



GAHC010077992022

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

Case No. : W.P.(CrI.)/18/2022

SHARUKH AHMED @ MUKTAR
S/O LATE BATEN MIYA, R/O VILL-PALHAJI, PUBPARA, P.S. AND DIST-
BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME, NEW DELHI-1

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

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

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-781005

5:THE COMMISSIONER OF POLICE
GUWAHATI CITY
GUWAHATI
KAMRUP(M)
ASSAM



6:THE ADVISORY BAORD
PITNDPS ACT
1988
C/O THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-78100

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondents : MR. D. NATH, SR. GA
: MR. P.S. BHATTACHARYYA, CGC

Date of hearing : 21.07.2022

Date of Judgment/ Order : 05.09.2022

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

JUDGMENT & ORDER

Date : 05-09-2022

Heard Mr. N.J. Dutta, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Sr. Government Advocate, Assam appearing for the State/respondents and Mr. P.S. Bhattacharyya, learned CGC for the respondent No. 1.

PETITIONER'S GRIEVANCE:

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner on behalf of his brother-in-law Shahrukh Ahmed @Muktar, the detenu herein vide paragraph No. 2 of the petition (the Affidavit is sworn by detenu's wife Manowara Begum) has prayed for setting aside and quashing a Preventive Detention Order, dated 16.03.2022, issued by the Commissioner and Secretary to the Government of Assam, Home & Political Department/respondent No. 2 to the petitioner informing him with detail particulars about his involvement in illicit

trafficking in narcotic drugs and psychotropic substances, with reference to 07 (seven) number of cases registered at Barpeta Police Station under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('N.D.P.S. Act' for short) which prompted the Government to detain him under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ('Act' for short). By conveying the aforesaid detention order, the petitioner was asked to make a representation, through the Jail Authority, if so advised. Terming his detention as illegal, the petitioner has sought for a direction to the respondent authorities to release him forthwith.

ARGUMENTS:

(For the Petitioner)

3. Mr. N.J. Dutta, learned counsel for the petitioner submitted that the detenu was served with the aforesaid grounds of detention referred to in the letter, dated 16.03.2022, after lapse of 5(five) days, on 23.03.2022. Mr. Dutta submitted that the detenu submitted his representation to the respondent No. 2, on 30.03.2022 and again, another representation on behalf of the detenu, on 07.04.2022, to the respondent No. 2, but no response has been received yet from the said detaining authority, whereby the authority violated the detenu's rights guaranteed under Articles 14 and 21 of the Constitution of India. Therefore, Mr. Dutta submitted that the aforesaid impugned Preventive Detention Order, dated 16.03.2022 issued by the respondent No. 2 is *per se* illegal and violative of Article 22(5) of the Constitution of India.

4. Mr. Dutta emphatically submitted that the present detenu has been detained based on statements of some accused persons of the aforementioned 07(seven) cases, which is not admissible in evidence. Mr. Dutta further contended that the Preventive Detention Order of the detenu, dated 16.03.2022, was passed purportedly under Section 3(1) of the Act based on allegations made in the aforesaid 07(seven) number of cases under the provisions of the N.D.P.S. Act, where the learned Court has

already granted him bail, after due examination of the relevant police papers.

5. Mr. Dutta further submitted that the aforesaid Detention Order has been issued violating the prescribed procedure in the Act and without sufficient application of mind of the detaining authority to the materials allegedly placed by the police. Mr. Dutta also submitted that the grounds of detention were not communicated to the detenu within the stipulated period of 05(five) days as required under Section 3(3) of the Act and his two representations against the aforesaid Preventive Detention Order submitted to the detaining authority, dated 30.03.2022 and 07.04.2022 respectively were not considered as no communication whatsoever has been received by him. Mr. Dutta submitted that although as per the provisions of the Act, the detenu is entitled to be furnished with copy of the dossiers and police report which allegedly culminated in his preventive detention also have not been provided to him. Therefore, Mr. Dutta, learned counsel emphatically submitted that his preventive Detention Order being violative of the provisions of the Act is illegal and arbitrary as well as a clear violation of his personal liberty guaranteed under Article 21 of the Constitution of India, which makes him entitled to be released forthwith from detention.

6. Additionally, beyond pleading, Mr. Dutta contended that the aforesaid Detention Order was not placed before the Advisory Board within time prescribed by the Act and the opinion which was rendered beyond the period of limitation is not a speaking opinion. In support of his arguments, Mr. Dutta relied on the judgments of this Court rendered in *1. Ali Ahmed Laskar Vs. State of Assam and Ors., reported in 2022(2) GLT 108;* and *2. Purna Bora @Dilip Bora @Baba@Kamandu Vs. State of Assam and Ors., reported in 1999(1) GLT 370.*

FOR THE RESPONDENTS:

7. ***Per contra***, Mr. D. Nath, learned Senior Government Advocate appearing for the State/respondent, submitted that the procedure prescribed in Section 3 of the Act is directory in nature and as such, **marginal variation** in compliance for sufficient

reason, although not admitted, does not make the Preventive Detention Order invalid. Mr. Nath emphatically submitted that the Detention Order was served to the detenu within 5(five) days and the grounds of detention in detail, in separate sheets, both in English and vernacular Assamese language, were delivered to him, which he acknowledged receipt under his signature with date on 21.03.2022.

8. Mr. Nath further submitted that the representation of the detenu, dated 30.03.2022, was duly considered and rejected by the detaining authority/respondent No. 2 vide order, dated 26.04.2022, copy of which was received by the detenu on 28.04.2022 at Abhayapuri District Jail. Mr. Nath, learned Senior Government Advocate, therefore, submitted that no procedural lapse was committed in the matter by the detaining State authority in regard to the Detention of the detenu to prevent his explosive escalation of the illicit trafficking in narcotic drugs and psychotropic substances in the recent years which threatened public health in general due to drug abuse.

9. Mr. Nath also submitted that as the petitioner has not challenged the opinion of the Advisory Board, which has been newly raised abruptly during hearing, the respondents/State have not got opportunity to file its affidavit-in-opposition on this count. In support of his argument, Mr. Nath has relied on the judgments rendered by the Hon'ble Supreme Court in *Kailash Vs. Nanhku and Ors., reported in (2005) 4 SCC 480; Yumnam Brojen Singh @Kunjo @ Boss Vs. District Magistrate, Bishnupur and Ors., reported in 2003 (3) GLT 60; State of Tamil Nadu and Anr. Vs. Abdullah Kadher Batcha, reported in (2009) 1 SCC 333; E. Subbulakshmi Vs. State of Tamil Nadu, reported in (2017) 1 SCC 757.*

CONSIDERATION OF ARGUMENTS:

10. I have considered the above arguments rendered by the learned counsel of both sides and examined the matter in the context of the averments made in the writ petition supported by documents and the affidavit-in-opposition filed by the

respondents. Also perused the citations relied on by the parties.

AN ANALYSIS:

11. The Hon'ble Supreme Court in *Kailash (supra)* on rules of procedure held as hereunder-

“28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)

“The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive.

29. In State of Punjab v. Shamlal Murari [(1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)

“Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

In Ghanshyam Dass v. Dominion of India [(1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.”

12. In *Haradhan Saha Vs. the State of West Bengal and Ors.*, reported in (1975) 3 SCC 198, the Hon'ble Apex Court has succinctly explained the substantive limitations and procedural safeguards to the detenu as under-

“31. Article 22 which provides for preventive detention lays down substantive limitations as well as procedural safeguards. The principles of natural justice insofar as they are compatible with detention laws find place in Article 22 itself and also in the Act. Even if Article 19 be examined in regard to preventive detention, it does not increase the content of reasonableness required to be observed in respect of orders of preventive detention. The procedure in the Act provides for fair consideration to the representation. Whether in a particular case, a detenu has not been afforded an opportunity of making a representation or whether the detaining authority is abusing the powers of detention can be brought

before the court of law.”

13. In *Hansmukh Vs. State of Gujarat and Ors., reported in (1981) 2 SCC 175*), the Honb'le Supreme Court held that under Article 22(5) of the Constitution of India communication of the basic facts leading to the detention of the detenu is a must but, a marginal delay in furnishing supplementary or additional materials may in the particular circumstances may not vitiate the detention order.

14. In a recent judgment rendered by a Division Bench of this Court in the case of *Ali Ahmed Laskar Vs. State of Assam and Ors., reported in 2022 (2) GLT 108* held as under-

12. The Apex Court held that the detaining authority must be satisfied that the person detained is likely to indulge in illegal activities in future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds, it must be arrived at on the basis of relevant material and the material which is not stale and has a live link with the satisfaction of the detaining authority. The Apex Court held that the order of the detention may refer to previous criminal antecedence only if they have direct nexus or link with immediate need to be detained individual. While interpreting Section 3 of the said Act, the Apex Court held that in the absence of clear indication of a casual connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidence and hold him as a basis of an order of detention. Such stale material will have no bearing on the probability of the detuning of engaging in prejudicial activities in future. The Apex Court with reference to Section 3 of the said Act of 1988 further held that if on receipt of the Advisory Board's report, the Government wants to continue the detention for a further period it has to take a decision to confirm that order and continue the detention, for without such order or decision, the detention would not validly subsist beyond the period of three months. The relevant paragraph of the said judgment is extracted below:-

“The purpose of the Telangana Offenders Act, 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an Individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining

authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future”.(Para 23)

14. A perusal of the provisions of the Act of 1988 as well as the judgments rendered by the Apex Court in respect of preventive detention reveals that the detenu must be furnished with all relevant documents and records which have been found to be the basis of the satisfaction arrived at by the authority for detention of the person under the preventive detention. Secondly, the detenu must be informed of his rights to make his representation before the appropriate authority which could be the State Government or the Central Government or even the Advisory Board at the earliest and in order to enable the detenu to effectively make his representation, the records and the materials and the documents which were before the appropriate authority when it recorded its satisfaction for keeping the detenu under the preventive detention, should also be forwarded along with the order of the detention to the detenu. The third principle is that the mandate of the concerned Act under which the person is kept under preventive detention must be scrupulously followed.

16. The mandate of these two sections require firstly the Government to furnish a report to the Central Government where the detenu is detained by the State Government or Officer authorized by the State Government and such report is required to be made within 10(ten) days from the date of detention. The requirement under Section 9(f) of the Act is that where the Advisory Board renders its opinion that there are sufficient grounds for further detention, the detention order is required to be confirmed by the State Government. In the counter affidavit filed, there are no specific pleadings in respect of these two safeguards mandated under the Act under Section 3(2) and Section 9(f) of the Act of 1988. The State authorities have not stated in their counter affidavit as to whether the report as required under Section 3(2) has been sent to the Central Government. Further as required under Section 9(f) of the Act after the opinion of the Advisory Board advise further detention of detenu, the order of detention of the detenu is required to be confirmed by the appropriate authorities. However, no such statement or reference to any such order passed is found to be stated in the counter affidavit. In fact the opinion of the Advisory Board is also not brought on record through the counter affidavit filed although the learned State counsel has subsequently submitted a copy of the same before the Court during the course of the hearing.

18. As discussed above, the failure of the Department to send a report as mandated under Section 3(2) to the Central Government within 10(ten) days as well as the mandate of Section 9(f) for confirmation of an order under the Act of 1988 will have to effect of rendering the detention of the petitioner to be in complete violation of the mandate of law prescribed. Since the petitioner's detention is in violation to the above provisions, the same will have to be held to be ex-facie illegal and in violation of his constitutional rights.

15. In *Purna Bora @Dilip Bora @Baba @Lara @Kamandu (supra)*, a Division Bench of this Court held as follows-

“7. Keeping the impugned order, Annexure- A, and the grounds of detention as contained in Annexure B in juxtaposition and reading them together, a demonstrably glaring infirmity surfaces. The order of detention based on perusal of Dossier and report of the Superintendent of Police was passed on 12.4.97, whereas the grounds of detention came into existence on 15.4.97. There is absolutely no

reference, not even a whisper of the 'Dossier' and the 'report' of the Superintendent of Police in the grounds of detention, Annexure B, which runs into three pages. Obviously, the grounds of detention were not in existence while passing the impugned order of detention on 12.4.97. What has been made foundation of the order of detention namely, the 'Dossier' and the 'report' of the Superintendent of Police, is not even referred to in the grounds of detention, let alone its being supplied to the detenu for which a grievance has been made by the learned counsel. These 'Dossiers' and the 'report' of the Superintendent of Police does not even find a mention in Annexure B and are conspicuously missing there from. This by itself is sufficient ground to strike down the impugned order of detention as passed by the learned District Magistrate, Nagaon. The detention order, Annexure A, is liable to be set aside on this short ground alone. It is inconceivable that a detention order, could be passed without formulating the grounds of detention. Subjective satisfaction of the detaining authority cannot be reached in vacuum, the grounds must be in existence.

8. It was argued that grounds of detention can be supplied to the detenu within five days of passing the order of detention. No doubt, section 8 of the Act carves out such a scope for communication of grounds ordinarily within five days from the date of detention but this communicating the grounds within five days does not mean that a detention order can be passed by a detaining authority even in absence of grounds of detention which can be formulated within five days. What is made permissible under section 8(1) of the Act is communication of grounds of detention to the detenu ordinarily within five days and in exceptional circumstances not later than ten days, from the date of detention, that too, for reasons to be recorded in writing by the detaining authority but no such reason has been recorded in Annexure-B.

9. Communication of grounds presupposes existence and formulation of I grounds, a sine qua non for passing a detention order. It is apparent from the record that no such formulation of grounds was in existence when the detention order Annexure A was passed on 12.4.97, whereas the grounds of detention, Annexure B was prepared on 15.4.97. The order of detention Annexure A itself shows that it was passed on perusal of Dossier and report submitted by Superintendent of Police, which has admittedly not been supplied or communicated to the detenu. What was communicated to the detenu was Annexure B as prepared on 15.4.97. It is an admitted position that the detenu was detained on 12.4.97 in pursuance to the detention order, Annexure A and on detaining authority's own showing the grounds of detention were communicated on 17.4.97. To quote from the affidavit sworn by the District Magistrate :

“That with regard to the statements made in para 2 of the writ petition the deponent states that the detention order was passed vide this office No NC 10/97/ 3669 dated 12.4.97 was served on the detenu on the same day, ie on 12.4.97 which was duly acknowledged by the detenu, and the grounds of detention was issued vide this Memo No.NC 10/97/3675 dated 15.4.97 which was duly acknowledged by the detenu on 17.4.97. The detention order and the grounds of detention were made as per the provisions of law.”

16. In the instant writ petition, it is noticed that as stated above, the petitioner has challenged his Preventive Detention Order, dated 16.03.2022, issued under Section 3(1) of the Act alleging his continuous involvement in illicit traffic in narcotic drugs, which is a threat to the health of the community, as a whole and with a view to prevent his repeated violations of the provisions under the N.D.P.S. Act, 1985, basically on the grounds of procedural lapses under the Act.

17. The impugned order, dated 16.03.2022 (Annexure-I), reads as hereunder-



**“ GOVERNMENT OF ASSAM
POLITICAL (A) DEPARTEMNT : DISPUR
2nd Floor, CM’s Block, Assam Secretariat, Dispur, Guwahati-6
Tele Fax No. 0361-2261421:: Email: home.assam@gov.in**

No. HMA.19011/9/2022-Pol(A)/e CF-194872/192

Dated Dispur, the 16th March, 2022.

ORDER

Whereas, a Police report and connected records have been laid before the undersigned by the Inspector General of Police (WR), Assam, Bongaiaon vide his letter Memo No. DWR/Crime NDPS/2021/35 dated 09/01/2022 and letter Memo No. IWR/Crime NDPS/2021-22/99 dated 20.01.2022.

Whereas, it has been proposed to detain Sharukh Ahmed @ Muktar of age approx 25 years S/o Baten Miya of Vill-Palahazi-Pub para, PS & Dist- Barpeta with a view to preventing him from engaging in illegal and harmful activities of illicit business of Narcotic drugs and from the repeated violations of the provisions under the NDPS Act, 1985; and

Whereas, on perusal of Police report and the connected records, it appears that the said accused has persistently involved himself with the crime of illegal business of Narcotics drugs since many years and was arrested, under NDPS Act in the following case of Barpeta PS;

- i. Barpeta PS Case No. 1356/2021 U/S 21(a) NDPS Act.
- ii. Barpeta PS Case No. 1964/2021 U/S 21(a) NDPS Act.
- iii. Barpeta PS Case No. 2013/2021 U/S 21(a) NDPS Act.
- iv. Barpeta PS Case No. 1897/2021 U/S 21(a) NDPS Act.
- v. Barpeta PS Case No. 2558/2021 U/S 21(a)/22(a)(b) NDPS Act.
- vi. Barpeta PS Case No. 1959/2021 U/S 21(a) NDPS Act.
- vii. Barpeta PS No. 2022/2021 U/S 294/506/IPC R/W Sec. 25(I-a)/27 Arms Act add. Sec. 21(a) NDPS Act.

Whereas, it also appears from the Police report that during investigation the seized particulars suspected to be heroin in respect of the aforementioned cases were sent to FSL for examination and FSL report gave positive tests for Heroin.

Whereas, I, Diganta Baruah, IPS, Commissioner & Secretary to the Government of Assam, Home & Political Department on perusal of the Police records and recommendation of the IPG(WR), Bongaigaon, am satisfied that Sharukh Ahmed @ Muktar, S/o- Baten Miya of Vill- Palahazi- Pub Para, PS & Dist- Barpeta has been acting in a manner prejudicial to the provisions under the NDPS Act, 1985 by continuously indulging in illicit trade in narcotic drugs even after his arrest several times and therefore, in exercise of powers conferred under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 (PITNDPS Act, 1988), do hereby issue this order directing that the above accused person, Sharukh Ahmed @ Muktar, S/o- Baten Miya of Vill-Palahazi-Pub Para, PS & Dist- Barpeta be detained under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 (PITNDPS Act, 1988) until further order.

Given under my hand and seal of the office on this 16th day of March, 2022.



Sd/- Diganta Barah, IPS

Commissioner & Secretary to the Govt. of Assam

Home & Political Departments, Dispur

Dated Dispur, the 16th March, 2022

Memo No. HMA. 19011/9/2022- Pol(A)/eCF-194872/192-A

18. On an explicit reading of the above impugned order, it is revealed that the petitioner **"has persistently involved himself with the crime of illegal business of narcotic drugs since many years"**. As a matter of reference, the order shows, 07(seven) number of cases pending against him were cited.

19. The expression "detention order" is defined in Section 2(c) of the Act as an order made under Section 3. Section 3 of the Act reads as follows-

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

20. The petitioner has admitted pendency of the above cases basically under the provisions of the N.D.P.S. Act except the case noted in serial No. (i) against the detenu. The petitioner has contended that the detenu is not the same person in the above referred first case and in other cases, the detenu has been granted bail by the

Court considering the nature of materials on the case record and the charge-sheet. The petitioner has further contended that the detention order is *par se* illegal and without any authority of law as Court found insufficient materials to implicate the detinue with the alleged offences, for which reason, the learned Court enlarged him on bail.

21. A perusal of the **provisions of the Act** reveal that the legislature has enacted it to enable the governments, Central and States, to curb the menace of drugs trafficking and abuse of such health hazard prohibited contraband substances by providing provision for preventive detention orders against any person to prevent him from repeatedly engaging in the business of illicit drugs and psychotropic substances. The Act provides a detailed procedure in this regard.

22. The Act provides that in case of the Central Government, any officer specially empowered by the Central Government or in case of the State Government or any officer specially empowered by the State Government can pass Detention Orders, if convinced or **satisfied** that it is necessary so to do. It needs to be kept in mind that the preventive detention is an additional weapon at the hands of the law enforcement agencies to curb the organized trafficking of drugs. The procedure requires the law enforcement agencies to forward proposals to the Detaining Authority for passing Detention Order against any person and thereupon, on its subjective satisfaction, the Detaining Authority may issue the Detention Order under Section 3 of the Act.

23. The procedure in Section 3(2) further requires that the State Government shall, within 10(ten) days, forward a report to the Central Government in respect of such Detention Order. Further under Section 3(3) of the Act, the grounds of detention and relied upon documents should be served on the detinue as soon as may be after detention, but ordinarily not later than 05 (five) days and in exceptional circumstances, for reasons to be recorded in writing, not later than 15(fifteen) days from the date of detention.



24. Thereafter, under Section 9(b) of the Act, within 05(five) weeks from the date of detention, a reference should be made to the Advisory Board, constituted under Section 9 of the Act for opinion within 11(eleven) weeks from the date of detention regarding sufficiency of grounds for detention. If the Advisory Board opines that there are no sufficient grounds for detention, the detinue is to be released forthwith and if it is of the opinion that there are sufficient grounds for detention, the concerned government may confirm the detention order and also decide the duration of detention. The crucial decision of passing a Detention Order under Section 3 of the Act presupposes sound application of mind by the Detaining Authority in support of his subjective satisfaction requiring detention of any individual. Section 12 of the Act, however, provides that if the Detention Order is issued by the State Government or any officer of the State Government, it can be revoked at any time by the authority.

25. Section 13 of the Act provides for interim release of a detinue for a specified period on executing bond with or without sureties.

26. A perusal of the above Detention Order, dated 16.03.2022, shows that it was passed under Section 3(1) of the Act, based on a police report and connected records and on being satisfied, by the detaining authority/respondent No. 2 herein with a view to prevent him from repeated violation of the provisions of the N.D.P.S. Act. The aforesaid Detention Order was transmitted to the detinue by e-mail through the Superintendent, District Jail, Barpeta where he was detained and in serial No. 7 of copy forwarding part with a request as extracted hereinbelow-

“Copy to:

.....
.....

7) The Superintendent, District Jail, Barpeta with the request that if after the detention under PITNDPS Act, Sharukh Ahmed @Muktar, S/o Baten Miya of Vill- Palahazi- Pub para, PS & Dist.- Barpeta submit any representation to the State Government through the Authorities of the District Jail, Barpeta all such representation may please be forwarded to this end immediately either through special messenger or by the fastest mode of postal communication, under due acknowledgment and also intimate the same in the email ID- rajnoitikbibhag@gmail.com.”

27. The above Detention Order was forwarded to the detenu along with a detailed grounds of detention sheet vide Annexure- 3 referring to the background facts revealed in police investigations, as stated above, in the following 07 (seven) number of cases-

- i. *Barpeta PS Case No. 1356/2021 U/S 21(a) NDPS Act.*
- ii. *Barpeta PS Case No. 1964/2021 U/S 21(a) NDPS Act.*
- iii. *Barpeta PS Case No. 2013/2021 U/S 21(a) NDPS Act.*
- iv. *Barpeta PS Case No. 1897/2021 U/S 21(a) NDPS Act.*
- v. *Barpeta PS Case No. 2558/2021 U/S 21(a)/22(a)(b) NDPS Act.*
- vi. *Barpeta PS Case No. 1959/2021 U/S 21(a) NDPS Act.*
- vii. *Barpeta PS No. 2022/2021 U/S 294/506/IPC R/W Sec. 25(I-a)/27 Arms Act add. Sec. 21(a) NDPS Act.*

28. The detenu received the grounds of his detention under the Act in English and vernacular Assamese language by acknowledging the receipt thereof under his undisputed handwritings and signatures on 21.03.2022, that is, within 05(five) days from the date of the aforesaid order vide Annexure- 1(a) and 1(b) to the affidavit-in-opposition. There is no evidence to show that the Detention Order, dated 16.03.2022, was served to the detenu on 23.03.2022, that is, after expiry of the period of 05(five) days.

29. A perusal of the record shows that as per the request made in serial No. 7 of the copy forwarding part of the Detention Order, dated 16.03.2022, as required under Article 22(5) of the Constitution of India, the detenu submitted a representation through the Superintendent, District Jail, Barpeta, on 30.03.2022 to the respondent No. 2 vide Annexure- 3 to the petition, that is, within 15(fifteen) days from the date of service of the Detention Order, dated 16.03.2022 which was duly considered and after such consideration, the respondent No. 2 rejecting the same passed an order, dated 26.04.2022 vide Annexure 1(c) to the affidavit-in-opposition, which reads as follows-



**" GOVERNMENT OF ASSAM
POLITICAL (A) DEPARTEMNT : DISPUR
2nd Floor, CM's Block, Assam Secretariat, Dispur, Guwahati-06
Tele Fax No. 0361-2261421:: Email: home.assam@gov.in**

No. HMA.19011/9/2022-Pol (A)/393(eCF-194872)

Dated Dispur, the 26th April, 2022.

Read : The representation Dtd. 30/03/2022 submitted by PITNDPS detenu Sharukh Ahmed @Muktar, S/O- Late Baten Miya of vill.- Palahazi, Pubpara, PS & Dist- Barpeta, Assam

ORDER

Perused the representation dtd. 30/03/2022 submitted by the PITNDPS detenu Sharukh Ahmed @ Muktar, S/O- Late Baten Miya resident of vill.- Palahari, Pubpara, PS & Dist- Barpeta as received from the Superintendent, District Jail, Abhayapuri vide letter No. DJA.106/2022/243 dtd. 30/03/2022. After careful examination of all records/Police report it is seen that there are no justified grounds to revoke the order of detention.

The representation dtd. 30/03/2022 submitted by the PITNDPS detenu Sharukh Ahmed @Muktar S/O- Late Baten Miya resident of vill.- Palahari, Pubpara, PS & Dist- Barpeta has been examined and as there are no valid grounds for revocation of the Detention Order issued vide No. HMA. 19011/9/2022- Pol(A)/eCF-194872/192 dtd. 16/03/2022, the prayer of the petitioner is rejected by the Government of Assam.

Sd/-

Diganta Barah, IPS
Commissioner & Secretary to the Govt. of Assam
Home & Political Departments, Dispur

Memo No. HMA. 19011/9/2022- Pol(A)/393- A

Dated Dispur, the 26th April, 2022

30. In *Abdullah Kadher Batcha (supra)* the Apex Court reiterated the principle of an earlier decision and held as extracted hereunder-

“6. In *Radhakrishnan Prabhakaran v. State of T.N.* [(2000) 9 SCC 170 : 2000 SCC (Cri) 1198] it was observed as follows: (SCC p. 173, para 8)

“8. We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. It is admitted by the learned counsel for the petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail. But learned counsel emphasised that the counter filed by the Department was a relevant document, a copy of which has not been supplied to him.”

The view in *Radhakrishnan Prabhakaran case* [(2000) 9 SCC 170 : 2000 SCC (Cri) 1198] was reiterated in *J. Abdul Hakeem v. State of T.N.* [(2005) 7 SCC 70 : 2005 SCC (Cri) 1601] and *Sunila Jain v. Union of India* [(2006) 3 SCC 321 : (2006) 2 SCC (Cri) 90].

