

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

W.P. (CrI.) No. 54 of 2022

L. Lamkhohao Haokip, aged about 25 years, S/o. Thongkholen
Haokip of Songjangpat near Sangaikot, PS – Sangaikot,
Churachandpur District, Manipur.

Petitioner

Vs.

1. 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 the 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 Respondent Nos. 1 & 2	: Mr. Th. Vashum, Government Advocate
For Respondent No. 3	: Mr. S. Kaminikumar, CGSC
Date of Order	: 31.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] By way of this writ petition, the petitioner assails the order dated 11.10.2022 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. Th. Jugindro, learned counsel for the petitioner; Mr. Th. Vashum, learned Government Advocate, for respondent Nos. 1 & 2; and Mr. S. Kaminikumar, learned CGSC, appearing for respondent No. 3.

[3] Mr. Th. Jugindro, learned counsel, would urge two primary grounds of attack against the impugned detention order. Firstly, he would contend that there is delay in the disposal of the petitioner's representation against his detention and secondly, he would assert that there is clear and patent violation of the mandatory procedure prescribed under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (*for brevity*, 'the Act of 1988').

[4] The order of detention is dated 11.10.2022. Pursuant thereto, the petitioner was admittedly arrested on 17.10.2022. He submitted a representation against his detention on 04.11.2022 and the same came to be rejected only on 25.11.2022. The Affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, indicates that the said representation was forwarded by the Superintendent of Manipur Central Jail, Sajiwa, under letter dated 07.11.2022. It was received by the Home Department on 08.11.2022. The Deputy Secretary, however, admitted that the execution of the detention order on 17.10.2022 and the grounds of detention dated 20.10.2022 were communicated to the Government of India only under letter dated 24.10.2022 through e-mail. As regards disposal of the representation at the State level, the Deputy Secretary stated that the

representation was forwarded to the police authorities for their para-wise comments under letter dated 10.11.2022 and para-wise comments were forwarded by the Superintendent of Police, Churachandpur, under letter dated 13.11.2022, which was received on 16.11.2022. After considering the same, the representation was rejected *vide* order dated 25.11.2022. The time taken for processing and disposing of the representation was explained by stating that there were intermittent holidays falling in between and as the officials dealing with the matter were engaged with important assignments, including protocol and liaison duties in attending to VVIPs/VIPs/Foreign Dignitaries who were visiting Manipur to partake in the Manipur Sangai Festival, 2022,

[5] Mr. Th. Vashum, learned Government Advocate, would place reliance on the observation of the Supreme Court in **Senthamilselvi Vs. State of Tamil Nadu and another {(2006) 5 SCC 676}** that once the representation against the detention is disposed of with utmost expedition, no fault can be attributed to the authorities. The Supreme Court observed therein that there can be no hard-and-fast rule as to the measure of reasonable time and each case would have to be considered individually. *Per* the Supreme Court, if there is no negligence or callous inaction or avoidable red tapism on the facts of a particular case, the Court would not interfere and it is only when there is remissness, indifference or avoidable delay on the part of the authorities that the detention would become vulnerable. In the case on hand, disposal of the petitioner's representation was within 3(three) weeks from the date of its making. The said representation was received by the Home Department on 08.11.2022 and the delay in dispatch of the same by the Jail authorities was due to the intervening weekend holidays on 05.11.2022 and 06.11.2022. After the comments of the police authorities were received on 16.11.2022, there is no delay as such in dealing with the said representation, as 19.11.2022 and 20.11.2022 were holidays again, being Saturday and Sunday, and

the Sangai Festival commenced from 21.11.2022. As the said festival was of great importance to the State, in terms of boosting tourism and highlighting the State's culture and heritage, the time taken to dispose of the representation, being a mere 5(five) days, cannot be said to be unreasonable. More so, as the disposal of the representation took place even before the conclusion of the festival.

[6] That being said, the failure on the part of the State authorities in complying with the statutory mandate is altogether a different matter. Mr. S. Kaminikumar, learned CGSC, filed the affidavit-in-opposition of the Deputy Secretary (PIT-ND&PS), Department of Revenue, Ministry of Finance, Government of India. Therein, the Deputy Secretary stated that the report in respect of the detention order dated 11.10.2022 was received by the Government of India from the Special Secretary (Home), Government of Manipur, only on 24.10.2022, when the office letter bearing that date was communicated through email.

[7] Reference may now be made to Section 3(2) of the Act of 1988 in the context of the procedure to be followed in that regard. This provision unequivocally states that when any order of detention is made by the State Government or by an officer empowered by the State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order. In comparison, Section 3(3) of the Act of 1988 provides that the grounds on which the order of detention has been made shall be communicated to the person detained pursuant thereto, ordinarily not later than five days after the detention. Therefore, this provision links the time stipulated for communication to the 'actual' detention and not to the 'date' of the order of detention. However, Section 3(2) of the Act of 1988 categorically states that the communication to the Central Government should be made by the State Government within ten days from the day the order of detention is 'made' either by the State Government or by an officer empowered by it.

[8] In the case on hand, the order of detention was made on 11.10.2022 and it was communicated to the Central Government only on 24.10.2022, and at that, by e-mail. There is no explanation forthcoming as to why such communication by e-mail could not have been addressed by the State authorities within the statutorily prescribed time. This lapse on their part would be fatal to the very validity and continuance of the impugned detention order dated 11.10.2022.

[9] Orders of preventive detention issued under special enactments have the effect of denying and depriving citizens of their personal liberties without following the ordinary processes of law. Therefore, the procedures prescribed in such special enactments have to be scrupulously adhered to. Any lapse in doing so would render the entire exercise null and void in the eye of law.

[10] That being so, this Court has no hesitation in invalidating the impugned detention order dated 11.10.2022 on the ground of violation of the statutory procedure prescribed under Section 3(2) of the Act of 1988.

[11] The order of detention dated 11.10.2022 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, L. Lamkhohao Haokip, 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. 54 of 2022 is accordingly allowed.

In the circumstances, there shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Sandeep