



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

Case No. : W.P.(Crl.)/12/2023

Liahey Ngwazah
S/o Lt. Ngwayeti Yobin, resident of Gandhigram, PO/PS Vijaynagar, Changlang
District, Arunachal Pradesh.

VERSUS

The State of AP and 4 Others represented by the Principal Secretary, Home, Govt. of
Arunachal Pradesh, Itanagar.

2:The Deputy Commissioner cum District Magistrate
Age: 0
Occupation :
Changlang District Arunachal Pradesh.

3:The Superintendent of Police
Age: 0
Occupation :
Changlang District Arunachal Pradesh.

4:The Chairman
Age: 0
Occupation :
Advisory Board National Security Act (Arunachal Unit) C/o Commissioner (Home)
Government of Arunachal Pradesh.

5:The Additional Deputy Commissioner
Age: 0
Occupation :
Miao Sub Divisio

Advocate for the Petitioner : T T Tara, G. Lollen, G. Bam, K. Apa, T. Tokur,
T. Kamchi, K. Lollen, R. Sarkar, Y. Mugli, M. Chokar

Advocate for the Respondent : P P of AP, GA (AP)

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
HON'BLE MR. JUSTICE BUDI HABUNG

JUDGMENT & ORDER [CAV]

Date of Hearing : 12.12.2023.

Date of Judgment and order : 21.12.2023.

[Robin Phukan, J.]

Heard Mr. T.T. Tara, learned counsel for the petitioner; Ms. G. Ete, learned Additional Senior Government Advocate, Arunachal Pradesh for the respondent Nos. 1, 2, 4 & 5; and Ms. L. Hage, learned Additional Public Prosecutor for the respondent No. 3.

2. In this habeas corpus petition, under Article 226 of the Constitution of India, the petitioner namely, Shri Liahey Ngwazah has put to challenge the order, **Memo No. C/JUD/-110/NSA, dated 30.08.2023**, issued by the District Magistrate, Changlang, Arunachal Pradesh; and the order, **Memo No. HMB[B]-12049/1/2023, dated 16.10.2023**, passed by the Principal Secretary [Home], Government of Arunachal Pradesh; and the orders vide **Memo No. JUD-110/NSA, dated 14.09.2023**, and subsequent order, **Memo No. JUD-110/NSA, dated 20.11.2023**, passed by the District Magistrate, Changlang, Arunachal Pradesh rejecting the representations submitted on behalf of the detenu and the decision of the Advisory Board, National Security Act (Arunachal Pradesh State Unit) **dated 30.09.2023**.

3. It is to be noted here that vide impugned order, dated 30.08.2023, the

District Magistrate, Changlang, Arunachal Pradesh has ordered detention of the petitioner for a period of 3 months, under Section 3(2) of the National Security Act (NSA) and vide impugned order dated 16.10.2023, the Government of Arunachal Pradesh has confirmed the said detention order passed by the District Magistrate, Changlang, Arunachal Pradesh. It is also to be noted here that vide orders dated 14.09.2023 and 20.11.2023, the District Magistrate has dismissed the representations filed by the petitioner for revoking of the detention order. And vide decision dated 30.09.2023, the Advisory Board, National Security Act (Arunachal Pradesh State Unit) has approved the impugned detention order dated 30.08.2023.

4. The background facts, leading to filing of the present petition, are adumbrated herein below:-

“On the intervening night of 05.06.2023, about 100 – 150 men and women vandalized the Government properties, located at 40th miles, under Namdapha National Park and to that effect, one Shri Son Yowa Hade, Forest Range Officer, Gandhigram Wild Life Range lodged one FIR, with the Officer In-Charge of Miao Police Station on 05.06.2023. It was alleged in the said FIR that aforementioned 100 – 150 men and women were instigated by the present petitioner, by convening a meeting at Gandhigram. Upon the said FIR the Officer In-Charge of Miao Police Station had registered a case, being Miao PS Case No. 09/2023, under Sections 120[B]/447/427/392/186/506 of the IPC, read with Section 3 of the PDPP Act. Thereafter, police arrested the present petitioner and forwarded him to the court. Thereafter, a bail application was preferred before the learned CJM, Changlang and upon hearing both the parties, vide order dated 30.08.2023, the learned CJM, Changlang had granted bail to the

petitioner and before being released from the jail, the District Magistrate, Changlang, Arunachal Pradesh had passed the detention order, dated 30.08.2023, Memo No. C/JUD/-110/NSA, under Section 3[2] of the National Security Act, 1980. Thereafter, the family members of the petitioner had filed one representation for revocation of the detention order and then, vide order dated 14.09.2023, Memo No. C/JUD-110/NSA, the District Magistrate, Changlang had dismissed the representation, filed on behalf of the detenu to set him at liberty. Thereafter, vide order dated 17.10.2023, Memo No. HMB [B]-12049/1/2023, the Advisory Board had confirmed the detention order, dated 30.08.2023, Memo No. C/JUD/-110/NSA, issued by the District Magistrate, Changlang, Arunachal Pradesh. Thereafter, again petitions were filed for revocation of the detention order of the petitioner and then, vide order dated 20.11.2023, Memo No. C/JUD-110/NSA, the District Magistrate, Changlang, Arunachal Pradesh has rejected the representation filed on behalf of the petitioner.”

5. Being aggrieved, the petitioner approached this Court by filing the present petition for quashing the impugned orders and to allow this petition on the following grounds: -

[i] that, the detaining authority has not followed the procedure prescribed by law while passing the impugned detention order dated 30.08.2023;

[ii] that, the grounds assigned for detention are irrelevant to the object of the National Security Act, 1980;

[iii] that, the impugned detention order, dated 30.08.2023, does not connect with maintenance of public order, but it relates to only

maintenance of law and order;

[iv] that, the grounds of detention and the facts furnished, do not have any nexus for forming the subjective satisfaction of the detaining authority and further, that they are vague, irrelevant grounds and the same are verbatim reproduction of the facts and the offences that have allegedly being committed by the detenu as narrated in the FIR, dated 05.06.2023;

[v] that, in the impugned order, dated 30.08.2023, passed by the District Magistrate, Changlang, Arunachal Pradesh had mentioned only about the maintenance of public security and maintenance of law and order and no reason has been assigned to show any rational nexus to justify passing of the impugned order, as held by Hon'ble Supreme Court in the case of **Aidal Singh vs. State of Madhya Pradesh**, reported in **[1981] 4 SCC 428**.

[vi] that, the grounds of detention, the copies of documents and statements along with other materials relied upon by the District Magistrate, Changlang have not been furnished to the petitioner as per Section 8 of the National Security Act;

[vii] that, though it is mandated in the case of **Pritam Nath Hoon vs. Union of India**, reported in **1981 SCR (1) 682**, about furnishing of copies of documents to the detenu without delay, the detaining authority has not furnished the report submitted by Chairman Advisory Borad, National Security Act [Arunachal Pradesh Unit] and thereby, violated the mandate of law laid down by Hon'ble Supreme Court;

[viii] that, the grounds assigned for impugned detention order, dated 30.08.2023, passed by the District Magistrate, Changlang, Arunachal

Pradesh is not sustainable, inasmuch as the action of the District Magistrate is based on same set of offence in a regular criminal case, wherein the detenu was in jail and as held by Hon'ble Supreme Court in the case of **Sashi Aggarwal vs. State of U.P.**, reported in **[1988] 1 SCC 436**, "where the detenu was already in jail at the time of passing the order and detaining authority was aware of that fact and there was no material to show that there was possibility of his release from jail on bail and he was likely to cause threat to public order, the detention would be vitiated". In the instant case, the entire action of the detaining authorities is based on police reports, which are verbatim reproduction of the facts narrated FIR dated 05.06.2023, relating to the same offence;

[ix] that, the detaining authority has failed to apply the objective stands as against the subjective opinion or the belief by weighing the evidence brought before or collected by such authority, relevant to the purposes under and then coming to a decision, whether the order of detention needs continuation or not and the detenu was given an opportunity to correct or contradict such evidence either by explanation or through other materials which can place before the authority and as such, the continuation of detention order cannot be justified as held in the case of **Salim vs. The State of W.B.**, reported in **1975 AIR SC 602**, wherein it has been held that the laws of preventive detention must be construed with the greatest strictness; and,

[x] that, on the date of alleged incident i.e. 05.06.2023, the detenu was not present at Gandhigram village, as he was at Miao, visiting and praying for the bereaved family of Late Michepho Yobin, who

passed away on the morning of 04.06.2023, at South Miao.

6. Mr. Tara, learned counsel for the petitioner, besides reiterating the grounds mentioned herein above, submitted written notes highlighting the following points:-

[a] that, the procedural safeguards, which a detenu under National Security Act is entitled, has not been followed in case of the petitioner;

[b] that, the detaining authority has violated the provision of Article 22[4] of the Constitution of India, as the detention order ceased to have any legal force from 06.11.2023, and thereafter, no review meeting of the Advisory Board was held to recommend the detention of the detenu under National Security Act, which is mandated by a decision of Hon'ble Supreme Court in the case of **Ameena Begum vs. The State of Telangana and Others**, reported in **2023 livelaw [SC] 74**, wherein it has been held that a person cannot be kept in detention beyond three months, unless an Advisory Board finds sufficient cause for such detention;

[c] that, the preventive detention is a hard law and the background facts leading to detention of the present detenu is purely a minor law and order issue;

[d] that, the action under the National Security Act is an executive and quasi-judicial function;

[e] that, the grounds stated in the detention order are stale; and

[f] that, the incident mentioned in the impugned order dated 30.08.2023, is not connected with maintenance of public order, but,

is related to maintenance of law and order and there is a difference between public order and law and order.

7. Apart from this, Mr. Tara, referring to the decision of Hon'ble Supreme Court in the case of **Ameena Begum [Supra]**, further submits that the live and proximate link between the grounds of detention does not exist in this case, as the detenu was in Sub-Jail, Changlang while passing detention order, dated 30.08.2023. Mr. Tara further submits that the judicial review on subjective satisfaction of the detaining authority is permissible in view of the law laid down by Hon'ble Supreme Court in the case of **Ameena Begum [Supra]**, and the impugned order has failed to withstand the test of legality. Therefore, Mr. Tara contended to allow the petition, by setting aside the impugned order, dated 30.08.2023.

8. Whereas, Ms. Ete, learned Additional Senior Government, Arunachal Pradesh submits that the impugned order, dated 30.08.2023, suffers from no infirmity or illegality requiring any interference of this Court. Ms. Ete further submits that the incident took place at Gandhigram, which is bordering Myanmar and national security is involved with the offence and as such, the impugned order requires no interference of this Court. However, to a pointed query of this Court as to when the detention order was communicated to the petitioner, Ms. Ete submits that it was furnished to the petitioner on the same day while he was in Sub-Jail, Changlang, through the Jail Superintendent. To another pointed query of this Court, as to why the affidavit filed by the State respondents are silent about the date of the furnishing of the copy of the detention order to the petitioner, Ms. Ete submits that inadvertently the same was left out. Ms. Ete also submits that there is no infirmity in the order and the procedure has been duly followed and that there is no merit in this petition and therefore, it is contended to

dismiss the same.

9. On the other hand, Ms. Hage, learned Additional Public Prosecutor submits that on the basis of the report submitted by the Superintendent of Police, the impugned order dated 30.08.2023, was issued and the representation filed by the petitioner was dismissed and that there are sufficient grounds in doing so and therefore, it is contended to uphold the same.

10. We have carefully gone through pleadings of the parties and the documents placed on record and the relevant File of the District Magistrate, Changlang, produced before the court by the learned Government Advocate. Also, we have gone through the case laws referred by learned counsel for the petitioner.

11. From the pleadings of the parties as well as submissions of their respective learned Advocates, the issues, to be decided by this court, are formulated as under:-

- (i) Whether the court can examine the subjective satisfaction of the detaining authority in passing an order of detention under section 3(2) of NSA?
- (ii) Whether the past incidents mentioned in the impugned order have any live link with the detention order?
- (iii) Whether the order impugned was communicated to the detenu with in the time line provided in the NSA?
- (iv) Whether there was delay in disposing of the representation filed by the detenu or by his family members?
- (v) Whether rejection of the representation was communicated in a time bound manner?

(vi) Whether the decision of the Advisory Board was furnished to the detenu?

12. A careful perusal of the documents placed on record reveals that on the intervening night of 05.06.2023, at around 6:30 am, a group of 100 – 150 men and women, led by Mrs. Atasa Yobin; Mrs. Misangi Yobin; Mrs. Akhus Yobin; Mrs. Atali Yobin; Mrs. Lisicha Yobin; Mrs. Achimey Yobin; Mrs. Chumathi Yobin; Sh. Simi Yobin; and Shri Yelidu Yobin, came to the 40th mile camp, Miao Vijaynagar road and disconnected the WT set and snatched the mobile phone of the staff and thereafter destroyed the Government structure i.e. OBT protection camp - 2 numbers; Open Hall Kitchen – 1 number; newly constructed check gate with hut – 1 number; Watch Tower – 1 number etc. and they also threatened the staffs to vacate the area immediately and thereafter, they have fled away. It is also alleged in the FIR that one Shri Ngwazosa Yobin [the detenu] is the master mind of the aforesaid activities, under whose leadership a meeting was held on 04.06.2023, at Gandhigram village, wherein the entire planning was done. Upon the said FIR, the Officer In-Charge of Miao Police Station registered a case being Miao PS Case No. 09/2023, under Sections 120[B]/447/427/392/186/506 of the IPC read with Section 3 of the PDPP Act and thereafter, the petitioner was arrested and forwarded to the jail hazot. Further, it appears that the learned CJM, Changlang granted bail to the petitioner on 30.08.2023, and thereafter, issued release order [Annexure – 3] and on the same day the District Magistrate, Changlang has issued the impugned order dated 30.08.2023, which is annexed with the petition as Annexure - 4.

12.1. A careful perusal of the Annexure - 4 indicates that the incident took place on 05.06.2023, upon which the Miao Police Station registered Miao PS

Case No. 09/2023, under Sections 120[B]/447/427/392/186/506 of the IPC read with Section 3 of the PDPP Act and this incident is the genesis of the impugned order, though some incidents that took place on earlier occasions have also been taken into account. It appears that on 14.11.2022, under his leadership 40-50 people had set ablaze several Govt. structures of Namdapha National Park and Tiger Reserve, located at 25th Mile of Miao - Vijaynagar Road and six SP Type Buildings, one RCC Building, 3 Motor Cycle and some Govt. Documents, Walki Talki sets and personal belongings of the officials were burnt down. He was also arrested on 23.12.2020, for planning similar incidents of arson and violence in the year 2020, in Vijaynagar Circle. Further, reference is made to a letter of ADC, Miao dated 26.06.2023, Memo No. M/JUD/31/MISC/2021-22, by which a joint representation dated 23.06.2023, of the Gaon Burahas of Vijaynagar Circle was forwarded, wherein allegation is made against the present petitioner for creating social disharmony and participating in anti-government activities under the said circle. Reference is also made about the allegation made by the President of Yobin Welfare Society [YWS] against the present petitioner for creating division, disunity among his tribesman claiming himself to be the President of Yobin Welfare Society and instigating his associates in disturbing the health camp and manhandling the medical team for performing HIV test camp at Gandhigram on 30.05.2023. Reference is also made about the hatred posts on social media platforms criticizing the health camp organized by the Health Department and he also entered into altercation with local administration disrupting the decorum of the meeting and he has the antecedent of instigating members of his tribe against his own village elders, GBs, creating undemocratic and disharmony within the Yobin Society and other ethnic groups i.e. Gorkhas residing in Vijaynagar Circle. Reference is also made about the granting bail to the petitioner by the learned CJM,

Changlang which was earlier rejected on 27.06.2023. Reference is also made to a letter dated 25.08.2023, of EAC, about receiving representations against the petitioner for his alleged involvement in various anti-social activities in Vijaynagar Circle and apprehension of breakdown of law and order situation in Vijaynagar Circle upon his release and the report of the EAC indicates that in the event of his release from the custody, there is apprehension that he may again indulge in an act of violence and arson in Vijaynagar Circle, with higher intensity, against various Government establishment under Namdapha National Park/Vijaynagar Circle. Reference is also made about the report received of GBs of Vijaynagar Circle, CBOs members of Yobin Society, local administration, Forest Department, Police Report, FIR, Seizure list etc. Upon these facts and circumstances, the District Magistrate, Changlang having been convinced to prevent the petitioner in acting in any manner prejudicial to the maintenance of the security of the State and public order, deemed it necessary to keep him under preventive detention and therefore, he had passed the impugned order of detention of the petitioner for a period of 3 months with immediate effect.

13. It also appears that the Superintendent of Police, the respondent No. 3, had submitted a proposal of detention of the petitioner under Section 3[2] of the National Security Act to the District Magistrate, Changlang for inciting hatred, enmity and dissatisfaction against the State as well as the Government of India.

14. It is also to be noted here that the Section 3[2] of the National Security Act provides that the Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in

any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

SUBJECTIVE SATISFACTION VIS - A - VIS JUDICIAL REVIEW: -

15. While dealing with the issue in *Rameshwar Shaw v. District Magistrate*, reported in AIR 1964 SC 334 a Constitution Bench of the Hon'ble Supreme Court has held as follows:-

“7. There is also no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of clauses (i) to (iii) of Section 3(1)(a) and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed. Similarly, if some of the grounds supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making a representation that again may introduce a serious infirmity in the order of his detention. If, however, the grounds on which the order of detention proceeds are relevant and germane to the matters which fall to be considered under Section 3(1)(a), it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not reasonably based on any of the said grounds.

8. It is, however, necessary to emphasize in this connection that though the satisfaction of the detaining authority contemplated by Section 3(1)(a) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention on the ground of mala fides and in support of the said plea urge that along with other facts which show mala fides the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner and in support of the plea of mala fides that this question can become justiciable; otherwise, the reasonableness or propriety of the said satisfaction

contemplated by Section 3(1)(a) cannot be questioned before the Courts."

16. In Khudiram Das v. The State of West Bengal, reported in (1975) 2 SCC 81, Hon'ble Supreme Court has held as under:-

"9. But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority: if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. Emperor v. Shibnath Bannerji [AIR 1943 FC 75: 1944 FCR 1 : 45 Cri LJ 341] is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose: such a case would also negative the existence of satisfaction on the part of the authority. The existence of 'improper purpose', that is, a purpose not contemplated by the statute, has been recognized as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner of Police did in Commissioner of Police v. Gordhandas Bhanji [1951 SCC 1088 : AIR 1952 SC 16 : 1952 SCR 135] and the officer of the Ministry of Labour and National Service did in Simms Motor Units Ltd. v. Minister of Labour and National Service [(1946) 2 All ER 201] the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have

been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again, the satisfaction must be grounded 'on materials which are of rationally probative value'. *Machindar v. King* [AIR 1950 FC 129: 51 Cri LJ 1480: 1949 FCR 827]. The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. *Pratap Singh v. State of Punjab* [AIR 1964 SC 72: (1964) 4 SCR 733]. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider."

17. In the case of **Ameena Begum vs. The State of Telengana & Ors.**, reported in **2023 LiveLaw (SC) 743** Hon'ble Supreme Court has held that: -

"In the circumstances of a given case, a Constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether: -

(i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

(ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

(iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper

purpose, not authorized by the statute, and is therefore ultra vires;

(iv) the detaining authority has acted independently or under the dictation of another body;

(v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

(vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

(ix) the grounds on which the order of preventive detention rests is not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(x) the timelines, as provided under the law, have been strictly adhered to.

28. Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong."

18. The proposition of law, that can be culled out from the above discussion, is that the subjective satisfaction of the detaining authority is not wholly immune from judicial reviewability. Subjective satisfaction being a

condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority. By judicial decisions, the Courts have carved out an area, limited though it be, within which the validity of the subjective satisfaction, which can be subjected to judicial scrutiny.

Thus, **Issue No. (i)** has to be decided in affirmative and accordingly, the same stands answered.

‘PUBLIC ORDER’ AND ‘LAW & ORDER’:-

19. As pointed out herein above, Mr. Tara, learned counsel for the petitioner tried to differentiate between maintenance of ‘public order’ and ‘law-and-order’. According to him, the impugned order is primarily based upon the incident that took place on 05.06.2023, and according to him the said incident is not related to maintenance of ‘public order’, but, it relates to simple ‘law-and-order’ and moreover, the detenu was not present on that day at the village Gandhigram and therefore, the provision of Section 3[2] of the National Security Act could not have been invoked against the petitioner. This submission of Mr. Tara is controverted by Ms. Ete, learned Additional Senior Government Advocate, Arunachal Pradesh, who submits that the incident of 05.06.2023, took place at Namdapha National Park within the Gandhigram Circle, bordering Myanmar and therefore, national security is involved in the same and the same was not a simple ‘law & order’ issue as it affects the public also and as such, ‘public order’ is involved in the same.

20. The record, here in this case, indicates that the impugned action has been taken against the detenu under Section 3(2) of the National Security Act and a perusal of the impugned order clearly shows that the detenu has

been detained in order to prevent him from acting in any manner prejudicial to the maintenance of the security of the state and public order. Now, it is to be looked into whether act of the detenu tantamount to an act prejudicial to the security of the state and maintenance of 'public order' or not. Before directing a discussion to that effect, it would be apposite to understand the meaning of 'law and order' and 'public order'.

21. A Constitution Bench of Hon'ble Supreme Court in **Ram Manohar Lohia v. State of Bihar**, reported in **(1966) 1 SCR 709**, has dealt with the difference between "law and order" and "public order" in the following words:

"54. * Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.**

55. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represent the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

22. The aforesaid concept of 'public order' has been applied by the Hon'ble Supreme Court in cases arising under the NSA (See. Para 15 of the Supreme Court decision in **Ajay Dixit vs. State of U.P.** reported in **(1984) 4 SCC 400**). Thereafter, in the case of Subhas Bhandari vs. D.M. reported in **(1987) 4 SCC 685**, it has been held thus:

“9. It has now been well settled by several decisions of this Court (the latest one being Gulab Mehra v. State of U.P. [(1987) 4 SCC 302] judgment which was pronounced by us on September 15, 1987) that public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order or it affects public order. It has also been observed by this Court that an act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality, it may be very different. Therefore, it is the impact, reach and potentiality of the act which in certain circumstances affects the even tempo of life of the community and thereby public order is jeopardized. Such an individual act can be taken into consideration by the detaining authority while passing an order of detention against the person alleged to have committed the act.”

23. In the case of **Ameena Begum (supra)** Hon'ble Supreme Court has held that: -

“33. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquility affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, C.J. in Arun Ghosh v. State of West Bengal¹⁷, is this: “Does it [read: the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or

does it affect merely an individual leaving the tranquility of the society undisturbed?" In that case, the petitioning detenu was detained by an order of a district magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) "does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order". In the process of quashing the impugned order, the Chief Justice while referring to the decision in Ram Manohar Lohia (supra) also ruled:

"3. * Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its affect upon the community. ... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."**

34. In Kuso Sah v. The State of Bihar 18, Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that:

"4. * The two concepts have well defined contours; it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. *****

6. * The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***"**

35. Turning our attention to section 3(1) of the Act, the Government has to arrive at a subjective satisfaction that a goonda (as in the present case) has to be detained, in order to

prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes 'public order'. Even within the provisions of the Act, the term "public order" has, *stricto sensu*, been defined in narrow and restricted terms. An order of detention under section 3(1) of the Act can only be issued against a detenu to prevent him "from acting in any manner prejudicial to the maintenance of public order". "Public order" is defined in the Explanation to section 2(a) of the Act as encompassing situations that cause "harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health".

24. But, in the case in hand, having gone through the impugned order and the materials placed on record, and applying the ratios, laid down in the cases discussed herein above, this Court is unable to derive its satisfaction that the 'security of the state' and maintenance of 'public order' is involved in the activities as alleged in the impugned order. The incident, that took place on 05.06.2023, that finds mention in the impugned order, to the considered opinion of this Court is related to only 'law-and-order' not involving the maintenance of 'public order' and 'security of the State'. The impugned order reflects that there is apprehension of breakdown of law-and-order situation upon release of the detenu on bail and he may indulge in act of violence and arson in Vijaynagar with higher intensity against various Govt. establishment under the Namdhapha National Park. If release of the detenu on bail will create law and order situation then the authority may move the Court again to get his bail order cancelled. The criminal law has already been set into motion against the detenu and the said crimes can be effectively dealt with under the provision of IPC.

25. It may be mentioned here that in the rejection order, dated 20.11.2023, (**Annexure 12 of the petition**) by which the representation filed on behalf of the detenu, dated 01.11.2023, was dismissed, it has been

reflected that having found existence threat perception of breakdown of 'law and order' in Vijaynagar Circle and therefore the representation was rejected. There is no indication of existence of threat perception of breakdown of 'public order' let alone the 'security of state'. It is worth mentioning in this context that neither maintenance of public security nor maintenance of law and order can justify detention under section 3(2) of National Security Act. [see- **Aidal Singh** (supra)]

26. In the case of **Vijay Narain vs. State of Bihar** reported in **(1984) 3 SCC 14**, Hon'ble Supreme Court has held that when a person is enlarged on bail by a competent court, great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on very same charge which is to be tried by the criminal court.

27. In the case of **Smti Shashi Agarwal** (supra) Hon'ble Supreme Court held that every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under ordinary law of the land. If the state thinks that he does not deserve bail the state could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of granting bail may not be sufficient. Nor a bald statement that the person would repeat the criminal activities would be enough. There must be some credible information or cogent reason apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order.

28. Herein this case, there is no material made apparent on record that the detenu, if released on bail, is likely to commit activities prejudicial to the maintenance of 'public order'. Thus, the satisfaction, so arrived at by the District Magistrate, Changlang for invoking section 3(2) of the National

Security Act against the detenu cannot be said to be based on the relevant materials. He had relied upon materials which are stale and have no live link with the immediate need of the detenu, being kept in detention.

PAST CRIMINAL CONDUCT AND LIVE LINK WITH THE DETENTION ORDER: -

29. It also appears that the impugned order indicates about the previous criminal antecedent of the petitioner. Whether such incidents and numbers of pending cases against the detenu, falls within the parameters of Section 3(1) of the National Security Act, was considered in the case of **Javed Khan vs. State of M.P.: Writ Petition No.11872 of 2021**, wherein it is held as follows:

“6. The grounds of detention reflect that as many as 21 cases have been registered against the petitioner between the period October, 2006 and April, 2021. In view of the judgment of Supreme Court in the matter of Yumman Ongbi Lembi Leima vs. State of Manipur reported in (2012) 2 SCC 176, there should be live link between the detention and antecedent activities on the basis of which the detention order was passed. In the present case, even if the older cases are ignored then also it is noticed that in the recent past, the cases relating to offence of extortion under Section 384, extortion by putting a person in fear of death or grievous hurt under Section 386 of the IPC and making preparation for dacoity under Section 399 of the IPC have been registered, therefore, there is a live link between the recent offences which are registered against the petitioner with the order of detention.

7. In terms of Section 3(2) of the NSA, an order of detention can be passed to prevent a person from acting in any manner prejudicial to the maintenance of public order. The public order is a concept narrower than the concept of law and order. Public order is the even tempo of life of the community as a whole or even a specific locality. It is the potentiality of the Act to disturb the even tempo of life of the community which make it prejudicial to the maintenance of public order [State of U.P. vs. Sanjai Pratap Gupta reported in (2004) 8 SCC 591)].

