

GAHC010195172023



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

Case No. : W.P.(Crl.)/32/2023

JYOTSNA BEGAM
W/O- ASAD UDDIN @ ASAR, R/O- VILLAGE- DHIT SADARASHI, WARD NO.
06, P.S. KARIMGANJ, DIST.- KARIMGANJ, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
THROUGH THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY
OF HOME, NEW DELHI

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

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME AND POLITICAL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI

5:THE INSPECTOR GENERAL OF POLICE
CID
ASSAM
ULUBARI
GUWAHATI

6:THE COMMISSIONER OF POLICE
PANBAZAR
GUWAHATI

7:THE SUPERINTENDENT
CENTRAL JAIL
SILCHAR

8:THE DISTRICT MAGISTRATE
SILCHA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

03-05-2024

(M.R.Pathak, J)

Heard Mr. A A Ahmed, learned counsel for the petitioner and Mr. K K Parasar, learned Central Government counsel for the respondent No. 1. Also heard and Mr. D Nath, learned Senior Government Advocate, Assam for the respondent Nos. 2 & 8.

2. On perusal of the police records and recommendation of the Inspector General of Police (SR), Assam as well as the Superintendent of Police, Karimganj and being satisfied that Asad Uddin @ Asar, Son of late Ayaj Ali, resident of Village-DhitSadarashi, Ward No. 6, Police Station-Karimganj, District-Karimganj, Assam, is involved in the act that is prejudicial to the provisions under the Narcotic Drugs and Psychotropic Substances Act, 1985 continuously indulging in illicit trade of narcotic drugs even after his arrest on several times; the Secretary to the Government of Assam in the Home and Political (A) Department and the Detaining Authority under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as PITNDPS Act, 1988), exercising the power conferred under Section 3(1) of said 1988 Act issued an order of detention under Ecf. No. 220422/77

dated 18.04.2023 detaining said Asad Uddin @ Asar under the PITNDPS Act, 1988 until further order.

3. The Secretary to the Government of Assam in the Home and Political (A) Department and the Detaining Authority under the PITNDPS Act, 1988 Vide No. Ecf-220422/78 dated 18.04.2023 informed the grounds of detention under the said 1988 Act to the said detainee Asad Uddin @ Asar and both the orders of detention as well as the grounds of detention dated 18.04.2023 were served by the Superintendent of District Jail, Karimganj upon the detainee on 08.05.2023 with due written acknowledgment as the detainee was already in jail custody in the District Jail at Karimganj.

4. The said detainee on 27.05.2023 preferred a representation against the said order of detention dated 18.04.2023 passed by the Secretary to the Government of Assam in the Home and Political (A) Department praying for revocation of the same in the interests of justice. After examining the said representation of the detainee dated 27.05.2023 finding no valid grounds for revocation of the order of his detention dated 18.04.2023, the Secretary, Home and Political (A) Department, Government of Assam by order Ecf No-220422/109 dated 13.06.2023 rejected the said representation dated 27.05.2023 preferred by the petitioner.

5. On the basis of the report of the Advisory Board issued vide their order dated 10.06.2023 and in exercise of the powers conferred under Section 9(f) of the PITNDPS Act, 1988 the State Government in the Political (A) Department by order No. HMA.19030/11/2022-Pol-(A)/(eCF-220422)/ 108 dated 13.06.2023 confirmed the detention order of the said detainee Asad Uddin @ Asar dated 18.04.2023 for a period of one year from the date of detention. The said order dated 13.06.2023 of the State Government taken on the basis of report of the Advisory Board dated 10.06.2023 was handed over to the petitioner on 27.06.2023.

6. Wife of the said detainee, namely, Asad Uddin @ Asar as petitioner filed this writ petition challenging those orders issued by the Secretary to the Government of Assam in the Home and Political (A) Department and the Detaining Authority dated 18.04.2023 as well as order of the State Government in the Political (A) Department dated 13.06.2023 affirming his detention under the provisions of the PITNDPS Act, 1988, praying to set aside and quash the

same and further, to release the said detainee from detention.

7. The main contention of the petitioner, amongst others, is that – (i) the Secretary to the Government of Assam in the Home and Political (A) Department and the Detaining Authority has no such authority under the law and not been empowered under Section 3 (1) of said 1988 Act to pass the order of detention against the said detainee, (ii) all the documents referred to and relied upon in the orders and the grounds were not furnished to the detainee as required under the law due to which the detainee was deprived of his right of filing an effective representation against the impugned order of detention, (iii) though the Advisory Board is under legal obligation to consider the materials placed before the Board by the State Government and to procure any further information which the Board may deem necessary and to give the person concerned an opportunity of being heard and to submit its report to the State Government within the specified time from the date of detention, but the same was not complied with as required under the law, (iv) the authorities concerned in the State Government in the Advisory Board did not perform the mandatory duties as provided under Sections 3(1), 3(2), 3(3), Section 9(b) and 9(c) of the PITNDPS Act, 1988, (v) the authorities failed to consider the fact that the learned Special Judge (NDPS), Karimganj on 01.10.2021 itself granted bail to the detainee in connection with Karimganj Police Station Case No. 496/2021 under Section 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 prior to the impugned detention orders dated 18.04.2023/13.06.2023; (vi) the authorities failed to consider the fact that the learned Special Judge (NDPS), Karimganj by its judgment and order dated 04.08.2023 passed in Special NDPS Case No. 44/2021 already acquitted the detainee in connection with Karimganj P.S. Case No. 496/2021 under Section 21(c)/25 of the NDPS Act, 1985.

8. The petitioner stated that the authorities concerned in the State Government in its Political and Home Department as well as the concerned Advisory Board while issuing the impugned orders of detention dated 18.04.2023 and 13.06.2023 did not consider the above facts nor considered the fact that the detainee was already in judicial custody and thereby mechanically without any due consideration passed those impugned orders. As such, it is submitted on behalf of the detainee that the impugned detention orders dated 18.04.2023 and 13.06.2023 being in violation of Articles 14, 19, 21 and 22 of the Constitution of India as

well as the PITNDPS Act, 1988, should be set aside and quashed.

9. The State respondents in the Home Department filed its affidavit clarifying that the grounds of detention pertaining to the order of detention dated 18.04.2023 was duly informed to the detainee on the said date itself in compliance of the provision of Section 3(3) of the PITNDPS Act, 1988 who at the relevant point of time was in judicial custody and the said detention order along with the grounds was served upon the said detainee on 08.05.2023. In that regard the Superintendent of Police, Karimganj on 12.05.2023 specified regarding service of said order dated 18.05.2023 upon the detainee on 08.05.2023 with service report.

10. The representation of the petitioner dated 27.05.2023 was duly examined in the light of relevant records/police reports, the representation submitted by the Superintendent of Police, Karimganj dated 09.06.2023 and since grounds for revocation of the said representation dated 27.05.2023 on such examination were not found, the said representation of the detainee was rejected by order dated 13.06.2023.

11. As per Section 9(b) of the PITNDPS Act, 1988 the matter is required to be referred to the Advisory Board by the Government within a period of five weeks from the date of execution of detention order and whereas, the case of the detainee was referred to the Advisory Board on 19.05.2023 itself much within time. Further, the Advisory Board as per the provisions of Section 9 (b) of the PITNDPS Act, 1988 requires to submit their opinion to the Government within a period of eleven weeks from the date of execution of the detention order, whereas with regard to the detainee, the Advisory Board on 10.06.2023 submitted its report to the Government confirming the detention order dated 18.04.2023 for a period of one year, which was confirmed by the State Government on 13.06.2023.

12. According to the State respondents, the detainee was found involved in illegal trafficking of drugs since long time in the district of Karimganj, thereby turning a large number of youths into addicts harming their health as well as depriving the future of the nation from quality human resource having detrimental effect on the society at large, encouraging such addicts into various criminal activities affecting the society.

13. The respondents State contended that since the detainee is a habitual offender of

illegal drugs trafficking violating the provisions of the NDPS Act, 1985 the competent authority was compelled to take the decision in issuing the order of detention dated 18.04.2023 under the PITNDPS Act, 1988 so as to prevent him from acting in any manner prejudicial to the repeated violations of the NDPS Act, 1985.

14. However, the petitioner did not object to the contention made by the State respondents filing any reply.

15. During pendency of this writ petition, the period specified in the impugned Detention Order under Ecf. No. 220422/77 dated 18.04.2023 issued by the Government of Assam in its Home and Political (A) Department with regard to the detenue, i.e., petitioner's husband namely, Asad Uddin @ Asar under the PITNDPS Act, 1988 have elapsed.

16. As such, this writ petition being infructuous, stands dismissed.

JUDGE

JUDGE

Comparing Assistant