

GAHC020001962023



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

Case No. : W.P.(Cri.)/2/2023

SHRI. KEDINGULIE KERETSU
AGED ABOUT 50 YEARS,
PRESENTLY RESIDING AT LERIE COLONY,
KOHIMA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY,
NAGALAND, KOHIMA

2:THE SPECIAL SECRETARY TO THE GOVERNMENT OF NAGALAND
(HOME)
HOME DEPARTMENT
NAGALAND KOHIMA

3:THE DIRECTOR GENERAL OF POLICE
NAGALAND KOHIMA.

4:THE UNION OF INDIA
THROUGH THE JOINT SECRETARY(PITNDPS/COFEPOSA),
GOVERNMENT OF INDIA,MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, CENTRAL ERCONOMIC
INTELLIGENCE BUREAU, 6TH FLOOR, 'B' WING, BHAWAN,
JANPATH, NEW DELHI - 110001

Advocate for the Petitioner : HISINLO HIMB

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 27-07-2023

JUDGMENT AND ORDER (ORAL)

(Kardak Ete, J)

Heard Mr. Hisinlo, learned counsel for the petitioner. Also heard Ms. Inaholi, learned Government Advocate and Mr. Yangerwati, learned C.G.C.

2. This writ petition has been instituted by one Shri Kedingulie keretsu who claims to be the brother-in-law of the accused Ruokuodilhou Liezietsu (detenue) assailing the impugned detention order No.CON/PITNDPS/01/2023/01 dated 22/2/2023 passed by the Special Secretary, (Home), Government of Nagaland Kohima the impugned order No.-CON/PITNDPS/01/2023/12 dated 24/3/2023 rejecting the representation of the detenue and the impugned confirmation order No.CON/PITNDPS/01/2023/24 dated 9/5/2023 passed by the Chief Secretary, Government of Nagaland confirming the detention of the detenue on the ground of violation of Article 21 and 22(5) of the Constitution of India and Section 3(1) of the Prevention of Illicit Traffic under NDPS Act 1988 (hereinafter referred to as PITNDPS Act).

3. The case of the petitioner is that on 24/1/2023 at around 6.00 hours, the Police including the STF, Narcotoc Cell and Crime Branch raided the residence of the detenue and ar-

rested him on the allegation of involvement in suspected Narcotic and Arms and illegal trafficking of considerable quantity of Narcotic drugs and Psychotropic substance and engaged in marketing the same to gullible people of Nagaland. Further allegation is that the detainee had recruited several persons to trade in Narcotic drugs and psychotropic substance in and around Kohima town and is suspected to be a member of Under Ground group. The police recovered suspected Narcotic drugs and Psychotropic substance and arms from the residence of the detainee and accordingly FIR dated 24/1/2023 by Narcotic Cell PS PHQ Nagaland Kohima was registered being Case No.003/2023 u/s 21(a)/60 of the NDPS Act r/w 25(1B) Arms Act and 7 NSR Act. During the raid the following items were recovered from the residence of the detainee:-

1. 7 grams (Approx) of suspected heroin
2. Cash amounting to Rs.10110/-
3. Few handmade pipe/apparatus
4. Two Nos. of country made pistol.32 pistols and .22 pistols along with 15 live round.

4. After the arrest the detainee was transferred to the judicial custody at the district Jail Kohima and then transferred to Dimapur Central Jail. The Addl. DGP (L & O) Nagaland sent a proposal letter to the Special Secretary (Home) for detention of the detainee under section 3(1) of the PITNDPS Act,1988 vide order No.PHQ/IGP/CID/NAR-D/81A/2022/148 dated 10/2/2023. Thereafter, the impugned detention order No.CON/PITNDPS/01/2023/01 dated 22/2/2023 was passed by the Special Secretary to the Government of Nagaland, Kohima

along with the grounds of detention for initial period of 3 months w.e.f. the date of detention till 21/5/2023 by directing the detenue to be detained.

5. The detenue being aggrieved of the detention order dated 22/2/2023 has submitted representation against the impugned detention order dated 22/2/2023 through the Superintendent Central Jail, Dimapur Nagaland and the same was forwarded and received on the same day. Thereafter, vide Order No.CON/PITNDPS/01/2023/12 dated 24/3/2023, the Special Secretary (Home) to the Government of Nagaland considered and rejected the representation of the detenue. By order No.CON/PITNDPS/01/2023/24 dated 9/5/2023, the Chief Secretary Government of Nagaland, on basis of report of the Advisory Board had confirmed the detention of the detenue and further extended the detention period for another period of 3(three) months wef 22/5/2023 till 21/8/2023.

