

GAHC020004222024



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

Case No. : W.P.(Crl.)/10/2024

SHRI MORTUZA HUSSAIN CHOUDHURY
S/O ABDUS SATTAR CHOUDHURY
R/O BURMA CAMP
DIMAPUR NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND
NAGALAND KOHIMA

2:THE UNION OF INDIA
REPRESENTED BY THE JOINT SECRETARY (PITNDPS)
THE MINISTRY OF FINANCE
ROOM NO. 202
JEEVAN TARA BUILDING
2ND FLOOR
PARLIAMENT STREET
NEW DELHI-110001

3:THE SPECIAL SECREATRY
HOME DEPARTMENT- POLITICAL BRANCH
MORTH BLOCK 1ST FLOOR

NAGALAND CIVIL SECRETARIAT
NAGALAND KOHIMA

4:THE CHAIRMAN
NSA ADVISORY BOARD
NAGFALAND KOHIMA
C/O SPECIAL SECRETARY TO THE GOVT. OF NAGALAND

HOME DEPT.- POLITICAL BEANCH
NORTH BLOCK 1ST FLOOR
NAGALAND CIVIL SECRETARIAT
NAGALAND KOHIMA

Advocate for the Petitioner : A. SOPHIE

Advocate for the Respondent : GOVT ADV NL

With **W.P.(Crl.)/11/2024**

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NAGALAND KOHIMA 2:THE UNION OF INDIA
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FIRST FLOOR
NAGALAND CIVIL SECRETARIAT
NAGALAND KOHIM

Advocate for the Petitioner : A. SOPHIE

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE NELSON SAILO
HON'BLE MR. JUSTICE BUDI HABUNG**

JUDGMENT

29.08.2024

(Nelson Sailo, J)

The two (2) writ petitions will be disposed of by this common order since the facts and issues involved are one and the same and besides this, the detenues sought to be released are husband and wife.

[2.] By filing the writ petitions under Article 226 of the Constitution of India, the petitioners as stated, pray for issuance of a writ in the nature of Habeas Corpus to set aside the detention orders of the detenues and to set them at liberty.

[3.] Brief facts of the case is that on 06.04.2024, a written Suo-Moto FIR was lodged before the Officer-in-Charge, Narcotics Police Station, Kohima to the effect that on the night of 05.04.2024, the complainant along with accompanying staff during search of a vehicle bearing registration no. AS 03 T-4234

(Mahindra TUV red colour) coming from Dimapur side with three (3) occupants recovered 20 soap cases containing suspected Heroin weighing approximately 239 grams from the compartment in the vehicle which was concealed inside the gear lever in the presence of independent witnesses and Gazetted Officer. Accordingly, the suspected drugs, the vehicle with ignition key and documents, cash amounting to Rs. 1,43,000/- and other items were seized from the occupants of the vehicle. The apprehended persons were produced at the Narcotics Police Station, PHQ and Narcotics P.S Case No. 05/2024 under Section 22(b)/50 under the Narcotic Drugs and Psychotropic Substances Act, 1985 (ND&PS Act) was registered for further investigation and legal action.

[4.] During the interrogation of the three (3) accused persons, it was found that the suspected Heroin was to be delivered to the detenue in WP (Crl) No. 10/2024, who is known to be a Dimapur trafficker/peddler. Both the petitioners were arrested on 12.04.2024 and they were produced before the Court on 13.04.2024 with a prayer for 72 hours police remand. The prayer was allowed by the Court and accordingly, the detenues were

remanded w.e.f 13.04.2024 to 15.04.2024. On completion of police remand, the detenues were kept in judicial custody w.e.f 16.04.2024 to 01.05.2024. Subsequently, the Addl. Director General of Police (Administration) and Chairman, Screening Board, Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITND&PS Act), Nagaland submitted a proposal to the Special Secretary to the Government of Nagaland, Home Department for detention of the detenues under Section 3(1) of the PITND&PS Act.

[5.] The Special Secretary upon considering the proposals and in exercise of the powers conferred by Section 3(1) of the PITND&PS Act, vide order dated 30.05.2024, ordered the detention of the detenues in District Jail, Dimapur for an initial period of three (3) months. By a communication on the same day, the detenues were informed about the grounds of detention under Section 3(1) of the PITND&PS Act. The detenues then submitted their representation on 12.06.2024 for revocation of the detention order but the same was rejected by the Special Secretary to the Government of Nagaland, Home Department vide order dated 13.06.2024 and by the Chief Secretary to the

Government of Nagaland vide order dated 18.06.2024. A copy of the representation was also sent to the Joint Secretary (PITND&PS), Ministry of Finance, Govt. of India, New Delhi through post on 12.06.2024 and to the Chairman, PITND&PS Advisory Board as well. Aggrieved with their detention and with the non-disposal of their representation by the Government of India as well as the PITND&PS Advisory Board, the petitioners have filed the instant writ petitions on behalf of the detenues.

[6.] Mr. A. Soki, learned counsel for the petitioners submits that although the detenues had submitted their representation to the Government of India through the Joint Secretary (PITND&PS), Ministry of Finance, New Delhi and also to the Chairman, PITND&PS Advisory Board on 12.06.2024 but the same has not been considered and disposed of by the said authorities. He further submits that in the impugned order dated 30.05.2024 detaining the detenues, it has nowhere been mentioned that the detenues are likely to be released on bail or that they have applied for bail and that, considering the allegation made against them, their detention under the PITND&PS Act is necessary. Therefore, the detention of the detenues being without the

subjective satisfaction of the detaining authority, the same cannot be sustained.

[7.] The learned counsel further submits that the grounds for the detention of the detenues have not been made known to them in the language they understood and that the grounds were furnished to them in English language and that since the detenues are not conversant with English except for the local language Nagamese, grave prejudice has been caused to them. Therefore, even on this ground their detention is not sustainable. The learned counsel further submits that although the respondent authorities claim that the detainee in WP(Crl) No. 10/2024 is also involved in another case in the State of Meghalaya but he submits that since she has not been convicted by the Court concerned, the respondents cannot term her as an "habitual offender". The learned counsel submits that at any rate, the invocation of PITND&PS Act to detain the detenues cannot be justified in the given facts and circumstances of the case when they can be prosecuted under the regular provisions of law i.e., ND&PS Act. The learned counsel therefore submits that the impugned orders of detention passed against the

detenues and the rejection of their representation by the State authorities should be set aside and they should be set at liberty. In support of his submissions, the learned counsel relies upon the following authorities:-

(i) Harikisan Vs. The State of Maharashtra & Ors.
MANU/SC/0154/1962.

(ii) Huidrom Konungjao Singh Vs. State of Manipur & Ors. *MANU/SC/0458/2012.*

(iii) Alia Begum Vs. The State of Assam & Ors.
MANU/GH/0682/2022.

(iv) Gracy Vs. State of Kerala & Ors.
MANU/SC/0264/1991.

(v) Judgment & Order dated 23.02.2024 passed by the Division Bench of this Court in WP(Crl) No. 15/2023 (Sh. Ashuli Vs. State of Nagaland & 3 Ors.)

[8.] Mr. E. Thiba Phom, learned Public Prosecutor on the other hand submits that pursuant to the representations submitted by the detenues, they were produced before the Advisory Board and they were heard on 30.07.2024. After hearing the detenues and considering the materials available on record, the Advisory Board prepared a report on

09.08.2024 by forming an opinion that there were sufficient reasons for their detention. The said report has since been forwarded to the State Government for further necessary action. He submits that the report of the Board need not be furnished to the detainees and that it is the State Government to take further decision on the basis of the opinion or report rendered by the Board.

[9.] The learned Public Prosecutor further submits that the Additional Director General of Police (Administration) and Chairman of the Screening Board, PITND&PS Act, Nagaland while submitting the proposal for detention of the detainees has meticulously mentioned that the detainees are either involved directly or indirectly in a vast intra and inter-state network of smuggling and trafficking of illicit narcotic drugs and psychotropic substances and if bail is granted to them, they are likely to continue in the illicit trafficking of drugs and that they may not cooperate with the investigation and rather hamper the same. It was upon considering all the relevant aspects of the matter that the said authority made the

proposal to the competent authority for detention of the detenues and the competent upon being satisfied decided to pass the Detention Order dated 30.05.2024. The learned Public Prosecutor submits that the mentioning of all the details in the detention order may not be required when proper consideration has been done in terms of the detailed proposal submitted by the Chairman, Screening Board, PITND&PS Act. He therefore submits that the grounds taken by the petitioners has no merit.

[10.] The learned Public Prosecutor further submits that the claim of the petitioners that the grounds of detention has not been given to the detenues in the language they understand is also without any basis in view of the fact that the detenues were indeed explained in detail about the grounds of their detention in the language they understood i.e., Nagamese and acknowledging that they understood the grounds of their detention, they subscribed their signatures on the Acknowledgement Certificate. Therefore, the claim of the petitioners in this regard is also without any basis. The learned Public Prosecutor thus submits that the writ petitions are

without any merit and should be dismissed.

[11.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record including the record produced by the learned Public Prosecutor. From the proposal submitted by the Chairman, Screening Board PITND&PS Act on 17.05.2024 to the Special Secretary to the Government of Nagaland, Home Department, brief facts of the case, involvement of one of the detainees in another case besides other grounds available for their detention have been mentioned. The detainee in WP(Crl) No. 10/2024 was said to have been arrested earlier in Mawlai Police Station, Meghalaya in connection with FIR No. 23/2021 filed under Section 21(b) of the ND&PS Act on 21.04.2021. The case was said to have been charge sheeted but the detainee was on bail. It is no doubt true that until proven guilty and convicted by a competent court, one can only be termed as an accused but the fact remains that the detainee even while being on bail has been arrested again in connection with the present case involving recovery of a certain quantity of suspected contraband substance i.e., heroin which

as per the co-accused persons was to be delivered to her. The detenue is also known to be a Dimapur trafficker/peddler. The Chairman therefore opined that if the detenue is released on bail once again, she is likely to commit similar offence and therefore, the competent authority upon considering the proposal submitted for detention of the detenues found it justified to issue the detention order.

[12.] Further, following the detention of the detenues and submission of their representations to the authorities concerned, the Advisory Board took up the matter and the detenues appeared before the Board. The record produced by the learned Public Prosecutor shows that the detenues were heard in person in Nagamese and in English and that the Board upon taking all the material facts into consideration opined that there was sufficient cause for the detention of the detenues. It is also seen that the grounds of detention have been explained to the detenues in the language they understood and duly acknowledged by them as submitted by the learned Public Prosecutor and that the Acknowledgment Certificate is annexed to the affidavit-in-opposition filed by the respondent Nos. 1, 3 &

4. There are no materials available on record as of now to show that the representation of the detenues to the Government of India has been considered and disposed of but however, the same by itself cannot be the ground to ignore the incriminating materials available against the detenues, which were considered by the competent authority before issuance of the detention orders.

[13.] Thus, upon due consideration of the projected case of the petitioners and the materials available on record, we find no merit in the writ petitions and accordingly, they are dismissed.

[14.] We have also perused the authorities relied upon by the learned counsel for the petitioners but in view of the observations and findings arrived at, they are found to be not applicable and therefore, not referred to.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant