

(2008) 05 GAU CK 0001

Gauhati High Court

Case No: None

Lourembam Sana Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision: May 15, 2008

Acts Referred:

- Constitution of India, 1950 - Article 21, 22
- National Security Act, 1980 - Section 3, 8
- Penal Code, 1860 (IPC) - Section 34, 353, 387
- Unlawful Activities (Prevention) Act, 1967 - Section 16, 17, 20

Citation: (2008) CriLJ 2847 : (2008) 2 GLT 813

Hon'ble Judges: T. Vaiphei, J; T. NK. Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

T. NK. Singh, J.

The doctrine of preventive power of the Administrative/Executive authority, constitutionally validate preventive processes for the maintenance of public order, security of the State, national security, defence of India and relations of India with the foreign power. Even so, deprivation of personal freedom, must be founded on the most serious considerations relevant to the welfare objective of the society, specified in the Constitution.

2. Justice S. Ratnavel Pandian in Kartar Singh v. State of Punjab (C/B), reported in observed that:

When Law ends. Tyranny begins: Legislation begins where Evils begins. The function of the Judiciary begins when the function of the Legislature ends. Because the law is, when the Judges say it is since the power to interpret the law vests in the Judges.

3. The challenge in the present writ petition is to the detention order being No. Cril/NSA/No. 49 of 2007 dated 11-9-2007 passed by the District Magistrate, Imphal West in exercise of the powers conferred under Sub-section (3) of Section 3 of the National Security Act, 1980 read with Home Department's Order No. 17(1)/49/80-H(Pt-I) dated 1-9-2007 directing Shri Lourembam Sana Singh alias Nilachandra, s/o Shri L. Jugeshwar Singh who is now in judicial custody be detained u/s 3(2) of the National Security Act until further order, order of the Government of Manipur dated 22-9-2007 approving the detention order dated 11-9-2007 and also the order of the Government of Manipur dated 25-9-2007 confirming the detention order dated 11-9-2007.

4. Heard Mr. Ph. Sanajaoba, learned Counsel appearing on behalf of the petitioner as well as Mr. R.S. Reishang, learned Government Advocate appearing for the respondent Nos. 1, 2 and 3. Also heard Mr. N. Ibotombi, learned CGSC appearing for the respondent No. 4.

5. The petitioner is assailing the detention order only on two grounds:

i) There is non-application of mind of the detaining authority in passing the detention order dated 11-9-2007 inasmuch as there is no material to show that the detenu is likely to be released on bail and also that the normal application of criminal law against the detenu will not at all be effective to prevent him from the commission of further judicial activities.

ii) There is inordinate delay in disposal of the representation dated 22-9-2007 filed by the detenu to the Secretary, Government of India, Ministry of Home Affairs, Department of Internal Security inasmuch as the representation dated 22-9-2007 was rejected by the Union Home Ministry only on 8-11-2007.

6. In order to decide the two grounds for assailing the detention order, a short facts leading to the filing of the present writ petition is required to be recapitulated. On 17-8-2007, the detenu Shri Lourembam Sana Singh was arrested from the quarter of MLA Shri W. Brajabidhu Singh by the Imphal West Police, Commando personnel on the allegation that he is an active member of the unlawful organization namely "KYKL" and a regular police case being FIR No. 240(8)2007 IPC u/s 16/17/20 UA(P) A Act was registered against him and he was also formerly arrested in connection with other 7 (seven) police cases namely:

i) FIR No. 60(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A Act

ii) FIR N. 61(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A Act

iii) FIR N. 62(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A Act

iv) FIR N. 63(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A Act

v) FIR N. 64(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A Act

vi) FIR N. 65(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A Act

vii) FIR N. 84(8)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A Act.

7. While the detenu was in judicial custody i.e. Manipur Central Jail Sajiwa, detention order dated 11-9-2007 passed by the District Magistrate, Imphal West, Manipur was served to the detenu. Within the permissible period u/s 8 of the National Security Act 1980 (for short NSA), the detenu was served with the grounds of order of detention along with the copies of the documents which formed basis of grounds of detention under the letter of the District Magistrate, Imphal West dated 15-9-2007.

8. In the ground No. 2 of the order of detention it is specifically mentioned that the detenu and his associates mentioned in the said ground had extorted annual tax from the hotel, private agencies etc. etc. located in the Imphal. The particulars of the documents basing on which the detention order had been passed also mentioned in the grounds of detention. Over and above, the copies of the documents which formed grounds of detention were also furnished to the detenu.

9. In the ground No. 5 of the detention order, the detaining authority had specifically mentioned that after having availed of bail facilities and becoming a free person the detenu being a hard core member of the unlawful organization KYKL (Kanglei Yaol Kanba Lup) would continue to indulge in prejudicial activities to the security of the State and maintenance of the public order and as such application of normal criminal law against the detenu will not at all be effective to prevent the detenu from the commission of further prejudicial activities.

10. Under ground No. 7 of the order of detention, the detenu had been informed his right to make representation to the Chief Secretary, Government of Manipur and Secretary to the Government of India Ministry of Home Affairs (Department of Internal Security), North Block, New Delhi in respect of the representation to the Central Government. For ready reference, the relevant portion of the grounds of order of detention dated 15-9-2007 are quoted hereunder:

1. That you joined the banned organization namely Kanglei Yaol Kanba Lup (KYKL, in short) in the week of August, 2006 through Shri Ashok Singh (32 years) of Wagjing Bazar, an important member of KYKL....

2. That, just after joining the KYKL organization you worked in the Central Bureau, Finance II, Imphal West, KYKL, under the command of Shri Kh. Sanatamacha @ Somorjit Singh @ Radha @ Shanti @ Kiran (30) of Thanga Lawai Sabal Leikai S/S Sgt. Major and in-charge Imphal West Finance II of KYKL since September, 2008. Shri Loktongbam Dinesh Meitei @ Dine @ Bedanta was 2-i-c of Imphal West Finance II. About 10 KYKL cadres including Shri Kongrailat Giridhari Sharma @ Sharma (31 years) of Maharabi Makha Leikai, R.K. Robindro Singh @ Sanjoy @ R.K. of Naoremthong Khullem Leikai and Shri Soberson Meitei @ Captain @ Nanao of Top Awang Leikai were working in Imphal West Finance II under the command of Shri

Kh. Santamacha Singh, S/S Sgt. Maj. In the last week of January, 2007 Shri Kh. Santamacha Singh along with L. Subash and K. Giridhari Sharma were arrested by police. But Shri K. Giridhari Sharma was released on bail by the Court on 6-2-2007 and resumed to his work in Imphal West Finance II as 2-i-c. After the arrest of Kh. Santamacha Singh, L. Dinesh Meitei @ Dine was the in-charge of Imphal West Finance II of KYKL. You along with your associates mentioned above under the command of Shri L. Dinesh Meitei @ Die extorted annual tax from the following hotels, private agencies, shop keepers etc. located in Imphal area in the first part of 2007.

i)	White Palace, Thangal Bazar	-	Rs. 30,000/-	for the year
ii)	City Heart, Thangal Bazar	-	Rs. 30,000/-	-do-
iii)	Air Bus Travels North AOC, Imphal	-	Rs. 1,20,000/-	for the year
iv)	Sony Travels, -do-	-	Rs. 1,20,000/-	-do-
v)	Super Jet Travels, -do-	-	Rs. 1,20,000/-	-do-
vi)	Jet Travels -do-	-	Rs. 1,00,000/-	-do-
vii)	Kangla Travels -do-	-	Rs. 1,25,000/-	-do-
viii)	Net Works Travels -do-	-	Rs. 50,000/-	for the year
ix)	Silver Line Travels -do-	-	Rs. 1,10,000/-	for the year
x)	Royal Rajdhani Travels -do-	-	Rs. 1,45,000/-	-do-
xi)	Royal Tour Travels -do-	-	Rs. 1,40,000/-	-do-
xii)	Imphal Rajdhani Travels -do-	-	Rs. 70,000/-	for the year
xiii)	Seven Sisters Travels -do-	-	Rs. 1,00,000/-	for the year
xiv)	Manipur Golden Travels -do-	-	Rs. 1,75,000/-	-do-
xv)	ASTC, North AOC, -do-	-	Rs. 1,10,000/-	-do-