6. By memorandum No.F.NO.U-11013/38/2023-PIT-NDPS dated 16/5/2023, the Central Government through the Under Secretary to the Government of India had informed that the representation of the detenue has been examined and considered along with material facts on record by Secretary (Revenue) on behalf of the Central Government and the same was rejected. On being aggrieved by the detention order as well as the rejection of the representation by the State and Central Government and also the confirmation order dated 9/5/2023, the present petition has been file principally on 2 grounds:

"GROUNDS

- (i) *For that the impugned Detention Order dated has been passed by the Special Secretary to the Govt. of Nagaland, mechanically and without any application of mind, in that , the detainee having been arrested on 24.01.2023 was forwarded for Judicial Custody on 02.02.2023. That at the time of passing of impugned detention order the detainee was under judicial custody at District Jail, Kohima, that the detaining authority (Special Secretary) has failed to consider the fact. It is settled principal that when a person is in judicial custody, the authority who is passing the detention order must first acknowledge and reflects in his order the fact that the person intended to be detained is under custody and there are reasonable and cogent reasons to believe that the detainee may act prejudicial if released on bail. However, no such justification was mentioned/reflected in the impugned detention order, as such without any subjective satisfaction passing of detention order is illegal, injustice and unacceptable in the eye of the law. Hence, there as in fact no subjective satisfaction as the satisfaction was based purely on assumed suspicion and basing on the proposal for detention passed by the Addl. Director General of Police (L&O) without there being any material evidence to support the suspicion. As such, the impugned detention orders dated 22.02.2023 is liable to be quashed and set aside on the sole ground alone.*
- (ii) *That the detainee submitted his representation on 13.03.2023 and the same was received and forwarded on 13.03.2023 to the State and central government through Superintendent of Central Jail, Dimapur, Nagaland. Accordingly, the State Government disposed the detainee representation on 24.03,2023 which was served to the detainee only on 28.03.2023, as such there is a unreasonable and unexplained inordinate delay of 16(sixteen) days in considering the representation submitted by the detainee. Whereas, the central govt. consider representation of the detainee on 16.05.2023 which was served to the detainee on 17.05.2023. As such there is unreasonable and unexplained inordinate delay of 66 days by the central government in considering and rejection of the detainee's representation. The inordinate delay of 16 days in consideration of the petitioner's representation by the State Government and 66 days by the central government has made the con-*

tinued detention of the detainee illegal and which is clearly violation of Article 22(5) of the Constitution of India, rendering the order of detention liable to be quashed and set aside and the detainee be set at liberty."

7. Mr. Hisinlo, learned counsel for the petitioner submits that the detainee having being arrested on 24/1/2023 was forwarded to judicial custody on 2/2/2023. At the time of passing the impugned detention order dated 22/2/2023, the detainee was in judicial custody at district Jail Kohima. He submits that it is a settled principle that when a person is in judicial custody, the authority who is passing the detention order must first acknowledge and reflect in his order the fact that the person intended to be detained is under custody and there are reasonable and cogent reason to believe that the detainee may act pre-judicial if release on bail. However, no such justification was mentioned in the impugned detention order and as such, the same has been passed without any subjective satisfaction and without any application of mind. He further submits that there is no subjective satisfaction as the satisfaction was passed purely on assumed suspicion and based on the proposal for detention by the Addl. DGP (L & O) without there being any material evidence to support the suspicion.

8. The learned counsel for the petitioner submits that the detainee has submitted his representation on 13/3/2023 and the same was received and forwarded on the same day to the State Government and the Central Government through the Superintendent of Jail, Dimapur. The State Government disposed of the representation of the detainee on 24/3/2023 which was served to the detainee only on 28/3/2023. As such

there is unreasonable and unexplained inordinate delay of 16 days in disposing of the representation of the detainee. He further submits that the Central Government has rejected the representation of the detainee on 16/5/2023 which was served to the detainee on 17/5/2023 as such there is unreasonable and unexplained inordinate delay of 66 days on the part of the Central Government. Delay in considering/disposing of the representation of the detainee is violation of Article 22(5) of the Constitution of India which rendered the order of detention untenable. Therefore, he prays that the impugned detention order dated 22/2/2023 and the consequential other orders may be set aside and quashed and the detainee Shri Ruokuodilhou Liezietsu be set at liberty.

9. In support of his submission, the learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of Huidrom Konungjao Singh vs State of Manipur & Others in Criminal Appeal No.840 of 2012, dated 17/5/2012 which is reproduced herein below :-

"9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts:

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated."

10. The learned counsel further relied on the judgment of this Court dated 23/2/2023 in the case of Babul Ahmed vs Union of India & Others in W.P(Crl) 25/2022. The same is reproduced herein below:-

"9. The law in this respect has been settled by the Hon'ble Supreme Court in its pronouncement in Rashid Kapadia –vs- Medha Gadgil and others, reported in (2012) 11 SCC 745, wherein in paragraph 13 it had been provided as extracted:-

"13. It is well settled that the right of a person, who is preventively detained, to make a representation and have it considered by the Authority concerned as expeditiously as possible, is a Constitutional right under [Article 22\(5\)](#). Any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu. The proposition is too well settled in a long line of decisions of this Court. We do not think it necessary to examine the authorities on this aspect, except to take note of a couple of Judgments where the principle is discussed in detail. They are; Mohinuddin alias [Moin Master v. District Magistrate, Beed](#) and Ors.[1] and Harshala Santosh Patil v. State of Maharashtra[(2006) 12 SCC 211 : (2007) 1SCC (Cri) 680."

