

(2023) 02 GAU CK 0036

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 25 Of 2022

Babul Ahmed

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 23-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)

Citation : (2023) 02 GAU CK 0036

Hon'ble Judges : Achintya Malla Bujor Barua, J; Robin Phukan, J

Bench : Division Bench

Advocate : R Ali

Final Decision : Allowed

Judgement

1. Heard Mr. R Ali, learned counsel for the petitioner, Mr. UK Goswami, learned CGC for the respondents No. 1 and 7 being the Union of India and Mr. D Nath, learned senior Government Advocate for the respondents No. 2, 3, 4 and 5 being the authorities in the Home and Political Department of the Government of Assam. The respondent No. 6 stands deleted from the array of respondents.

2. The petitioner Babul Ahmed, as per the order dated 16.03.2022 of the Commissioner and Secretary to the Government of Assam in the Home and Political Department on being satisfied that Babul Ahmed has been acting in a manner prejudicial to the provisions under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short Act of 1985) by continuously indulging in illicit trade in narcotic drugs even after his arrest on several times, was detained under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short PITNDPS Act 1988). Being aggrieved by the order of preventive detention dated 16.03.2022, the petitioner has instituted this writ petition.

3. It is needless to say that a preventive detention even under the PITNDPS Act,

1988 is also a preventive detention and therefore, all the rules and procedure that are required to be followed in order to place a person under preventive detention would also be applicable in case of a preventive detention under the PITNDPS Act, 1988.

4. Amongst others, in the writ petition, the petitioner states that the representation to the Commissioner and Secretary to the Government of Assam in the Home and Political Department was made on 18.04.2022. The records reveal that the said representation was received by the Commissioner and Secretary to the Government of Assam in the Home and Political Department on 25.04.2022. But the disposal of the representation was made by the order dated 20.07.2022 as per the order of the Commissioner and Secretary. Accordingly, the contention is raised that the delay in disposing the representation is beyond the permissible limit and because of such delay, the detention is vitiated. The petitioner raises another contention that the petitioner detenu was not informed that he has a legal right to make a representation to four of the authorities, namely, the detaining authority itself, the State Government, the Advisory Board as well as to the authorities under the Central Government.

5. It is a settled proposition of law that in case of a preventive detention, there is an inherent legal right bestowed on the detenu to be informed by the detaining authority that he has a legal right to make representation to all the aforesaid four authorities.

6. But, without going into the second contention raised, when we take note of the first contention, the relevant dates, as indicated above, to be that the representation was made on 18.04.2022 to the Commissioner and Secretary to the Government of Assam in the Home and Political Department, the representation was received by the Commissioner and Secretary on 25.04.2022, but the same was disposed of by an order dated 20.07.2022. In other words, the disposal of the representation made on 18.04.2022 was made after a period of three months.

7. A stand is taken by the respondents in the Home and Political Department to the Government of Assam that upon receipt of the representation, the Commissioner and Secretary had called for a report from the Superintendent of Police, Barpeta and it took more than one month for the report to be received from the Superintendent of Police and that the report/comment of the Superintendent of Police was received on 27.05.2022. But, in the meantime, the entire records were required to be sent to the Advisory Board for its consideration and the records were sent on 03.06.2022 and it was received back from the Advisory Board after 14.06.2022.

8. Even if the period for which the records were required to be sent to the Advisory Board is taken out i.e. from 03.06.2022 to a few days subsequent to 14.06.2022, still a period of more than 2 ½ months remained unexplained other than an explanation that the report of the Superintendent of Police, Barpeta was

called for and it took more than a month to receive the same.

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] ."

10. A reading of the afore-extracted provisions of the Hon'ble Supreme Court in *Rashid Kapadia* (supra) makes it discernible that when a detenu under preventive detention makes a representation, it has to be considered by the authority concerned as expeditiously as possible as it is a constitutional right under Article 22(5) of the Constitution of India and any unreasonable and unacceptable delay in considering the representation would have to be held to be fatal to the continued detention of the detenu.

11. In the matter that was before the Hon'ble Supreme Court in *Rashid Kapadia* (supra), there the authorities took about one month to dispose of the representation of the detenu concerned and even the period of one month taken by the authority to dispose of the representation was viewed by the Hon'ble Supreme Court to be beyond the expeditious disposal as required in case of a preventive detention.

12. In the instant case, we have noticed that even if we take out the period for which the records were sent to the Advisory Board, the detaining authority took more than 2 ½ months to dispose of the representation and the only explanation given is that a report was called from the Superintendent of Police, Barpeta which took more than one month. Even if the report took more than one month, still a balance of 1 ½ months remained unexplained for the delay.

13. By following the proposition laid down by the Hon'ble Supreme Court in *Rashid Kapadia* (supra), the reason set-forth for the delay in disposing the representation by almost a period of 2 ½ months as indicated above is found to be unacceptable in law.

14. Accordingly, the order of detention dated 16.03.2022 against the detenu writ petitioner Babul Ahmed is set aside and if the detenu is not required under any other law for any other purpose, the detenu shall be released forthwith.

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