Imphal

xvi)	Khera Brothers, Paona Bazar	-	Rs. 20,000/-	for the year
xvii)	Gitanjali Stores	-do-	Rs. 20,000/-	-do-
xviii)	Santosh Textile	-do-	Rs. 40,000/-	-do-
xix)	Subhash Stores	-do-	Rs. 40,000/-	-do-
xx)	Rabindra Textile	-do-	Rs. 40,000/-	-do-

Over and above you and your associates mentioned above extorted about Rs. 8.10 lacs at the rate of Rs. 40,000/- per shops from 22 shops located at Paona Bazar near B.T. Road, Imphal. All the extorted money had been deposited to Shri L. Dinesh Meitei @ Dine, S/S in-charge of Imphal West Finance II, KTKL staying in the residential quarter of the Hon"ble MLA Shri W. Brajabidhu Singh, Lamshang A/C at Babupara, Imphal to avoid suspicion by the security force/police on their movements. You and your associates took shelter in the quarter of the Hon"ble MLA since April, 2007 every now and then to evade arrest by the security force/police. The quarter of the Hon"ble MLA became their safe heaven and place of discussion regarding the modus-operandi for extortion of money to different agencies, offices etc.

3. That, in the month of May, 2007 the following new recruits of KYKL were also working along with the above noted KYKL members including you under the command of Shri Dinesh Meitei @ Dine:

(i) Shri Keisham Hemanta Meitei of Ingourok Awang.

(ii) Shri Ingudam Ibosana Meitei S/o (L) I. Chaomu Meitei of Taothong Mamang Leikai.

(iii) Shri Lourembam Tiken Singh of Taothang Maning Leikai.

(iv) Shri Ningthoujam Romen Singh of Leimaram Makha Leikai.

In the months of May and June, 2007 you and your associates mentioned above demanded huge amount of money from the following offices, farms, companies etc. and threatened the lives of the Staffs over phone with dire consequences if they fail to comply with the demand within a short period:

(I) Demanded Rs. 10 lacs from the staffs of the State Bank of India, Imphal Branch over telephone under No. 9856577364 on 18-5-2007. This refers to FIR No. 60(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A. Act.

(I) Demanded Rs. 20 lacs from the Staffs of the Life Insurance Corporation, Imphal Branch Office, Khoyathong on 16-05-2007. It refers to FIR No. 61(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(A) A. Act.

(I) Demanded Rs. 15 lacs from the Staffs of the National Insurance Company, Imphal Divisional Office, Dharmasala on 11-5-2007 at about 11 a.m. This refers to FIR No. 62(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(A) A. Act.

(I) Demanded Rs. 10 lacs from the Oriental Insurance, Imphal Branch Office, Thangal Bazar over phone No. 9856577364 on 11-5-2007. It refers to FIR No. 63(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A. Act.

(I) Demanded Rs. 10 lacs from the New India Assurance Company, Imphal Branch, Thangal Bazar on 5-5-2007. It refers to FIR No. 64(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A. Act.

(I) Demanded Rs. 10 lacs from the Staffs of the United India Insurance Company, Imphal Branch, Thangal Bazar on 5-5-2007. This refers to FIR No. 65(6)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(P) A. Act.

(I) Demanded Rs. 1 Crore from the pharmaceutical Companies through druggists/stockiest and Medical Representatives located at Khwai Bazar area, Imphal. This refers to FIR No. 84(8)2007 City P.S. u/s 387/353/34 IPC & 17/20 UA(A) A. Act.

Such act of extortion and threat intimidation to the people done by you and your associates gave a terror wave to the general people residing/staying in Imphal City and its surrounding area which not duly disturb the even tempo of life but also endanger the public order which is prejudicial to the security of the State and maintenance of public order.

4. That, on 16-8-2007 in the late evening some KYKL members you under the command of Shri K. Giridhari Sharma @ Sharma were assembled at the quarter of the Hon"ble MLA Shri W. Brajabidhu Singh, Lamshang A/C and discussed in length the strategies, policies as well as modus operandi for extortion of money from the different agencies, offices, etc. and halted the right there. At about 6 a.m. of 17-8-2007 a Police team of Imphal West Commando led by S.I. M. James Thangal arrived at the Hon"ble MLA Shri W. Brajabidhu Singh, Lamshang A/C and conducted search operation. During the course of search operation you were arrested at about 6:05 a.m. and other members of KYKL including Shri K. Griridhari Sharma, S/S 2-i-c, Imphal West Finance II KYKL. The following articles were seized from the possession and disclosure/instance of K. Giridhari Sharma by preparing two separate seizure Memos:

i) 10 live rounds of 5.56 ammn.

ii) 5 live rounds of 9mm ammn.

iii) 5 Nos. of KYKL demand letter signed by one Nongthang Mangang, Dy. Secy, of Finance, KYKL.

iv) 10 different parts of dismantled M-16 rifle and 9mm Pistol.

a. One barrel with body group of M-16.

b. One spring.

c. 2 pieces of M-16 barrel.

d. One bolt of M-16.

e. One M-16 empty magazine.

f. One barrel of 9 mm pistol.

g. One broken pistol.

h. Magazine spring.

i. One broken magazine of 9mm pistol.

5. That, in view of your tendencies and inclinations reflected in the offences committed by you in the proximate past as a hard core member of the banned organization namely Kanglei Kaol Kanba Lup (KYKL in short) which aim of establishing a sovereign independent State of Manipur by waging war against the lawfully established Government of India and Manipur holding fire arms, I am satisfied that after having availed of bail facilities and becoming a free person, you being a hard core member of the said organization would continue to indulge in the same activities which are prejudicial to the security of the State and maintenance of the public order. Hence, the application of normal criminal law against you will not at all be effective to prevent you from the commission of further prejudicial activities. An alternative preventive measure is, therefore, immediately called for.

From the above grounds, I am satisfied that with a view to prevent you from acting in any manner prejudicial to the security of the State and maintenance of public order, I have made this order directing that you be, detained under NSA, 1980.

7. That, you are hereby informed that you have the right to make representation to the Government of Manipur as well as to the Central Government against the order of detention passed against you and you are hereby afforded the earliest opportunity for making such representation if you wish to do so. The representation is to be sent through Additional Superintendent of Manipur Central Jail, Sajiwa to the Chief Secretary, Government of Manipur in respect of representation to the Government of Manipur and to "The Secretary to the Government of India Ministry of Home Affairs" (Department of Internal Security) North Block, New Delhi-110001 in respect of representation to the Central Government and should be submitted within 3 (three) weeks from the date of detention. Further, you are informed that

you have right to make representation to the detaining authority within 12 (twelve) days from the date of detention or till the order is approved by the State Government whichever is earlier. The representation is to be sent to the District Magistrate, Imphal West representation, if any would be placed before the Advisory Board within 3 (three) weeks time from the date of your detention and such other documents/papers connection with your detention as the Government is bound under the law to produce before the Board for its consideration.

11. The detenu filed the joint representation dated 22-9-2007 to (i) Chief Secretary to the Government of Manipur and (ii) Secretary to the Government of India, Ministry of Home Affairs, Department of Internal Security, North Block, New Delhi.