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

11. In the matter that was before the Hon'ble Supreme Court in Rashid Kapadia (supra), there the authorities took about one month to dispose of the representation of

the detenu concerned and even the period of one month taken by the authority to dispose of the representation was viewed by the Hon'ble Supreme Court to be beyond the expeditious disposal as required in case of a preventive detention."

11. Ms. Inaholi, learned Government Advocate appearing on behalf of the State respondent Nos. 1,2 and 3 while referring to the affidavit-in-opposition filed by the State respondents submits that there are grounds for detention of the detenu under PITNDPS Act, 1988. The proposal substantiated by established facts and circumstances of the case was forwarded to the Detaining Authority by the Addl. DGP (L & O). The FIR of the Police report is documents containing the actual facts and circumstances of the case. The grounds of detention has been formulated by the Detaining Authority in line with the established facts and circumstances of the case. The Detaining Authority while considering the detention of the detenu under the Act had written a letter dated 17/2/2023 to the Sponsoring authority to ascertain the facts as to whether the accused person namely Shri Ruokuodilhou Liezietsu has moved any bail application before the competent authority or already enlarged on bail. A reply was received from the Sponsoring authority on 18/2/2023 informing that the detenu has not applied for bail till then. She submits that having satisfied that the detenu was still in judicial custody in the district jail Kohima, the Special Secretary (Home) Department passed the detention order on dated 22/2/2023 against the detenu. The fact that the Detaining authority was aware that the detenu was in judicial custody at the time of passing the detention order is reflected in ground No.4 of the grounds of detention

communicated to the detainee. The Detaining authority passed the detention order after careful examination of the case on good and valid ground.

12. The learned Government Advocate submits that the representation dated 13/3/2023 was also received by the Detaining authority via India Post on 23/3/2023 (AN) as forwarded by the concerned Jail authority which was put up for consideration of the Detaining authority on 24/3/2023. The Detaining authority carefully examined the points raised in the representation and having found no merit in the representation has rightly rejected the representation. The detainee was informed vide order dated 24/3/2023. The representation dated 13/3/2023 addressed to the Chief Secretary, Government of Nagaland on receipt by the Home Department was put up for consideration of the State Government on 27/3/2023. The State Government authority examined the points raised in the representation and also all the relevant record including the materials by which the Detaining authority was satisfied to direct the detention of the detainee. Accordingly, having found no merit in the representation, the State Government authority has turned down the representation. The detainee was accordingly informed by order dated 9/5/2023. As such, there is no delay in disposing of the representation of the detainee from the date of receipt of the same either by the Detaining authority or the State Government authority. The learned Government Advocate further submits that the case of the detainee was forwarded to the PITNDPS Advisory Board on 4/3/2023 for its independent examination. The

Board after personal hearing of the detainee and after taking into consideration the facts and circumstances of the case found sufficient cause for detention of the detainee in its report dated 01/5/2023 submitted to the State Government. Accordingly, the confirmation order of detention dated 9/5/2023 was issued on the basis of the report of the Advisory Board submitted to the State Government wherein the detention period of the detainee was extended for another period of 3(three) months w.e.f. 22/5/2023 till 21/8/2023.

13. In support of her submission, the learned State counsel has relied on the judgment of the Apex Court in the case of Baby Devassy vs Union of India reported in (2013) 4 SCC 531 which is reproduced herein below:-

"13) In a series of decisions, this Court has held that it is the subjective satisfaction of the Detaining Authority whether a person has to be detained for a particular period of time or not. In the impugned grounds of detention, the Detaining Authority has narrated all the reasons for passing the detention order detaining the appellant with a view to prevent him from abetting the smuggling of goods in future.

14) With regard to non-application of mind, Mr. K.K. Mani, learned counsel for the appellant pointed out that on the date of passing of the detention order, i.e., 03.05.2005, the detenu was in prison though he was granted bail on 12.04.2005, he had not availed the same and continued in prison on the date of order. According to him, this aspect was not reflected in the detention order which, according to him, vitiates the detention on the principle of non-application of mind. It is true that though the detenu was granted bail on 12.04.2005, for the reasons best known to him, he did not avail such benefit and continued to be in jail on the date of the detention, i.e., 03.05.2005. It is true that this aspect has not been mentioned in the detention order, however, on the other hand, it is not in dispute that the grounds of detention which forms part of the Detention Order dated 03.05.2005 clearly mention the details

about the bail order dated 12.04.2005 and non-availing of the same on the date of detention order, i.e., 03.05.2005.

17. *For the same reason, the other contention, namely, that no compelling necessity to pass the order of detention is to be rejected. As a matter of fact, learned counsel for the Detaining Authority took us through various grounds/details/materials adverted to in the impugned order and we are satisfied that it cannot be claimed that there was no compelling necessity to pass the order of detention. We have already pointed out that it is the subjective satisfaction of the Detaining Authority whether the order of detention is to be invoked or not. Accordingly, we reject the above contention also."*

14. The learned Government Advocate also relied in the case of Ankit Ashok Jalan vs Union of India and Others reported in (2020) 16 SCC 127 at paragraph 14.8 which is reproduced herein below:-

After considering the relevant decisions on the point, including Pankaj Kumar Chakrabarty¹⁸, Jayanarayan Sukul¹⁵, Haradhan Saha¹⁶ and Frances Coralie Mullin²¹ this Court observed:-

"15. In Frances Coralie Mullin case, the detenu's representation was received by the detaining authority on December 26, 1979. Without any loss of time copy of the representation was sent to the customs authorities for their remarks which was obviously necessary because the information leading to the order of detention was collected by the customs authorities. The facts were undoubtedly complex since the allegations against the detenu revealed an involvement with an international gang of dope smugglers. The comments of the customs authorities were received on January 4, 1980. The Advisory Board was meeting on January 4, 1980 and so there could be no question of the detaining authority considering the representation of the detenu before the Board met, unless it was done in a great and undue haste. After obtaining the comments of the customs authorities, it was found necessary to take legal advice as the representation posed many legal and constitutional questions, so, after consultation with the Sec-

retary (Law and Judicial) Delhi Administration, the representation was finally rejected by the Administrator on January 15, 1980. It was held that if there appeared to be any delay it was not due to any want of care but because the representation required a thorough examination in consultation with investigation agencies and advisers on law.

16. We agree with the observations in *Frances Coralie Mullin* case. The time imperative for consideration of representation can never be absolute or obsessive. It depends upon the necessities and the time at which the representation is made. The representation may be received before the case is Writ Petition (Criminal) No.362 of 2019 [Ankit Ashok Jalan vs. Union of India & Ors.](#) referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board. Nor it could be said that the government has delayed consideration of the representation, unnecessarily awaiting the report of the Board. It is proper for the government in such situations to await the report of the Board. If the Board finds no material for detention on the merits and reports accordingly, the government is bound to revoke the order of detention. Secondly, even if the Board expresses the view that there is sufficient cause for detention, the government after considering the representation could revoke the detention. The Board has to submit its report within eleven weeks from the date of detention. The Advisory Board may hear the detenu at his request. The constitution of the Board shows that it consists of eminent persons who are Judges or persons qualified to be Judges of the High Court. It is therefore, proper that the government considers the representation in the aforesaid two situations

only after the receipt of the report of the Board. If the representation is received by the government after the Advisory Board has made its report, there could then of course be no question of sending the representation to the Advisory Board. It will have to be dealt with and disposed of by the government as early as possible."

15. Mr. Yangerwati, learned C.G.C appearing for the Union of India, the respondent No.4 submits that the representation dated 13/3/2023 was received by the Ministry from the State Government of Nagaland through Post on 17/3/2023. Subsequently para wise comments on the representation was forwarded to the Ministry by the State Government through email dated 27/3/2023. The State Government by email dated 29/3/2023 informed that the case of the detainee has been referred to the Advisory Board on 4/3/2023 and that the report of the Advisory Board was awaited. Accordingly, the matter was kept in abeyance. In terms of the judgment and order of the Hon'ble Supreme Court in the case of Ankit Ashok Jalan vs Union of India reported in (2020) 16 SCC 127 wherein Hon'ble Supreme Court has observed that the representation addressed to the Central Government would continue to be considered and disposed of either before a reference made to the Advisory Board or after the receipt of Advisory Board opinion and not during the pendency of the matter before the Advisory Board. Subsequently, the confirmation order dated 9/5/2023 issued by the State Government was received by the Ministry on 9/5/2023 by email. Thereafter, the representation of the detainee was examined along with the facts of the case and relevant materials provided by the

State Government and was submitted to the competent/appropriate authority i.e. Secretary(Revenue) on 10/5/2023 who on behalf of the Central Government carefully considered the material facts on record and disposed of the representation by rejecting the same and was duly conveyed to the detinue by Memorandum dated 16/5/2023 and sent to the Jail authority by email dated 17/5/2023. Therefore, there is no delay in disposing of the representation of the detinue.

16. We have considered the submissions of the learned counsel for the parties.

17. The genesis of the matter emanates from the proposal dated 10/2/2023 from the Addl.DGP (L&O) Nagaland to the Special Secretary (Home) Government of Nagaland for passing appropriate order of detention under the provisions of PITNDPS Act which are reproduced here below:-

"

**GOVERNMENT OF NAGLAND
OFFICE OF THE DIRECTOR GENERAL OF POLICE
NAGALAND KOHIMA**

NO.PHQ/IGP/CID/NAR-D/81A/2022/148

Dated. Kohima the 10th

Feb,2023

To,

*The Special Secretary(Home)
Home Department
Government of Nagaland
Nagaland Kohima.*

*Sub:- PROPOSAL FOR DETENTION OF ACCUSED
RUOKUODILHOU LIEZIETSU (M) 37 YRS,S/O LT.KEVIMESE
LIEZIETSU V/O KOHIMA,PS,NORTH KOHIMA UNDER SECTION
391) OF THE PITNDPS ACT,1988.*

*Ref.Nar(c) PS. C No.03/2023 U/S 21(a)/60 NDPS R/W 25(1B)
Arms Act R/W 7 NSR*

Sir,

Please find enclosed herewith a proposal along with relied upon documents for the detention of accused Ruokuodilhou Liezietsu (M) 37 yrs, S/O Kevimese Liezietsu under section 3(1) of the Prevention of Illicit Traffic in narcotic Drugs and Psychotropic Substance Act, 1988 (PITNDPS Act 1988). The proposal for detention of the above accused in Crime No.3/2023 dated 24/01/2023 of Narcotic Police Station was submitted by the I.O of the case through the Superintendent of Police (Narcotic and Prohibition) before the Screening Board, PHQ constituted for the purpose of recommendation of the detention of the accuse under the provisions of the PITNDPS Act 1988. The Screening Board has perused the proposal and relevant case documents placed before it.

The brief facts of the case in Narcotic Police Station Crime No.003/2023 dated 24/01/2023 registered under section 21 (c) & 60 NDPS Act.

5. *Based on credible information received to the effect that one Mr. Ruokuodilhou Liezietsu S/O Kevimese Liezietsu member of UG group residing below Chakhesang Baptist Church, Kitsubozou colony, Kohima Sadan along with his associates are involved in illegal trafficking for considerable quantity of Narcotic drugs & Psychotropic substance and are also engaged in marketing the same to gullible people of Nagaland is recruiting several persons to trade in Narcotic Drugs & Psychotropic substance in and around Kohima town a raid was conducted at the suspected accused residence and search carried out. The following items were recovered and sized from his possession (1) Around 7 grams (Approx) of suspected heroin (2) Cash amounting to Rs.10110/- (3) Few handmade pipe/apparatus (4) Two Nos. of country made pistol.32 pistols and .22 pistols along with 15 live round of 22 and other incriminating items as mentioned in seizure list. In this connection Narcotic Cell PS Case No.03/2023 U/S 21(a)/60 NDPS R/W 25(1B) Arms Act R/W 7 NSR was registered on 21/01/2023.*

Ruokuodilhou was apprehended. Further, based on the information another suspected person Vizakhono (female), D/O Vedesul, V/O Viswema P.s Khuzama, Kohima, who is an acquaintance of the accused person was also apprehended from Agri colony Kohima. Presently the case is under active investigation.

During the course of investigation, the accused person was arrested under proper Arrest Memo and items in his possessions were seized through the proper Seizure Memo. The accused person was forwarded to the Hon'ble Court on 25/01/2023 and obtained police remand for a period of 8(eight) days w.e.f.25 jan 2023, for thorough interrogation. Presently, he is in judicial custody.

Current Activity indicating indulgence in drug trade and technical investigation:

- 1. The statement of the accuse/proposed detainee given to the IO and the seizure Memo seizing the contraband reveals the indulgence of the accused in illicit traffic of Narcotic Drugs. He was procuring the contrabands from parties in Manipur and selling it to people in and around Kohima. In his statement to the I.O, he stated that he has been to Senapati for more than 10(ten) times to purchase drugs and the latest being on 14/01/2023. The statement of the accused corroborates with CDR/call records and Bank Transaction statement of the accused-Ruokuodilhou Liezietsu with other suspects.*
- 2. The accused-Ruokuodilhou Liezietsu, has also stated that he is presently a member of an underground group NSCN (IM), Angami region, and admitted the ownership of the seized arms and ammunitions (seized ID card enclosed)*

Status of the accused: *Presently, the accused is in judicial custody at District Jail, Kohima w.e.f.02.02.2023.*

Status of previous cases: *The accused-Ruokuodilhou Liezietsu is an accused in Kohima North PS. FIR NO.01 19/2021, dated 17/12/2011. The proposed detainee was convicted vide judgment order of the District & Session Judge, Kohima in GR 266/2011, dated 06/02/2015 u/s 304 part 1 IPC, section 6 NSR and Arms Act. He was sentenced to undergo simple Imprisonment for 5 years and a fine of Rs.5000/- and in default to undergo simple imprisonment for 1 year.*

Grounds for detention:

- 1. The accused-Ruokuodilhou Liezietsu is both a consumer and trafficker of NDPS and has admitted to illegal trafficking and marketing of Narcotic Drugs & Psychotropic substance in and around Kohima town confirming to acts under Sec 2(c) of PIT-NDPS Act 1988.*
- 2. The accused intermittently visits Senapati to purchase drugs. He has been to Senapati for more than 10(ten) times to purchase drugs and the latest being on 14/01/2023.*

