

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

W.P. (Crl.) No. 35 of 2022

Mr. HL Seikholen Mate, aged about 38 yrs., S/o. HL Helkai Mate
@ Helkhokai Mate, a permanent resident of Tengenoupal Village,
Tengenoupal Sub-Division, Tengenoupal District, Manipur-795131.

Petitioner

Vs.

- 1.** Union of India, represented by Secretary, Ministry of Finance,
Dept. of Revenue, Near North Block, Room No.-26, Church
Road, RFA Barracks, New Delhi – 110001.
- 2.** The Deputy Secretary (PIT-ND&PS), Ministry of Finance,
Department of Revenue, Near North Block, Room No.-26,
Church Road, RFA Barracks, New Delhi-110001.
- 3.** State of Manipur, represented by the Chief Secy. Govt. of
Manipur, Babupara, Imphal-795001.
- 4.** Special Secretary (Home), Government of Manipur,
Babupara, Imphal-795001.

Respondents

BEFORE

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

For the Petitioner	: Mr. Serto T Kom, Advocate
For Respondent Nos. 1 & 2	: Mr. Armananda, Advocate
For Respondent Nos. 3 & 4	: Mr. Athouba Khaidem, Government Advocate
Date of Order	: 02.02.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] By way of this writ petition, the petitioner assails the order dated 13.09.2022 of the Special Secretary (Home), Government of Manipur, whereby his brother 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 his brother at liberty forthwith.

[2] Heard Mr. Serto T Kom, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, for respondents No. 3 & 4; and Mr. Armananda, learned counsel representing Mr. Kh. Samarjit, learned DSGI, appearing for respondent Nos. 1 & 2.

[3] The primary ground of attack urged by Mr. Serto T Kom, learned counsel, against the impugned detention order is the unexplained delay in the disposal of the detenu's representation. The detenu's representation is dated 10.10.2022 and it was rejected by the State Government on 01.12.2022. The Government of India rejected it on 14.12.2022.

[4] The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that the detenu's representation dated 10.10.2022 was forwarded to the Home Department by the Inspector General of Prisons, Manipur, under letter dated 12.10.2022 and it was received on the very same day. Para-wise comments were sought from the Director General of Police, Manipur, under letter dated 14.10.2022. The representation was also forwarded to the Government of India on the same day. The Officer-in-Charge,

Kakching Police Station, submitted para-wise comments only on 17.11.2022 and, thereupon, the representation was considered and rejected by the State Government on 01.12.2022. Para-wise comments were forwarded to the Government of India on 24.11.2022 leading to rejection of the representation by the Government of India on 14.12.2022. The Deputy Secretary stated that the time taken during this exercise was due to processing of files and communications between offices and as officers and officials dealing with the matter were also dealing with other similar cases and time-bound Court matters apart from Home Department related duties, like protocol duties, State and National functions *etc.* The Central Government did not choose to file an affidavit-in-opposition explaining the delay on its part

[5] The file of the detaining authority produced by Mr. Athouba Khaidem, learned Government Advocate, reflects that the Superintendent, Manipur Central Jail, Sajiwa, forwarded the detenu's representation on 10.10.2022 itself and it was received on by the Directorate of Prisons, Manipur, on 11.10.2022. In turn, the Inspector General of Prisons, Manipur, forwarded it to the Special Secretary (Home), Government of Manipur, on 12.10.2022 and it was received on the very same day. The Deputy Secretary (Home), Government of Manipur, addressed letter dated 14.10.2022 to the Director General of Police, Manipur, calling for para-wise comments on the representation. The same were furnished by the Officer-in-Charge, Kakching Police Station under letter dated 17.11.2022. No reason is forthcoming as to why more than a month's time was taken for this purpose. Perusal of the comments reflects that the same pertained to events that took place up to

September, 2022, and therefore, there was no investigation undertaken after receipt of the letter dated 14.10.2022 from the Home Department, which necessitated the Police Department to delay submission of the para-wise comments to cover such later events. That apart, the affidavit-in-opposition filed by the State Home Department reflects that the Central Government was furnished with para-wise comments on 24.11.2022 itself but the Government of India rejected the detenu's representation only on 14.12.2022. As noted *supra*, no affidavit-in-opposition was filed by the Central Government to explain the delay in this regard. It is therefore manifest that there were unexplained delays both at the level of the State Government as well as the Central Government in dealing with the detenu's representation.

[6] 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. *Per* 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.

[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 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 delays on the part of the authorities in dealing with the detenu's representation dated 10.10.2022 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. Needless to state, citing routine excuses of everyday duties and pressure of work to explain the delay is of no avail to the authorities as matters of this nature must take precedence and priority over all others.

[11] The order of detention dated 13.09.2022 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, Mr. HL Seikhongam Mate, 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. 35 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 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.

Sandeep

JUDGE

CHIEF JUSTICE