

GAHC010081502023



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

Case No. : WP(C)/2208/2023

SALIM UDDIN LASKAR @ MONAI
S/O- LATE TOBARAK ALI LASKAR,
VILLAGE- VICHINGCHA PT-II, P.S.- HAILAKANDI,
DISTRICT- HAILAKANDI, ASSAM.

VERSUS

1: THE STATE OF ASSAM AND 6 ORS REPRESENTED BY THE
COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, HOME AND
POLITICAL DEPARTMENT, DISPUR, ASSAM.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT DISPUR ASSAM.

3:THE DIRECTOR GENERAL OF POLICE
ULUBARI GUWAHATI ASSAM.

4:DEPUTY INSPECTOR GENERAL OF POLICE
(SOUTHERN RANGE) SILCHAR CACHAR ASSAM.

5:THE SUPERINTENDENT OF POLICE
HAILAKANDI P.O. P.S. AND DIST.- HAILAKANDI ASSAM.

6:THE OFFICER-IN-CHARGE HAILAKANDI POLICE STATION P.O
P.S. AND DIST.- HAILAKANDI ASSAM.

7:THE SUPERINTENDENT DISTRICT JAIL
HAILAKANDI P.O. P.S. AND DIST.- HAILAKANDI ASSAM

For the Petitioner : Mr. A.M. Barbhuiya, Advocate.

For the Respondents : Ms. M. Bhattacharjee, Additional Senior Government Advocate,
Assam for all the respondents.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

31.05.2023

The instant writ petition under Article 226 of the Constitution of India has been filed by the writ petitioner/ detenu, namely, Salim Uddin Laskar @ Monai, for assailing the order dated 11.11.2022 executed on 14.02.2023, whereby the petitioner has been placed under detention by resorting to the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as "1988 Act").

The instant writ petition came to be filed on 10.04.2023 and notice was issued to the respondents on 28.04.2023. Copy of the writ petition was provided to Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam appearing for all the respondents on the very same day and she was given 3(three) weeks' time to file affidavit-in-opposition.

When the matter was taken up on 30.05.2023, this Court directed the learned Additional Senior Government Advocate, Assam to place on record copy of the order of confirmation of detention, if any, passed by the detaining authority confirming the detention order dated 11.11.2022 and authorising the detention of the detenu beyond a period of 3(three) months.

Today, an affidavit-in-opposition has been filed on behalf of the respondent No.1, the Under Secretary to the Government of Assam, Political (A) Department, annexing therewith copy of the order dated 19.05.2023, whereby the detention of the detenu petitioner has been confirmed and it has been ordered that the detenu shall be kept in detention for a period of 1(one) year from the date of the detention.

There is no dispute about the fact that the order of detention issued on 11.11.2022 was executed and served upon the detenu on 14.02.2023 and on the very same day, he was placed under detention.

The scheme of the constitutional framework, to be specific Article 22(4) of the Constitution of India, clearly postulates that no law providing for preventive detention shall authorize the detention of a person for a longer period than 3(three) months, unless the Advisory Board has reported that there is sufficient cause for such detention.

The Advisory Board in the case at hand gave its report on 31.03.2023 opining that there are sufficient grounds for detention of the detenu. Despite the Advisory Board's opinion being received way back on 31.03.2023, the order of confirmation has been passed after lapsing of the mandatory period of 3(three) months.

This Court has noticed in numerous matters that the authorities concerned in the State are not complying the said mandate and the orders of detention are not being confirmed within the mandatory period of 3(three) months, thereby violating the letter and spirit of Article 22(4) of the Constitution of India read with Section 9(f) of the 1988 Act. Reference in this regard may be had to the judgment & order dated 24.02.2023 passed by this Court in Writ Appeal No.299/2022 (*Sharukh Ahmed @ Muktar -Vs- The Union of India & Ors.*) and the order dated 11.05.2023 passed in WP(Crl.) No.17/2023 (*Mondira Das & Anr. -Vs- The Union of India & Ors.*).

As a consequence, we are of the firm opinion that as the order of detention of the detenu herein was not confirmed within 90 days (three months) from the date of his detention, i.e. 14.02.2023, his continued detention is illegal and contrary to the mandate of Article 22(4) of the Constitution of

India read with Section 9(f) of the 1988 Act. The order of confirmation dated 19.05.2023 is totally illegal and violative of the constitutional guarantee of liberty and hence the same is quashed. The writ petitioner/detenu, namely, Salim Uddin Laskar @ Monai, shall be released from custody forthwith, if not wanted in any other case.

With the above observation and direction, the writ petition is disposed of.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant