

GAHC010134502024



2024:GAU-AS:12882-DB

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

Case No. : W.P.(Crl.)/21/2024

SMT. MANJU BEGUM
W/O KHALILUR RAHMAN, R/O LOCH, MUKTAPUR, P.S.-BAIHATA
CHARIALI, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME AND POLITICAL DEPARTMENT, DISPUR,
GUWAHATI-781006

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE ADVISORY BOARD
PITNDPS ACT
C/O THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE DEPUTY SECRETARY (PITNDPS) DIVISION
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
GOVERNMENT OF INDIA
CHURCH ROAD HUNTMENTS
NORTH BLOCK
NEW DELHI-11000

Advocate for the Petitioner : MR. Y S MANNAN, MS N DEKARAJA,MR. C K NATH

Advocate for the Respondent : GA, ASSAM, MS. K PHUKAN (C.G.C),DY.S.G.I.

BEFORE

**HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

O R D E R

09.12.2024

(Mrs. Susmita Phukan Khaund, J.)

Heard Mr. Y.S. Mannan, learned counsel for the petitioner. Also heard Mr. D. Mozumdar, learned Addl. Advocate General, assisted by Ms. R. Begum, learned counsel for the State respondents.

2) By filing this *habeas corpus* petition under Article 226 of the Constitution of India, the petitioner, namely, Smt. Manju Begum, has assailed the order bearing eCF No. 446481/208 dated 22.05.2024, passed by the Secretary to the Govt. of Assam, Home and Political Department (respondent no.2), by which the petitioner's husband, namely, Khalilar Rahman, was ordered to be detained until further order under section 3(1) of the Prevention of Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the "PITNDPS Act" for short).

3) As per the said order, the detention of the husband of the petitioner (hereinafter referred to as "detenue") was proposed to prevent him from engaging in illegal activities of illicit business in narcotic drugs and from repeated violations of the provisions of NDPS Act, 1985. It was further mentioned in the said order that the detenue had persistently involved himself with the crime of illegal business of narcotics drugs since many years and was

arrested in (i) STF PS Case No. 6/2023 under sections 21(c)/ 29(1) of NDPS Act; (ii) Geetanagar PS Case No. 219/2021 under sections 21(c)/ 29(1) of NDPS Act; and (iii) North Guwahati PS Case No. 111/2023 under sections 21(c)/ 29(1) of NDPS Act and that the samples seized tested positive for heroin. Moreover, as intimated by the Deputy Inspector General of Police (STF), Assam vide his letter dated 24.01.2024, the detainee was found to be a repetitive offender under various sections of the NDPS Act and therefore, his detention was imperative to keep him out of business and to break the network of drugs supply in the districts of Kamrup (M) and Kamrup. Accordingly, the detention was ordered.

4) The grounds of detention has been appended to the detention order dated 22.05.2024, which also discloses that certain documents, being the copy of FIR, GD Extract, seizure memo, FSL report and counter-foil of charge-sheet of the three police cases were also provided to the detainee. Moreover, the detainee was informed about his right to make a representation through the jail authorities to the following authorities, viz., (i) The Principal Secretary to the Govt. of Assam, Home and Political Department, the Detaining Authority under PITNDPS Act; (ii) Advisory Board, PITNDPS Act; and (iii) The Deputy Secretary PITNDPS Division), Ministry of Finance, Department of Revenue, Govt. of India.

5) In paragraph 5 of this petition, the petitioner has projected that the detainee could not write a representation on his own due to lack of knowledge and though he sought assistance for writing the representation through some other person but he was not allowed to do so. The State has not specifically denied the said statement.

6) Thus, the petitioner had submitted a representation dated 30.05.2024, addressed to the Principal Secretary to the Govt. of Assam, Home & Political Department. The said representation contains a foot note that copy thereof

were sent to (1) Advisory Board PITNDPS Act, and (2) The Deputy Secretary to the Govt. of India, PITNDPS. By projecting that the said representation was not responded, the present *habeas corpus* petition has been filed on 28.06.2024. Notice of motion was issued by this Court by order dated 17.07.2024.

7) Affidavit-in-opposition on behalf of the respondent nos. 1 and 2 was filed on 05.08.2024, wherein it has been stated that by its Report dated 07.07.2024, the Advisory Board under PITNDPS Act, 1985 had opined that there are sufficient grounds for detention of the detainee and the report was submitted to the Government.

8) It has further been stated by the respondent nos. 1 and 2 that by an order bearing eCF No. 4466481/281 dated 03.08.2024, the representation of the petitioner was rejected. In the said order, it has also been mentioned that on receipt of the Report of the Advisory Board, the State Government had confirmed the Detention Order dated 22.05.2024 for a period of one year vide eCF No. 446481 dated 25.07.2024. There is also no statement to the effect that the said order dated 25.07.2024 was served upon the petitioner.

9) It may also be stated that in the affidavit-in-opposition filed by the respondent nos. 1 and 2, it has been stated that the representation of the petitioner dated 30.05.2024, was considered and rejected by order dated 03.08.2024.

10) The respondent no. 3, i.e. Advisory Board, PITNDPS Act, has not filed any affidavit-in-opposition and it has not been denied that the representation of the petitioner dated 30.05.2024 was not served on the said authority or that has been disposed of.

11) It would be pertinent to state that on behalf of the Union of India

(respondent no.4), no affidavit in opposition has been filed, but the learned CGC has obtained instructions that the representation of the petitioner dated 30.05.2024, was examined and considered by the Deputy Secretary to the Government of India, PITNDPS, and was rejected vide order dated 30.07.2024.

12) The learned counsel for the petitioner has mainly urged and pressed three grounds to assail the impugned detention order. Firstly, that the inordinate delay on part of the Detaining Authority (respondent no.2) to consider the said representation, and moreover, the two other authorities, who were required to consider the said representation have not done so constitutes a good ground to quash the impugned detention order dated 22.05.2024, passed against the detainee. Secondly, it is urged that the detention order has been passed only to frustrate the release of the detainee as the authorities were aware that there was likelihood that bail would be granted to the detainee. Thirdly, it has been submitted that in the impugned order dated 22.05.2024, it is mentioned that the detainee had three NDPS cases registered against him and that he was on judicial remand. However, contrary to the same, the detainee has been granted bail vide order dated 17.08.2021, passed in B.A. No. 1391/2021, which was in connection with Geetanagar P.S. Case No. 219/2021, for which reliance is placed on para-2 of the representation dated 22.05.2024 and the copy of the bail order annexed to the said representation as Annexure-2. Thus, it has been submitted that when the detainee was already in judicial custody, there was no necessity to pass a detention order, which is stated to be mechanical exercise of power without application of judicial mind.

13) In support of his contentions, the learned counsel for the petitioner has cited the following cases, viz., (1) *Banka Sneha Sheela v. The State of Telengana & Ors.*, (2021) 9 SCC 415, (2) *Yumman Ongbi Lembi Meima v. State*

of Manipur, (2012) 2 SCC 176, (3) Ummu Sabeena v. State of Kerala & Ors., (2011) 10 SCC 781, (4) Rekha v. State of Tamil Nadu & Anr., (2011) 5 SCC 244, (5) Debarshi Kashyap v. The Union of India & Ors., W.P.(Crl.) 14/2020, decided on 25.06.2021, (6) Miss. Regina Begum v. The Union of India & Ors., W.P.(Crl.) 15/2021, decided on 11.11.2021, (7) Babul Ahmed v. The Union of India & Ors., W.P.(Crl.) 25/2022, decided on 23.02.2023, (8) Alia Begum v. The State of Assam & Ors., W.P.(Crl.) 20/2022, decided on 05.09.2022.

14) The learned Addl. A.G. has given an extensive reply to the submissions made by the learned counsel for the petitioner, specifically urging that the detenue was incorrigible and there was very likelihood that he would indulge in more trafficking of narcotic drugs and psychotropic substances, which would ruin the future of the youths in the State.

15) In the earlier decision of this Court in the case of *Babul Ahmed (supra)*, the following observation has been made:-

“9. The law in this respect has been settled by the Hon’ble Supreme Court in its pronouncement in Rashid Kapadia -vs- Medha Gadgil and others, reported in (2012) 11 SCC 745, wherein in paragraph 13 it had been provided as extracted:-

“13. It is well settled that the right of a person, who is preventively detained, to make a representation and have it considered by the authority concerned as expeditiously as possible, is a constitutional right under Article 22(5). Any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu. The proposition is too well settled in a long line of decisions of this Court. We do not think it necessary to examine the authorities on this aspect, except to take note of a couple of judgments where the principle is discussed in detail. They are: Mohinuddin v. District Magistrate, Beed [(1987) 4 SCC 58 : 1987 SCC (Cri) 674] and Harshala Santosh Patil v. State of Maharashtra [(2006) 12 SCC 211 : (2007) 1 SCC (Cri) 680]
.”

16) In the present case in hand, the representation is dated 22.05.2024. The rejection order was passed on 03.08.2024, i.e. after 72 (seventy two) days.

However, there is no explanation in the order dated 03.08.2022, by the respondent no.2 regarding the delay of 72 (seventy two) days in the disposal of the representation dated 30.05.2024. Such inordinate delay is also not explained in the affidavit-in- opposition filed by the respondent nos. 1 and 2. Moreover, the respondent no. 3 has not considered the petitioner's said representation dated 22.05.2024, whereas the respondent No. 4 rejected the representation after two months.

17) Therefore, following the legal proposition laid down by the Supreme Court of India in the case of *Rashid Kapadia (supra)*, which has been followed by this Court in the case of *Babul Ahmed (supra)*, the delay in disposal of the representation by 72 days, i.e. about 2 months 10 days, is held to have vitiated the continued detention of the detenue, namely, Md. Khalilar Rahman. The objection by the learned Addl. Advocate General cannot be sustained in any manner due to the undue delay in disposal of the representation dated 30.05.2022.

18) Accordingly, the impugned detention order bearing eCF No. 446481/208 dated 22.05.2024, passed by the Secretary to the Govt. of Assam, Home and Political Department (respondent no.2), by which the petitioner's husband, namely, Khalilur Rahman, was ordered to be detained until further order under section 3(1) of the PITNDPS Act, is hereby set aside and quashed. Resultantly, if the detenue is not required to be kept in custody under any law for any other purpose, or if he is not required under any other case, the detenue shall be released forthwith.

19) Therefore, the other points raised by the learned counsel for the petitioner is not required to be gone into.

20) The writ petition is allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant