

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

W.P. (Crl.) No. 49 of 2022

Md. Khalilur Rahman, aged about 72 years, S/o (L) Md. Raphae
of Urup Awang Leikai, P.O. & P.S. Lilong, District-Imphal East,
Manipur, 795103.

Petitioner

Vs.

- 1.** The State of Manipur, represented by the Chief Secretary,
Government of Manipur, Babupara, P.O. & P.S. Imphal,
Imphal West District, Manipur, 795001.
- 2.** The Special Secretary (Home), Government of Manipur,
Babupara, P.O. & P.S. Imphal, Imphal West District,
Manipur, 795001.
- 3.** 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 AHANTHEM BIMOL SINGH**

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

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] The petitioner assails the order dated 20.09.2022 of the Special
Secretary (Home), Government of Manipur, whereby his son, Md. Tamijur

Rahaman, 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 son at liberty forthwith.

[2] Heard Mr. Jagatchandra, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, appearing for respondents No. 1 & 2; and Mr. Boboy Potsangbam, learned CGSC, appearing for respondent No. 3.

[3] The primary ground of challenge urged by Mr. Jagatchandra, learned counsel, is the unexplained delay in consideration and disposal of the detenu's representation dated 01.10.2022 made against his detention. The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that the said representation dated 01.10.2022 was forwarded to the Home Department by the Inspector General of Prisons, Manipur, only on 07.10.2022. In turn, it was forwarded by the Home Department to the Government of India under letter dated 19.10.2022. The State Government considered the said representation and rejected it as devoid of merit only on 22.11.2022, after considering the comments received from the Police Department.

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

The Superintendent of Police, Manipur Central Jail, Sajiwa, forwarded 5(five) copies of the detenu's representation to the Director General of Prisons, Manipur, on 01.10.2022 itself. However, the Inspector General of Prisons, Manipur, forwarded the same to the Special Secretary (Home), Government of Manipur, only

on 07.10.2022, and they were received on the same day. No explanation is forthcoming as to why this delay ensued in the forwarding of the representation. Para-wise comments were called for from the Director General of Police, Manipur, on the said representation by the Deputy Secretary (Home), Government of Manipur, only on 19.10.2022. Again, no explanation is forthcoming for the delay that ensued in this regard. The Superintendent of Police, Thoubal District, furnished his para-wise comments to the Deputy Secretary (Home), Government of Manipur, under his letter dated 21.10.2022. The same were taken into consideration and the State Government rejected the representation on 22.11.2022. However, though the State Government forwarded the detenu's representation to the Central Government on 19.10.2022, it is admitted by Mr. Boboy Potsangbam, learned CGSC, that the said representation has not been considered till date.

[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 and the Central Government 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 20.09.2022 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, Md. Tamijur Rahaman, 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. 49 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.

Sandeep

JUDGE

CHIEF JUSTICE