8. Having regard to the nature of offences which are registered against the petitioner specially the offence of extortion under Section 384 of the IPC, extortion by putting a person in fear of death or grievous hurt under Section 386 of the IPC and making preparation for dacoity under Section 399 of the IPC, we are of the opinion that these activities are prejudicial to public order."

30. In the case of **Sama Aruna v. State of Telangana reported in (2018) 4 SCC 531** while construing the provisions of the NSA, Hon'ble Supreme Court has held as under:

"16. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account."

31. Further, holding that the order of detention therein was grounded on stale grounds, Hon'ble Supreme Court held that:

"The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it."

32. Hon'ble Supreme Court in **Khaja Bilal Ahmed v. State of Telangana**, reported in **(2020)13 SCC 632**, observed as under:

“23. * If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the Appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”**

33. But, in the case in hand though the District Magistrate had referred some past incidents in the impugned order of detention, yet it appears that the said incidents have no direct nexus or link with the immediate need to detain him under the National Security Act. Any absence of clear indication of a causal connection, a mere reference to the pending criminal cases, cannot account for the requirement of Section 3 of the National Security Act,

as held by Hon'ble Supreme Court in the case of **Sama Aruna (supra)** and in **Khaja Bilal Ahmed (supra)**. On such count, this Court finds sufficient force in the submission of Mr. Tara, the learned counsel for the petitioner. Though Ms. Ete, the learned Addl. Senior Govt. Advocate submits that national security is involved in the activities of the detenu, yet no such basis finds mention in the impugned order. Therefore, this court is unable to record concurrence to the submission of Ms. Ete, the learned Addl. Senior Govt. Advocate. The previous criminal activities, thus, seems to have no direct nexus or link with the immediate need to detain an individual. Moreover, the incidents, which finds mention in the impugned order, appears to be not matters of 'public order' as held in para 24 of this judgment since they do not tend to affect the even flow of public life. The past activities of detenu cannot be said to have affect the 'public order' as defined in Explanation to section 2(a) of the Act as the same failed to encompass the situation that cause harm, danger or alarm or a feeling of insecurity amongst the general public or section thereof or grave wide spread danger to life of public health. [see- Aameena Begum (supra) para-35].

34. On consideration of overall facts and circumstances, and conduct of the detenu and having tested the same on the metrics of 'public order' it does not appears to us that existing legal framework to deal with the law & order is not sufficient to address the issues, which the detaining authority has anticipated that could be repeated by the detenu if he is not detained. On this count also the impugned detention order had failed to withstand the test of legal scrutiny.

Issue No. (ii), is accordingly answered in negative.

PROCEDURAL SAFEGUARDS: -

TIMELINE UNDER NATIONAL SECURITY ACT

Sl. No.	Provision of the NSA under which the action is taken	Time-limit prescribed from the date of detention order	Action/Orders taken	Date of the order/Action Taken & Annexure No.
01.	Section 3(2)		Detention Order passed	On 03.08.2023, Annexure-4
02.	Section 3(4)	Forthwith	Reporting of facts of detention to the State Govt.	On 30.08.2023 Annexure-4
03.	Section 8	05 to 10 Days	Communication of grounds of detention to the detenu	Allegedly on 30.08.2023, but no Document to support the same
04.	Section 3(4)	12 Days	Approval of detention Order by State Govt.	On 05.09.2023 Annexure - 6
05.	Section 3(5)	07 days	Reporting of the fact by The State Govt. to Central Govt.	Not available
06.	Section 10	3 Weeks	Reference to the Advisory Board	Board approved on 20.09.2023
07.	Section 12		Confirmation of detention order	On 16.10.2023

COMMUNICATION OF GROUNDS OF DETENTION TO THE DETENU IN A TIME BOUND MANNER: -

35. Section 8(1) of the National Security Act, 1980 reads as under:

8. Grounds of order of detention to be disclosed to persons affected by the order:- (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and

shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.”

36. The Act also provides for forthwith reporting of the order made by the District Magistrate to the State Government under Section 3(4) of the NSA along with the grounds thereof and approval thereof by the State Government within 12/15 days of the date of order, disclosing the grounds of detention to the affected persons within 5-10 days under Section 8 read with proviso to Section 3(4); in case of approval of the order by the State Government, reporting of the said fact to the Central Government in 7 days under Section 3(5), reference of the grounds of detention of the Advisory Board along with representation(s), if any, made by the affected party under Section 10 and consideration thereof after hearing the affected party, if required, and to submit its report to the State Government within 7 weeks from the date of detention under Section 11; in case the Advisory Board reports that there is sufficient cause for detention of the person, the State Government is to confirm the detention order under Section 12; inform in the order of detention that the affected party has a right to make representation against the detention to the District Magistrate, the State Government, the Advisory Board as well as the Central Government etc.

37. In the case of **D.K. Basu v. State of West Bengal, reported in (1997) 1 SCC 416**, Hon’ble Supreme Court has held that intimation sent to the family member of the detenu by registered post in addition to the telephonic intimation, must be considered as substantial compliance of the requirement laid down.

38. In the case in hand, though the State respondents have contended that the impugned detention order, dated 30.08.2023, was communicated to the petitioner on the same day, through the Superintendent of Sub-Jail,

Changlang, yet, no documents were placed before this Court to support the same. The affidavit of the State respondents is also silent on this point. And the learned Government Advocate also, to a pointed query of this Court, could not produce any document in respect of the claim that it was served on the same day. In absence of pleading and supporting documents, this Court is unable to record concurrence with the submission of learned Government Advocate that the impugned order was served upon the petitioner on the same day, i.e. 30.08.2023. Thus, the requirement of law seems to be violated here in this case and consequently, the valuable right of the detenu also stands violated.

Issue No. (iii) is accordingly, answered in negative.

