

GAHC010092512023



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

Case No. : W.P.(Crl.)/17/2023

1: MONDIRA DAS AND ANR

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2: SUKUMAR DAS (DETENUE)

VERSUS

1: THE UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF HOME, NEW DELHI.

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

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

4:THE DIRECTOR GENERAL OF POLICE (DGP) ASSAM
ULUBARI GUWAHATI 781007.

5:THE SUPERINTENDENT, CENTRAL JAIL DHUBRI.

6:THE DISTRICT MAGISTRATE, DHUBRI

For the Petitioners : Mr. P. Das, Advocate.
Ms. N. Borah, Advocate.

For the Respondents : Mr. J. Sarmah, Central Government Counsel for respondent No.1.
: Mr. D. Saikia, Advocate General, Assam, assisted by Mr. D. Nath,
Senior Government Advocate, Assam for respondent Nos.2 to 7.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

11.05.2023

This writ petition seeking issuance of a writ in the nature of habeas corpus has been filed by the petitioner herein being the sister of the detenu, namely, Shri Sukumar Das, who has been detained vide order dated 24.08.2022 issued by the respondent Commissioner & Secretary to the Government of Assam, Home & Political Department exercising powers under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the "1988 Act"). The petitioner has challenged the said detention order on various grounds, amongst others, including non-application of mind, non-supply of relevant documents and delay in disposal of the representations, etc.

The matter was posted for the first time before the Court on 10.05.2023. Since the order of detention was passed on 24.08.2022 and upon enquiry from the learned counsel for the petitioner, a response was received that no order of confirmation of the detention order has been served to the detenu, who is lodged at Central Jail, Dhubri, we directed Mr. D. Nath, learned Senior Government Advocate, Assam appearing on behalf of the State Government authorities to apprise the Court regarding the order of confirmation, if any, passed authorizing detention of the petitioner beyond three months.

Today, Mr. Nath has placed on record copy of the communication dated 10.05.2023 issued by the Under Secretary to the Government of Assam, Political (A) Department. The communication is taken on record and the contents thereof are reproduced herein below for the sake of ready

reference:-

“In inviting a reference to the letter on the subject cited above, I am directed to inform you that the confirmation of detention order issued vide this Department letter No.HMA-19011/113/2022/Pol-A/Ecf-212283/98, dated 24/08/2022 in respect of Sukumar Das, S/o Late Jharu Das, resident of District Dhubri, Assam is under process in the Department. The Advisory Board constituted under PITNDPS Act, 1988, had earlier opined in favour of the afore-mentioned detention order.”

Bare perusal of the aforesaid communication establishes beyond all manner of doubt that till date, no order of confirmation has been issued authorizing the detention of the detenu Shri Sukumar Das beyond the period of three months.

Article 22 of the Constitution of India governs the detention of a person under the laws of preventive detention. Article 22(4) of the Constitution of India clearly postulates that no law providing for preventive detention shall authorize the detention of a person for a longer period than three months, unless the Advisory Board has reported that there is sufficient cause for such detention.

As per Section 9(f) of the 1988 Act, which reads as below, upon receiving the report of the Advisory Board, if the Board has opined that there is no sufficient cause for detention of the person concerned, the appropriate Government is under an obligation to revoke the detention order and cause the person detained to be released forthwith. However, if the Board has reported that there is in its opinion sufficient cause for detention of the person, the appropriate Government “**may**” confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

“(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.”

Thus, once the report of the Advisory Board is received, the State Government is under an obligation to pass an order of confirmation or revocation, as the case may be, of the initial detention order and the said order must be issued within the period of three months because the initial detention cannot exceed the said period as prescribed under Article 22(4) of the Constitution of India.

Section 10 of the 1988 Act prescribes the situations in which a person/persons may be detained for a period longer than three months without obtaining the opinion of the Advisory Board. This section too, does not authorize detention of a person for a period beyond six months from the date of detention. Section 11 of the 1988 Act stipulates that the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Section 10 do not apply and which has been confirmed under Section 9(f) shall be one year from the date of detention. Thus, under the scheme of the 1988 Act, the detaining authority is under an obligation to call for the report of the Advisory Board within the prescribed time frame (eleven weeks) and to issue an order of confirmation, within the period of three months as provided under Article 22(4) of the Constitution of India, failing which, the further detention of the detenu would be rendered totally illegal.

The situation in the case at hand is alarming to say the least because the detenu has been kept behind bars for a period of more than eight months without the initial detention order being confirmed. Every moment of custody of the detenu beyond the period of three months from the date of the initial order of detention without the order of confirmation being passed, amounts to illegal detention pure and simple.

Reference in this regard may be made to the judgment rendered by Hon'ble Supreme Court in the case of ***Nirmal Kumar Khandelwal -Vs- Union of India & Ors.***, reported in ***(1978) 2 SCC 508***.

We had noticed a similar situation while deciding Writ Appeal No.299/2022 (*Sharukh Ahmed @ Muktar -Vs- The Union of India & Ors.*). The said order was passed way back on 24.02.2023 but till date, the State authorities have not rectified the sheer blunder in the matter of issuing the detention orders.

As per the communication dated 10.05.2023 placed on record by Mr. Nath, steps for issuing the order of confirmation are under process, manifestly, the order of confirmation is not in existence. Thus, further detention of the detenu Shri Sukumar Das is declared to be illegal as being in gross contravention of the mandate of Article 22(4) of the Constitution of India. **He shall be released from custody forthwith, if not wanted in any other case.** As a symbolic compensation to the detenu for his grossly illegal detention for a period of more than nearly four and half months (after completion of the three months initial period), we direct the respondent State to pay a sum of Rs.50,000/- (Rupees Fifty Thousand) to the detenu, namely, Shri Sukumar Das, within a period of 30(thirty) days from today.

The habeas corpus petition is accepted in these terms.

We further direct that the Assam State Legal Services Authority shall forthwith, seek a report from all prisons across the State of Assam regarding the status of detenues, who have been detained under the preventive detention laws, so as to find out whether any similar situation as has been noticed by this Court, prevails and to take remedial measures, if so required.

The compliance report of the above directions shall be placed on record for the Court's perusal on next date.

List on **23.06.2023** for production of the compliance report.

JUDGE

CHIEF JUSTICE

Comparing Assistant