

GAHC010255332025



DB

2026:GAU-AS:2580-

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

Case No. : W.P.(Crl.)/76/2025

VICTOR DAS
S/O LATE KUMUD CHANDRA DAS, R/O DADARA (NEAR DADARA
CHOWK), P.S. HAJO, P.O. DADARA, KAMRUP, ASSAM.

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI, PIN- 110001

2:THE STATE OF ASSAM
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME AND POLITICAL DEPARTMENT
GOVERNMENT OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI
ASSAM
PIN-781006

3:THE ADVISORY BOARD FOR NATIONAL SECURITY ACT
ASSAM
REPRESENTED BY ITS CHAIRMAN

4:THE COMMISSIONER OF POLICE
GUWAHATI
ASSAM

5:THE SUPERINTENDENT OF CENTRAL JAIL
GUWAHATI

ASSA

Advocate for the Petitioner : MR S BORTHAKUR, MR D MEDHI,MR SAURADEEP DEY

Advocate for the Respondent : DY.S.G.I., MR. K K PARASAR (C.G.C),GA, ASSAM

Date on which Judgment was reserved: 29.01.2026

Date of pronouncement of Judgment : 20.02.2026

Whether the pronouncement is of the operative part of the Judgment ? : NA

Whether the full Judgment has been pronounced ? : Yes

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

JUDGMENT & ORDER

(A.M. Kalita, J)

Heard Mr. S. Borthakur, learned counsel appearing on behalf of the Petitioner as well as Mr. B. Goswami, learned Addl. Advocate General for the State of Assam, assisted by Mr. N. Kalita, learned Government Advocate. Also heard Mr. K. K. Parasar, learned CGC, representing the Respondent no. 1.

2. The instant petition, under Article 226 of the Constitution of India has been filed praying for a writ in the nature of certiorari for quashing and setting aside the Detention Order bearing Memo No. CP/CB/NSA/2025/49, dated 07.10.2025, issued by the Commissioner of Police, Guwahati, in exercise of it's power under Section 3(2) of the National Security Act, 1980.

3. In the prayers, the Petitioner has, amongst others, prayed for the following reliefs:

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(i) issuance of a writ in the nature of certiorari quashing and setting aside the Detention Order No. CP/CB/NSA/2025/49, dated 07.10.2025, issued by the Commissioner of Police, Guwahati;

(ii) issuance of a writ in the nature of certiorari quashing and setting aside the Grounds of Detention served upon the Petitioner on 08.10.2025;

(iii) issuance of a writ in the nature of certiorari quashing and setting aside the Order No. PLA-710928/122, dated 14.10.2025, by which the detention order of the Petitioner was approved by the Government of Assam/Hon'ble Governor of Assam;

(iv) issuance of a declaration that the detention of the Petitioner is illegal;

(v) issuance of a writ of habeas corpus directing the immediate release of the Petitioner from detention;

(vi) issuance of a direction to the Respondent authorities to appropriately compensate the Petitioner and/or;

(vii) pass any other such order(s) as this Court may deem fit and proper.

4. Defending the action of the Government, the Respondent no. 2, on being authorized by the Addl. Chief Secretary to the Government of Assam, Home & Political Department, the Secretary to the Government of Assam, Home & Political Department has filed an Affidavit-in-Opposition in the instant case. Additionally, another Affidavit-in-Opposition has also been filed on behalf of the Respondent no. 4, i.e., the Commissioner of Police, Guwahati, Assam.

5. After a preliminary hearing, notices were issued on 21.11.2025 by this Court in the instant matter.

6. The matter was finally heard on 21.01.2026 and 29.01.2026 respectively. On conclusion of the hearing, the judgment and order was reserved on the very same day.

7. The Petitioner, namely, Shri Victor Das, is presently under prevention detention under the National Security Act, 1980. (herein after referred to as NSA, 1980) and being

aggrieved by the act of keeping him in such preventive detention, the Petitioner has approached this Court. The facts arising to his detention and his assailing of the Detention Order are summarized herein below: -

(i) An FIR was lodged on 22.09.2025, by one Sub Inspector (SI), namely, Sri Sanjiv Handique of Borjhar Outpost against the Petitioner at Azara Police Station, which was registered as Azara Police Station Case No. 142/2025, under Sections 191(2)/190/296/324(5)/109/132 of the Bharatiya Nyaya Sanhita (herein after referred to as BNS), 2023, read with Section 3 of the Prevention of Damage to Public Property Act, 1984. It was alleged in the FIR that after the death of late Zubeen Garg, the famous singer belonging to the State of Assam, his dead body was supposed to be arrived at the LGBI Airport, Guwahati, on 20.09.2025 from Singapore via Delhi. In view of the aforesaid, a large crowd gathered at the aforesaid Airport to have a glimpse of the dead body of late Zubeen Garg. The Informant, along with his staffs were performing their official duties at the main entrance road at the said Airport. It was alleged that at around 12.30 AM on 21.09.2025, an unruly mob approached them and tried to proceed towards the Airport which was not allowed by the police team. The mob then became agitated and started using abusive languages and they tried to overpower the police force. At that time, when the CDSP, Jalukbari, arrived at the spot, her official vehicle was attacked by the unruly mob thereby, causing damage to the vehicle. The police had to resolve to use force to disperse the unruly mob and rescued the CDSP who was inside the vehicle. It was alleged that at about 6.30 AM, the aforesaid unruly mob started various acts of vandalism and attacked the media persons and thereby, damaged one costly camera worth several lakhs. It was further alleged that the aforesaid unruly mob totally went out of control at some point of time and thereby, created a chaotic scene at the Airport and thereby, obstructed the police personnel from performing their official duties.

(ii) Thereafter, on 26.09.2025, one Inspector, namely, Sri Tilak Baishya, lodged an FIR at Fatasil Ambari Police Station, stating that the CID, Assam, was investigating the CID P.S. Case No. 18/2025, regarding the death of late Zubeen Garg and on 25.09.2025, 4(four) teams, specially formed by the Senior Superintendent of Police, CID, Assam, for the purpose of investigating the aforesaid CID case, went to the residence of Sri Sidhartha Sharma, an accused in the aforesaid CID case, located at Orchid Hill View Apartment, Manpara, Ganeshpara, under Fatasil Ambari Police Station of Guwahati for conducting a house search. The police team after reaching the aforesaid apartment, conducted the search at around 3:24 PM. In the meanwhile, a crowd started gathering in front of the main gate of the aforesaid Orchid Hill View Apartment and they started demanding entry into the flat of the aforesaid Sidhartha Sharma. When the search and seizure procedure was completed at around 6:20 PM, there was a huge gathering of 3/4 thousand people under the leadership of Sri Victor Das (the Petitioner), Sri Ajay Phukan, Fera @ husband of Youtuber Sumi Begum, Sri Bikash Axom and some other unidentified persons, demanding to enter forcefully into the flat of Sidhartha Sharma with the purpose of committing vandalism and rioting causing damage to life and property. It was alleged that after completion of the aforesaid search and seizure procedure, when the police wanted to leave the premises, the unruly mob, lead by the aforesaid persons, wrongfully restrained the CID police team by blocking the vehicle. Thereafter, the unruly mob led by the aforesaid persons, damaged the vehicle and broke the windshield and window glasses of the vehicle, wherein the Informant and other members of the CID police team sustained grievous injuries. It was alleged that the above mentioned accused persons had been continuously instigating the public on social media taking the excuse of sentiments of the public regarding the untimely death of late Zubeen Garg. However, on arrival of back-up force from Guwahati City Police, the CID police team could manage to return.

(iii) On the basis of the aforesaid allegations, Fatasil Ambari P.S. Case No. 137/2025, dated 26.09.2025, under Sections 61(2)/189(2)/191(2)/191(3)/126(2)/125(b)/132/109 of the BNS read with Section 3 of the Prevention of Damage to Public Property Act, 1984, was registered.

(iv) On 26.09.2025, the Petitioner was arrested in connection with the aforesaid Fatasil Ambari Case No. 137/2025 and he was produced before the Court of the learned CJM, Kamrup (M). During his production, a bail application was moved on behalf of the Petitioner and the Petitioner was granted bail on the very same day. However, the Petitioner was again arrested from the aforesaid court premises on the very same day in connection with aforesaid Azara P.S. Case No. 142/2025.

(v) When the Petitioner was still in the custody, the Commissioner of Police, Guwahati, issued the Detention Order bearing Memo No. CP/CB/NSA/2025/49 dated 07.10.2025, directing the detention of the Petitioner under Section 3(2) of the NSA, 1980 and since then the Petitioner is inside the Central Jail, Guwahati.

8. The case of the Detaining Authority is that the Detention Order was passed on the basis of credible evidence and confidential intelligence inputs that revealed that the Petitioner had been actively involved in activities intended to create social unrest in the State by organizing mass protests under the pretext of seeking justice for the demise of Zubeen Garg. It was stated that taking undue advantage of public outpouring of grieves following the death of the aforesaid singer, the Petitioner had been found to be continuously using various social media platforms to disseminate inflammatory messages and misleading narratives concerning the steps taken by the State Government to investigate the circumstances leading to the death of Zubeen Garg with deliberate intention of instigating public sentiments against the Government and thereby, causing social unrest pre-judicial to the security of the State and the maintenance of public order. It was stated that the Petitioner through various social media posts, had provoked the

general public to replicate the situation that was prevailing in Nepal under the pretext of seeking justice and thereby, creating an imminent apprehension of acts pre-judicial to the security of the State and maintenance of public order.

9. It was alleged that on one occasion, while the CID team was investigating the case relating to the death of late Zubeen Garg, the Petitioner mobilized a large crowd and inciting the mob to attack the CID team, damaged public properties including Government vehicles and obstructed police officials in discharging their lawful duties, which resulted in serious injuries to the police force and damage to the public properties. It was stated that in connection with the aforesaid acts of violence against police personnel and destruction of public properties 2(two) cases were registered, namely, Fatasil Ambari Case No. 137/2025 and Azara P.S. Case No. 142/2025 and in both the cases, the Petitioner had been arrested for his direct and active involvement in the offences alleged in the aforesaid cases.

10. It was alleged that the statements, actions and social media activities of the Petitioner after the death of Zubeen Garg and the confidential inputs received by the police, clearly indicate the Petitioner's participation in a larger and premeditated design to create social unrest by inciting violence, promoting enmity among different social groups on regional and linguistic lines, disrupting the essential services and damaging public institutions. It was stated that the Petitioner has known history of defying lawful authorities and instigating public disorder by encouraging mob action against specific groups, for which he had been detained and arrested in several cases. Therefore, it was stated that based on the inputs received from police units, field officers, media sources and confidential reports, it appeared that if the Petitioner is allowed to remain at large, there exists a strong likelihood of renewed violent protests, large-scale disturbances of public order and disruption of the maintenance of essential services to the community.

11. In view of the aforesaid statements made in the order dated 07.10.2025, in exercise of powers conferred under Section 3(2) of the NSA, 1980, read with

Government of Assam Notification No. PLA/786/76 dated 21.08.2025, issued under Section 3(3) of the NSA Act, 1980, the Commissioner of Police, Kamrup (M), Guwahati, being satisfied that it is necessary for preventing the Petitioner from acting in any manner pre-judicial to the security of the State or to the maintenance of public order or to the maintenance of supplies of services essential to the community, ordered that the Petitioner be detained under the provisions of Section 3(2) of the NSA, 1980. It was mentioned that the order shall take effect from the date and time of execution thereof, and shall remain in force until it was approved, modified, or cancelled by the State Government, under Section 3(4) of the said NSA, 1980. It was also mentioned that the Grounds of Detention shall be furnished along with material particulars, on which the order was based, shall be communicated to the Petitioner as soon as practicable, in any case, within 5(five) days from the date of issuance of the order. It was stated that the detainee shall be lodged in the Central Jail, Guwahati, pending approval, modification, or cancellation of the order by the State Government. It was also mentioned that the case shall be referred to the Advisory Board, constituted under Section 9 of NSA, 1980 within the period specified therein. It was mentioned that if the Petitioner desires to make a representation against the order, he may do so to the Addl. Secretary, Home & Political Department, Government of Assam, or directly to the Advisory Board under the NSA, 1980.

12. The Grounds of Detention were communicated to the Petitioner by the Commissioner of Police, Guwahati, vide its forwarding letter bearing Memo No. CP/CB/NSA/2025/50 dated 08.10.2025, wherein it was mentioned that the Petitioner was informed about his right to make representation against the Detention Order to the Government of Assam and also to the Advisory Board constituted under the NSA, 1980.

13. The Grounds of Detention of the Petitioner could be broadly summarized in the following heads: -

(a) Delivery of seditious and inflammatory speech, wherein it was alleged that the

Petitioner allegedly spread rumors that some individuals have been demanding money from interested candidates for securing backdoor entry into Grade-III and Grade-IV posts conducted under the Assam Direct Recruitment Exam. It was alleged that the statements were factually baseless and the Petitioner had been found making unfounded and unspecific claims to induce mass paranoia among public since 28.08.2022. It was also stated that on the basis of the above-mentioned allegations, a case was registered by Pan Bazar Police Station, vide Panbazar P.S. Case No. 233/2022, under Section 120(B)/150/153(a)/384/511. It was stated that the Petitioner was arrested in the aforesaid case.

(b) The second ground, i.e., the pattern of conduct of threatening the public order and the State security, which is related to the incidents after the death of Zubeen Garg. It was alleged that the Petitioner had continuously instigated the public in social media to take direct action, taking the ploy of the sentiments of the public regarding the untimely death of Zubeen Garg. The allegations under this head are primarily relating to Fatasil Ambari Police Station Case No. 137/2025, wherein the Petitioner was arrested on 26.09.2025.

(c) The third ground, i.e., provoking people to create public unrest and chaos, wherein the Petitioner was alleged of mobilizing public to destroy public properties and obstruction of government officials to perform their lawful duties. The allegations under this ground are relating to or in connection with the case registered as Azara P.S. Case No. 142/2025, under Section 191(2)/190/296/324(5)/109(1)/132 BNS, 2023, read with Section 3 of the Prevention of Damage to Public Property Act, 1984. It was mentioned that the Petitioner was arrested in connection with the case on 26.09.2025 and later on, he was sent to judicial custody.

(d) The fourth ground is the satisfaction of the Detaining Authority regarding the

detention of the Petitioner, which specifically provides that upon careful consideration of the materials on record as well as intelligence inputs and digital evidences, the Detaining Authority is satisfied that the Petitioner's activities are pre-judicial to the maintenance of public order and to the security of the State. Therefore, being satisfied that the ordinary law is insufficient to prevent the Petitioner from continuing such acts, the Petitioner's preventive detention under Section 3(2) of the NSA, 1980, was necessary.

14. It may be worthwhile to mention herein that the Grounds of Detention also included certain enclosures like lists of controversial posts and videos on social media platforms, all related videos (in CD) of incitements and inducements and copies of FIRs and GD extracts of fourteen (14) cases registered against the Petitioner. The same also included a Dossier, containing the brief details of the Petitioner and a list containing the summaries of the cases against the Petitioner.

15. The Commissioner of Police, Guwahati, issued another letter bearing Memo No. CP/CB/NSA/2025/51 dated 08.10.2025 to the Petitioner with the subject: Communication regarding Right to Representation in connection with the Detention Order issued against you under Section 3(2) of the NSA, 1980. In the aforesaid letter, the Petitioner was informed that he has a right to make a representation against the Detention Order to the Government of Assam and also to the Advisory Board constituted under Section 9 of the NSA, 1980. It was further mentioned that such representation may be submitted through the Superintendent of the Central Jail, Guwahati and the Petitioner can also request a personal hearing before the Advisory Board.

