

THE HIGH COURT OF MEGHALAYA

W.P(Crl). No. 14 of 2013

Smti. Isilda Mary Thyrniang, Aged about 34 years, W/o Shri Arphul Kharbani, R/o Mawkadiang Village, West Khasi Hills, Meghalaya.

...**Petitioner**

-VERSUS-

1. The Union of India, through the Secretary to the Government of India, Ministry of Home, New Delhi.
2. The State of Meghalaya, through the Secretary to the Government of Meghalaya, Home & Political Department, Shillong.
3. The Commissioner and Secretary to the Government of Meghalaya, Political Department, Meghalaya, Shillong.
4. The District Magistrate, West Khasi Hills District, Nongstoin, Meghalaya.
5. The Superintendent of District Jail, Tura, West Garo Hills District, Meghalaya.

....**Respondents**

Mr. SP Mahanta, Advocate, present for the petitioner.

Mr.K.Khan, Addl. Sr. Govt. Advocate, assisted by Mr. S. Sen Gupta, Govt. Advocate, present for the respondents.

Date of Order 26th February, 2014.

ORDER

HON'BLE PRAFULLA. C.PANT, CHIEF JUSTICE

Shri SP Mahanta, Advocate, present for the petitioner.

Shri K.Khan, Addl. Sr. Govt. Advocate assisted by Shri S.Sen Gupta, Govt. Advocate, present for the respondents.

2. Heard.

3. By means of this writ petition, the petitioner has challenged the detention order dated 29-10-2013 of Shri Arphul Kharbani, passed and approved by the respondent-authorities under Meghalaya Preventive Detention Act, 1995 (for short MPDA).
4. Briefly stated, Shri Arphul Kharbani was arrested on 26-9-2013 and the District Magistrate, West Khasi Hills has passed a detention order dated 29-10-2013 under Section 3(1) of the MPDA, 1995 whereafter he is lodged in District Jail, Tura. His detention order has been approved by the Governor vide order dated 6-11-2013. It appears that the detenue made a representation on 8-11-2013. It is stated that said representation has also been rejected on 5-12-2013.
5. It is pleaded before this court on behalf of the detenue that he (Shri Arphul Kharbani) was on his way from Bangalore to Guwahati in the intervening night on 22-9-2013 and 23-9-2013. The case of the State Government is that in said intervening night, incident of arson took place in Nongstoin whereby some miscreants set government building on fire. Nobody is named in the First Information Report. Suspecting the involvement of Shri Arphul Kharbani (Detenue) in the incident, he has been detained.
6. Annexure 6 to 11 filed with the writ petition clearly show that the petitioner was not in the State of Meghalaya in the fateful night when the aforesaid incident had occurred. Annexure – 10 is the copy of the railway ticket by which Shri Arphul Kharbani had travelled from Bangalore to Guwahati by Guwahati Express. The ticket No. 7462498 shows that the detenue started journey from Bangalore on 20-9-2013 at 23.30 hours and reached Guwahati on 23-9-2013 at 5.50 hours. Annexure 11 to the writ petition shows that the railway authorities have confirmed the journey undertaken by Shri Arphul Kharbani, a male, aged 37 performed his journey in Sleeper Coach S3 on Berth No. 34 from Bangalore to Guwahati. Annexure 6 to the

writ petition shows that on 19-9-2013, one day before the journey from Bangalore, he visited Kruthika Poly Clinic (Hospital) for his treatment. Copy of the ATM Card of the detainee along with the statement of withdrawal of money at Sidedahalli, Bangalore has been filed as Annexure 7 and 8, to further corroborate that the detainee had withdrawn an amount of ₹ 5000/- from the ATM of Sidedahalli (Bangalore) on 20-9-2013, in Bangalore.

7. On behalf of the respondents, it is pleaded that the detainee is a member of the Hynniewtrep Achik National Movement and it is stated in the affidavit-in-opposition filed by Shri S.Kharlyngdoh, District Magistrate, West Khasi Hills, that the detainee might have been in touch with the miscreants in Nongstoin. But there is nothing on the record to show any call details of mobile phone of the detainee suggesting the above fact.
8. Having gone through all the papers on record and after considering the rival submissions, this court is of the view that there is no material on record to support the ground on which the detainee has been detained under preventive detention. His detention under M.P.D.Act, 1995 is illegal. It is relevant to mention here that the detainee has no past criminal record.
9. Therefore, for the reasons as discussed above, this writ petition is allowed and the detention order dated 29-10-2013 and approval thereof dated 6-11-2013 (Annexure 1 to 4) are hereby quashed, and it is directed that Shri Arphul Kharbani shall be released forthwith from the detention by the Superintendent of District Jail concerned.

(Prafulla C.Pant)
CHIEF JUSTICE
26th February, 2014