

GAHC020007042023



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

Case No. : W.P.(Crl.)/14/2023

SHRI THINGBAM SHIMRAH
S/O LATE SIARING SHIMRAH
REPRESENTED BY HIS WIFE SMTI ABENI LOTHIA
R/O UKHRUL
P.O AND P.S UKHRUL, MANIPUR AND PRESENTLY RESIDING AT
H.NO. 49, 4TH MILE, DIPHUPAR, DIMAPUR NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND

2:THE SPECIAL SECRETARY
HOME DEPT
(POLITICAL BRANCH) KOHIMA NAGALAND

3:THE COMMISSIONER OF POLICE AND DISTRICT MAGISTRATE
DIMAPUR NAGALAND

4:THE SUPERINTENDANT
CENTRAL JAIL
DIMAPUR NAGALAND

5:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF HOME AFFAIRS
GOVT. OF INDIA
NEW DELH

Advocate for the Petitioner : SARIF AHMED

Advocate for the Respondent : GOVT ADV NL

WP(Crl) No. 10 of 2023

Mrs. Khrieletuonuo Yanthan

W/O Michael Yanthan, R/O H.No. 326, 5th Mile Diphupar-B Village, Chumukedima,
Nagaland

Versus

The State of Nagaland

Represented by the Chief Secretary to the Govt. of Nagaland

2:The Principal Secretary(Home)
Govt. of Nagaland

3:The Special Secretary(Home)
Govt. of Nagaland

4:The Commissioner of Police and District Magistrate
Dimapur
Nagaland

5:The Union of India
Represented through the Secretary to the Govt. Of India
Ministry of Home Affairs
Dept. of Internal Security
North Block
New Delhi-110001

Advocate for the Petitioner : P. B. Paul

Advocate for the Respondent : E. Thiba Phom, GA for State respondent

Yangerwati, CGC for Union of India

WP(Crl) No. 13 of 2023

Smti Tabitha Hriivine

W/O Roshan Liangmai

R/O H.No. 08

Kanakhada, Beltola Tinali, Guwahati, Assam

Versus

The State of Nagaland

Represented by the Chief Secretary to the Govt. of Nagaland

2:The Commissioner of Police And District Magistrate
Dimapur Nagaland

3:The Union of India
Through the Secretary to the Govt. of India
Ministry of Home Affairs
Dept. of Internal Security
North Block
New Delhi-110001

Advocate for the Petitioner : M. Kasar

Advocate for the Respondent : E. Thiba Phom, GA for State respondent

Yangerwati, CGC for Union of India

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

16.02.2023

(Nelson Sailo, J)

This Order will dispose of all the three (3) cases since common issues are involved and they are covered by the registration of a common Police case.

[2.] The three (3) writ petitions are filed under Article 226 of the Constitution of India by the respective wives of the detainee seeking issuance of writ in the nature of Habeas Corpus for setting aside the detention orders of their husbands under the National Security Act, 1980 (NSA) and for a direction to the respondent authorities to set them at liberty.

[3.] Heard Mr. Sarif Ahmed, learned counsel for the petitioner in WP(CrI) No. 14/2023, Mr. P.B. Paul, learned counsel for the petitioner in WP(CrI) No. 10/2023, Mr. M. Kasar, learned counsel for the petitioner in WP(CrI) No. 13/2023, Mr. E. Thiba Phom, learned State Counsel for the State respondents in all the cases and Mr. Yangerwati, learned CGC for the

respondent Union of India in all the cases.

[4.] The case of the petitioner in WP (Crl) No. 14/2023 is that her husband (detenue) was arrested on 11.07.2023 pursuant to the Suo Moto FIR filed on 10.07.2023 before the Office-in-Charge, Sovima Police Station, Chumukedima wherein, it was stated that information was received from Intelligence Input about trafficking of ammunition at Sovima village and based on which one suspected vehicle Bolero bearing registration No. AS 01 BY 9559 was intercepted at Sovima village and huge amount of ammunitions comprising of 1500 numbers of 7.62mm and 980 numbers of 5.56mm ammunitions packed inside three (3) rice bags were recovered from the vehicle. The two (2) occupants of the vehicle were arrested and the vehicle seized. Later on, based on the preliminary investigation, one (1) more person namely, Elizabeth Zingkhai was also arrested. Sovima P.S Case No. 0014/2023 under Section 120(B) of the IPC read with Section (1A)/25(1AA) of the Arms Act, 1959 (Arms Act) and Regulation 7/8 of the Nagaland Security Regulation (NSR) was registered and investigated into. At the time of arrest of the detenue, the properties seized from his possession were one (1) Maruti Suzuki Zen car bearing registration No. WB 02 V 2232, cash amount of Rs. 29,450/-, one (1) wrist watch, one (1)