16. On 11.10.2025, the Commissioner of Police, Guwahati, issued another letter bearing Memo No. CP/CB/NSA/2025/53 dated 11.10.2025 with the subject: Communication regarding Right to Representation in connection with the Detention Order issued against you under Section 3(2) of the NSA, 1980. Vide the aforesaid letter, the Petitioner was informed that he can also make a representation to the Government of

India (Central Government) as per law. Thereafter, the Secretary to the Government of Assam, Home & Political Department, issued an order bearing No. PLA/710928/122 dated 14.10.2025, whereby the Governor of Assam, as per the provision of Sub-Section 4 of Section 3 of the NSA, 1980, was pleased to approve the Detention Order passed by the Commissioner of Police, Guwahati, dated 07.10.2025, detaining the Petitioner under NSA, 1980.

17. Thereafter, the Petitioner submitted his representations to the Government of Assam, the Government of India and also to the Chairman of the Advisory Board constituted under NSA, 1980 on 22.10.2025. The representations were sent through the Superintendent of Central Jail, Guwahati, on 22.10.2025 itself. Through his representations, the Petitioner took various grounds to address his grievances against his detention and thereby, to justify that his detention is illegal and unwarranted.

18. In his representations, the Petitioner had specifically stated that many of the documents and particulars relied upon by the Detaining Authority, while passing the Detention Order, were not furnished to the Petitioner and therefore, he was highly prejudiced in making effective representations against his Detention Order. The Petitioner further denied all the allegations stated in the Grounds of Detention on which the Detention Order was passed, explaining the reasons why such grounds are ill-conceived and not maintainable under the law. The Petitioner mentioned that though he had been provided with the copies of the FIRs of fourteen (14) cases, wherein he was alleged to be an accused person, other than Fatasil Ambari P.S. Case No. 137/2025 and Azara P.S. Case No. 142/2025, none of the other cases had any connection with the primary reason for the Petitioner's preventive detention, i.e., his role in protest in connection with the death of Zubeen Garg. The Petitioner stated that eleven (11) of those cases, in fact, had not been referred to in the Grounds of Detention. The Petitioner stated that twelve (12) of the cases referred therein had even no casual connection, whatsoever, with the Petitioner's detention under the NSA, 1980. Therefore, he stated that

considerations of those FIRs are absolutely irrelevant reflecting total non-application of mind by the Detaining Authority. The Petitioner stated that most of the cases referred in the list of FIRs, were related to the years in between 2021 to 2023 and few are of 2024 but, those had no proximity in time to the alleged cause for his preventive detention. He stated that other than the FIRs of the cases, no documents in respect of any of the cases had been supplied to the Petitioner.

19. The Petitioner also mentioned that there were many defective supporting documents relating to social media posts had been furnished to him, which were totally unclear and in case of video posts, the screenshots did not indicate anything about the contents of the posts. He stated that there was nothing incriminating in any of those posts, therefore, those materials were totally irrelevant in connection with his detention under the NSA, 1980. The Petitioner stated that the Detaining Authority had absolutely failed to justify why such an extraordinary measure as preventive detention was necessary in his case. He stated that he did not do anything to disturb public order, which was prejudicial to the security of the State and maintenance of public order and he had only asked for a fair and just investigation in the case relating to the death of Zubeen Garg. He stated that the Detaining Authority had completely mis-read and misapplied the law of prevention detention with a complete non application of judicious mind to the relevant facts. Therefore, his Detention Order, based on irrelevant considerations, violated his rights under Article 21 & 22 of the Constitution of India.

20. On 07.11.2025, the Petitioner was provided with a copy of the Notification No. PLA-7836/76 dated 21.08.2025 of the Government of Assam, on the basis of which the Commissioner of Police, Guwahati, claimed to have the authority to issue the Detention Order against the Petitioner. It may be worth mentioning that the aforesaid notification was provided to the Petitioner on the basis of an order dated 07.11.2025 of the Advisory Board constituted under the NSA, 1980. On 08.11.2025, the aforesaid Advisory Board sat and provided an opportunity of personal hearing to the Petitioner. Accordingly,

during the hearing, the Petitioner submitted his written argument before the Advisory Board stating his detention as bad in law and prayed for his Detention Order to be quashed by the said Advisory Board. In the meantime, the Petitioner was granted bail in connection with Azara P.S. Case No. 142/2025 by the Gauhati High Court, vide its order dated 14.11.2025, passed in BA No. 3566/2025.

21. Being aggrieved by the preventive detention of the Petitioner, the Petitioner has approached this Court by assailing the aforesaid impugned Detention Order dated 07.10.2025.

22. Mr. S. Borthakur, learned counsel appearing for the Petitioner has submitted that the so-called preventive detention of the Petitioner is bad in law and has been made with ulterior and political motives on the basis of vague, non-existent, irrelevant and not proximate grounds, which cannot be sustained under the law. He submitted that no reasonable person, instructed in law, could have passed the impugned Detention Order in the facts and circumstance of the present case. He submitted that the Grounds of Detention and the allegations made therein are totally incorrect and are hopelessly insufficient to detain a person under the NSA, 1980.

23. The learned counsel for the Petitioner has argued and submitted his case in challenging the impugned Detention Order dated 07.10.2025, broadly on five (5) grounds. Each of those grounds is considered separately in the succeeding paragraphs.

24. The primary and the foremost ground which has been taken to challenge the aforesaid impugned Detention Order dated 07.10.2025, is that the Detaining Authority failed to inform the Petitioner about the right of representation before the Detaining Authority. He has submitted that the Petitioner was not informed by any means about his right to file a representation before the Detaining Authority, i.e., the Commissioner of Police, Guwahati. He has submitted that a bare perusal of the Detention Order dated 07.10.2025, as well as the Grounds of Detention, shows that the Detaining Authority, although informed the Petitioner about his right to represent before the Central

Government, the State Government and the Advisory Board, he was never informed about his right to represent before the Detaining Authority. He has submitted that the Detaining Authority, in exercise of powers under Section 14 of the NSA, 1980 read with Section 20 of the General Clauses Act, 1897, has the power to revoke the Detention Order. Therefore, it was incumbent on the part of the Detaining Authority to inform the Petitioner of such rights of his and thus, enable to file a representation. Hence, the omission of not intimating the Petitioner about his such valuable right, has clearly violated the Petitioner's right under Article 21 & 22(5) of the Constitution of India and thereby, making his preventive detention under the NSA, 1980, illegal and unsustainable under the law. He has submitted that the Detaining Authority is the one who passes the Detention Order and, in law, is entitled to rescind or modify his own orders. He has submitted that the right to submit such representation against an order of detention, flows from the provisions of Article 22(5) of the Constitution and even if the law of preventive detention does not include the right to submit a representation, such right would definitely flow from Article 22(5) of the Constitution of India. Therefore, he has submitted that since the preventive detention is about life and liberty, which is enshrined under Article 22 (5) of the Constitution of India, withholding of such an important information relating to the Petitioner's irreplaceable valuable right provided to the Petitioner by the mandates of the Constitution of India, is an unpardonable lapse committed by the Detaining Authority, which goes to the root of the matter vitiating the whole preventive detention process illegal and thereby, making the same liable to be set aside and quashed on that ground alone. The learned counsel has submitted that the Hon'ble Supreme Court and the Hon'ble Gauhati High Court, in catena of cases. have laid down the proposition that the omission of not intimating the valuable right of representation to the Detaining Authority is in violation of Article 22(5) of the Constitution of India and thereby, making the preventive detention illegal and non-sustainable. In this connection, he has relied on the following cases: -

- (1) *Kamlesh kumar Ishwardas Patel Vs. The Union of India & Ors., reported in 1995 4 SCC 51.*
- (2) *Konsam Brojen Singh Vs. The State of Manipur, reported in 2006 1 GLT 375.*
- (3) *Dharmeswar Haloi @ Bhaity Vs. The Union of India, reported in 2009 1 GLT 657.*
- (4) *Rongjam Momin Vs. Union of India, reported in 2005 1 GLT 173.*
- (5) *Robin Dhekial Phukan Vs. Union of India & Ors., reported in 2008 2 GLT 876.*

