



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

Case No. : W.P.(Crl.)/5/2024

SMT. ROMICHAND BEGUM @ ROMIJAN
DAUGHTER OF AKHTAR JAMAL
R/P SAMAGURI
P.O./P.S.- JAKHLABANDA
DIST- NAGOAN, ASSAM

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND
2:THE SPECIAL SECRETARY TO THE GOVT. OF NAGALAND
HOME DEPT. (POLITICAL BRANCH)
KOHIMA NAGALAND

3:THE SUIPERINTENDENT OF JAIL
DIMAPUR NAGALAND

4:THE UNION OF INDIA
PITNDPS/COFEPOSA
MINISTRY OF FINANCE
DEPT. OF REVENUE
CENTRAL ECONOMIC INTELLIGENCE BUREAU
6TH FLOOR
B-WING
JANPATH BHAWAN
JANPATH
NEW DELHI-11000

Advocate for the Petitioner : ABI SENOTSU

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE NELSON SAILO
HON'BLE MR. JUSTICE KAKHETO SEMA**

JUDGMENT & ORDER (ORAL)

Date : 24.06.2024

(Nelson Sailo,J)

Heard Mr. Abi Senotsu, learned counsel for the petitioner and Mr. E. Thiba Phom, learned Government Advocate appearing on behalf of the State respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner prays for issuance of writ of Habeas Corpus and/or any other appropriate writ, order or direction of the like nature for setting aside the order of her detention dated 04.07.2023, the Confirmation order dated 29.09.2023 (Annexure-F), the order dated 19.12.2023 (Annexure-J) and order dated 01.04.2024 (Annexure-K).

3. The facts of the case as projected by the petitioner is that on 20.05.2023, a suo moto FIR was lodged at West Police Station Dimapur stating that an information was received from source regarding smuggling of illegal contraband drugs. Accordingly, the SOT team along with Women Police Cell conducted a search operation at the residence of the detenue at Zeliangrong colony Dimapur which allegedly led to recovery of eighty two(82) packets

of suspected heroine weighing 984 gms and a mobile phone. In this connection, the petitioner was arrested and the case was registered vide Dimapur West P.S Case 044/23 under section 22(c) of NDPS Act.

4. After the petitioner was in judicial custody for about 46 days, the Addl. DGP (L & O), Nagaland Kohima sent a proposal to the Special Secretary (Home) to the Government of Nagaland that the petitioner be detained under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988(Act of 1988) in order to prevent the petitioner from continuing her harmful and prejudicial activity by engaging in illicit traffic in narcotic drugs and psychotropic substance which poses a threat to people's health and welfare and as her act of illegal traffic have a deleterious effect on the nation's economy.

5. The Special Secretary (Home) on being satisfied with the proposal, in exercise of powers conferred by section 3(1) of the Act of 1988 passed the detention order dated 04.07.2023 detaining the petitioner for a initial period of three months w.e.f 3.10.2023. A copy of the detention order was furnished to the petitioner through the I.O on 15.07.2023. Thereafter, the Special Secretary(Home) Government of Nagaland by an order dated 29.09.2023 extended

confirmation of detention of the petitioner and extended her detention for another period of three months w.e.f 4.10.2023 till 03.01.2024 and within which period, her detention was to be reviewed as required under the provisions of law.

6. The petitioner then submitted her representation against her detention before the Chief Secretary, Government of Nagaland and the Special Secretary, Home Department, Political Branch through the Superintendent of Jail, Dimapur praying for revocation of her detention. The said representation was however rejected vide order dated 07.11.2023 passed by the Special Secretary (Home) to the Government of Nagaland, Home Department, Political Branch. The representation of the petitioner was also rejected separately by order dated 17.11.2023 passed by the Chief Secretary to the Government of Nagaland. The detention of the petitioner was thereafter extended for another period of three months from 04.01.2024 till 03.04.2024 vide order dated 19.12.2023 and thereafter, for another period of three months w.e.f. 04.04.2024 till 03.07.2024 vide order dated 01.04.2024. The petitioner being aggrieved with the prolonged and extended detention is before this Court through the instant writ petition.

7. Mr. Abi Senotsu, learned counsel for the petitioner submits

that the petitioner was not given copy of the detention order as stipulated under section 3(3) of the Act of 1988 and was only furnished with the same by the case I.O on 15.07.2023 despite having been detained w.e.f. 07.07.2023. He submits that even after her detention vide order dated 04.07.2023, the petitioner was not informed of her rights to submit a representation against her detention and for which reason, the Fundamental Rights of the petitioner has been infringed in a most arbitrary manner. He therefore, submits that since the petitioner has not been informed about the reason for her detention as stipulated under the Act of 1988, within the time specified, the detention order dated 04.07.2023 and the subsequent confirmation and extension of the detention are bad in law and should be set aside. In support of his submission, the learned counsel relied upon the case of ***Golam Hossain alias Golab vs State of Tripura*** reported in ***AIR Online 2019 Tri 181***.