Mr On bare perusal of the grounds of the order of detention dated 9-11-2007 it is crystal clear that there are materials both documentary evidences as well as informations for coming to the subjective satisfaction that after having availed bail facilities and becoming a free person detenu being a hard core member of the unlawful organization i.e. KYKL would indulge in the same activities which are prejudicial to the security of the State and maintenance of public order and as such normal application of criminal law against the detenu will not at all be effective to prevent him from the commission of further prejudicial activities and having no alternative as a preventive measure, the detenu would therefore be detained under NSA as a preventive measure.

12. It is well settled law that subjective satisfaction of the detaining authority arrived at for detaining the detenu as a preventive measure under the preventive law is invalid if such satisfaction is based on non-existence or irrelevant ground only. Reference in [Dwarika Prasad Sahu Vs. The State of Bihar and Others](#), . The subjective satisfaction of the detaining authority arrived at while considering the materials and records was the cumulative result of all the grounds of detention and the involvement of the detenu in different activities. Reference may be made in [P. Saravanan Vs. State of T.N. and Others](#), . There is no set standards laid down by the NSA for arriving at subjective satisfaction of the detaining authority on the basis of all the materials placed before it by the police. In the present case as stated above, the detaining authority had arrived at, on subjective satisfaction, for detaining the detenu under the NSA on the basis of the materials and the information placed by the Superintendent of Police, Imphal West. Therefore, the detention order cannot be said to be illegal on the ground of non-application of mind. Reference in [Gurdev Singh Vs. Union of India and ors](#), . The Apex Court in [Union of India \(UOI\) Vs. Paul Manickam and Another](#), held that:

Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced on the materials available and placed before it that such detention is necessary in

order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law. The action of the executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authorities. It is not practicable to lay down objective rules of conduct, the failure to confirm to which alone should lead to detention.

13. The Apex Court in a catena of cases held that a person in the custody can validly be detained under the detention order passed under the preventive detention law i.e. NSA etc.

- i) If the authority passing the order is aware of the fact that he is actually in custody.
- ii) If he has the reason to believe on the basis of available materials placed before him.
 - (a) That there is every possibility of being released and
 - (b) That on being so released he would in all probability indulge in prejudicial activities.
- iii) If it is felt essential to detain him to prevent him from doing so.

14. Para No. 13 of SCC in [Kamarunnissa and Others Vs. Union of India and another](#), is quoted hereunder:

13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) If the authority passing the order is aware of the fact that he is actually in custody. (2) If he has reason to believe on the basis of reliable material placed before him (a) That there is a real possibility of his being released on bail, and (b) That on being so released he would in all probability indulge in prejudicial activity and (3) If it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher Court. What this Court stated in the case of Ramesh Yadav was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not held otherwise. We, therefore, find it difficult to accept the contention of the Counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody.

15. From the above discussion we are of the considered view that first ground for assailing the detention order is not at all sustainable under the law inasmuch as there are materials for coming to the subjective satisfaction for detaining the detenu as a preventive measure under the detention order dated 9-11-2007 and also the detaining authority was very much aware of the fact that the detenu is actually in custody and also that there is every possibility of releasing the detenu on bail and on being so released he would in all probability indulge in prejudicial activities and as such it is essential to detain the detenu to prevent him from indulging in prejudicial activity. Over and above, there is a clear satisfaction on the part of the detaining authority that the application of normal criminal law against the detenu will not at all be effective to prevent him from commission of further prejudicial activities.

16. Before taking up the second ground it would be relevant to see the relevant provisions of the Constitution of India as well as NSA. It is the fundamental right of the detenu guaranteed by Article 22(5) of the Constitution of India that the detenu shall be afforded the earliest opportunity of making representation against the detention or order. Therefore, a constitutional protection is given to the detenu which mandates the grant of liberty to the detenu to make a representation against the detenu as imparted in Article 22(5) of the Constitution of India and it also imperates the authority to whom the representation is addressed to deal with the same with utmost expedition.

17. The Apex Court in [K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India \(UOI\) and Others and State of Karnataka and Others](#), held that the representation relates to the liberty of the individuals is the highly cherished right enshrined in Article 21 of the Constitution. Clause (5) of Article 22 casts a legal obligation on the Government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in Clause (5) of Article 22 reflects the concerned of the framers that the representation should be expeditiously considered and disposed of with the sense of urgency without an unavoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of the case. There is no prescribed time limit either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement, however, is that there should be no supine indifference-slackness or callousness attitude in considering the representation. Any unexplained delay in the disposal of the representation would be a prejudice of the constitutional imperative and it would render the continued detention impermissible and illegal." The Apex Court again in [Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others](#), held that the detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly there is a

constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose of the same as expeditiously as possible. The Apex Court in [Rajammal Vs. State of Tamil Nadu and Another](#), had discussed as to the duration or range of delay in disposing the representation and held that the test is not the duration or range of delay but it is the explanation made by the concerned authority. Para 8 of SCC in Rajammal v. State of T.N. 1999 Cri LJ 826 Para 9 reads as follows:

8. The position, therefore, now is that if delay was caused on account of any indifference, or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So, test is not the duration or range of delay, but it is the reasons explained by the authority concerned.

18. The Apex Court had discussed the of the Court while deciding as to whether or not there is delay in disposal of the representation and also the circumstances which called interference by the Court in [Senthamilselvi Vs. State of Tamil Nadu and Another](#), and held that duty of the Court is to see that if there is negligence or callous inaction or avoidable red tapism on the facts of a case while disposing the representation.

Para No. 6 in [Senthamilselvi Vs. State of Tamil Nadu and Another](#), is quoted hereunder:

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 was received by the respondents on 15-12-2005. The details 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 the 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 becomes vulnerable. That is not the case at hand. It may be noted that the writ petition was filed on 22-12-2005, even before the order or rejection was served. That being so the detenu cannot make grievance that the State had not explained the position as to how his representation was dealt with.

19. The corollary of the decisions of the Apex Court as well as this Court in the cases discussed above are that:

- 1) There is no period prescribed either under the Constitution or under the concerned detention law within which representation should be dealt with;
- 2) It is a constitutional mandate under Clause (5) of Article 22 commanding the concerned authority to whom detenu submitted this representation to consider the representation and dispose of the same as expeditiously as possible;
- 3) There should not be supine indifference, slackness or callousness attitude in considering the representation. Any unexplained delay in disposal of the representation would be a prejudice of the constitutional imperative and it would render the continued detention impermissible and illegal;
- 4) It is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that delay was very short. Even longer delay can as well be explained. So, the test is not the duration or the range of delay, but it is the reasons explained by the authority concerned.

20. From the above discussion, it is clear that this Court is not concerned with the number of days delay in disposing the representation dated 22-9-2007 but what is concern with this Court is that whether or not there is reasonable explanation for the delay in disposing the representation dated 22-9-2007. In the present case even if the detenu was informed his right to make representation under ground No. 7 of the ground of order of detention that in respect of representation to the Central Government, the representation should be addressed to "Secretary to the Government of India, Ministry of Home Affairs (Department of Internal Security), North Block, New Delhi) the detenu did not file the separate representation to the Central Government but he filed the joint representation dated 22-9-2007. In the joint affidavit-in-opposition filed by the respondent No. 1 i.e. State of Manipur and the respondent No. 3, Superintendent of Manipur Central Jail, Sajiwa, it is categorically mentioned that the representation dated 22-9-2007 filed by the detenu was forwarded by the Jail Department and received on 24-9-2007 by the State Government 23-9-2007 was holiday being Sunday. Immediately on 25-9-2007 the representation was processed by the concerned S.O. to the higher authority, thereafter, the matter was placed with file to the Joint Secretary (Home) on 29-9-2007 for consideration of the said representation. 30-9-2007 was holiday being Sunday. Accordingly, the representation of the detenu requesting for revocation of

the detention order was immediately examined and finalized on 4-10-2007 by the State Government by rejecting it on the ground that detenu is found involved in various FIR cases which are supported by the documents and materials and the result was communicated to the detenu on 5-11-2007.