7. *The court has a duty to see whether the non-supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non-supply of the documents called for had any effect on the detenu and/or whether the non-supply was prejudicial to the detenu. Merely because copies of some documents have (sic not) been supplied, they cannot by any stretch of imagination be called as relied upon documents. While examining whether non-supply of a document would prejudice a detenu, the court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non-supply thereof would prejudice the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.*”

31. The above representation, dated 30.03.2022, rejection order vide Annexure 1(c) was received by the detenu under his signature, dated 28.04.2022, in presence of the Assistant Jailor, District Jail, Abhayapuri, conveying the grounds that “**there are no valid grounds for revocation of the Detention Order**” after “**careful examination of all records/police report.**” The aforesaid representation rejection order was well explanatory and illustrative leaving no room for confusion to the detenu regarding the grounds for rejection of his representation against the Detention Order in question. Therefore, his second representation, dated 07.04.2022, forwarded to the respondents No. 2 and 7 by registered post and which were delivered on 12.04.2022 vide Annexure- 4 to the petition, that is, in the intervening period, between the date of first representation, dated 30.03.2022 and the date of the aforesaid representation rejection order, dated 26.04.2022 vide Annexure 1(c) was irrelevant having no implication in any manner. Therefore, it cannot be said that the respondent authority acted in violation of Articles 14 and 21 and *ipso facto*, the Detention Order, dated 16.03.2022, passed by the Respondent No. 2 was illegal and in violation of the provisions of the Act as well as Article 22(5) of the Constitution of India.

32. During hearing, Mr. D. Nath, learned Senior Government Advocate appearing for the State/respondents submitted that as per requirement of Section 9 of the Act read with Article 22 of the Constitution of India, a reference of the Detention Order was made to the Advisory Board for consideration and accordingly, by a Notification, dated 26.05.2022, the Governor of Assam reconstituted the Board under the Chairmanship

of a retired Justice and 02(two) other members under Section 9(a) of the Act. Mr. Nath further submitted that the Advisory Board, by its Report, dated 14.06.2022, rendered its opinion holding the unanimous opinion that there are sufficient grounds for detention of Sharukh Ahmed @ Muktar.

33. It may relevantly be pointed out that the writ petitioner has not challenged the above Advisory Board's opinion in the instant petition. However, as the learned counsel for both sides during hearing dwelt extensively on this issue the aforesaid opinion dated 14.06.2022, is extracted hereinbelow-

**“BEFORE THE ADVISORY BOARD
UNDER THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS
AND PSYCHOTROPIC SUBSTANCES ACT, 1988
GUWAHATI, ASSAM**

In Re: *Sharukh Ahmed @Muktar, son of Baten Miyan, village- Palahazi Pubpara, P.S. and District- Barpeta (detenue)*

OPINION

There is unanimity of opinion of the Advisory Board constituted under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 that there are sufficient grounds for detention of Sharukh Ahmed @Muktar, under the proviso to Sub Section 1 of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

Let this Report, signed on 14th June, 2022 be sent to the Government of Assam.

**(T J Mahanta)
MEMBER**

**(JUSTICE P.G. AGARWAL)
CHAIRMAN**

**(N.C. DAS)
MEMBER”**

34. The aforesaid opinion of the Advisory Board, it is noticed, was rendered within 12 weeks 6 days, which is marginally beyond the period of 11(eleven) weeks as required under Section 9(c) of the Act. As stated above, the opinion of the Advisory Board has not been challenged by the petitioner in the instant petition. In totality, therefore, this Court finds no substantive violation of the procedure prescribed in Section 9 of the Act which may be said to have rendered the impugned Detention Order made under Section 3 of the Act in question illegal.

CONCLUSION:

35. It is respectfully stated that the judgment of a Division Bench of this Court in



Yumnam Brojen Singh @Kunjo @Boss (supra), which is related to a matter pertaining to the procedure in National Security Act, 1980 dwelt on the procedure followed by the detaining authority so far the petitioner's factual matrix was concerned and as such, in absence of focus on principle of law for general application, the same could not be applied to the instant case.

36. In view of the above analysis on the respective cases of both sides, the grounds alleged by the petitioner regarding procedural lapses being factually not correct, all the aforesaid grounds challenging the Detention Order are not tenable.

37. For the reasons, set forth above, the petition being devoid of merits, the same stands **dismissed**.

Accordingly, the writ petition is disposed of.

JUDGE

Comparing Assistant