

GAHC010006302024



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

Case No. : WP(C)/226/2024

JUBAID AHMED KHAN
S/O- NUR MAHAMMAD KHAN,
R/O- VILL- KAWATIKA,
P.O.- KAWATIKA,
P.S.- BIJNI,
DIST.- BIJNI, ASSAM,
PIN- 783390.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
HOME AND POLITICAL DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME AND POLITICAL DEPARTMENT
ASSAM
DISPUR
GUWAHATI-06.

3:THE ADVISORY BOARD
PITNDPS ACT
C/O THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM

HOME AND POLITICAL DEPARTMENT

DISPUR
GUWAHATI-06.

4:JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-06.

5:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-03.

6:THE DEPUTY COMMISSIONER
CHIRANG
DIST. CHIRANG
ASSAM.

7:THE SUPERINTENDENT OF POLICE
CHIRANG
DIST.- CHIRANG
ASSAM.

8:THE SUPERINTENDENT OF JAIL
ABHAYAPURI
DIST.- BONGAIGAON
ASSAM.

9:THE OFFICER-IN-CHARGE
BIJNI POLICE STATION
DIST.- CHIRANG
ASSAM

Advocate for the Petitioner : MR A A DEWAN

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri AA Dewan, Adv.
Advocates for the respondents : Ms. S. Sarma, GA-Assam

Date of hearing : **15.03.2024**
Date of Judgment : **15.03.2024**

JUDGMENT & ORDER

Considering the subject matter in dispute and also the fact that pleadings have been exchanged, this writ petition is taken up for final disposal at the admission stage.

2. The petition, which has been structured under Article 226 of the Constitution of India has put to challenge an order dated 13.07.2023 issued by the Home and Political Department, Government of Assam under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter called the PITNDPS Act, 1988). It is the case of the petitioner that a representation for revocation of the order dated 13.07.2023 was submitted which was however rejected and the period of detention has been specified to be of one year, on the basis of the opinion of the Advisory Board. The petitioner has pleaded that the impugned action is in violation of the constitutional provisions.

3. I have heard Shri AA Dewan, learned counsel for the petitioner. I have also heard Ms. S. Sarma, learned State Counsel, who submits that affidavit-in-opposition has also been filed by the respondent no. 4 on 22.02.2024.

4. Shri Dewan, learned counsel for the petitioner submits that there were three cases against the petitioner under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act, 1985) and in two cases, on the plea of guilt made by the petitioner, he was convicted. So far as the third case is concerned, the same is pending trial. However, the petitioner was granted bail. The learned counsel has submitted the provisions of the PITNDPS Act, 1988 have not been complied with and his rights under Articles 14, 21 and 22 have been violated. He submits that apart from the three cases, there are no

cases pending against the petitioner and therefore detaining him under the PITNDPS Act, 1988 is not justified. It is also submitted that the Advisory Board did not specify the period of detention and under the said Act, a detenu cannot be kept under detention for an indefinite period.

5. On the other hand, Ms. Sarma, learned State Counsel has submitted that all procedures laid down in the PITNDPS Act, 1988 have been meticulously followed. She submits that firstly the antecedents of the petitioner would aptly justify invoking provisions of the aforesaid Act as he is accused in three cases under the NDPS Act, 1985 and in two of those cases, the petitioner is also convicted on pleading guilty and the third case is pending. By referring to the affidavit-in-opposition, learned State Counsel submits that there are sufficient materials to justify such detention. As regards the plea that the period of detention has not been specified by the Advisory Board, the learned State Counsel has referred to the provisions of Section 9(f) wherein the procedure to be followed by the Advisory Board has been laid down. The learned State Counsel has also referred to the order of detention dated 20.08.2023 of the Political (A) Department which specifies period of detention to be one year.

6. Though a general submission has been made that the constitutional rights of the petitioner has been violated, the learned counsel for the petitioner has not been able to show any provisions of the PITNDPS Act, 1988 which has been violated or not complied with. There are no pleadings in the petition substantiated by any records to make out any ground of any such aberration of the provisions of the said Act. The PITNDPS Act, 1988 being a valid piece of legislation, the provisions of Article 22 of the Constitution of India cannot be taken as a general ground to assail such an order as the said Article itself provides that in case when the detention is for a period of three months, an

Advisory Board constituted in accordance with law is to give its opinion regarding the sufficiency of the causes for such detention. In the instant case, the said prescription of law appears to have been followed.

7. In view of the aforesaid discussions, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant