



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**(ITANAGAR BENCH)**

**Case No. : W.P.(Crl.) 8/2023**

1:Teli Yamang  
W/o Teli Leji, Permanent Resident of Village Ganga, A Permanent Resident of Village  
Ganga, PO RKM and PS Chimpu, Dist. Papum Pare, Arunachal Pradesh. Pin 791111.  
Ph 8011481871

VERSUS

1:THE STATE OF AP and 2 Ors.  
Represented by the Secretary (Home), Govt. of Arunachal Pradesh, Itanagar.

2:Deputy Commissioner cum District Magistrate  
Capital  
Itanagar  
Arunachal Pradesh.

3:Superintendent of Police  
Capital  
Itanagar  
Arunachal Pradesh

**Advocate for the Petitioner** : Sunil Mow

**Advocate for the Respondent** : GA (AP)

**BEFORE**

**HON'BLE MRS. JUSTICE MARLI VANKUNG**  
**THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

For the petitioners : Mr. S Mow, Advocate

For the Respondents : Mr. S Tapin, Senior GA

Date of Hearing : 27.06.2023

Date of Judgment & Order : 29.06.2023

**JUDGEMENT & ORDER (CAV)**

(AD, Choudhury, J)

Heard Mr. S Mow, learned counsel for the petitioner. Also heard Mr. S Tapin, learned Senior Government Advocate for the State respondents.

2. The petitioner has filed the present writ petition assailing the detention order dated 08.05.2023 being No. DM/ICC/APUAPA/01/2023-4 issued under Section 3(1) of the Arunachal Pradesh Unlawful Activities (Prevention) Act, 2014, (hereinafter referred as 'the APUAPA') as well as the order dated 20.05.2023 being No. DM/ICC/APUAPA/01/2023-5 passed by the District Magistrate, Capital: Itanagar, issuing proclamation against under Section 82 of the Cr.P.C. and declaring her as proclaimed offender under section 7 of APUAPA.

3. The background fact, of issuing the impugned proclamation and detention order was that a group of individuals have declared 3 (three) days Capital Bandh from 10<sup>th</sup> to 12<sup>th</sup> May, 2023 to persuade their various demands with the Government, in connection with the paper leakage case of Arunachal Pradesh Public Service Commission (APPSC). Thereafter, the District Magistrate, Capital: Itanagar had declared the aforesaid Capital Bandh on 27.12.2022 as illegal and prohibited the same under the law. In doing so, the District Magistrate had relied upon a decision of Supreme Court in Civil Appeal No.7728/29 of 1997 (CPI vs. Bharat Kumar and others) inasmuch as in the aforesaid judgment, Hon'ble Supreme Court had termed any bandh

called, given by any political parties or organizations or association or groups or individuals, as unconstitutional and illegal.

4. Thereafter, the District Magistrate, had found that the present petitioner, namely, Smt. Teli Yamang had taken active part in the said bandh call and refused to co-operate with the District Administration, and intended to go ahead with the proposed bandh call. She came out of her respective house and instigated the public to participate in the bandh call through various means. And such activities of the petitioner had directly caused a feeling of insecurity, danger among the general public, disruption of daily supplies and essential services to the public.

5. Having been satisfied, the District Magistrate had declared the petitioner as 'unlawful person' in terms of Section 2(viii) of the APUAPA, 2014. Thereafter, the District Magistrate had passed the impugned detention orders, dated 08.05.2023, No.DM/ICC/APUAPA/ 01/2023-4, against the petitioner, under Section 3(1) of the APUAPA. Thereafter, the Superintendent of Police, Capital Itanagar, vide his letter No. SPC/ITA/CR-96/23, dated 20.05.2023, had submitted a report to the District Magistrate stating that all necessary efforts have been made to apprehend the petitioner, but the same failed to yield any result, and the detention order could not be executed and she is absconding and concealing herself from being detained by police.

6. Thereafter, the District Magistrate, had issued detention against the petitioner under section 82 Cr.P.C. read with section 7(1)(a) APUAPA vide order dated 20.05.2023, No. DM/ICC/APUAPA/01/2023-5 and served the copy of the said orders to her and also pasted a copy in the conspicuous location for filing representation by her against the order of the District Magistrate, Capital: Itanagar under Section 8(i) of the APUAPA.

7. Being aggrieved the present writ petition is filed. In a similar circumstances, out of the same incident similar proclamation and detention order issued against some other persons were set aside by a Coordinate Bench in its judgment and order (CAV) dated 21.06.2023 in WP (CrI) 01/ 2023 and WP (CrI) 2/2023.

8. The writ petitioners in the aforesaid writ petitions were Chairman and Vice Chairman of one organization called PAN Arunachal Joint Steering Committee, which according to those petitioners, were espousing their cause for transparency in Arunachal Pradesh Public Service Commission and for accountability for paper leakage. In the present case the petitioner is stated to be President of another similar organization called Nari Shakti.

9. The learned Coordinate Bench after perusal of the record set aside the orders of detention and proclamation after having the following conclusions:

I. The detention and proclamation order were passed to prevent three days bandh called from 10<sup>th</sup> to 12<sup>th</sup> May, 2023. The bandh passed off peacefully.

II. Even after passing of more than one month from the date of impugned orders the authority had failed to execute the said order.

III. From the record it is seen that no any sincere attempts were been made to cause arrest of the petitioners.

IV. Relying on the decision of the Hon'ble Apex court in ***Naresh Kumar Goyal vs. Union of India*** reported in ***(2005) 8 SCC 276***, ***Subhash Popatlal Dave vs Union of India & Anr*** reported in ***(2012) 7 SCC 533*** and ***Deepak Bajaj vs. State of Maharashtra*** reported in ***(2008) 16 SCC 14***, the learned Bench concluded that live and proximate link between the ground of detention and the purpose of detention is snapped in the meantime.

V. The Bench relying on the decision of the Hon'ble Apex Court in ***Sheikh Nizamuddin vs. State of West Bengal reported 1974 AIR SC 2353*** and ***Pramod Singla (Crl. Appeal No. 1051/2023)*** came to a conclusion that the precious right and liberty of the petitioners should not be infringed in the aforesaid backdrop of cause of detention becoming stale and having no existing live link between the incident and the detention.

10. The learned counsel for the petitioner submits that the present case is exactly similar in fact and law to that of the case of the petitioners in WP (Crl) 1/2023 and WP (Crl) 2/2023 and therefore the judgment rendered by the Coordinate Bench shall cover her case too and therefore the impugned orders are liable to be set aside.

11. Mr. S Tapin, learned Senior Government Advocate countering such argument submits that though the background fact of both the cases WP (Crl) 1/2023 and WP (Crl) 2/2023 and the present case are similar and the detention order were also issued under the same apprehension, however, the decision of the Coordinate Bench is a decision per enquiry and therefore similar relief should not be granted to the present petitioner. He urges the following in support of his contention:

I. The decision rendered by the Hon'ble Apex court in the case of ***Additional Secretary to the Government of India and Others vs. Alka Subhash Gadia reported in 1992 Supp (1) SCC 496*** has been ignored by the learned Bench and also ignored that it was clearly held in ***Sayed Taher Bawamiya*** reported in ***(2000) 8 SCC 630*** and in ***Administration of the National Capital of Delhi, Raj Niwaj, Delhi vs. Prem Singh*** reported in ***1995 Supp (4) SCC 252*** that no interference of the detention order, at pre detention stage is permitted on any other grounds except of the five grounds

mentioned in ***Alka Shubhash Gadia (supra)***.

II. Mr. Tapin also contends that the judgment rendered by the Coordinate Bench is not a good law inasmuch as even if same is not held to be per incuriam, then also such decision is required to be referred to a larger Bench for the reason that while rendering such judgment the learned Bench has failed to properly interpret the aforesaid judgments of the Hon'ble Apex Court and set aside the detention only on the ground of having no live cause.

III. According to Mr. Tapin in view of the decision of the Hon'ble Apex Court in ***Vinod K. Chawla vs. Union of India*** reported in ***(2006) 7 SCC 337***, ***Hare Ram Pandey v. State of Bihar*** reported in ***(2004) 3 SCC 289*** and ***Union of India and Others vs. Parasmal Rampuria*** reported in ***(1998) 8 SCC 402***, the decision of the learned Bench that on account of delay in execution of the detention orders the live and proximate link in the alleged activities of the petitioner with that of the object stand snapped, is misconceived and contrary to the law laid down in the aforesaid cases and therefore, the decision rendered by the Coordinate Bench requires reconsideration and may therefore be referred to a larger Bench for proper determination.

12. We have given our anxious and thoughtful considerations to the argument advanced by the learned counsel for the parties.

13. The Hon'ble Apex Court in the case of ***State of UP and another vs. Synthetics and Chemical Ltd*** reported in ***(1991) 4 SCC 139*** held that 'incuria' literally means 'carelessness' and in practice per incuriam appears to mean per ignoratium. It was interpreted that a quotable law is avoided and ignored, if it is

rendered in ignorance of a statute or other binding authority.

14. Dealing with the binding nature of a decision of a Coordinate Bench, the Hon'ble Apex Court in the case of ***State of Bihar vs Kalika Puer*** reported in ***(2003) 5 SCC 448*** held that an earlier decision of Bench of a Coordinate jurisdiction may seem to be incorrect to a later Bench for the reason that a possible aspect of the matter was not considered or not raised or more aspects should have been gone into, the same cannot be a reason to say that the earlier decision was rendered per incuriam and liable to be ignored. The Hon'ble Apex Court further went to say that the earlier judgment may seem to be not correct yet it will have binding effect on the later Bench of the Coordinate jurisdiction. Even it was held that such course of action is not permissible, then, issue can be resolved either by following the earlier decision or refer the matter to a larger Bench to examine the issue, in the event it was felt that the earlier decision is not correct on merit.

15. As discussed hereinabove, the Coordinate Bench dealt with all the judgments relied on by Mr. Tapin including the decision rendered in ***Alka Subhash Gadia (supra)***. Relying on the decision of ***Subhash Popatlal (supra)*** wherein the ***Alka Subhash Gadia (supra)*** was dealt with, the learned Bench came to a conclusion that the exception mentioned in ***Alka Subhash Gadia (supra)*** are not exhaustive but illustrative only.

16. Therefore, in the backdrop of settled proposition of law relating to per incuriam decision and binding precedent, as discussed hereinabove, there is no room to conclude that decision rendered by the Coordinate Bench is either per incuriam or is not a binding precedent. The Coordinate Bench has not only considered ***Alka Subhash Gadia (supra)*** but also relied on the interpretation made in ***Popatlal (supra)***

relating to ***Alka Subhash Gadia (supra)***. Accordingly, the contention of Mr. Tapin is rejected.

17. This court is also of considered opinion that when admittedly the situation apprehended did not even happen and the detention order has not been executed till date, it can safely be said that no live link between the incident for which the detenue was sought to be detained and the detention order remains, and that the detention order has become stale. Therefore, in such a situation the detention orders can be set aside to protect the most valuable and cherished right of a citizen guaranteed under Article 21 of the Constitution of India.

18. Now coming to the facts of the present case this court has perused the record and found that similar is the situation in the present case inasmuch as a common detention order dated 08.05.2023 was issued against the present petitioner and petitioners in WP (Crl) 1/2023 and WP (Crl) 2/2023 including some others. Except a direction to the Superintendent of Police to execute the order dated 08.05.2023 and a statement that attempt were made to detain the petitioner, nothing is discernable from the record that any attempt was made to detain the petitioner. Accordingly, this court is of the view that the present case is also covered by determination made in WP (Crl) 1/2023 and WP(Crl) 2/2023 including the fact and law.

19. This Court is also in total agreement with the determination made by the learned Co-ordinate Bench. Therefore, there is no occasion for this court to refer it to a larger Bench as urged by Mr. Tapin, learned Senior Government Advocate.

20. Accordingly, the detention order dated 08.05.2023 bearing No. DM/ICC/APUAPA/01/2023-4, under Section 3(1) of the Arunachal Pradesh Unlawful Activities (Prevention) Act, 2014 as well as the order dated 20.05.2023 bearing No.

DM/ICC/APUAPA/01/2023-5, passed by the District Magistrate, Capital: Itanagar, are hereby set aside and quashed.

**JUDGE**

**Comparing Assistant**