3. *That, during the course of the investigation, analysis of the call records the Bank Account of the accused person- Ruokuodilhou Liezietsu and some suspected person from Senapati, with whom the accused person made financial transaction reveals the suspected existence of a vast intra and interstate network involved in smuggling and trafficking of illicit drugs, Narcotic and psychotropic substances.*
4. *The accused Ruokuodilhou Liezietsu is a member of underground group NSCN (IM) and is in illegal possession of arms and ammunitions. He being a member of UG faction is in a position to threaten the witnesses and also alarm the drug peddlers from whom he is purchasing the drugs. This would hamper the investigation of the case and be detrimental to the case.*
5. *He has a history of crime. He is convicted in a murder case. With this background, he is in all likelihood could be a threat to the witnesses in the case and hence his continuation in preventive detention is necessary in the interest of the case.*
6. *That, the State of Nagaland lies within the area highly vulnerable to such illicit traffic as explained U/S 10(v) (c) of PIT-NDPS Act 1988.*

Conclusion: Illegal traffic in narcotic drugs and psychotropic substances pose serious threat to people's health and welfare, and the activities of persons engaged in such illegal traffic have a deleterious effect on the national economy and youth. The Government in the centre and State are constantly working towards the prevention of illicit traffic of NDPS. Nagaland being a transit route for illicit trafficking of the NDPS from Maynmar and Manipur to the other States in the country, prevention, detection, investigation and prosecution of the NDPS activities and cases is of importance.

In this particular case, there are strong grounds for placing the accused in preventive detention as in evident from the grounds mentioned above. The investigation of the case is in the initial stage. There are confidential reports which points towards a large network of supply and demand chain that is being investigated into. The accused is a member of UG faction in possession of the arms and ammunition, is an ex-convict, and is part of large network. In view of the above, the quantity of the seizure of contraband from the accused possession in the case is immaterial. If the competent authority, wishes to peruse reports of confidential nature, the department undertakes to produce the same in the future. Therefore, in view of the above mentioned facts and the grounds/reasons men-

tioned, it is strongly recommended to consider the proposal for prevention detention of accused Ruokuodilhou Liezietsu under section 3(1) of the PITNDPS Act 1988.

Enclosed:

1. Proposal by I.O along with list of documents.
2. Documents in Annexure 'A' to 'M'."

18. To appreciate the matter we would refer to the impugned detention order No. No.CON/PITNDPS/01/2023/01 dated 22/2/2023 along with grounds which are quoted herein below:-

**GOVERNMENT OF NAGALAND
HOME DEPARTMENT : POLITICAL
BRANCH**

**ORDER
Dated Kohima, the 22nd Feb-**

ruary, 2023.

NO.CON/PITNDPS/01/2023:: Whereas, the Addl. DGP (L&O), Nagaland has sent a proposal for detention of **Mr. Ruokuodilhou Liezietsu**, s/o Lt. Kevimese Liezietsu; Village: Kohima; PO/PS: North, Kohima; District: Kohima; State: Nagaland; P/Add: H/No. 4, Below Chakhesang Baptist Church, Kitsubozou, Kohima under PITNDPS Act, 1988 along with records under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

And whereas, on perusal of records as submitted by the Addl.DGP (L&O), Nagaland it appears that Mr. Ruokuodilhou Liezietsu, s/o Lt. Kevimese Liezietsu,; Village: Kohima; PO/PS: North, Kohima; District: Kohima; State; Nagaland:P/Add: H/No.4, Below Chakhesang Baptist Church Kitsubozou, Kohima was involved in the following case:-

- (i) Narcotic P.S. C/No. 03/2023 U/S 21(a)/60 NDPS Act R/W 25 (1B) Arms Act R/W 7 NSR.

And whereas, Addl. DGP (L&O), Nagaland has proposed to prevent Mr. Ruokuodilhou Liezietsu, s/o Lt. Kevimese Liezietsu; Village: Kohima; P/O/PS: North, Kohima; District: Kohima; State: Nagaland: P/Add: H.NO. 4, Below Chakhesang Baptist Church, Kitsubozou, Kohima from continuing his harmful and prejudicial activity by engaging in illicit traffic in narcotic drugs and psuchotropic substances which poses a serious threat to the public health and welfare of the people and the activities

of him engaged in such illicit traffic have a deleterious effect on the national economy.

And whereas, I. S.R. Saravanan, Special Secretary (Home), Nagaland, specially empowered under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (as amended) am satisfied on careful examination of the proposal of Addl. DGP (L&O), Nagaland and other supporting documents, found sufficient grounds for detention of Mr. Ruokuodilhou Liezietsu and being satisfied that with a view of preventing him from engaging in illicit traffic in NDPS, it is necessary to detain him.

Now, therefore, the undersigned, in exercise of powers conferred by sub-section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 has hereby issue this order directing Mr. Ruokuodilhou Liezietsu, s/o Lt. Kevimese Liezietsu; Village: Kohima; P/O/PS: North, Kohima; District: Kohima; State: Nagaland: P/Add: H.NO. 4, Below Chakhesang Baptist Church, Kitsubozou, Kohima be detained and kept in Central Jail, Dimapur for an initial period of three months w.e.f. the date of detention till 21.05.2023.

Given under my hand and seal of the office on this 22nd day of February, 2023.

(S.R.SARAVANAN) IPS

Special Secretary to the Govt. of Nagaland.

NO. CON/PITNDPS/01/2023 Dated Kohima, the 22nd February, 2023

Copy to:-

1. The Joint Secretary, (PITNDPS/COFEPOSA), Govt. of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, 5th Floor 'B' Wing, Janpath, Bhawan, Janpath, New Delhi- 110001
2. The Dy. Secretary to Chief Secretary, Nagaland, Kohima
3. The Director General of Police, Nagaland, Kohima
4. The Director General of Prison, Nagaland, Kohima.
5. The ADGP(L&O), , Nagaland, Kohima
6. The Inspector General of Police (INT), Nagaland, Kohima
7. The Inspector General of Police (CID), , Nagaland, Kohima
8. The Superintendent of Police, Narcotics, Nagaland.

9. *The Superintendent of Jails, Central Jail, Dimapur, Nagaland.*
10. *Mr. Ruokuodilhou Liezietsu, c/o Superintendent of Jails, Central Jail, Dimapur, Nagaland.*
11. *Office copy*

(S.R.SARAVANAN) IPS

Special Secretary to the Govt. of Nagaland.

GROUND OF DETENTION

*To,
Mr. Ruokuodilhou Liezietsu, S/o Lt. Kevimese Liezietsu;
Village: Kohima
PO/PS: North P.S. Kohima
District: Kohima
State: Nagaland
P/add: H/No.4, below CBCK, Kitsubozou, Kohima*

Subject: Communication of Grounds of Detention under Section 3(1) of the PITNDPS Act, 1980

Whereas, the undersigned has made detention order against you under the provision of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 on the following grounds:

1. *You, Mr. Ruokuodilhou Liezietsu, is both a consumer and trafficker of NDPS and has admitted to illegal trafficking and marketing of Narcotic Drugs & Psychotropic Substances in and around Kohima town confirming to acts under section 2 (e) of PITNDPS Act, 1988.*
2. *That you have been regularly procuring narcotic drugs from dealers in Senapati District, Manipur and that you have been to Senapati more than 10 times, the latest being 14.01.2023, to purchase drugs with the intention to sell it to potential clients as evident in the material before me. This reflects that you had knowingly engaged yourself in illicit traffic of narcotic drugs.*
3. *That, during the course of investigation, analysis of your call records and bank accounts and some suspected persons from Senapati, with whom you have made financial transaction reveals the existence of vast intra and inter-*

state network involved in smuggling and trafficking of illicit drugs, narcotic and psychotropic substances.

4. *That you are presently under judicial custody w.e.f. 02.02.2023. On the basis of material placed before me, I am satisfied that you are likely to indulge in similar prejudicial activity unless you are prevented from doing so by an appropriate order of preventive detention. Taking into account the nature of your antecedent activities, it is likely that after your release from custody you will indulge in prejudicial activities and it is necessary to detain you in order to prevent you from engaging in such activities.*
5. *That, the State of Nagaland lies within the area highly vulnerable to such illicit traffic of Narcotic Drugs and Psychotropic Substances. Therefore, keeping in view your propensity and inclination to indulge in such activities it is necessary to detain you in order to prevent you from illicit traffic in narcotic drugs in future.*

In light of the above facts and circumstances, I have no hesitation in arriving at the conclusion that you, Mr. Ruokuodilhou Liezietsu, through your above acts engaged yourself in possession and transportation of narcotic drugs, therefore, a fit case for detention under the PITNDPS Act, 1988.

Enclosures: Police Report and all supporting documents to the case.

(S.R.SARAVANAN) IPS

Special Secretary to the Govt. of Nagaland

19. On the bare perusal of the proposal and the detention order dated 22/2/2023 along with the grounds of detention we find that the grounds for detention of the detainee under section 3(1) of the PITNDPS Act 1985 are sufficient and cogent. We noticed that at ground No.4, it is clearly stated that the detainee is in judicial custody w.e.f. 2/2/2023. According to the Detaining authority the materials placed before him supports that the detainee is likely to indulge in similar pre ju-

dicial activities unless the detainee is prevented from doing so by passing an appropriate order of preventive detention. It also clearly states that taking into the nature of antecedent activities of the detainee, it is likely that after release of the detainee from custody he would indulge in pre judicial activity for which it was necessary to detain the detainee in order to prevent from engaging in such activities.

20. We take note that the detainee has submitted his representation before the appropriate authority through the Superintendent of Jail Dimapur Nagaland against the detention order dated 22/2/2023 and the same was forwarded to the Special Secretary (Home) Department, Government of Nagaland on the same day i.e. 13/3/2023. We have perused the record. The materials available on record reveals that the representation was received by the Detaining authority by India Post on 23/3/2023 and after consideration of the representation it was disposed of on 24/3/2023 by the Detaining authority. The rejection of the representation was communicated by the authority through the Superintendent of Central Jail, Dimapur on 28/3/2023. The representation dated 13/3/2023 addressed to the Chief Secretary Government of Nagaland and received by the Home Department was put up for consideration of the State Government on 27/3/2023 which was also rejected which was for revocation of the detention order dated 22/2/2023 and was also rejected by the State Government by order dated 4/4/2023.

