

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

WP(CRIL.) NO.42 OF 2022

Letkhogin Vaiphei, aged about 26 years, S/o Khutinlun Vaiphei of Tangmual Village, P.O. & P.S. Churachandpur, Churachandpur District, Manipur (now a detenu under PIT-ND&PS Act).

...Petitioner

-Versus-

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 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 M.V.MURALIDARAN**

For the Petitioner :: Mr. Th.Jugindro, Advocate

For Respondents No.1 & 2 :: Mr. S.Nepolean, Government Advocate

For Respondent No.3 :: Mr.W.Darakishwor, Sr.PCCG

Date of Order :: 25.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] Challenge in this writ petition is to the order dated 09.09.2022 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. Th.Jugindro, learned counsel for the petitioner; Mr. S.Nepolean, learned Government Advocate, appearing for respondents No.1 and 2; and Mr. W.Darakishwor, learned Sr. PCCG appearing for respondent No.3.

[3] The primary ground of attack urged by Mr. Th. Jugindro, learned counsel, is the unexplained delay in the disposal of the petitioner's representation against his detention. The petitioner's representation was dated 20.09.2022 and was rejected on 19.10.2022. The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that para-wise comments were received upon the said representation on 19.10.2022 and it was rejected on the very same day.

[4] The file of the detaining authority is produced by Mr.S.Nepolean, learned Government Advocate, and it reflects that the Superintendent, Manipur Central Jail, Sajiwa, forwarded 5(Five) copies of the petitioner's representation to the Inspector General of Prisons, Manipur, on 20.09.2022 itself and they were received in the Directorate of Prisons, Manipur, on 21.09.2022. In turn, the Inspector General of Prisons, Manipur, forwarded the 5(Five) copies of the petitioner's representation to the Home Department on 22.09.2022 and they were received on the very same day. Thereafter, letter dated 18.10.2022 was addressed by the Deputy Secretary (Home), Government of Manipur, to the Director General of Police, Manipur, calling for para-wise comments on the said representation. The same were furnished on the very next day by the Superintendent of Police, Bishnupur District, leading to rejection of the petitioner's representation on 19.10.2022. However, no explanation is forthcoming as

to why para-wise comments were not called for by the Home Department till 18.10.2022 when the petitioner's representation was received by the Home Department as long back as on 22.09.2022.

[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 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.

[10] The order of detention dated 09.09.2022 issued by the Special Secretary (Home), Government of Manipur, is accordingly set aside. All consequential proceedings based thereon shall also stand set aside. The petitioner, Letkhogin Vaiphei (26), S/o Khutinlun Vaiphei of Tangmual Village, PO & PS- Churachandpur, Churachandpur District, Manipur, 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. 42 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.

JUDGE

CHIEF JUSTICE

FR/NFR
Opendro