

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

W.P. (CrI.) No. 51 of 2022

Shri Thokchom Subhaschandra, aged about 42 years,
S/o Th. Kumar Singh of Khurai Kongpal Sajor Leikai,
P.O. & P.S. Porompat, District- Imphal East, Manipur, 795005.

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 District Magistrate, Imphal East District, P.O. & P.S.
Porompat, Imphal East District, Manipur, 795005.
3. The Union of India, through the Secretary to the Government
of India, Ministry of Home Affairs Department of Internal
Security, North Block, New Delhi - 110001.

Respondents

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

For the Petitioner	: Mr. Ph. Sanajaoba, Advocate
For Respondent Nos. 1 & 2	: Mr. Athouba Khaidem, Government Advocate
For Respondent No. 3	: Mr. W. Darakeshwar, Sr. PCCG
Date of Order	: 27.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] Challenge in this writ petition is to the order dated 08.11.2022 of the District Magistrate, Imphal East District, whereby the petitioner's younger brother, Thokchom Suresh @ Tombi @ Parihanba, was subjected to preventive detention in

exercise of power under Section 3(2) of the National Security Act, 1980. He seeks a consequential writ of *habeas corpus*, to set his brother at liberty forthwith.

[2] Heard Mr. Ph. Sanajaoba, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, for respondents No. 1 & 2; and Mr. W. Darakeshwar, learned Sr. PCCG, appearing for respondent No. 3.

[3] The primary ground of attack urged by Mr. Ph. Sanajaoba, learned counsel, is that the detenu's representation dated 28.11.2022 has not been disposed of by the State Government till date. The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that the representation dated 28.11.2022 addressed by the detenu to the Advisory Board was forwarded to it, *vide* letter dated 05.12.2022, by the Deputy Secretary (Home), Government of Manipur. In para 9 of the affidavit-in-opposition, the Deputy Secretary stated that the representation dated 28.11.2022 of the detenu was received by the Home Department on 26.12.2022 from the District Magistrate, Imphal East. He then went on to state that the representation submitted to the Government of Manipur, was still under process of consideration.

[4] The file of the detaining authority produced by Mr. Athouba Khaidem, learned Government Advocate, reflects that the detenu earlier submitted representation dated 18.11.2022 which was rejected by the District Magistrate, Imphal East District, under letter dated 23.11.2022. Thereafter, he submitted representation dated 28.11.2022 addressed to the Advisory Board, praying for revocation of the detention order. This representation was forwarded by the Superintendent, Manipur Central Jail, Sajiwa, on the very same day to the Inspector General of Prisons, Manipur, and was received on 29.11.2022. In turn, the

Inspector General of Prisons, Manipur, forwarded the said representation to the Special Secretary (Home), Government of Manipur, on 30.11.2022. The same was received by the Special Secretary (Home), Government of Manipur, on 30.11.2022 and by the Deputy Secretary (Home), Government of Manipur, on 01.12.2022. It was forwarded to the Advisory Board by the Deputy Secretary (Home), Government of Manipur, under letter dated 05.12.2022, but the said letter reflects that the representation dated 28.11.2022 was already placed before the Advisory Board during its sitting on 28.11.2022. Upon due consideration thereof, the Board furnished its report on 01.12.2022 holding that there was sufficient cause for continuation of the detention and it was accordingly confirmed under Orders dated 07.12.2022 of the Deputy Secretary (Home), Government of Manipur.

[5] In the light of the law laid down by the Supreme Court in **Smt. Gracy vs. State of Kerala and another [(1991) 2 SCC 1]**, the mere fact that the representation dated 28.11.2022 was addressed only to the Advisory Board did not absolve the State Government from passing appropriate orders thereon. Admittedly, the State Government is yet to do so, as is evident from the statement made in the affidavit-in-opposition.

[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 inaction on the part of the State authorities in dealing with the detenu's representation dated 28.11.2022 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 08.11.2022 issued by the District Magistrate, Imphal East District, is accordingly set aside. All consequential proceedings based thereon shall also stand set aside. The detenu, Shri Thokchom Suresh @ Tombi @ Parihanba, 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. 51 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