Abdulla Kunhi vs. Union of India [(1991) 1 SCC 476]**, that it is beyond the pale of controversy that the Constitutional right to make a representation under Article 22 (5), by necessary implication, guarantees the Constitutional right to proper consideration of the representation and, secondly, the obligation of the Government to afford to the detenu an opportunity to make a representation and to consider such representation is distinct from the Government's obligation to refer the case of the detenu along with the representation to the Advisory Board. It was pointed out that the obligation of the Government to consider the representation is different from the obligation of the Board.

[7] Reiterating this principle in **Smt. Gracy vs. State of Kerala & Anr. [(1991) 2 SCC 1]**, the Supreme Court observed that the representation of a detenu against the order of his detention has to be considered and decided by the detaining authority and the requirement of its separate consideration by the Advisory Board would be an additional requirement implied by Clauses 4 & 5 of Article 22. The Supreme Court affirmed that the aforesaid dual obligation of consideration of the detenu's representation by the Advisory Board and, independently, by the detaining authority, flows from Article 22 (5) even when the representation is addressed only to the Advisory Board and not to the detaining authority. This principle was again reiterated in **Moosa Husein Sanghar vs State of Gujarat & Ors. [(1993) 1 SC 511]**.

[8] It is equally well settled that delay in consideration and disposal of the representation made by a detenu against his detention would be fatal to its very validity and continuance. 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.

[9] 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.

[10] 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.

[11] 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.

[12] The failure of the State authorities in disposing of the detenu's representation till date indicates their dismal and utterly casual approach in discharging their functions keeping Constitutional objectives in mind. The same would also be fatal to the validity and continuance of the impugned detention order.

[13] 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 detenu,

Mangkholien Haokip, 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. 31 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.

Sapana

JUDGE

CHIEF JUSTICE