mobile phone and one (1) handbag. Apart from these items, no illegal item whatsoever was seized from his possession. By orders dated 12.07.2023 and 17.07.2023, the Chief Judicial Magistrate (CJM), Dimapur granted police remand of the detainee on the prayer made by the Investigating Officer (I/O). Thereafter, on 19.07.2023, the I/O forwarded the detainee before the CJM, Dimapur with a prayer for judicial remand.

[5.] Mr. Sarif Ahmed submits that while the detainee was under judicial custody in Central Jail, Dimapur, one (1) police personnel visited the Central Jail, Dimapur on 01.09.2023 and handed over five (5) documents to the detainee. The documents were Detention Order dated 31.08.2023, Grounds of Detention, Letter of Approval for Detention dated 31.08.2023, Schedule and Letter of Information dated 31.08.2023. Apart from these documents, no other documents were supplied to the detainee. According to the detainee, at the time of handing over of these documents, the police personnel did not explain to the detainee the contents of the documents and it was only on 02.09.2023 that the detainee came to know the reason for his detention when the lawyer representing him visited the Central Jail, Dimapur informing him that he was booked under the NSA by the Order dated 31.08.2023 by the Commission of Police and District

Magistrate, Dimapur for a period of three (3) months. The detenue then on 11.09.2023 submitted a representation through the respondent No. 5 to all the respondents. The detenue then was served with the approval of his detention vide Order dated 11.09.2023 on 15.09.2023, which was for initially a period of three (3) months from the date of his detention till 30.11.2023. At the time of handing over the said approval order, the documents attached to the said order included the Letter of Approval of Detention dated 31.08.2023, Detention Order dated 31.08.2023, Grounds of Detention, Schedule, Letter of Information dated 31.08.2023 passed by the respondent No. 4, proposal for NSA detention of the detenue along with five (5) others by the Deputy Commissioner of Police dated 24.07.2023 addressed to the respondent No. 4, a detailed report dated 24.07.2023 prepared by the I/O, statement of the detenue, Suo Moto FIR dated 10.07.2023, Crime Details Form, Arrest/Court Surrender Form, Properties Search & Seizure Form, Check List under Section 41 (1)(b)(ii) Cr.PC and revised format for joint interrogation.

[6.] The detenue was then served with a copy of the order dated 29.09.2023 on 10.10.2023 by the respondent No. 3 by which his representation was rejected. He was then served with a wireless message

dated 13.10.2023 on 19.10.2023 by which his representation to the Ministry of Home Affairs was rejected. Subsequently, the State Government on 17.11.2023 issued a confirmation order under Section 12(1) of the NSA confirming the detention of the detainee while directing that he is to be detained for another three (3) months with effect from 01.12.2023 till 28.02.2024 and that his detention shall be reviewed within the said period. Aggrieved, the petitioner is before this Court.

[7.] Mr. Sarif Ahmed, learned counsel for the petitioner submits that the detainee was served with the Order of Detention only on 01.09.2023 along with the grounds of his detention. The detainee having studied only up to Class-VII and without being explained about the contents of the documents given to him was not aware about the reason for his detention. It was only on 02.09.2023 when his lawyer explained to him why he was detained that he became aware. The learned counsel by referring to the grounds of detention at page No. 30 of the writ petition submits that it was indicated that the detainee was informed the ground of his detention in pursuance of Section 5 of the NSA, which otherwise should be under Section 5-A of the said Act. This shows the non-application of mind on the part of the issuing authority concerned. The

learned counsel submits that in the Approval for Detention of the detainee sought by the Commissioner of Police from the State Government dated 31.08.2023, it was indicated that the detainee was arrested for dealing in illegal ammunitions and possession of the same which are in gross violation of the cease fire ground rules. However, the learned counsel submits that no ammunition was recovered from the possession of the detainee which can be seen from the seizure memo and therefore, the approval sought is wholly misconceived. The detainee was then furnished with the relevant documents only on 15.09.2023 whereas, he had submitted his representation on 11.09.2023 and the approval order was also passed on 11.09.2023. Therefore, the detainee could not make effective representation since he was not furnished with the relevant materials on 11.09.2023.

