IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P.(Cril.) No.4 of 2020

1. **Smt. Yaikhom (O) Mayengbam (N) Radhe Devi, aged about 65 years, W/o Late YaikhomShidam Singh of Wabagai Tera Pishak near water supply, P.O. Kakching, P.S. Hiyanglam, District-Kakching, Manipur, 795103**

... Petitioner

-Versus -

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, Kakching District, P.O. & P.S. Kakching, Manipur, 795103.**
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

B E F O R E

HON'BLE MR. JUSTICE MV MURALIDARAN

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Petitioner	**:**	Mr. Ph. Sanajaoba, Advocate.
For the respondents	**:**	Mr.A.Vashum, G.A. & Mr. W. Darakishwor, senior penal counsel.
Date of Hearing	**:**	**21.10.2020**
DateofJudgment& Order	**:**	**02.11.2020**

JUDGMENT &ORDER

(A. BimolSingh,J)

[1] Heard Mr. Ph. Sanajaoba, learned counsel appearing for the petitioner, Mr. Vashum, learned Government Advocate appearing for the respondents No.1 and 2 and Mr. W. Darakishwor, learned senior penal counsel appearing for the respondent No.3.

[2] The present petitioner is the mother of the detenu, namely Shri. YaikhomJanendro Singh @ Romen of Wabagai Tera Pishak, near Water Supply in Kakching District, Manipur. The present writ petition has been filed assailing the order dated 03.02.2020 passed by the District Magistrate, Kakching District, order dated 12.02.2020 and 25.02.2020 passed by the Deputy Secretary (Home), Government of Manipur, detaining the said son of the petitioner under the National Security Act, 1980.

[3]. The facts of the present case in a nutshell is that the detenu was arrested on 15.01.2020 by the police in connection with F.I.R No.8(01)2020 KCG-PS, u/s 13/17/20 UA(P) Act. While the detenu was under judicial custody, the District Magistrate, Kakching District, passed the impugned detention order dated 03.02.2020 detaining the aforesaid son of the petitioner under section 3(2) of the National Security Act, 1980. The grounds of detention dated 06.02.2020 along with supporting documents was served to the detenu on 07.02.2020. Thereafter by an order dated 12.02.2020, impugned herein, the Secretariat (Home Department), Government of Manipur approved the order of detention passed by the District Magistrate,Kakching.

[4]. On 20.02.2020, the detenu submitted 2(two) representations, one addressed to the Hon'ble Chairman, Advisory Board Manipur, National Security Act, 1980 and the other addressed to the Secretary, Government of India, Ministry of Home Affairs, (Department of Internal Security), North

Block, New Delhi, praying for revoking/cancelling the detention orders and to set him at liberty on the ground as mentioned in the said two separate representations. The said two separate representations were submitted through the Superintendant of Manipur Central Jail, Sajiwa.

[5]. Subsequent to the submission of the aforesaid representations, the Secretary, Home Department , Government of Manipur issued an order dated 25.02.2020 confirming the detention of the detenu under the National Security Act, 1980 and fixing the period of detention of the detenu for a period of 12(twelve) months from the date of detention.

[6]. By a letter dated 06.03.2020, the Secretary, Home Department informed the detenu that the State Government had considered his representation addressed to the Hon'ble Chairman, Advisory Board Manipur and it has come to the conclusion that the request of the detenu for revocation of the detention order cannot be acceded to as the representation was found to be devoid of merit. On 11.05.2020, the detenu was informed through a wireless message dated 08.05.2020 that his representation addressed to the Secretary, Government of Manipur, Ministry of Home Affairs, has not been acceded to.

[7]. Having been aggrieved, the present petition had been filed assailing the orders of detention on several grounds. However, the learned counsel appearing for the petitioner confined his arguments only on the following two grounds :-

(a) There has been 15 (fifteen) days inordinate and unexplained delay on the part of the State Government

in forwarding the representation submitted by the detenu to the Central Government and accordingly, such inordinate and unexplained delay vitiatethefurtherdetention of the detenu; and

(b) There has been 78(seventy eight) days inordinate and unexplained delay in disposing of the representation submitted by the detenu to the Central Government.

[8]. Mr. Ph. Sanajaoba, learned counsel appearing for the petitioner submitted that his representation addressed to the Central Government was submitted on 20.02.2020 through the Senior Superintendant of Jail, Manipur Central Jail, Sajiwa. However, the said representation was forwarded by the State Government to the Central Government only on 06.03.2020, after lapse of 15 days from the date of submission of the said representation. By referring to the statements made in the paragraphs 14 and 15 of the present petition, it has been submitted that there had been 15 days inordinate and unexplained delay in forwarding the representation submitted by detenu to the Central Government and such delay on the part of state government vitiated the further detention of the detenu, The learned counsel further submitted that none of the respondents in their counter affidavit specifically denied or controvert the statements made by the petitioner in paragraphs 14 and 15 of her petition.