25. The second ground that has been asserted by the Petitioner's counsel in his submission is that of delay in disposal of the representations submitted by the Petitioner before the concerned authorities. The learned Counsel has submitted that from the chronology of events involved in the instant case, it is clearly evident that due to the inordinate delay in forwarding the Petitioner's representations to the Central Government, the State Government and the Advisory Board, there is also a consequential inordinate delay in disposing the Petitioner's representations by the aforesaid authorities. He has submitted that the manner in which the Central Government as well as the State Government dealt with the representations of the Petitioner, it has become clear that there is clear unexplained delay in disposing of the representations. He has submitted that the State Government took sixteen (16) days to dispose of the representation of the Petitioner, whereas the Central Government took twenty (23) days to dispose of the Petitioner's representation. He has submitted that such unexplained delay is not acceptable in case of preventive detention. He has further submitted that the para-wise comments of the Commissioner of Police, Guwahati, were obtained only on 31.10.2025, however, there is no explanation as regards why the Commissioner of Police, took more than seven (7) days' time to furnish the para-wise comments. He has submitted that it is also not explained as to why the State Government took further seven (7) days to dispose of the Petitioner's representation, making the total days to dispose of the Petitioner's representation by the State Government to sixteen

(16) days, which cannot be termed as reasonable in a case of a preventive detention.

26. The learned counsel for the Petitioner has submitted that the Respondent no. 2, in his affidavit, has also not explained why such inordinate delay was caused in disposing of the representation by the State Government. He has submitted that the Respondent no. 2, without explaining any details, simply made his statement that there was no delay in forwarding the representation of the Petitioner to the concerned authorities. In view of the aforesaid submissions, the learned counsel has submitted that such unexplained delay in disposing of the representation is not permissible in case of preventive detention under the NSA, 1980 and such delay has curtailed his valuable rights conferred under the Constitution of India, thereby, prolonging his detention. Hence, such unexplained delay has vitiated the detention of the Petitioner, thereby, calling for immediate interference by this Court by setting aside and quashing the impugned Detention Order dated 07.10.2025. In support of his submissions, the learned counsel has relied on the following judicial pronouncements of the Hon'ble Supreme Court as well as the Gauhati High Court: -

- 1. Vijay Kumar Vs. The State of J & K, reported in (1982) 2 SCC 43.*
- 2. Narinder Singh Suri Vs. Union of India & Ors., reported in (1980) 2 SCC 357.*
- 3. Raj Kishore Prasad Vs. The State of Bihar & Ors., reported in (1982) 3 SCC 10.*
- 4. Pabitra N. Rana Vs. Union of India & Ors., reported in (1980) 2 SCC 338.*
- 5. Saleh Mohammed Vs. Union of India & Ors., reported in (1980) 4 SCC 428.*
- 6. Icchu Devi Choraria Vs. Union of India, reported in (1980) 4 SCC 531.*
- 7. Pebam Ningol Mikol Devi Vs. The State of Manipur, reported in (2010) 9 SCC 618.*
- 8. Lala Paite Vs. State of Manipur & Ors., reported in 1999 3 GLT 236.*

27. The third ground that the counsel appearing for the Petitioner has argued is that of non-furnishing of the relevant materials while passing the impugned Detention Order by

the Detaining Authority. He has submitted that the perusal of the Grounds of Detention shows that the Detaining Authority has relied on as many as twelve (12) cases to justify Petitioner's detention. He has submitted that though the copies of the FIRs relating to the aforesaid cases were provided to the Petitioner, however, most of the relevant documents relating to the investigation of those cases and the outcome of those cases, such as, the nature of evidences collected including the statements of witnesses, contents of the Charge-sheets etc., pertaining to the aforesaid cases were not furnished to the Petitioner. He has submitted that non-furnishing of such documents is not explained or reasoned by the Detaining Authority, which is not permissible under the settled laws of preventive detention cases. He submits that although there is column for "*Related Documents*" in the "*Gist of cases against Victor Das*" but the entire column was left blank without providing any information about the documents relied by the Detaining Authority. He has submitted that even the statuses of the cases were also not provided depriving the Petitioner of such important information, thereby, making him handicap of preparing an effective representation which is his constitutional right under Article 22(5) of the Constitution of India. The learned counsel has submitted that non-application of mind of the concerned authorities, including the Detaining Authority is palpably clear due to the fact that one of the cases cited by the Detaining Authority, i.e., Jalukbari P.S. Case No. 967/2021 dated 29.08.2021, the accused person, in fact, is not the Petitioner but a different person with a same name "Victor Das". He has submitted that such non-application of mind while curtailing the life and liberty of the Petitioner by detaining him is fatal to the whole proceeding and therefore, such preventive detention, in no way, can be sustained under the law.

28. The learned counsel for the Petitioner has highlighted another crucial fact in his submission that the Petitioner was not even provided, in a timely manner, the order by which the power of issuing the Detention Order had been delegated to the Commissioner of Police, Guwahati, under Section 33 of the NSA, 1980. He has submitted that the

NSA, 1980, being a preventive detention law, the fulfillment of every procedural aspect in preventive detention is crucial and non-compliance of any such crucial procedural aspect makes the whole detention process illegal and unsustainable under the law. In this connection, the learned counsel has referred and relied on the following cases: -

1. Kamala Kanyalal Khushalani Vs. The State of Maharashtra & Anr., reported in (1981) 1 SCC 748.

29. The fourth ground that has been argued and submitted by the learned counsel for the Petitioner is that of non-consideration of the possibility of the release of the Petitioner on bail. He has submitted that a plain reading of the Detention Order as well as Grounds of Detention makes it clear that the Detaining Authority had not given any consideration to the possibility of the release of the Petitioner on bail. He has submitted that the Detaining Authority was well aware of the fact that the Petitioner was already under arrest at the time of his detention. Therefore, in such cases, the Detaining Authority was bound to have taken into consideration if there is any likelihood of his release on bail and accordingly, then decide whether a Detention Order of the Petitioner was required to be made or not. He has submitted that the impugned Detention Order dated 07.10.2025 was passed against the Petitioner without giving any judicious consideration to these crucial facts, while passing the preventive detention order against the Petitioner, which is, therefore, illegal and unsustainable. He has submitted that there is no subjective satisfaction mentioned or recorded by the Detaining Authority that the Petitioner may be coming out of bail and thereby, issuance of the preventive detention order was necessary in the instant case. He has submitted that non-recording of such subjective satisfaction, which is unavoidable in a case of preventive detention, makes the instant preventive detention of the Petitioner illegal and unsustainable under the law. In this connection, the counsel has relied on the following judicial pronouncements of the Hon'ble Supreme Court: -

1. Kamarunnissa Vs. Union of India & Ors., reported in (1991) 1 SCC 128.

2. *Union of India Vs. Paul Manickam*, reported in (2003) 8 SCC 342.

3. *Champion R. Sangma Vs. State of Meghalaya & Anr.*, reported in (2015) 16 SCC 253.

30. The fifth ground that the learned counsel for the Petitioner has argued is that of not informing the Petitioner about the period of detention. The learned counsel has submitted that the Petitioner was not been informed of the period of his detention leaving him under immense uncertainty. Therefore, the action of curtailing Petitioner's right to life and liberty enshrined under Article 21 & 22 of the Constitution of India, vide the impugned Detention Order of the Detaining Authority, is wholly untenable under the law and therefore, is liable to be set aside and quashed.

31. In view of the aforesaid submissions, the learned counsel for the Petitioner has submitted that the instant Detention Order dated 07.10.2025, passed against the Petitioner is illegal and unsustainable on the face of the records and therefore, the same is liable to be set aside and quashed due to violation of the settled laws governing the preventive detention laws.

32. In the instant case, it is seen that no Affidavit has been filed on behalf of the Respondent no. 1, i.e., the Union of India. However, two(2) Affidavits-in-Opposition have been filed on behalf of the State Respondents, i.e., the Addl. Chief Secretary to the Government of Assam, Home & Political Department (the Respondent no. 2) and the Commissioner of Police, Guwahati (the Respondent no. 4) respectively.

33. Responding to the submissions made by the learned counsel for the Petitioner, Mr. B. Goswami, learned Addl. Advocate General, has submitted that there is no wrong committed by the State authorities in passing the Preventive Detention Order against the Petitioner, as the same was the need of the hour at that point of time. He has submitted that the Petitioner has been involved in various anti-social and anti-Government activities and therefore, above mentioned fourteen (14) cases had been filed against the Petitioner in various police stations across the State of Assam. He has submitted that the

Detention Order of the Petitioner was issued to prevent him from further damage to the civilized society as well as to control the damage that might have caused to the ordinary citizens prevailing in the after month of the death of Zubeen Garg. He has submitted that no one can be allowed to involve in such anti-social activities thereby, causing irreparable harm to the mass in general. He has submitted that the Detention Order was passed by the Detaining Authority after due consideration of all the materials available before it and after subjective satisfaction that the detention of the Petitioner was required, which is discernible from the Detention Order along with the Grounds of Detention. He has submitted that the Detaining Authority has come to a conclusion that ordinary law is insufficient to prevent the Petitioner from continuing with various anti-social activities that the Petitioner was involved.

34. Referring to the Affidavit-in-Opposition filed by the Respondent no. 2, the learned AAG submits that the State Government Notification No. 7836/76 dated 21.08.2025, empowers the District Magistrate of Assam in all districts and the Commissioner of Police, Guwahati, to make preventive detention under NSA, 1980. Therefore, although furnishing of the notification to the Petitioner is not mandated under the law, a copy of the Notification was furnished to the Petitioner on 07.11.2025. Therefore, he has submitted that non-furnishing of the aforesaid Notification cannot be a ground to declare the preventive detention of the Petitioner as bad under the law. The learned AAG has submitted that the Detaining Authority, vide its order dated 07.10.2025, intimated the Petitioner that if the Petitioner desires to make any representation against the Detention Order, the Petitioner may file representation to the Addl. Chief Secretary, Government of Assam, Home & Political Department, or directly to the Advisory Board constituted under the NSA, 1980. He has submitted that thereafter, the Petitioner was informed again, vide letter dated 08.10.2025, that he has the right to make representation against his detention to the Government of Assam and/or to the Advisory Board as per Section 9 of the NSA, 1980. He has submitted that the Detaining Authority being the State of

Assam, there is no violation of any mandates of law as the Petitioner was intimated that he could submit his representation to the Home & Political Department of Assam.

35. The learned AAG, on a query by this Court has admitted that intimation regarding the Petitioner's right to represent before the Detaining Authority, i.e., the Commissioner of Police, Guwahati, was not available on record. However, he has submitted that the omission in that respect has not prejudiced the Petitioner and the Petitioner has got the opportunity to file his representations to the Central Government, the State Government as well as the Advisory Board constituted under the NSA, 1980. He has submitted that the Petitioner has, in fact, got an opportunity of personal hearing in addition to his written argument before the said Advisory Board. He has submitted that on the very day of passing of the Preventive Detention Order, the Petitioner was intimated about his right to file representations before any of the authorities as specified under Section 9 of the NSA, 1980. He has submitted that from the letter dated 11.10.2025, issued by the Detaining Authority, i.e., the Commissioner of Police, Guwahati, to the Petitioner, it was discernible that the Petitioner's right to make a representation to the Central Government was specifically intimated to the Petitioner. In view of the aforesaid submissions, the learned AAG has submitted that there is no force in the argument and contention made on behalf of the Petitioner that the Detaining Authority omitted to intimate about a valuable right to the Petitioner while passing the impugned Detention Order dated 07.10.2025.

36. The learned AAG has submitted that there is no delay in disposing of the representations submitted by the Petitioner before the concerned authorities. He has submitted that the representation submitted before the State Government was disposed of within a reasonable time without any delay and whatever days were consumed, it was due to the fact that there were certain holidays during that period due to holidays which need not be counted while counting the delays as contended. He has submitted that the time took to dispose of the representation cannot be termed as unreasonable and thereby,

making the same fatal. He has submitted that the representation dated 20.10.2025, submitted by the Petitioner was received by the Addl. Chief Secretary to the Government of Assam, Home & Political Department and had given his clarification on the representation, vide order dated 07.11.2025, which was communicated, vide Memo No. PLA-710928/167-A dated 07.11.2025. In view of the aforesaid, referring to various holidays during that period, he has submitted that the approval of the Governor of Assam of the Detention Order passed by the Commissioner of Police, Guwahati, was received on 14.10.2025 and thereafter, immediately on 15.10.2025, the Petitioner was given the Detention Order. He has submitted that the Petitioner submitted his representation dated 22.10.2025 to the State Government, Central Government and the Advisory Board on 23.10.2025. He has submitted that the required para-wise comments on the representation submitted by the Petitioner, was received on 31.10.2025 by the Government and thereafter, after consideration of the para-wise comments and the representation, the Addl. Chief Secretary to the Government of Assam, Home & Political Department, rejected the Petitioner's representation on 07.11.2025. Therefore, he has submitted that there was no such unreasonable delay in responding the representation of the Petitioner by the State Government. In view of the aforesaid submissions, he has submitted that there is no merit in the arguments forwarded by the learned counsel for the Petitioner that there was an inordinate delay in disposing of the representation of the Petitioner by the State Government, which is not permissible under a preventive detention case.

37. The learned AAG has submitted that though there was a contention made by the Petitioner that some relevant materials or facts had not been taken into account in the Grounds of Detention while passing the Detention Order against the Petitioner, he has submitted that inadvertently, if some grounds were included which were not too relevant to the case, the same shall not take away the whole order and therefore, the same cannot be termed as bad. In this connection, the learned AAG has referred to Section 5A of the

NSA, 1980 which provides that the Grounds of Detention are severable.

38. The learned AAG has submitted that the detailed grounds were given to the Petitioner of his arrest. He has submitted that the Petitioner was arrested in approximate case and he was detained in judicial custody when the preventive detention order was passed. He has submitted that the Petitioner's involvement in various anti-social and anti-government activities is easily available in various social media and other platforms, which were narrated in details in the Grounds of Detention. Therefore, he has submitted that the Grounds of Detention cannot be termed as insufficient for detaining the Petitioner under preventive detention. He has submitted that all relevant materials, including the videos, screen shots of videos, photographs and other materials relied on by the Detaining Authority while passing the Detention Order were made available to the Petitioner and the Petitioner was given the CD containing the videos while he was detained in the Central Jail. Therefore, he has submitted that there was no lapse on the part of the Detaining Authority in providing the documents, materials, videos and screen shots of videos as well as photographs on the basis of which the impugned preventive detention order was passed.

39. Referring to paragraph 2 of the representation submitted by the Petitioner on 22.10.2025, the learned AAG has submitted that though the Petitioner has taken a ground that the documents furnished to him were partially incomplete and insufficient and therefore, he was extremely restricted from filing an effective and informed representation, the learned AAG has submitted that the statements in paragraph 2 are totally vague and without providing any specific material details. He has submitted that the Petitioner did not mention which were the documents he wanted from the Detaining Authority to make his representations. Therefore, these kinds of vague statements will not hold any water in the eyes of the law. He has submitted that no prejudice has been caused to the Petitioner by any of the contentions made by the Petitioner in his writ petition. He has submitted that none of the relied documents by the Detaining Authority

was not made available to the Petitioner. Therefore, he has submitted that the contentions raised by the Petitioner that he was not provided with sufficient grounds as well as materials on the basis of which he was detained is not correct and therefore, the same is liable to be rejected.