[8.] The representation of the detainee was then rejected on 29.09.2023 and the Order of Rejection was received by him only on 10.10.2023. He was served with a carbon copy of the rejection by the Ministry of Home Affairs on 18.10.2023 and a typed copy on 19.10.2023. The learned counsel submits that the confirmation order of his detainee was given to the detainee only on 24.11.2023 whereas, the same was passed on

17.11.2023. Referring to the Schedule prepared by the Commissioner of Police, the learned counsel submits that the same nowhere provides that the detinue was likely to be released on bail so as to warrant his detention under NSA. He submits that the respondent authorities have clearly violated Article 22(4) & (5) of the Constitution of India in detaining the detinue for a period exceeding three (3) months without due process. The learned counsel further submits that Section 3(3) and Section 3(5) of the NSA has not been complied with by the State respondents in view of the fact that upon approval of detention by the State Government, the same has to be conveyed to the Central Government within seven (7) days but in the instant case, it took 24 days for conveying the information to the Central Government. The learned counsel referring to the affidavit-in-opposition filed by the respondents submits that while it was the Commissioner of Police who had directed the detention of the detinue purportedly after having a subjective satisfaction that he should be detained, it was the Principal Secretary to the Govt. of Nagaland, Home Department, who had filed the affidavit. No reason has been assigned as to why the Commissioner of Police could not file the affidavit. He submits that that the Principal Secretary to the Govt. of Nagaland, Home Department at any rate could not have filed the affidavit explaining the

subjective satisfaction of another person/authority i.e., the Commissioner of Police. The learned counsel submits that as already pointed out by him, the representation submitted by the detainee also was rejected after a considerable delay and without any explanation for the same. The detainee therefore should be released from custody since his detention is only vitiated for non-compliance of the mandate of the law in this regard. In support of his submission, the learned counsel relies upon the following authorities:-

- (1) Adam Ali @ Adi Ali -Vs- Union of India 2021 (3) GLT 764.*
- (2) Mankhanniang –Vs- State of Manipur & Ors. 2020 (3) GLT (MN) 780.*
- (3) Biplab Biswas –Vs- Union of India & Ors. 2020 (3) GLT (TR) 771.*
- (4) Ananta Gogoi –Vs- Union of India & Ors. 2009 (4) GLT 216.*
- (5) Huidrom Konungjao Singh –Vs- State of Manipur & Ors. (2012) 7 SCC 181.*
- (6) Akhil Gogoi –Vs- State of Assam & Ors. 2017 (5) GLT 660.*
- (7) Rajammal –Vs- State of T.N & Anr. (1999) 1 SCC 417*
- (8) Pebam Ningol Mikoi Devi –Vs- State of Manipur & Ors. 2010 (5) GLT (SC) 41.*

(9) Phukan Daimary @ Fungjarang –Vs-. State of Assam & Ors. 1998 (4) GLT 40.

(10) Jagdish Prasad –Vs-. The State of Bihar & Ors. (1974) 4 SCC 455.

(11) Union of India (UOI) –Vs-. Paul Manickam & Ors. (2003) 8 SCC 342.

[9.] Mr. E. Thiba Phom, learned State Counsel submits that the detainee has clearly admitted of having received the documents on 02.09.2023 and therefore, he could file his representation before the authority concerned without any difficulty. The learned State Counsel submits that the detention order was passed on 31.08.2023 and a copy served to the detainee on 02.09.2023. From the records, the detainee acknowledges receipt of the documents and he admits that he was explained in Nagamese the reason for the detention and about his rights. Therefore, Section 8 of the NSA has not been violated as alleged by the counsel for the petitioner. He submits that the representation of the petitioner dated 11.09.2023 was disposed of on 29.09.2023 within a period of 18 days by rejecting the same. Since the file containing the representation has to be processed at different levels, it therefore took 18 days time to consider and dispose of the representation of the detainee. He submits that the

detenue has been booked under the Preventive Act on merit and after careful examination of all relevant documents by the Detaining Authority and therefore, the writ petition has no merit and should be dismissed.