DELAY IN CONSIDERATION OF REPRESENTATION: -

39. The law in respect of delay in consideration of the representation and its consequences are well settled by Hon'ble Supreme Court in catena of decisions. In the case of **Tara Chand vs. State of Rajasthan and Others** reported in **1980 (2) SCC 321** and **Raghavendra Singh vs. Superintendent, District Jail, Kanpur & Ors**, reported in **(1986) 1 SCC 650**, it has been held by the Hon'ble Supreme Court that if there is inordinate delay in consideration of representation filed by the detenu, that would clearly amount to violation of the provisions of Article 22(5) of the Constitution of India, as to render the detention order unconstitutional and void.

40. In the case of **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur**, reported in **2021 SCC Online SC 1019**, Hon'ble Supreme Court has held as under: -

“Article 22(4), in guaranteeing a right to make a representation to the detenu, understandably creates a corresponding duty on the State machinery to render this right meaningful. In Section D.1 of the judgment, we have detailed this Court’s PART D settled precedent on the detenu’s right to make a representation and for it to be considered expeditiously- failing which the detention order would be invalidated. However, this right would ring hollow without a corollary right of the detenu to receive a timely communication from the appropriate government on the status of its representation- be it an acceptance or a rejection. This Court, in considering claims of delay in the appropriate government’s dealing with the representation of a detenu, has included delays in communication of such rejection. A two judge Bench of this Court in State of Punjab v. Sukhpal Singh reported in (1990) 1 SCC 35, had noted that such a delay formed a part of the infraction on the detenu’s constitutional right under Article 22(4). Justice K. N. Saikia, speaking on behalf of this Court, had held: -

“19. In the instant case we are satisfied that after receipt of the zerox copy from the Central Government, the State Government took only 13 days including 4 holidays in disposing of the representation. Considering the situation prevailing and the consultation needed in the matter, the State Government could to have been unmindful of urgency in the matter. But the facts remain that it took more than two months from the date of submission of the representation to the date of informing the detenu of the result of his representation. Eight days were

taken after disposal of the representation by the State Government. The result is that the detenu's constitutional right to prompt disposal of his representation was denied and the legal consequences must follow."

41. In the instant case, series of representations were preferred by the relatives of the detenu on 03.09.2023; 07.09.2023; and 08.09.2023, for revocation of the detention order dated 30.08.2023. One such representation, dated 07.09.2023, was disposed of by the District Magistrate, Changlang vide order dated 14.09.2023. The record indicates that having received the representation on 07.09.2023, the District Magistrate, Changlang had on 11.09.2023, called for a report from the Superintendent of Police, Changlang and ADC, Miao and on 12.09.2023 and 13.09.2023, and the Superintendent of Police, Changlang and ADC, Miao have filed their respective reports, upon consideration of which the District Magistrate, Changlang had rejected the representation on 14.09.2023. Thus, it appears that though there is explanation after 11.09.2023, on which he had called for reports from the Superintendent of Police, Changlang and ADC, Miao, yet, there is no explanation for delay of three days i.e. from the receipt of representations on 08.09.2023, (*Page No.10 of File No. C/JUD-110/NSA, which indicates that the P.A. to Deputy Commissioner had received the representation on 08.09.2023*) till 11.09.2023. The District Magistrate, Changlang did not take any action and sat over the representation till 11.09.2023, on which he had called for the reports of the Superintendents of Police and ADC, Miao. These three days unexplained delay in disposal of representation would clearly amounts to violation of the provisions of Article 22(5) of the Constitution of India, so as to render the detention order unconstitutional and void, as held in the case laws discussed in the foregoing para.

Issue No. (iv) is answered accordingly in affirmative.

FAILURE TO COMMUNICATE REJECTION OF REPRESENTATION IN TIMELY MANNER: -

42. While considering the claim of delay in the appropriate government's dealing with the representation of the detenu Hon'ble Supreme Court in the case of **Sukhpal Sing** (supra) had held that such a delay formed a part of the infraction on the detenu's constitutional rights under Article 22(4). In **Madan Lal Anand v. Union of India** reported in **(1990) 1 SCC 81**, Hon'ble Supreme Court had considered an explanation for a two-day delay in communicating a rejection of representation to the detenu in determining laches or negligence on the part of the detaining authority. It noted: -

“37. At the hearing of this appeal, the learned counsel for the respondents handed over to us a list of dates showing that a number of holidays intervened between one date and another and hence the apparent delay. It appears that the Collector of Central Excise & Customs received the representation for his comments on January 23, 1989 and handed over the same to the dealing officer for comments on January 24, 1989 and the Collector's comment was made on February 9, 1989. Between January 25, 1989 and February 8, 1989, a number of holidays intervened, namely January 26, 1989 (Republic Day), January 28, 1989 and January 29, 1989 (Saturday and Sunday), and February 4, 1989 and February 5, 1989 (Saturday and Sunday). On February 9, 1989, it was sent to the Ministry of Finance (COFEPOSA Cell), New Delhi, and was received by that Ministry on February 10, 1989. February 11, 1989 and February 12, 1989 being Saturday and Sunday were holidays. On February 13, 1989, it was put up before the Joint Secretary, COFEPOSA, and was sent to the Minister of State (Revenue). The file was received back after the rejection of the representation and such

rejection was communicated to the detenu on February 20, 1989. The two intervening dates, namely, February 18, 1989 and February 19, 1989 being Saturday and Sunday were holidays.

43. In the case of **Sarabjeet Singh Mokha (supra)** it has been held by the Hon'ble Supreme Court that-

“The AAG has furnished no reasons for the failure to communicate the State Government or Central's government rejection of the appellant's representation. This failure in timely communication of the rejection of representation is a relevant factor for determining the delay that the detenu is protected against under Article 22(5). Based on the precedents of this Court, we hold that the failure of the Central and the State Government to communicate the rejection of the appellant's representation in a time-bound manner is sufficient to vitiate the order of detention.”

44. In the instant case there is no material to suggest when the impugned order of rejection was communicated to the detenu. The affidavit of the respondent authorities is also silent on this point. In absence of any such proof, this court is inclined to hold that such lapse formed a part of the infraction on the detenu's constitutional right under Article 22(5) and as such legal consequences must follow.

Issue No. (v) is accordingly decided in negative.

DELAY IN FURNISHING COPIES TO THE DETENU: -

45. While dealing with this issue, Hon'ble Supreme Court in the case of **Shri Tushar Thakkar vs. Union of India & Ors.**, reported in **(1980) 4 SCC 499**, held that: -

“From the facts, alleged in the writ petition and admitted in the counters, it is clear that there was unreasonable and inordinate delay in the supply of the copies of the material documents to the detenu. He had made the request for supply of copies of those materials, by a letter from jail on September 8, 1979. All the copies were not supplied till October 12, 1979. It is regrettable that the letter dated September 8, 1979 of the detenu for copies took 11 days to travel from the jail to the detaining authority in the Ministry of Finance, New Delhi. Surely some functionary of the Government in some office was grossly negligent in conveying or transmitting this letter to the detaining authority. Although the Advocate of the detenu as a matter of additional precaution to eliminate office delays, again directly wrote on September 15, 1979 a letter to the Office of the Directorate of Enforcement for immediate supply of the copies mentioned in the enclosure, as he thought that the documents would be in his office, yet instead of promptly supplying the copies repeatedly asked for by the detenu, the Advocate was told to come and take inspection of the documents. The inspection of the documents, as the Advocate rightly demurred, was no substitute for the constitutional obligation to furnish the detenu promptly with copies of all the materials relied upon in the grounds of detention, to enable him to prepare and make a purposeful representation. With great reluctance, the copies of all the documents requested for by the detenu on September 10, 1979 were supplied on October 12, 1979, after a delay of about 82 days. Even if five or six days which would have been normally taken in transit, were to be excluded, there was a delay of 25 or 26 days in supplying the copies. This delay has not been satisfactorily explained, and in the circumstances of the case, was clearly unreasonable.

14. This Court has repeatedly held that the detenu has a constitutional right under Article 22(5) to be furnished with copies of all the materials relied upon or referred to in the grounds of detention, with reasonable expedition. Delay tends to stultify the detenu's right to make an effective representation and, to have it considered speedily by the

authority concerned. The delay in supplying the copies to the detenu, in the facts of the instant case, being inordinate and unreasonable, had vitiated the continuance of his detention. It was on this short ground, we had by our Order dated May 7, 1980 allowed this writ petition and ordered the release of the detenu.

46. Here in this case, from the materials placed on record and also from the submission of Mr. T.T. Tara, the learned counsel for the petitioner, it becomes apparent that the respondent authorities had not furnished the copy of the approval of the Advisory Board, dated 30.09.2023. Mr. Tara submits that though one RTI application was filed on 08.11.2023, yet, copy of the report of the Advisory Board has not yet been furnished to the detenu or his relatives. It also appears that there is no explanation in the affidavit of the State respondent in this regard and the learned Government Advocate, Arunachal Pradesh also failed to explain the same at the time of hearing. Rather, the State respondents have tactfully avoided making any comment in the affidavit in opposition by stating that the matter is pertained to the Home Department. And drawing premises from the ratio laid down in the case of **Shri Tushar Thakkar** (supra), this court is inclined to hold that failing to furnish the decision of Advisory Board, dated 30.09.2023, to the detenu, in the facts of the instant case, being inordinate and unreasonable, had vitiated the continuance of his detention.

Issue No. (vi) is accordingly answered in negative.

47. Thus, on over all consideration of the fact and circumstances of the case and materials placed on record, this Court is of the opinion that the impugned order dated 30.08.2023, stands invalidated on the following grounds: -

[a] that, there is no live link or nexus of the activities of the detenu, including the past antecedents, with immediate need to order his detention under NSA, as the same (activities of the detenu) cannot be said to have prejudicially affected the security of the state and maintenance of 'public order', rather the same appears to be the issue of 'law and order' and the existing legal framework is sufficient to deal with the same.

[b] that, the order of detention and the grounds thereof, have not been communicated to the detenu or his relatives, by the state respondents in time bound manner;

[c] that, there is unexplained delay of three days on the part of the District Magistrate, Changlang, Arunachal Pradesh, in deciding the representation of the petitioner;

[d] that, the state respondents have failed to communicate the rejection of the representation to the detenu in time bound manner; and

[e] that, the state respondents have failed to furnish the order of approval of the impugned order dated 30.08.2023, by the Advisory Board of National Security Act, Arunachal Pradesh unit, to the detenu and his relatives.

48. For the reasons indicated herein above, this Court finds sufficient merit in this petition and accordingly, the same stands allowed. The impugned detention **order dated 30.08.2023**, stands quashed and set aside. Since the impugned order dated 30.08.2023, failed to withstand the legal scrutiny and accordingly stands quashed, the subsequent **orders dated 14.09.2023 and 20.11.2023**, by which the representations of the detenu were dismissed, and the **order dated 16.10.2023**, passed by the Principal Secretary (Home) Govt.

of Arunachal Pradesh, also failed to withstand the legal scrutiny, and therefore, the same stands quashed and set aside. The detenu shall be released forthwith if not warranted in any case. The parties have to bear their own cost.

JUDGE

JUDGE

Comparing Assistant