40. The learned AAG, while referring to para-22 of the Affidavit-in-Opposition filed by the Respondent no. 4 has submitted that out of the fourteen (14) cases mentioned in the Grounds of Detention, it is a fact that the details of three (3) cases had been referred to in the Grounds of Detention. He has further submitted that one case, i.e., Jalukbari P.S. Case No. 967/2021, which had been referred in the Grounds of Detention, has been returned in FR. He has submitted that the rest ten (10) cases that had been referred in the Grounds of Detention were due to the oversight. However, those ten (10) cases had been referred in the Grounds of Detention as a part of his previous criminal activities, though there was no proximity at the time of issuance of the Detention Order. He has submitted that out of the eleven (11) cases, charge sheets had been filed in five (5) cases, Final Reports in five (5) cases and one (1) case remained under investigation. He has submitted that the records and statuses of the cases were part of judicial records and the concerned courts are the legal authorities in possession of those. Therefore, he has submitted that the Detaining Authority had no right over those to share or provide the same to the Petitioner. He has submitted that, however, the Petitioner could have collected the certified copies of the records, including the affidavits, if so desired, with due permission from the concerned courts.

41. In view of the aforesaid statements in the Affidavit-in-Opposition, he has submitted that though the aforesaid ten (10) cases were mentioned in the Detention Order, the detention of the Petitioner was mainly on the grounds of the three (3) cases which had been detailed in the Grounds of Detention while passing the Preventive Detention Order of the Petitioner. In view of the aforesaid, he has submitted that though there were certain inadvertent errors due to oversight in mentioning the ten (10) cases,

that simply cannot take away or make the whole Detention Order illegal as the Detention Order was passed after subjective satisfaction of the Detaining Authority which was recorded in the Detention Order. In view of the aforesaid, he has submitted that the preventive detention order doesn't suffer from any error of law and therefore, this court should not interfere with the same.

42. The learned AAG has submitted that the Detention Order dated 07.10.2025, was very clear that the Petitioner had been involved in various incidents of vandalism and anti-social activities, whereby he had commented and written various offendable objects in the public domain which had necessitated his arrest under the preventive detention as the Detaining Authority has come to the subjective satisfaction that other available laws may not be sufficient to detain the Petitioner in judicial custody, thereby stopping him from involving in activities which can be termed anti-social and against the public order. He has submitted that the Petitioner had been involved in provoking people to create public unrest and chaos which was needed to be prevented by the government to maintain public order. Therefore, he has submitted that the Detaining Authority has not violated any law by detaining the Petitioner under NSA, 1980. In connection to his submission that vague assertion by the Petitioner of not providing the Grounds of Detention or the materials on the basis of which the Detention Order was passed by the Detaining Authority, the learned AAG has referred to the case of ***Manirul Islam v. Union of India and others*** in ***W.P. (Crl.) No. 1/ 2017***, decided by the ***Single Bench of Gauhati High Court*** on ***26-07-2017***.

43. By citing the aforesaid case, the learned AAG has submitted that there was no proper application or representation from the Petitioner stating that sufficient grounds and/or materials documents were not provided to him and the same should be furnished to him. He has referred to the aforesaid case to argue that the Detaining Authority as well as the Advisory Board has come in affirmative that the detention of the Petitioner is justified for maintenance of public order and security of the State. Therefore, since the

authorities have subjective satisfaction while detaining the Petitioner, the Preventive Detention Order cannot be termed as defective or illegal. Therefore, the instant petition is liable to be dismissed.

44. The Respondent no. 2, Union of India has not filed any Affidavit-in-Opposition in the instant matter. However, the learned CGC has supported the contentions made by the learned AAG for the State of Assam.

45. We have heard the submissions made by the learned counsel appearing for the respective parties and also have gone through the case records submitted before this Court in the instant case.

46. *The Hon'ble Justice P.N. Bhagwati, J*, in the case of *Ichhu Devi (supra)* at paragraph-5 has authored the following paragraph:

"5.The burden of showing that the detention is in accordance with the procedure established by law has always been placed by this Court on the Detaining Authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred. The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade."

47. However, liberty being the most valuable right of a citizen, that comes with lots of responsibilities too. Article 22(3) of the Constitution provides for preventive detentions under any law made for the purpose of preventive detention whereas Article 22(4) and

(5) provide for the procedural safeguards of the Detenue. Hence, though the liberty is a cherished right any act of its abuse can be violative of the prescribed laws. The playwright, Gorge Bernard Shaw famously said “*Liberty means responsibility. That is why men dread it*” in his play “Man and Superman” meaning thereby liberty to be carried with dignity and self-restrain, so that it does not hurt societal norms and prescribed laws.

48. Time being an important factor in a case of preventive detention, we propose to provide the important dates relevant to the instant case with their respective events.

26.09.2025: The Petitioner was arrested in connection with Fatasil Ambari P.S. Case No. 137/2025 dated 26.09.2025. The Petitioner was released on bail on the same day by the court of learned Special Judicial Magistrate, Kamrup (M), Assam.

However, on the same day, the Petitioner was arrested from the court premises itself in connection with a different case, i.e., Azara P.S. Case No. 142/2025 dated 22.09.2025.

07.10.2025: The Detention Order of the Petitioner was passed by the Commissioner of Police, Guwahati, Assam.

08.10.2025: The Grounds of Detention were communicated to the Petitioner and the Petitioner was informed about his right to file representations before the Government of Assam and the Advisory Board.

11.10.2025: The Petitioner was informed about his right to file a representation before the Government of India.

14.10.2025: The Governor of Assam approved the Detention Order of the Petitioner.

15.10.2025: The Petitioner received the Detention Order.

22.10.2025: The Petitioner submitted representations to the Advisory Board, the State Government and the Central Government.

23.10.2025: The Superintendent of Central Jail, Guwahati, forwarded the representation of the Petitioner to the Principal Secretary to the Government of Assam, Home & Political Department.

31.10.2025: The Commissioner of Police, Guwahati, submitted para-wise comments to the representations of the Petitioner.

07.11.2025: The Petitioner's representation to the Government of Assam was rejected by the Addl. Chief Secretary to the Government of Assam, Home & Political Department.

08.11.2025: The Petitioner was heard by the Advisory Board.

14.11.2025: The Petitioner's representation to the Central Government was rejected.

49. As noted above, the learned counsel for the Petitioner has made his submissions broadly on five (5) grounds, which are: (1) Failure to inform the Petitioner about his right of representation before the Detaining Authority, (2) Delay in disposal of the representation submitted by the Petitioner before the State Government as well as Central Government, (3) Non-furnishing of relevant materials to the Petitioner by the Detaining Authority, (4) Non-consideration of the possibility of release of the Petitioner on bail and (5) Non-information to the Petitioner about the period of detention.

50. In the instant case, the Detention Order dated 07.10.2025, under Section 3(2) of the NSA, 1980, was issued by the Commissioner of Police, Guwahati. On perusal of the aforesaid Detention Order, it is seen that there is a mention that the order shall come into effect from the date and time of execution thereof and shall remain in force until it is approved, modified and/or cancelled by the State Government, under Section 3(4) of the

said Act. It was also mentioned that the Grounds of Detention shall be furnished along with the material particulars on which it was based, shall be communicated to the Detenue as soon as practicable and in any case within five (5) days from the date of issuance of the order. The Detenue shall be lodged at the Central Jail, Guwahati, pending approval, modification and/or cancellation of the order by the State Government. It was mentioned that the case shall be referred to the Advisory Board, constituted under Section 9 of the said Act, within the period specified therein.

51. As far as the right of the Petitioner for representation is concerned, it is mentioned that if the Detenue desires to make a representation against the order, he may do so through the Addl. Chief Secretary to the Government of Assam or directly to the Advisory Board. Therefore, it is apparent that no mention about the Detenue's right to submit a representation before the Detaining Authority, i.e., the Commissioner of Police, Guwahati, was made in the Detention Order. The Petitioner was issued a forwarding letter dated 08.10.2025, whereby the Grounds of Arrest, under Section 8(1) of the NSA, 1980, were given to him. On a careful perusal of the forwarding letter, it is seen that there was a mention that the Petitioner has a right to make representation against the Detention Order to the Government of Assam and also to the Advisory Board constituted under Section 9 of the NSA, 1980. However, in that forwarding letter also, there was no mention of any right of the Petitioner to file representations to the Central Government or to the Detaining Authority, i.e., the Commissioner of Police, Guwahati, Assam.