21. The case of the detainee was referred to the PIT-NDPS Advisory Board on 4/3/2023. The Advisory Board after

personal hearing of the detainee has considered and found sufficient ground for detention of the detainee vide report dated 1/5/2023. Accordingly, confirmation order of detention was issued vide confirmation order dated 9/5/2023 by extending the period of detention for another 3(three) months w.e.f. 22/5/2023 till 21/8/2023.

22. The report under section 3(2) of the PITNDPS Act 1988 in connection with the detention order dated 22/2/2023 was sent on 22/2/2023 to the Joint Secretary Government of India, Ministry of Finance, Department of revenue, New Delhi.

21. We deemed it appropriate to refer to the provisions of the PITNDPS Act, 1988 which are reproduced herein below:-

"3. Power to make orders detaining certain persons-

(1) 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, 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."

23. On reading of the aforesaid provision, it is clear that the purpose of clause 5 of Article 22 of the Constitution,

the communication to the person detained in pursuance of the detention order of the grounds on which 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.

24. We find that in the present case the order of detention along with the grounds dated 22/2/2023 was communicated on 28/2/2023 within 6 days which we find that there is no unreasonable delay by the Detaining authority as exceptional circumstances has been shown as State Assembly Election. The representation of the detenue was disposed of on 24/3/2023 which was received by the Detaining authority on 23/3/2023 therefore, we are of the view that there is no delay in disposing the representation much less unreasonable or inordinate delay.

25. We also takes note that the report in respect of the detention order by the State Government was forwarded to the Central Government on 22/2/2023 on which date the detention order was issued. As per the record we find that the representation dated 13/3/2023 was received by the Ministry on 17/3/2023 and the para wise comments was received on 27/3/2023 from the State Government and it was also informed that the case of the detenue was referred to Advisory Board on 4/3/2023. The representation was disposed of on 10/5/2023 by the Central Government after proper consideration of the material facts on record. Thereafter, the same was duly conveyed to the detenue through the Jail authority by

Memorandum dated 16/5/2023 by email dated 17/5/2023. During the intervening period the reference of Advisory Board was pending. The confirmation order dated 9/5/2023 was received by the Ministry on the same day. Accordingly, we find no unreasonable delay in disposing of the representation even by the respondent No.4.

26. On examination of the materials available on record, we find that the materials or vital facts was placed before the Detaining authority and the same has been duly considered by the Detaining authority from where the Detaining authority has derived its subjective satisfaction. The materials available on record reveals that requisite subjective satisfaction, the formation of which is a condition precedent in passing of detention order has been duly considered as the materials or vital facts which had bearing and weighed on the issue of the satisfaction of the Detaining authority are neither withheld or suppressed by the sponsoring authority and the same has been duly considered by the Detaining authority before passing the detention order.

27. We are not oblivious of the fact that the preventive detention is a serious invasion of personal liberty and in normal methods upon the person charged with commission of offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained. As held by the Hon'ble Supreme Court, in preventive detention jurisprudence whatsoever little safeguard the Constitution and the enactment authorizing such detention assumes outmost importance and must strictly adhered to. In the present case,

on careful examination of the materials on record, we are of the view that the authorities had duly complied with the provision of law in passing the detention order dated 22/2/2023. We also find that the disposals of the representation by the authorities, as noted above, have been after fair consideration of the representation of the detainee within a reasonable time.

28. On consideration of the judgment relied by the learned counsel for the parties referred to herein above, we find that the proposition laid by the Hon'ble Supreme Court are consistent and observation and decision have been rendered on the attending facts and circumstances of those particular cases.

29. In view of what we have discussed above, we are of the view that the two grounds urged on behalf of the detainee particularly the subjective satisfaction or non application of mind in passing the impugned detention order dated 22/2/2023 and unreasonable delay in disposing of the representation by the Detaining authority/State Government and the Central Government are unacceptable.

30. On examination of the materials available on record we also find that there is sufficient and cogent reason in the proposal for preventive detention of the detainee. As noted herein above, on examination of the materials available on record, the detention order passed by the Detaining authority is supported by sufficient ground and there is no infirmity in passing the detention order and the respondent authorities have duly complied with the requirements of law in passing the detention order. Therefore we hold that the dis-

posals of the representation are within reasonable time in the present facts and circumstances of the case and the authorities have acted in accordance with the provision and requirement provided under the law.

31. In view of above conclusion, we find no merit in the writ petition. Accordingly, the writ petition is dismissed and the detention order dated 22/2/2023 and confirmation order dated 9/5/2023 are affirmed.

32. No order as to cost.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Comparing Assistant