[9]. The counsel for the petitioner further submitted that the Central Government disposed of the representation of the detenu after 78 days from the date of submission of such representation and as such, there is inordinate delay on the part of the Central Government in considering and disposing of the said representation. Accordingly, such inordinate delay vitiates the further detention of the detenu.

[10]. Mr. A. Vashum, learned Government Advocate appearing for the respondents No.1 and 2 submitted that in paragraph 5 of the affidavit-in-opposition filed on behalf of the respondent No.1, it has been clearly explained that the representation of the detenu addressed to the Central Government was forwarded by the Superintendent of Police, Sajiwa Jail to the Addl. Director General of Police(Prison) and from the Addl. Director General of Police (Prison) to the Special Secretary(Home), Government of Manipur and thereafter the same was forwarded to the Secretary, MHA, Government of India on 06.03.2020. The learned Government Advocate contended that the delay in forwarding the representation to the Central Government has been elaborately explained by the respondent No.1 and therefore it cannot be contended that there had been inordinate and unexplained delay in forwarding the representation of the detenu to the Central Government. In support of his contention, the learned Government Advocate relied on the decision rendered by the Apex Court in the case of the **"Senthamilselvi Vs. State of Tamil Nadu and Another"** reported in (2006) 5 SCC 676, particularly para 6 of the said judgment, which read as under:

> *"6….Coming to the plea that there was delay in disposal of the representation it is to be noted that the order of detention is dated 1-12-2005. The representation was sent on 11-12-2005 which were received by the respondents on 15-12-2005. The detains were called for on 16-12-2005 which were received on 20-12-2005. The file was submitted on 21-12-2005 and*

dealt with by the Under-Secretary and Deputy Secretary on 22-12-2005. The Minister concerned passed an order on 22-12-2005 and order of rejection which was passed on 27-12-2005 was issued on 28-12-2005 which was sent to the Superintendent of the Jail where the detenu was incarcerated, which was communicated to the detenu. It was received by the prison authorities and it was served on the detenu on the day it was received by the jail authority. The factual scenario indicated above indicates that the representation was dealt with utmost expedition. There can be no hard and fast rule as to the measure of reasonable time and each case has to be considered from the facts of the case and if there is no negligence or callous inaction or avoidable red tapism on the facts of a case, the Court would not interfere. It needs no reiteration that it is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention become vulnerable.

[11]. Mr. W. Darakishwor, learned counsel for the respondent No.3 draws our attention to paragraphs 5 & 6 of the affidavit-in-opposition of the respondent No.3 and submitted that a copy of the representation dated 20.02.2020 submitted by the detenu was forwarded by the State Government under its letter dated 06.03.2020 and the said representation was received in the concerned section of the Ministry of Home Affairs on 09.03.2020. On the same day of receipt of the said representation, parawise comments of the detaining authority on the said representation was requested to be furnished. Thereafter the parawise comments on the representation of the detenu was forwarded by the State Government under its letter dated 16.03.2020 and the same was received in the concerned section of Ministry of Home Affairs on 17.03.2020. On the same date of

receiving the said parawise comments, the representation of the detenu along with the parawise comments was process for consideration by the Union Home Secretary. It is contended by the learned counsel that the representation was examined threadbare along with the document available and report received from the State Government and being aware of the effects and sensitivity of detention under the National Security Act, it was felt that an independent report from the central agency was also needed and the same was sought accordingly.After receiving the report of the central agency on 05.05.2020, the matter was submitted for decision by the Union Home Secretary on 05.05.2020 and the Union Home Secretary considered the said representation along with the materials of the connected records including the order of detention, ground for the same, comment of the detaining authority and additional report and concluded that there were no justification or ground for revoking the order of the detention and accordingly, rejected the representation of the detenu on 06.05.2020. Thereafterthe detenu was informed accordingly, by a wireless message dated 08.05.2020. The learned counsel strenuously contended that every efforts were made to examine the matter with utmost care and cautionwith promptitude and therefore there was no delay in disposal of the representation on the part of the Central Government.

[12]. After hearing the rival submissions made on behalf of the parties and after careful consideration and perusal of the relevant records, we are of the considered view that none of the respondents specifically denied or controvert the clear and categorical statements made by the petitioner in paragraph 14 of her writ petition that there was inordinate and unexplained delay in forwarding the representation of the detenu addressed to the Central Government.

[13]. On perusal of the averment made by the respondent No.1 in paragraph 5 of its affidavit-in-opposition, we find that except for the bald statement that the representation of the detenu addressed to the Central Government was forwarded by the Superintendant of Police, Sajiwa jail to the Addl. Director General of Police(Prison) and thereafter to the Special Secretary, Home, Government of Manipur, nothing has been mentioned on which date the said 3(three) Officials received and forwarded the said representation from one desk to another. Non-mentioning of any date to indicate the movement of the said representation among the said 3(three) Officials is nothing but to conceal the lapses on the part of the said 3(three) Officials in discharging their official duties to forward the said representation. Moreover, the duties cast on these 3(three) Officials was only to forward or send the said representation of the detenu to the concerned authority of the Central Government and nothing more. Thus taking 15 days time by the said 3 officials in forwarding the said representation without giving any reasonable

explanation is not acceptable, particularly in the case of preventive detention. Accordingly, we are of the opinion that merely stating that the representation was forwarded fromtheSuperintendent of Police (Jail) to the Addl. DGP(Prison) and thereafter to Special Secretary(Home), Government of Manipur, without giving any explanation or the reasons in taking 15 days time in forwarding the said representation of the detenu to the Central Government cannot be said to be reasonably explained.

[14]. From a bear perusal of para. 6 of the judgment of the Hon'ble Apex Court in the case of "Senthamilselvi Vs. State of Tamil Nadu"(supra) relied on by the learned Government Advocate appearing for the respondents No.1&2, it can clearly be noticed that the authorities had given detailed explanation in considering and disposing of the representation submitted by the detenu and that the representation was dealt with utmost expedition, which is not so in the present case. Accordingly, we are respectfully of the view that the authority relied on by the learned Government Advocate is not applicable in the present case.

[15]. The Constitution of India protects the liberty of an individual. Article 21 provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. In matters of preventive detention such as this, as there is deprivation of liberty without trial, subsequent safeguards are provided in Article 22 of the Constitution. They are, when any person is detained pursuant to an

order made under any law providing for preventive detention, the authority making the order is required to communicate the grounds on the basis of which, the order has been made and give him an opportunity to make a representation against the order as soon as possible. It thus, cannot be doubted that the constitutional framework envisages protection of liberty as essential, and makes the circumstances under which it can be deprived.

[16]. In the case of "**Aslam Ahmed Zahirb Shaik Vs Union of India and others"**reported **in (1989) 3 SCC 277**, the Hon'ble Apex Court held as under;

> *"9. Thus when it is emphasised and re-emphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing withit, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution.*
> *"10. A contention similar to one pressed before us was examined by this Court in Vijay Kumar case wherein the facts were that the representation of thedetenu therein dated July 29, 1981 was forwarded to government by the Superintendent of Jail on the same day by post followed by a wireless message, but according to the government, the representation was not received by them. Thereafter, a duplicate copy was sent by the Jail Superintendent on being requested and the same was received by the government on August 12, 1981. Considering the time lag of 14 days in the given circumstances of that case, this Court though overlooked the same and allowed the writ petition on the subsequent time lag, made the following observations (SCC pp49-50, para 12)*
> *The jail authority is merely a communicating channel because the representation has to reach the government which enjoys the power of revoking the detention order. The intermediary authority who are communicating authorities have also to move with an amount of promptitude so that the statutory guarantee of affording earliest opportunity of making the representation and the same reaching the government is translated into action. The corresponding obligation of the State to consider the representation cannot be whittled down by merely saying that much time was lost in the transit. If the government*

enacts a law like the present Act empowering certain authorities to make the detention order and also simultaneously makes a statutory provision of affording the earliest opportunity to the detenu to make his representation against his detention, to the government and not the detaining authority, of necessity the State Government must gear up its own machinery to see that in these cases the representation reaches the government as quickly as possible and it is considered by the authorities with equal promptitude. Any slackness in this behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order.

"11. Reverting to the instant case, we hold that the above observation in Vijay Kumar case will squarely be applicable to the facts herein. Indisputably the Superintendent of Central Prison of Bombay to whom the representation was handed over by the detention on June 16, 1988 for mere onward transmission to the Central Government has callously ignored and kept it in cold storage unattended for a period of seven days, and as a result of that, the representation reached the government eleven days after it was handed over to the Jail Superintendent . Why the representation was retained by the Jail Superintendent has not at all been explained in spite of the fact that this Court has permitted the respondent to explain the delay in this appeal, if not before the High Court.

"12. In our view, the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the government which received the representation eleven days after it was handed over to the Jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible."

[17]. In the case of "**Pebam Ningol Mikhoi Devi Vs State of Manipur and Others"**reported in **(2010) 9 SCC 618** the Hon'ble Supreme Court held as under:-

"33. The second issue is that of delay. There has been a delay of 7 days i.e., from 9-10-2009 to 16-10-2009 in forwarding the representation of the detenu to the Central Government. There has been no explanation of the reasons for this delay given by the respondents.

"34.Article 22(5) of the Constitution of India mandates in preventive detention matters. The detenu should be afforded the earliest possible opportunity to make a representation against the order. With regard to the importance of delay in preventive detention matters under the National Security Act, it has been held by this Court in Union of India V. Laishram Lincola Singh that (SCCp.492,para 6)

*"6....*6.... There can be no hard and fast rule as to the measure of reasonable time and each case has to be considered from the facts of the case and if there is no negligence or callous inaction or avoidable red tapism on the facts of a case,the Court would not interfere. It needs no reiteration that is the duty of the Court to see that*

*the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention becomes vulnerable.****

"35.On the specific ground of the delay in forwarding the representation under the National Security Act, it has been observed by this Court in Haji Mohammad Akhlaq V. District Magistrate Meerut that (SCC p.540.para3)

"3. ...There can be no doubt whatever that there was unexplained delay on the part of the State Government in forwarding the representation to the Central Government with the reason that the said representation was not considered by the Central Government till 16-10-1987 i.e. for a period of more than two months. Section 14(1) of the Act confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must imply a right in a detenu to make a representation to the Central Government against the order of detention. Thus, the failure of the State Government to comply with the request of the detenu for the onward transmission of the representation to the Central Government has deprived the detenu of his valuable right to have his detention revoked by that Government"

"*36.In the matter before us, a delay of 7 days has occurred in the forwarding of the representation. This may not be inordinate; however, at no stage has there been an explanation given for this delay. The State Government or the Central Government has not clarified the same and thus the delay remains unexplained.*

"37. In the light of the fact that none of the documents relied on by the detaining authority in passing the detention order can be deemed to be pertinent, and the fact that the delay has remained unexplained, there is sufficient ground made out in order to quash the order of preventive detention made against the detenu.

[18]. In the case of "**Abdul Nasar Adam Ismail Vs. State of Maharastra and Others".** reported in **(2013) 4 SCC 435** the Supreme Court is held as under:-

"19.In Pebam Ningol Mikhoi Devi, seven days' unexplained delay in forwarding the representation to the Central Government was held to be fatal. In Aslam Ahmed Zahire Ahmed Shaik, the detenu had handed over his representation to the Superintendent of Jail on 16.06.1998 for onward transmission to the Central Government. It was kept unattended for a period of seven days and as a result it reached the Government 11 days after it was handed over to the Superintendent of Jail. The Superintendent of Jail had not explained the delay. Relying on the Vijay Kumar V. State of J&K., the continued detention of the detenu was set aside. At the cost of repetition, we must note that in this case, the Superintendent of jail has not filed any affidavit explaining the delay. Therefore, this delay, in our opinion renders continued detention of the detenu, illegal".

[19]. In the present case, the State Government or its concerned official took 15 days in merely forwarding the representation of the detenu addressed to the Central Government and the State Government or its concerned officials did not give any satisfactory explanations or reasons for such delay in forwarding the said representation of the detenu. Accordingly, in view of the judgment rendered by the Apex Court as quoted hereinabove, we have no hesitation to hold that the continue detention of the detenu is illegal. We accordingly, quash and set-aside the impugned detention orders dated 03.02.2020, the impugned approval order dated 12.2.2020 and impugned confirmation order dated 25.2.2020 and we direct the respondents to release the detenu namely YaikhomJanendro Singh @ Romen, son of (L)YaikhomShidam Singh of Wabagai Tera Pishak, near Water Supply, Kakching district, Manipur forthwith, if not wanted in connection with other cases.

As we have decided the present case on consideration of the first ground raised by the counsel for the petitioner and ordered for release of the detenu, we consider it unnecessary to decide the second ground raised by the counsel for the petitioner in the present case.

With the above directions, the present petition is disposed of.

There is no order as to cost.

JUDGE **JUDGE**

FR/NFR

A.SURJIT

Yumkham Rother Digitally signed by Yumkham Rother Date: 2020.11.05 10:50:57 +05'30'