21. Mr. R.S. Seishang, learned Counsel appearing for the State respondents has strenuously contended that since the representation dated 22-9-2007 was a joint representation filed by the detenu to the (1) Chief Secretary, Government of Manipur (2) Secretary Home to the Government of India, Ministry of Home Affairs, Department of Internal Security, the State respondents and authority concerned were of the bona fide view that the joint representation dated 22-9-2007 if allowed by the State Government, it would not be necessary to forward the same to the Central Government. On such bona fide views the State-respondents had taken up prompt steps for disposing of the joint representation as expeditiously as possible and as such there are reasonable explanations for delay of 7 (seven) days in forwarding the joint representation dated 22-9-2007 by the State Government to the Central Government. Mr. Reishang further contended that the said joint representation to the Central Government was forwarded on 5-11-2007 immediately after the joint representation was rejected by the State Government.

22. Mr. Ph. Sanajaoba, learned Counsel appearing for the petitioner strenuously contended that the above explanations for the delay in forwarding the joint representation dated 22-9-2007 by the State respondents to the Central Government are not specifically pleaded in their counter-affidavit.

23. It is a well settled position of law that even in the normal civil suit, the Court should be slow to throw out a claim on mere technicality such as imperfect pleadings and also there are exceptions to the rule of pleadings. The Apex Court in [Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others](#), held that pleadings have to be interpreted not with formalistic rigour but with latitude or awareness of low legal literacy of poor people. The Apex Court in [Nagubai Ammal and Others Vs. B. Shama Rao and Others](#), held that rule of specific pleadings has no application to a case where parties go to trial with knowledge that a particular Question is in issue though no specific issue has been framed thereon.

24. Again, the Apex Court in [Madan Gopal Kanodia Vs. Mamraj Maniram and Others](#), held that the pleadings are loosely drafted in the Court, and Court should not scrutinize the pleadings with such meticulous care so as to result any genuine claim being defeated on trivial ground. The Apex Court while dealing with the matter relating with the life and liberty of a citizen guaranteed by Article 22(5) of the Constitution, in a criminal appeal arising out of a writ of habeas corpus petition in [Mohinuddin alias Moin Master Vs. District Magistrate, Beed and Others](#), held that the Court was not justified in dismissing a habeas corpus petition merely on the ground of imperfect pleadings of the petitioner.

25. From the ratio laid down by the Apex Court in the cases discussed above, it is crystal clear that the pleading in the habeas corpus writ petition and counter-affidavit have to be interpreted not with formalistic rigour but with latitude or awareness of low legal literacy of the citizen of India. Therefore, the submissions of Mr. Ph. Sanajaoba, learned Counsel for the petitioner regarding imperfect pleading in the counter-affidavit of the respondents in the present habeas corpus is not sustainable in the eye of law.

26. For the reasons discussed above, we are constrained to observe that there is no supine indifference, slackness and callousness attitude in considering the joint representation dated 22-9-2007 by the State Government as well as by the Central Government and also there is no unexplained delay in disposing the representation dated 22-9-2007 which would be prejudice of the constitutional imperative so far as the present detenu in the facts and circumstances of the present ease, Accordingly, the ground No. 2 for assailing the detention order dated 11-9-2007 is not sustainable in the eye of the law in the given ease of the present case.

27. For the reasons discussed above, we are the considered view that two grounds for assailing the detention order railed to persuade us to interfere with the detention order. Accordingly, writ petition is devoid of merit and hereby dismissed.