[10.] Mr. Yangerwati, learned CGC by referring to the affidavit-in-opposition filed by the respondent No. 5 submits that the representation dated 11.09.2023 of the detenue was received by the concerned Section in the Ministry of Home Affairs on 05.10.2023 only and thereafter, after having a threadbare examination of the materials on record at various levels, the representation was rejected on 12.10.2023. Therefore, there being no ground for revoking the detention order, the writ petition should be dismissed.

[11.] Mr. P.B. Paul, learned counsel for the petitioner in W.P(Crl) No. 10/2023 submits that the detenue was arrested on 12.07.2023 and the proposal for his detention was submitted on 24.07.2023. From a bare perusal of the proposal, it can be seen that there is no subjective satisfaction but only a copy paste of the statements made by the detenue under Section 161 Cr.PC. The Detention Order was passed by the Commissioner of Police purportedly after having subjective satisfaction to detain the detenue but it is the Principal Secretary to the Govt. of

Nagaland, Home Department who has filed and sworn the affidavit-in-opposition. The said authority by no means can be in a position to explain the subjective satisfaction of another person i.e., the detaining authority. He submits that the law is settled in this regard and therefore, even on this sole ground, the Detention Order is liable to be set aside and the detainee set at liberty. The learned counsel further submits that the representation of the detainee was submitted on 20.09.2023 but was disposed of by the State Government only on 29.09.2023 without any explanation as to why there was a delay in considering and disposing of the same. Similarly, the representation of the detainee was disposed of by the Union of India Ministry of Home Affairs by rejecting the same on 13.10.2023 after a period of 23 days and that too, without any explanation for the delay. Information about the rejection was given to the detainee only on 19.10.2023. Therefore, there being no explanation in disposing of the representation, the Detention Order is liable to be set aside even on this ground. The learned counsel further submits that no recovery was made from the possession of the detainee so as to implicate him in the case and therefore, his detention under NSA is wholly unwarranted. The learned counsel submits that he also adopts the argument made by the learned counsel Mr. Sarif Ahmed in respect of the

delay in disposing of the representation and there being no subjective satisfaction by the Detaining Authority along with the authorities cited in support thereof. In addition, the learned counsel relies upon the following authorities:-

(1) Mohinuddin –Vs- District Magistrate, Beed & Ors. AIR 1987 SC 1977.

(2) Pebam Ningol Mikoi Devi vs. State of Manipur & Ors. (2010) 9 SCC 618.

(3) Haobijam Kenjit Singh @ Kenedy –Vs- State of Manipur & Ors. 2006 (Suppl) 1 GLT 577.

[12.] Mr. E. Thiba Phom, learned State Counsel submits that the affidavit-in-opposition of the State respondents is in similar lines with the earlier writ petition and therefore, he would like to reiterate the same. In addition, the learned State Counsel submits that the detinue in his statement during the investigation clearly admitted that he collect the live round ammunitions from the Police Central Store which he had adjusted for different occasions and thereafter, delivered the same to one Mr. Lanusanen Ponge, who is the accused No. 5 in the instant case.

Therefore, it is clear that the detainee is one (1) of the main accused in the case. The learned State Counsel therefore submits that the writ petition should be dismissed.

[13.] Mr. Yangerwati, learned CGC submits that the representation of the detainee dated 20.09.2023 was received by the Ministry of Home Affairs only on 05.10.2023 and upon due considering the same, the same was rejected on 13.10.2023 and communicated to the detainee. Therefore, there is no question of revoking the Detention Order and the writ petition should be dismissed.

