

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

W.P. (CrI.) No. 55 of 2022

Mrs. Moichingmayum Ongbi Epham Yasmine, aged about 23 years, w/o Md. Abdul Kalam of Moijing Awang Leikai, P.O. & P.S. Thoubal, Thoubal District, Manipur – 795138.

Petitioner

Vs.

- 1.** The State of Manipur, represented by the Commissioner/ Special Secretary (Home), Government of Manipur, Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
- 2.** The Union of India, through the Secretary (Finance) Government of India, Ministry of Finance, North Block, New Delhi – 110001.
- 3.** The Superintendent, Manipur Central Jail, Imphal, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

Respondents

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

For the Petitioner	: Mr. K. Modhusudon, Advocate
For Respondent Nos. 1 & 3	: Mr. Athouba Khaidem, Government Advocate
For Respondent No. 2	: Mr. S. Samarjeet, Sr. PCCG
Date of Order	: 01.02.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] By way of this writ petition, the petitioner assails the order dated 13.09.2022 of the Special Secretary (Home), Government of Manipur, whereby she

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. She seeks a consequential writ of *habeas corpus* to set her at liberty forthwith.

[2] Heard Mr. K. Modhusudon, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Government Advocate, for respondents No. 1 & 3; and Mr. S. Samarjeet, learned Sr. PCCG, appearing for respondent No. 2.

[3] The primary ground of attack urged by Mr. K. Modhusudon, learned counsel, is the unexplained delay in the disposal of the petitioner's representation against her detention. Her representation was dated 13.10.2022. It was rejected by the State Government on 03.11.2022 and by the Central Government on 20.01.2023.

[4] The affidavit-in-opposition filed by the Deputy Secretary (Home), Government of Manipur, reflects that the said representation was forwarded to the Home department by the Inspector General of Prisons, Manipur, on 14.10.2022 and it was then forwarded to the Central Government on 19.10.2022. The delay in such forwarding was sought to be explained by stating that there was a high volume of PIT-ND&PS cases and other time-bound cases that were being dealt with by the Home Department. It was pointed out that 15.10.2022 and 16.10.2022 were holidays, being the weekend. The Deputy Secretary further stated that the Home Department called for para-wise comments from the Police Department under letter dated 19.10.2022 and, thereafter, upon consideration of the material on record, the representation was rejected on 03.11.2022. The delay in disposal of the representation and forwarding the report was stated to be due to the high volume of proposals received and other routine works of the Department.

[5] Mr. Athouba Khaidem, learned Government Advocate, produced the file of the detaining authority. Perusal thereof reflects that the Superintendent, Manipur Central Jail, Imphal, forwarded the petitioner's representation to the Inspector General of Prisons, Manipur, on 13.10.2022 itself and it was also received on the very same day. In turn, the Inspector General of Prisons, Manipur, forwarded the representation to the Special Secretary (Home), Government of Manipur, under letter dated 14.10.2022 and it was received on the very same day. However, the Deputy Secretary (Home), Government of Manipur, addressed a letter to the Director General of Police, Manipur, seeking para-wise comments on the said representation only on 19.10.2022. The representation was also forwarded to the Central Government on the said day. The Superintendent of Police, Thoubal, submitted para-wise comments to the Home Department under letter dated 21.10.2022. The Note-file reflects that an entry was made therein only on 31.10.2022, referring to the para-wise comments received under letter dated 21.10.2022. In effect, there was no application of mind to the matter and the para-wise comments furnished by the police for a full ten days. It was only on 02.11.2022 that an endorsement was made in the Note-file that the representation may be rejected, basing on the recommendation by the Police Department. This led to the actual rejection order being passed on 03.11.2022.

[6] Though the Central Government did not file a separate reply, Mr. S. Samarjeet, learned Sr. PCCG, placed before this Court a copy of the e-mail instructions received by him from the PITNDPS Division, Ministry of Finance, Department of Revenue, Government of India. Perusal thereof reflects that the representation of the petitioner was kept in abeyance in terms of the judgment of the Supreme Court in **Ankit Ashok Jalan Vs. Union of India and others {(2020) 16 SCC 127}**, awaiting the report of the Advisory Board. Thereafter,

upon receipt of the comments from the State Government on 02.11.2022 and the confirmation order on 10.01.2023, the petitioner's representation was stated to have been examined by the competent/appropriate authority, viz., the Secretary (Revenue), Government of India, and it was rejected on 20.01.2023. In this regard, it may be noted that the aforestated judgment of the Supreme Court did not arise under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, and had no application to consideration of a representation made by a detenu under this enactment. In any event, the aforestated facts disclose that there was delay at every stage, be it at the level of the State Government or at the level of the Central Government.

[7] 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 a 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.

[8] 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.

[9] 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.

[10] 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.

[11] 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.

[12] The unexplained inaction on the part of the State authorities in dealing with the detenu's representation dated 13.10.2022 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.

[13] The order of detention dated 13.09.2022 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, Moichingmayum Ongbi Ephem Yasmine @ Kebisana, presently incarcerated in Manipur Central Jail, Imphal, shall be set at liberty forthwith unless her continued incarceration is validly required in connection with any other case.

WP (Cril.) No. 55 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