52. We have gone through the Grounds of Detention, wherein at Serial No. 5 of the Grounds of Detention, it was mentioned that the Petitioner has the right to make a representation to the Government of Assam and to the Advisory Board, under Section 9 of the NSA, 1980 and such representations may be submitted through the Superintendent of Central Jail, Guwahati. It was further mentioned that the Petitioner may request for a personal hearing before the Advisory Board constituted under the NSA, 1980. However, there was no mention of the Petitioner's right for representation to

the Detaining Authority. Hence, it is clear that neither in the forwarding letter nor in the Grounds of Detention, there was any mention and/or intimation to the Petitioner of his right to submit representations before the Detaining Authority, i.e., the Commissioner of Police, Guwahati. Though it is seen from the letter, vide Memo No. CP/CB/NSA/2025/53 dated 11.10.2025, issued to the Petitioner by the Commissioner of Police, Guwahati, wherein it was informed to the Petitioner that he could also make representation to the Government of India (Central Government) as per law, no mention of the Detenue's right of representation before the Detaining Authority.

53. It may be worthwhile to mention that the Detention Order of the Petitioner, issued by the Commissioner of Police, Guwahati, was approved by the Government of Assam. From the aforesaid documents too, it is seen that no communication, whatsoever, was ever made to the Petitioner intimating him about his valuable right of representation to the Detaining Authority. In this connection, it is relevant to mention that Section 8 of the NSA, 1980, mandates that Grounds of Detention be disclosed to the person effected by the order and the person shall be given the earliest opportunity to make a representation against the order to the appropriate Government.

54. The Hon'ble Supreme Court, while dealing with the detentions under the COFEPOSA Act and the PIT NDPS Act in the case of ***Kamalesh Kumar (supra)*** has held that where the detention order has been issued by an officer specially empowered for that purpose either by the Central Government or the State Government, the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so, results in denial of the right conferred on the person detained to make a representation against the order of detention. It was also held that the right of the detenue is in addition to his right to make the representation to the State Government and the Central Government respectively. The relevant paragraph, i.e., paragraph no. 38 is extracted herein below for ready reference: -

“38. Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act the question posed is thus answered: Where the detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorized by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation.”

55. The aforesaid ratio laid down by the Hon’ble Supreme Court in the case of **Kamlesh Kumar (supra)** was discussed in details in the case of **Konsam Brojen Singh (supra)** by the Full Bench of this Court in a case relating to a preventive detention under the NSA, 1980. In that case, the questions which arose to be answered by the Hon’ble Full Bench of this Court was whether the detainee under the NSA, 1980, has a right to make representation to the Detaining Authority in addition to his right to file representation, as provided under Section 8(1) of the said Act to the appropriate Government and as to whether Article 22(5) of the Constitution of India confirms any such additional right. While dealing with various cases decided by the Hon’ble Supreme Court as well as by the Hon’ble Gauhati High Court, the Full Bench of this Court has come to the following conclusion at paragraph-57:

“57. For all the aforesaid reasons, we hold:

(1) That a detenu has two rights under article 22(5) of the constitution: (i) to be informed, as soon as may be, the grounds on which the order of detention is passed, i.e., the grounds which led to the subjective satisfaction of the detaining authority, and (ii) to be The twin rights are available to a detenu whether they are provided for or not in the preventive detention laws.

(2) The right to make representation to the detaining authority by a detenue in addition to his right to file representation to the Central Government or appropriate Government is also guaranteed under Article 22(5) of the Constitution which forms part of package of guaranteed fundamental right. No distinction as such could be made in this regard in respect of the detention orders made either under COFEPOSA, PIT NDPS or National Security Act, 1980, as the case may be.

(3) The detaining authority is under the constitutional obligation to inform the detenue of his right to make such a representation to the detaining authority;

(4) The failure to inform the detenue of such right to make representation to the detaining Authority vitiates the detention order made even under the provisions of the National Security act, 1980.”

56. From the above judicial pronouncement of this Court, it is crystal clear that the right of the detenue to make a representation to the Detaining Authority in addition to the State Government and the Central Government, is one of the most valuable right which has been mandated under Article 22(5) of the Constitution of India and non-intimation of such valuable right takes away his right to make a representation before the Detaining Authority, who has the power and jurisdiction to consider his representation. Therefore, a violation of the mandatory procedure as laid down by the Hon’ble Supreme Court, by the Detaining Authority, makes the whole process of detention unsustainable under the law. In the facts of the instant case, as we have seen, this valuable right of representation was not intimated to the Petitioner, whereby vitiating the whole act of preventive detention of the Petitioner.

57. The aforesaid settled position of law has also been reiterated in the cases of **(1)**

Rongjam Momin (supra), (2) Robin Dhekial Phukan (supra), (3) Dharmeswar Haloi (supra) and (4) Aminul Islam Vs. Union of India & Ors, [W.P.(Crl.) No. 42/2025], decided by the Gauhati High Court on 27.11.2025.

58. The learned counsel for the Petitioner has assertively argued that the representations of the Petitioner were not disposed of expeditiously as expected under the law by the State and the Central Government. In reference to the case in hand, it is seen that the Petitioner submitted his representations to the State Government, Government of India and the Chairman of Advisory Board respectively on 22.10.2025 through the Superintendent of the Central Jail, Guwahati. The representations were purportedly sent to the respective Governments and the Advisory Board on 23.10.2025. Thereafter, on 31.10.2025, the Commissioner of Police, Guwahati, submitted para-wise comments to the representations of the Petitioner. The Petitioner's representation to the State Government was rejected by the Additional Chief Secretary to the State of Assam, Home & Political Department on 07.11.2025. The Petitioner was heard by the Advisory Board on 08.11.2025. However, whether any order has been passed on the aforesaid, is not known, as the same has not been brought on record. The Petitioner's representation to the Central Government was rejected on 14.11.2025. From the above itself, it is seen that it took nine (9) days for the Commissioner of Police to submit para-wise comments to the representation of the Petitioner and thereafter, another seven (7) days taken by the Addl. Secretary to the State Government, Home & Political Department to consider and reject the aforesaid representation. The Central Government took another eight (8) days to consider and reject the representation of the Petitioner.

59. The learned AAG appearing for the State Respondent has submitted that the part of delay caused in considering the representation was due to certain holidays during that period. The issue of delay in consideration of the representation of a detainee has been discussed and examined by the Hon'ble Supreme Court as well as by the Hon'ble Gauhati High Court in several cases. In this connection, it may be relevant to refer to

paragraph-10 of the case of *Icchu Devi Choraria (supra)*, which is extracted herein below: -

