

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

W.P.(Crl.) No. 37 of 2022

Md. Sahir Khan, aged about 35 Years, S/o L. Md. Abdul Rashit of Khurai Khomidok,
P.O. Pangei Yangdong, P.S. – Heingang, Imphal East District, Manipur.

...Petitioner

Vs.

1. Special Secretary (Home), Government of Manipur, Babupara, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur - 795001.
2. State of Manipur, represented by the Chief Secretary, Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur - 795001.
3. Deputy Secretary (PIT-ND & PS), Ministry of Finance, Department of Revenue, New Delhi- 110001.
4. The Superintendent of Manipur Central Jail, Imphal, 1st M.R. P.O. & P.S. Imphal, District Imphal West, Manipur.

...Respondents

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

For the Petitioner : Mr. Ch. Ngongo, Advocate
For Respondent Nos. 1, 2 & 4 : Mr. Athouba Khaidem, Government Advocate
For Respondent No. 3 : Mr. S. Kaminikumar, CGSC
Date of Order : 24.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] Challenge in this writ petition is to the order dated 09.11.2022 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. Ch. Ngongo, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, appearing for respondent Nos. 1, 2 & 4; and Mr. S. Kaminikumar, learned CGSC, for respondent No. 3.

[3] Mr. Ch. Ngongo, learned counsel, would assert that the unexplained delay on the part of the State and Central Governments in dealing with and disposing of the petitioner's representation against his detention is sufficient in itself to invalidate the impugned order of detention. The petitioner's representation was dated 21.11.2022. It was rejected by the State Government on 15.12.2022 and by the Central Government on 22.12.2022.

[4] The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that the petitioner's representation was forwarded to the Home Department by the Inspector General of Prisons, Manipur, on 22.11.2022. Comments were solicited from the Police Department vide letter dated 24.11.2022 and the same were furnished by the Superintendent of Police, Thoubal, under letter dated 28.11.2022. The representation was rejected on 15.12.2022. The delay in its disposal was stated to have been caused by the high volume of proposals received and other urgent works of the department. Mention was made of the various steps that need to be taken in the context of preventive detention orders and it was stated that the State Government was trying to dispose of the representations made by the detenus as expeditiously as possible.

[5] The affidavit-in-opposition filed by the Deputy Secretary (PITNDPS), Department of Revenue, Ministry of Finance, Government of India, records that the petitioner's representation and the comments of the State Government were received by e-mail on 13.12.2022. The same were submitted to the competent

authority, i.e., the Secretary (Revenue) only on 16.12.2022 and the representation was rejected only on 22.12.2022. No explanation was offered for the delay.

[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. 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.

[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] It is not open to the State and Central Governments to blithely brush aside the delay on their part in dealing with the representation made by a detenu against his detention. Unexplained delay in this exercise would be fatal, as pointed out by the Supreme Court. It is not open to the State Government to cite the volume of work generated by issuance of preventive detention orders galore as an excuse for the delays in disposing of representations made by detenus. Having issued a plethora of preventive detention orders in their effort to wage a war on drugs, the State Government must necessarily provide sufficient infrastructure and personnel to deal with the additional work that would have to be dealt with in the context of such detention orders. Liberty of the individual being the paramount consideration in terms of the Constitutional scheme, the State Government cannot delay consideration of the representations made by detenus on such grounds.

[11] Perusal of the file of the detaining authority produced by Mr. Athouba Khaidem, learned Government Advocate, reflects that the Superintendent, Manipur Central Jail, Sajiwa, forwarded 5 copies of the petitioner's representation dated 21.11.2022 to the Inspector General of Prisons, Manipur, on the very same day and it was received in the Directorate of Prisons, Manipur, on 22.11.2022. The Inspector General of Prisons, Manipur, forwarded the same to the Special Secretary (Home),

Government of Manipur on 22.11.2022 and they were received on the very same day. The Deputy Secretary (Home), Government of Manipur, addressed letter dated 24.11.2022 to the Director General of Police, Manipur, calling for para-wise comments on the said representation. Para-wise comments were furnished by the Superintendent of Police, Thoubal, to the Home Department, under letter dated 28.11.2022. The Note File reflects that no steps were taken upon the same till 08.12.2022. An endorsement was made on that day with reference to the para-wise comments received from the Police Department but with nothing further in so far as disposal of the petitioner's representation is concerned. Eventually, the representation was rejected by the State Government on 15.12.2022, basing upon the endorsement made in the Note File on 14.12.2022.

[12] The unexplained somnolence on the part of the State 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.

[13] The order of detention dated 09.11.2022 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, Md. Sahir Khan, 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. 37 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.

Indrajeet

JUDGE

CHIEF JUSTICE