8. Per contra, Mr. Thiba Phom, learned Government Advocate appearing for the State submits that pursuant to the recovery of of eighty two(82) packets of suspected heroine weighing 984 gms approximately, the petitioner was arrested. On being interrogated, the petitioner admitted to the illegal trafficking of Narcotic drugs and

Psychotropic substance in and around Dimapur town and for which she received commission from the sale of the drugs. Therefore, considering the fact that if the petitioner is released on bail, it will be a threat to peace and security of the State there being every likelihood of the accused of committing the same offence and endangering the lives of many innocent citizens, the proposal for her detention was approved by the competent authority. Therefore, the petitioner has been legally detained under the provisions of the Act of 1988. The learned State counsel further submits that one set of detention order along with its enclosures were handed over to the petitioner on 15.07.2023 and she has duly acknowledged the same. He therefore, submits that there is no merit in the instant writ petition and the same should be dismissed.

9. We have heard the submissions of the learned counsel for the rival parties and perused the materials available on record including the record produced by the learned State counsel.

10. The learned counsel for the petitioner has argued that the detention of the petitioner vide order dated 04.07.2023 without furnishing her a copy of the detention order is illegal due to non-compliance of section 3(3) of the Act of 1988. Section 3 of the Act of 1988 may be abstracted here below:-

"3. Power to make orders detaining certain persons.—

(1) The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention."

10. From the above abstract, it may be seen that as per section 3(3) of the Act of 1988, a communication to the person detained

about the grounds of detention should be made ordinarily not later than five days of the detention. However, in exceptional circumstances and for reasons to be recorded in writing, such communication to the detained person can be made not later than fifteen days from the date of detention. In the present case, the admitted position is that the petitioner was furnished with a copy of the detention order along with its enclosures by the case I.O on 15.07.2023 whereas, she was detained w.e.f. 04.07.2023. Therefore, it can be seen that the detention order was given to her after the lapse of five days of her detention. In terms of the provisions of section 3(3) of the Act of 1988 a copy of detention order may be given to the detained person in exceptional circumstances not later than fifteen days from the date of detention however, subject to reasons to be recorded in writing. In order to find out as to whether any reasons are recorded, we have asked Mr. Thiba Phom, learned State counsel as to whether any such reason has been recorded in writing by the authorities concerned. In reply, the learned State counsel submits that there are no such recording in the relevant file and only that a mention is made in the communication dated 17.07.2023 made by the Sr. Superintendent (Police) to the Special Secretary (Home) to the Government of Nagaland while forwarding

the execution report of the detention order stating that the reason for delay was due to blockage of road by landslide.

11. We have also perused the records produced by the learned State counsel and we do not find any specific reasons to have been recorded in writing for the delay in furnishing of the detention order and the enclosures to the petitioner. The Division Bench of the High Court of Tripura in ***Golam Hossain alias Golab*** (supra) upon finding that no cogent reason were shown in the record for the inordinate delay to provide a copy of the detention order to the detenu held that the detention order was illegal and directed the release of the petitioner. Paragraph 24 of the judgment may be abstracted herein below:

"24. What we find in this case that, though, the detention order was passed on 26.12.2018, it was provided to the petitioner on 25.01.2019 i.e. the day much after the period of 5(five) days as prescribed in Sub-Section (3) of Section 3 of PITNDPS Act and again subsequently on 01.02.2019 i.e after 31 days. The Legislature in their best wisdom has given some relaxation to the authorities concerned that in exceptional circumstances they may provide the copy of the order of detention within 15(fifteen) days but with a clear and specific rider that in that circumstance the authorities concerned are to justify the exceptional circumstance and in that case the authorities concerned has

to record reasons in writing for the delay caused in supplying the copy of the detention order to the detenue. Here, we have noticed that the detaining authority has failed to provide the copy of the detention order as soon as the order of detention was issued against the petitioner and even the detaining authority has failed to provide the copy of the detention order within 5(five) days or within 15(fifteen) days. Further, noticeably, though the detention order was made available to the petitioner first on 25.01.2019 and subsequently on 01.02.2019, the said copy did not reflect the reasons for such inordinate delay in violation of the provisions of Sub-Section(3) of Section 3 of the PITNDPS Act.”

12. We find the above referred case to squarely cover the instant case as well. Therefore, the mandate of law having not been complied with while detaining the instant petitioner, her detention is found to be not sustainable. In other words, her detention is in violation of section 3(3) of the Act of 1988 and therefore not sustainable in law. Accordingly, the impugned detention order dated 04.07.2023 and the subsequent confirmation and extension orders are hereby set aside and the petitioner is directed to be released.

The writ petition accordingly stands disposed of as allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Comparing Assistant