“10. It is also necessary to point out that there was unreasonable delay in considering the representations of the detenu dated June 9, 1980 and June 26, 1980. It is now settled law that on a proper interpretation of clause (5) of Article 22, the detaining authority is under a constitutional obligation to consider the representation of the detenu as early as possible, and if there is unreasonable delay in considering such representation, it would have the effect of invalidating the detention of the detenu: vide V. J. Jain v. Pradhan. Here in the present case the representation of the detenu dated June 9, 1980 was received by the Deputy Secretary on June 14, 1980 while the representation dated June 26, 1980 was received on June 30, 1980 and yet no decision was taken on these representations of the detenu until July 14, 1980. The question is whether this delay could be said to have been reasonably explain-ed by the detaining authority. The representation of the detenu dated June 9, 1980 was received in the Mantralaya on June 14, 1980 but that day and the next day being holidays, it came to the hands of the concerned officer only on June 16, 1980, and a copy of it was forwarded to the Assistant Collector of Customs for his remarks on June 23, 1980. It is difficult to see why the concerned officer in the Mantralaya should have taken seven days for just forwarding a copy of the representation of the detenu to the Assistant Collector of Customs. There is no explanation at all for this delay in any of the affidavits filed on behalf of the detaining authority. The Assistant Collector of Customs thereafter forwarded his remarks on June 30, 1980 and here again there was a delay of seven days for which no explanation is forthcoming. The remarks of the Assistant Collector of Customs were received by the concerned officer on July 2, 1980 and thereafter the representation started on its upward journey from the Under-Secretary to the Chief Minister. It appears that by this time the second representation of the detenu dated June 26, 1980 was also received by the State Government and hence this representation was also subjected to the same process as the representation dated June 9, 1980. It was only on July 11, 1980 that these two representations dated June 9, 1980 and June 26, 1980 came to be considered by the Under-Secretary and he made a noting on the file recommending that the request of the detenu for revocation of the order of detention may be rejected, and this noting was approved by the Deputy Secretary as well as the Secretary on the same day and the Chief Minister endorsed it on July 14, 1980. It is indeed difficult to see how these two representations of the detenu

could be rejected by the detaining authority when the request of the detenu for copies of the tapes was pending and the Secretary to the State Government in fact made a noting on July 11, 1980 that the copies of the tapes must be given to the detenu by the Customs Department. But even if we take the view that it was not necessary for the detaining authority to wait until after the copies of the tapes were supplied to the detenu, it is difficult to resist the conclusion that the detaining authority was guilty of unreasonable delay in considering the two representations of the detenu, and particularly the representation dated June 9, 1980. This ground is also in our opinion sufficient to invalidate the continued detention of the detenu.”

60. What is discernible from the aforesaid paragraph is that the authority, while considering the representation is not expected to take the undue luxury of time in considering the representation. Every day of unexplained delay is prohibited in the case of preventive detention.

61. A Constitution Bench of the Hon’ble Apex Court, in the case of ***K. M. Abdulla Kunhi Vs. Union of India & Ors.***, reported in (1991) 1 SCC 476, has held that it is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words ‘as soon as may be’ occurring in clause (5) of Article 22 reflects the concern of the framers of the Constitution that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

62. The Hon’ble Supreme Court, in another case, ***Vijay Kumar Vs. State of Jammu &***

Kashmir, reported in (1982) 2 SCC 43 at paragraph-12 has discussed and considered the issue on delay in disposing of the representation of a detenu, wherein the Hon'ble Supreme Court has held as follows: -

“12. The provision contained in Section 13(1) is on par with the constitutional protection conferred by Article 22(5) of the Constitution of India. The contention is that the obligation on the detaining authority to afford to the detenu the earliest opportunity of making a representation against the order of detention, in order not to render it illusory simultaneously obliges the authority to whom the representation is made to consider the same expeditiously. Submission is that a statutory right conferred on detenu enabling him to make a representation which of necessity must be giving an opportunity to point out to the Government as to why the detention order was not justified and that it must be revoked and the personal liberty deprived under the detention order must be restored, is to convince the Government to take into consideration the facts and contentions set out in the representation, which must imply that the Government must consider the same. The earliest opportunity to be afforded for making representation inheres the corresponding duty of the Government to consider the representation so received expeditiously. The reason behind enacting this provision is manifest. When power to detain without trial, is exercised, the authority exercising the power must afford an opportunity to the detenu to convince the Government/detaining authority that the power was not justifiably exercised or no occasion arose for exercise of the power. In a punitive detention which is the end product of a trial in which the convict participates and has full opportunity to present his side of the case while preventive detention ordinarily described as jurisdiction based on suspicion does not afford any opportunity to the detenu to explain his side of the matter before he is deprived of the liberty and, therefore, so soon after the detenu is deprived of his personal liberty the statute makes it obligatory on the authorities concerned to afford him an earliest opportunity to represent his side of the case and which inheres the corresponding obligation on the authority to consider the same. The word 'earliest' which qualifies the opportunity must equally qualify the corresponding obligation of the State to deal with the representation, if and when made, as expeditiously as possible. The opportunity contemplated by the section is the opportunity to make a representation against the detention order to the Government and therefore ex hypothesi soon after the person is deprived of his personal liberty he must be

afforded the earliest opportunity to make a representation. The representation is to be made to the Government. Therefore, the detenu who has already been served with the detention order and thus deprived of his liberty would ordinarily be in a position to send his representation through the jail authorities. The jail authority is merely a communicating channel because the representation has to reach the Government which enjoys the power of revoking the detention order. The intermediary authorities who are communicating authorities have also to move with an amount of promptitude so that the statutory guarantee of affording earliest opportunity of making the representation and the same reaching the Government is translated into action. The corresponding obligation of the State to consider the representation cannot be whittled down by merely saying that much time was lost in the transit. If the Government enacts a law like the present Act empowering certain authorities to make the detention earliest opportunity to the detenu to make the detention order and also simultaneously makes a statutory provision of affording the earliest opportunity to the detenu to make his representation against his detention, to the Government and not the detaining authority, of necessity the State Government must gear up its own machinery to see that in these cases the representation reaches the Government as quickly as possible and in this behalf not properly explained would be denial of the protection it is considered by the authorities with equal promptitude. Any slackness conferred by the statute and would result in invalidation of the order.”

63. Therefore, any lapse in consideration and disposal of the representation submitted by a detenu without any appropriate and convincing explanations, makes the action of the State Authority non sustainable under the laws. This lapse of unexplained delay has been treated as fatal and the same is treated as a strong ground for the detenu to challenge his continuous detention under the prevention detention.

64. As we have seen in the instant case, the State Government took 17 days to dispose of the representations submitted by the Petitioner and no convincing explanation could be given by the State Government. Therefore, such unexplained delay can obviously be termed as fatal and thereby, providing an indefeasible right of liberty to the Petitioner.

65. In view of the aforesaid discussions, it is the considered opinion of this Court that

the State Government has miserably failed to provide constitutional guarantee to the Petitioner, under Article 22(5) of the Constitution of India, while executing the process of detention of the Petitioner in the instant case, clearly on the aforesaid two grounds, i.e., (1) Non-information/intimation of the Petitioner's right to make a representation before the Detaining Authority and (2) Unreasonable and unexplained delay in considering and disposal of the representations submitted by the Petitioner before the State and Central Government respectively.

66. Taking into account the principles and ratios laid down by the Hon'ble Supreme Court as well as by the Hon'ble Gauhati High Court, as discussed herein before, this Court is of the considered opinion that the State Respondent has violated the mandates of Article 22(5) of the Constitution of India as well as the principles laid down by the Hon'ble Supreme Court in the instant case, while passing and executing the Detention Order of the Petitioner.

67. Having arrived at the aforesaid conclusions, this Court does not find it necessary at this stage to consider and examine the other Grounds of Detention of the Petitioner in the instant case, as the same will not materially affect the findings of this Court. This Court is of the clear opinion that in the instant case, on the aforesaid two grounds alone, the impugned Detention Order dated 07.10.2025 can be termed to be violative of Article 22(5) of the Constitution of India and therefore, the instant writ petition of the Petitioner liable to be allowed.

68. Consequently, the impugned Detention Order dated 07.10.2025, issued by the Commissioner of Police, Guwahati, the Grounds of Detention served upon the Petitioner on 08.10.2025 as well as the order bearing Memo No. PLA-710928/122 dated 14.10.2025, whereby the Detention Order of the Petitioner was approved by the Government of Assam/Hon'ble Governor of Assam, are hereby set aside and quashed. Accordingly, having held that the detention of the Petitioner is bad under the law and on quashing of the impugned orders as well as the Grounds of Detention, the Petitioner is

directed to be set at liberty immediately, if not otherwise wanted in any other case.

69. In terms of the aforesaid, the instant writ petition is disposed of as allowed.

JUDGE

JUDGE

Comparing Assistant