

GAHC020007522023



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

Case No. : W.P.(Crl.)/16/2023

SHRI M. PETER ZEME
S/O TALONG ZEME
R/O H.NO. 119, NIATHU KHEL, SOVIMA VILLAGE
CHUMOUKEDIMA NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND
2:THE COMMISSIONER OF POLICE AND DISTRICT MAGISTRATE
DIMAPUR NAGALAND

3:THE UNION OF INDIA
THROUGH THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
DEPT OF INTERNAL SECURITY
NORTH BLOCK
NEW DELHI-11000

Advocate for the Petitioner : M. KASAR

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

21.02.2024

(D. Baruah, J.)

The instant application under Article 226 of the Constitution of India has been filed by the father of the detenu Smti. Elizabeth Zingkhai @ Sophie seeking a writ in the nature of habeas corpus for the purpose of setting aside the detention order dated 31.08.2023; the approval order dated 11.09.2023 and the confirmation order dated 17.11.2023.

2. It has been brought to the attention of this Court that vide the proposal made on 24.07.2023 by the Deputy Commissioner of Police, Chumoukedima, Nagaland to the Commissioner of Police, Dimapur, the daughter of the petitioner along with 4 others were proposed to be put under preventive detention.

3. It is relevant to take note of that six persons were arrested in connection with Sovima P.S. Case No.14/2023, registered under Section 120B of the IPC read with Section 25 (1A) (1AA) of the Arms Act, 1959. Thereupon, the daughter of the petitioner along with 3 others were detained vide separate detention order all dated 31.08.2023. Annexure-C to the writ petition is the detention order of the daughter of the petitioner.

4. The record further reveals that the Commissioner of Police & District Magistrate, Dimapur vide a communication

dated 31.08.2023 informed the Special Secretary, Home, Nagaland that the daughter of the petitioner along with 4 others were detained under the provisions of Section 3 (2) of the National Security Act, 1980 (for short, 'the Act of 1980'). Subsequent thereto, the Chief Secretary to the Government of Nagaland vide the order dated 11.09.2023 affirmed the detention order of the daughter of the petitioner. On the same date, the detention of the other three persons were also affirmed.

5. The record further reveals that on 25.09.2023, the daughter of the petitioner had submitted a representation and the said representation was rejected vide the order dated 10.10.2023. It is also relevant to take note of that the remaining 3 others who were detained along with the daughter of the petitioner who were also submitted representations on various dates and the were also rejected on 10.10.2023. The petitioner thereupon was also informed that the Central Government had also rejected the representation of the petitioner on the basis of a Wireless Message dated 13.10.2023.

6. It is seen that the Chief Secretary to the Government of Nagaland had issued a confirmation order on 17.11.2023 thereby stipulating that the daughter of the petitioner be detained for another period of three months w.e.f. 01.12.2023 to 28.02.2023 within which period, her detention would be reviewed as required under the provisions of the Act of 1980.

7. In the case of the remaining 3 persons who were also

detained, the Chief Secretary to the Government of Nagaland also had passed confirmation order on 17.11.2023. It is relevant to take note of that the three persons who were detained along with the daughter of the petitioner had approached this Court earlier by filing three separate writ proceedings being WP(Crl.) No.14/2023; WP(Crl.) No.10/2013 and WP(Crl.) No.13/2023. The Coordinate Bench of this Court vide the judgment and order dated 16.02.2024 had set aside the detention order, approval order as well as the confirmation order after taking into account the materials on record.

8. Mr. E. Thiba Phom, the learned counsel appearing on behalf of the State respondents has also produced the records which this Court has duly perused. This Court had issued notice on 18.01.2024 making it returnable by four weeks. However, the State respondents have not filed their affidavit-in-opposition inspite of the fact that a matter of preventive detention requires an urgent disposal. It is well settled that when a question of liberty is at stake and more so in a case of preventive detention, the respondents cannot be permitted to file their pleadings at their sweet will. We are also of the opinion that as the Coordinate Bench while passing the judgment on 16.02.2024 had duly considered the stand of the respondents who had filed affidavits therein, prolonging the adjudication herein would not be in the interest of justice.

9. On the basis of the materials on record and taking note of the judgment and order passed by the Coordinate Bench of this Court on 16.02.2024 in the three writ petitions, we are of the opinion that the petitioner being similarly situated would

be entitled to the similar relief.

10. Accordingly, we set aside the detention order dated 31.08.2023; the approval order dated 11.09.2023 as well as the confirmation order dated 17.11.2023.

11. It has been duly submitted by the learned counsel for the petitioner that the daughter of the petitioner is still in custody in connection with Sovima P.S. Case No.14/2023 and under such circumstances, this Court is not passing any direction for release of the daughter of the petitioner.

12. The release of the daughter of the petitioner shall be subject to such order that may be passed by the jurisdictional Court in connection with Sovima P.S. Case No.14/2023.

JUDGE

JUDGE

Comparing Assistant