

GAHC010139142023



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

**Case No. : W.P.(Crl.)/23/2023**

LAKHAN DAS  
S/O- SHRI SURESH DAS, R/O- VILL- LONGKHRANG, P.O. AND P.S.  
BOKAJAN, DIST.- KARBI ANGLONG, ASSAM, PIN- 782480

VERSUS

UNION OF INDIA AND 4 ORS  
REP. BY THE SECRETARY TO GOVT. OF INDIA, DEPTT. OF REVENUE,  
MINISTRY OF FINANCE, NEW DELHI, PIN- 110001

2:THE JOINT SECRETARY (PITNDPS)  
GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
ROOM NO. 202  
SECOND FLOOR  
JEEVAN TARA BUILDING  
PARLIAMENT STREET  
NEW DELHI  
PIN- 110001

3:DIRECTOR GENERAL OF POLICE  
ASSAM  
ASSAM  
ULUBARI  
GUWAHATI- 781005

4:THE SUPERINTENDENT OF POLICE  
KARBI ANGLONG  
DIPHU  
DIST.- KARBI ANGLONG  
ASSAM

5:THE ADVISORY BOARD  
UNDER THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS  
AND PSYCHOTROPIC SUBSTANCES ACT  
1988 C/O- COMMISSIONER AND SECRETARY GOVERNMENT OF ASSAM  
HOME AND POLITICAL DEPTT.  
DISPUR  
GUWAHATI- 78100

**– B E F O R E –**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

For the petitioner : Ms. P. Bhattacharya  
Ms. P. Mahanta, Advocates

For the respondent : Ms. A. Gayan, C.G.C.  
For respondent Nos.1 & 2  
Mr. D. Nath, Senior Govt. Advocate, Assam  
For respondent Nos.3, 4 & 5

Date of hearing & judgment : 21.08.2023

**JUDGMENT & ORDER**

S. Mehta, C.J.

Heard learned counsel appearing for the parties and perused the material placed on record.

**2.** The instant petition under Article 226 of the Constitution of India has been filed by the detenu petitioner seeking issuance of a writ of habeas corpus by challenging the legality and validity of the order dated 29.12.2022 passed by the

respondent No.2, Joint Secretary (PITNDPS), Government of India, Ministry of Finance, Department of Revenue, New Delhi, under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as PITNDPS Act) whereby the detenu petitioner was ordered to be placed under detention and so also the order dated 11.04.2023 whereby the order of detention passed against the detenu petitioner was confirmed for a period of one year from the date of his detention.

**3.** The composite order and the grounds of detention (Annexure-1) dated 29.12.2022 served on the detenu petitioner project that the petitioner herein was detained on the allegations of being involved in repeated acts of illicit trafficking in narcotic drugs viz. ganja and psychotropic substances, viz. heroin. Two criminal cases have been referred to in the grounds of detention. The first case pertains to recovery of 1586.03 Kgs of ganja from a container truck effected by the officers of NCB Guwahati Zonal Unit on 28.03.2021. The second case pertains to recovery of heroin (net weight 794.44 gms) effected by the officers of Barpathar Police Station, Karbi Anglong, Assam on 25.05.2021. In the first case, pertaining to recovery of ganja, the Court of Additional Sessions Judge, Kamrup allowed the prayer for bail made by the detenu petitioner. The detaining authority has recorded due satisfaction in the order/grounds of detention regarding the active involvement of the petitioner in the prejudicial activities of illicit traffic in narcotic drugs and psychotropic substances and the imminent possibility of the petitioner repeating the serious prejudicial acts if not confined. The satisfaction so recorded by the detaining authority is based on substantive material and the supporting documents, which have been annexed with the grounds of detention. The order of detention was executed and the petitioner was detained and put behind bars on 15.02.2023. After being so

detained, the composite detention order containing the grounds of detention and the relied upon documents were served upon the detenu on the very same day. The detenu petitioner submitted representation to the respective authorities on 09.03.2023. The Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue, PITNDPS Division conveyed rejection of the petitioner's representation vide memorandum dated 20.03.2023. Thereafter, the detention of the petitioner has been confirmed by order dated 11.04.2023 as indicated above.

**4.** Learned counsel for the petitioner Ms. P. Bhattacharya has put forth two grounds for challenging the legality and validity of the order of detention passed against the petitioner:-

Firstly, that the order of detention was passed and executed after significant delay and thus, there is no live nexus between the order of detention and the genuine requirement to detain the petitioner. As per the petitioner's counsel, the delay in passing of the detention order and the unexplained delay in the execution thereof throw a doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order. In support of this contention, learned counsel for the petitioner Ms. Bhattacharya placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***Sushanta Kumar Banik vs. State of Tripura & Ors.*** reported in ***AIR 2022 (SC) 4715.***

The second ground advanced by the learned counsel for the petitioner is that there was a delay in disposal of the representation submitted by the petitioner, which vitiates the order of detention.

**5.** On the other hand, Ms. A. Gayan, learned standing counsel for the Government of India, vehemently and fervently opposed the submissions

advanced by the petitioner's counsel. She pointed out from the record that the proposal for detaining the petitioner dated 18.11.2022 was forwarded by the Sponsoring Authority, i.e. Narcotics Control Bureau, Guwahati Zone and was received by the Ministry on 21.11.2022. The same was placed before the Screening Committee, which considered and recommended the proposal in its meeting held on 13.12.2022. The order of detention was passed promptly on 29.12.2022. Ms. Gayan urged that the detaining authority has duly applied its mind to the facts and circumstances as available on record before passing the order of detention. The incriminating material in existence against the detenu as presented by the Sponsoring Authority was analysed and scrutinized minutely whereupon, it came to the light that the petitioner is a major trafficker of narcotic drugs and psychotropic substances in the Karbi Anglong area. The Screening Committee recommended the proposal as fit for preventive detention under the PITNDPS Act and accordingly, the order of detention was issued on 29.12.2022 by the detaining authority by exercising powers under Section 3(1) of the PITNDPS Act. After issuance of the order, the same was endorsed to the Director General of Police, Assam with the request to take necessary action and to serve the same upon the petitioner, who was on bail. The order was executed on 17.02.2023 and on the same day, the grounds of detention, the relied upon documents along with the list thereof were served on the detenu petitioner, who was detained at the District Jail, Diphu, Karbi Anglong. The representation submitted by the petitioner on 09.03.2023 was carefully considered and rejected with utmost expedition, i.e. on 20.03.2023. Thus, as per the learned Central Government Counsel, Ms. A. Gayan, there is neither any delay in passing the order of detention nor there was unexplained delay in execution thereof. She further urged that the representation submitted by the petitioner detenu was

also disposed of expeditiously. She thus, implored the Court to dismiss the petition.

**6.** We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material available on record.

At the outset, we may note that the petitioner has been found deeply involved in illicit trafficking of narcotic drugs and psychotropic substances. Two cases were relied upon in the grounds of detention. The first involving recovery of 1586.03 kgs of ganja and the second involving recovery of 794.44 gms of heroin. The petitioner's role in the trafficking of contraband drugs has been established by significant evidence including the call details collected during investigation. The subjective satisfaction expressed in the order of detention and the ground of detention clearly establishes the genuine need to detain the petitioner herein.

The Hon'ble Supreme Court in the case of ***Sushanta Kumar Banik (supra)***, relied upon by the petitioner, laid down that if there is unexplained and unreasonable delay between the date of the proposal and the date of passing of the order of detention and so also between the date of the order of detention and the actual arrest of the detenu, such delay unless satisfactorily explained, throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently renders the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped. Thus, the emphasis laid by the Hon'ble Supreme Court in the aforesaid judgment was that unless the delay, if so occasioned in passing the order of detention and the execution thereof, is explained, it can be presumed that "live and proximate link" is snapped.

**7.** Analysing the facts of the case at hand, we find that in addition to the fact that the order of detention was passed within a period of one and half months from the date of the proposal being received by the detaining authority, the execution thereof was effected within a period of one and half months. The time spent between the date of proposal and the date of passing the order of detention has been satisfactorily explained in the affidavit filed by the respondents. Likewise, proper explanation has been given for the period which was spent in execution thereof. Hence, the ratio of the judgment in the case of ***Sushanta Kumar Banik*** (*supra*) does not come to the aid of the petitioner in any manner. The second argument raised by the petitioner's counsel regarding the delay in considering the petitioner's representation is absolutely frivolous considering the fact that the representation submitted by the petitioner was disposed of within a period of twelve days only and hence, there was no ostensible delay in considering the petitioner's representation.

**8.** In wake of the discussion made above, we find no valid ground to interfere with the order of detention passed against the petitioner and so also the order of confirmation thereof. Thus, this petition seeking issuance of a writ of habeas corpus is bereft of merit and is dismissed as such.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**