

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

W.P. (Crl.) No. 47 of 2022

Md. Ajmir Hussain @ Ithem, aged about 42 years, s/o late Md. Abdul Satar of Lilong Leihakhong Mathak Leikai, P.O. & P.S. Lilong, Thoubal District, Manipur (Now a detenu under PIT-ND & PS Act).

Petitioner

Vs.

1. The Special Secretary (Home), Govt. of Manipur at Old Secretariat, Imphal, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin Code – 795001.
2. The State of Manipur, represented by the Chief Secretary, Government of Manipur, at Old Secretariat, Imphal, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin Code – 795001.
3. The Union of India, Through the Deputy Secretary (PIT – ND & PS), Ministry of Finance, Dept. of Revenue, ADD: Near North Block, Room No. 26-Church Road, RFA-Barrack, New Delhi – 110001.
4. The Superintendent of Manipur Central Jail, Imphal, P.O. and P.S. Imphal, Imphal West District, Manipur, Pin Code-795001.

Respondents

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the Petitioner	: Mr. S. Jibon, Advocate
For Respondent Nos. 1, 2 & 4	: Mr. Athouba Khaidem, Government Advocate
For Respondent No. 3	: Mr. Y. Paikhomba, Advocate
Date of Order	: 20.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] The petitioner assails the order dated 30.08.2022 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. S. Jibon, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, appearing for respondents No. 1, 2 & 4; and Mr. Y. Paikhomba, learned counsel representing Mr. Kh. Samarjit, learned DSGI, appearing for respondent No. 3.

[3] The primary ground of challenge urged by Mr. S. Jibon, learned counsel, is that there is unexplained delay on the part of the State Government in dealing with the petitioner's representation against his detention. The petitioner's representation is dated 14.09.2022 and it was rejected by the State Government only on 09.11.2022. The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, records the fact that the petitioner's representation dated 14.09.2022 was forwarded to the Home Department of the State Government on 15.09.2022 and was received on 16.09.2022. According to the Deputy Secretary (Home), Government of Manipur, the delay in the disposal of the representation and in forwarding the same to the Government of India on 06.10.2022 was due to the high volume of proposals received and other routine works of the Department.

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

Upon receipt of the petitioner's representation dated 14.09.2022 on 16.09.2022, the Deputy Secretary (Home), Government of Manipur, addressed a letter only on 23.09.2022 to the Director General of Police, Manipur, inviting para-wise comments. The para-wise comments were furnished by the Superintendent of Police of Thoubal District, under letter dated 08.10.2022. No explanation is forthcoming either for the time lag in calling for para-wise comments or the time lag in furnishing the same. Further, the representation of the petitioner was not forwarded to the Government of India till 06.10.2022. Again, no explanation is forthcoming for this delay.

[5] Trite to state, the liberty of an individual is at stake when he is subjected to preventive detention and the Constitutional scheme guarantees him the right to have his representation considered without delay, as he is deprived of his personal freedom without following the ordinary procedures laid down by law. When a concerted and dedicated effort is launched by the State Government to arrest the menace of illicit drug-trafficking in the State of Manipur, leading to a plethora of preventive detention orders being issued, it is not open to the Home Department to put forth the volume of work generated in that regard as an excuse to explain the delay on its part in dealing with the detenu's representation. Having created the volume of work by its own actions, the State Government must necessarily equip itself with sufficient personnel and infrastructure to ensure that there are no delays or shortcomings in the processing of the files in relation to such detention orders.

[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] The unexplained lethargy on the part of the State and the police 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.

[11] 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 petitioner, Md. Ajmir Hussain @ Ithem, 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 (Crl.) No. 47 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 norms that they need to adhere to while exercising power and jurisdiction under preventive detention laws.

JUDGE

CHIEF JUSTICE

Sandeep