

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

W.P. (CrI.) No. 45 of 2022

Md. Nawaz Khan (27 yrs), s/o Md. Islauddin of Lilong Dam
Makhong, P.O. & P.S. Lilong, Thoubal District,
Manipur – 795009.

Petitioner

Vs.

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

For the Petitioner	: Mr. L. Seityandra, Advocate
For Respondent Nos. 1, 2 & 3	: Mr. Athouba Khaidem, Government Advocate
For Respondent No. 4	: Mr. Boboy Potsangbam, CGSC
Date of Order	: 20.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] The petitioner assails the order dated 02.09.2022 of the Special Secretary (Home), Government of Manipur, whereby he 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. L. Seityandra, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, for respondents No. 1, 2 & 3; and Mr. Boboy Potsangbam, learned CGSC, appearing for respondent No. 4.

[3] The primary ground of attack urged by Mr. L. Seityandra, learned counsel, is that the petitioner's representation to the Central Government has not been disposed of till date. The petitioner's representation against his detention is dated 04.10.2022 and was addressed to respondent Nos. 2 & 4 herein. As per the affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, this representation was rejected by the State Government, *vide* order dated 11.11.2022, based on the comments received from the Police Department on 24.10.2022. The report of the Advisory Board was received by the State Government on 15.11.2022 and thereupon, the detention order was confirmed on 02.12.2022. The affidavit is however silent as to when the petitioner's representation was forwarded to respondent No. 4.

[4] Perusal of the file of the detaining authority placed before the Court by Mr. Athouba Khaidem, learned Government Advocate, reflects as follows:

The petitioner's representation dated 04.10.2022 was forwarded to the Special Secretary (Home), Government of Manipur, by the Inspector General of Prisons, Manipur, on 07.10.2022 and it was received on the very same day. Para-wise comments were solicited by the Deputy Secretary (Home), Government of Manipur, from the Director General of Police, Manipur, under letter dated 20.10.2022. There is no explanation forthcoming either from the file or the Note-file therein as to why action was not taken in this regard for nearly two weeks, as the representation dated 04.10.2022 was received on 07.10.2022 itself. Further, the said representation was forwarded to respondent No. 4 by the Deputy Secretary (Home), Government of Manipur, only on 20.10.2022. Again, there is no explanation forthcoming for the delay in this dispatch. The Superintendent of Police, Thoubal District, furnished his para-wise comments on the representation under his letter dated 24.10.2022 addressed to the Deputy Secretary (Home), Government of Manipur. However, it was only on 11.11.2022 that the representation was rejected by the State Government and the same was informed to the petitioner under a letter of the same date addressed by the Deputy Secretary (Home), Government of Manipur. Para-wise comments on the petitioner's representation were forwarded to respondent No. 4 on 09.11.2022. Respondent No. 4 is yet to pass an order on the petitioner's representation as on date. The aforesaid facts demonstrate unexplained periods of delay on the part of both the State Government as well as the Central Government.

[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 lethargy 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. Further, the complete failure of the Central Government, viz., respondent No.4, in acting upon the representation sounds a death knell for the impugned detention order.

[10] The order of detention dated 02.09.2022 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, Md. Nawaz 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. 45 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 norms that they need to adhere to while exercising power and jurisdiction under preventive detention laws.

JUDGE

CHIEF JUSTICE

Sandeep