[14.] Mr. M. Kesar, learned counsel for the petitioner in WP(Crl) No. 13/2023 submits that the detainee was arrested on 10.07.2023 and as per the Seizure Memo, 1500 plus 980 live round ammunitions and Bolero vehicle amongst others was recovered and seized. Pursuant to the proposal submitted by the Deputy Commissioner to the Commissioner of Police on 24.07.2023, the Commissioner of Police on 31.08.2023 passed the Detention Order. The said Detention Order purportedly has been passed by the Commissioner of Police purportedly after having subjective satisfaction that the detainee should be detained but surprisingly, it is the Principal Secretary to the Govt. of Nagaland, Home Department who has

filed the affidavit-in-opposition against the writ petition. The learned counsel submits that the Principal Secretary to the Govt. of Nagaland, Home Department cannot be said to have explained the subjective satisfaction of another person/authority i.e., the Detaining Authority and therefore, the Detention Order passed cannot be sustained even on this ground and the detainee should be set at liberty. The learned counsel further submits that on facts, the detainee did not have any knowledge that the goods he was transporting were live round ammunitions. He only helped in transporting the goods without knowing the contents on the request of one Ms. Elizabeth Zingkhai. The learned counsel further submits that the ground taken by the Deputy Commissioner of Police in the proposal for detention of the detainee under the NSA to the effect that he was likely to seek bail and therefore should be detained under the Special Act is without any basis in view of the fact that the detainee neither filed any bail application nor was there any attempt. The learned counsel submits that the offence alleged to have been committed by the detainee can be effectively dealt with under the relevant penal laws including the Arms Act and therefore the detention of the detainee under the NSA is wholly unwarranted. The learned counsel submits that the detainee was also not given any opportunity to be represented by his next

friend before the Advisory Board and that even for this reason, the Detention Order cannot be sustained. The learned counsel submits that he adopts the argument made by the learned counsels Mr. Sarif Ahmed as well as Mr. P.B. Paul and in addition, relies upon the following authorities:-

(1) Rekha –Vs- State of Tamil Nadu Through Secretary to the Government & Anr. (2011) 5 SCC 244.

(2) Yumman Ongbi Lembi Leima –Vs- State of Manipur & Ors. (2012) 2 SCC 176.

(3) Jutika Chakraborty –Vs- State of Nagaland & Ors. 2013 (5) GLT 785.

(4) Konsam Inaocha Singh @ Jack Konsam –Vs- District Magistrate, Imphal East & Ors. 2012 (2) GLT 9.

(5) Nameirakpam Inaotomba Singh –Vs- Union of India & Ors. 2007 (4) GLT 200.

[15.] Mr. E. Thiba Phom, learned State Counsel appearing for the State respondents by relying upon the affidavit-in-opposition filed by the State respondents submits that the detention of the detainee has been done as per the relevant provisions of the NSA after considering all the

relevant materials. He submits that the statements of the detainee given to the I/O reveals the indulgence and role of the detainee in illegal business of selling and possession of ammunitions. Secondly, investigation reveals strong prima facie case against the detainee for having acted in contravention of Section 120B IPC read with Section 25 (1A) (1AA) of the Arms Act read with Regulation 7/8 of the NSR. Thirdly, the co-accused admitted that the detainee was the main agent who arranged the selling of the illegal ammunitions. Lastly, based on the advice of the Advisory Board, the confirmation order was passed. Referring to the statements of the detainee recorded under Section 161 Cr.PC, the learned counsel submits that the detainee stated that he passed Class-XII. Therefore, the detainee is a literate person and does not require the assistance of the next friend as claimed. He therefore submits that the writ petition is without merit and the same should be dismissed.

[16.] Mr. Yangerwati, learned CGC by referring to the affidavit-in-opposition of the respondent No. 3 submits that the representation of the detainee dated 25.09.2023 was received by the Ministry of Home Affairs on 17.10.2023 and after due consideration of the same at different levels, the Ministry did not find any ground for revoking the Detention Order and accordingly rejected the representation. He submits that there is no delay

on the part of the respondent No. 3 in disposing of the representation of the detinue. The writ petition being without any merit should be dismissed.

[17.] 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 records produced by the learned State Counsel.

[18.] As may be noticed, the grounds taken by all the petitioners in seeking the setting aside of the Detention Orders are similar. It is their case that the subjective satisfaction claimed by the Detaining Authority i.e., Commissioner of Police is erroneous and based on irrelevant considerations. Further, despite the fact that the detinue did not apply for bail, the authority concerned took an adverse view without any basis. Therefore, there was no reason for their detention under the NSA. It is also their case that in order to prosecute the detenues for the alleged offence said to have been committed by them, the penal laws including the Arms Act can be applied and there is no requirement for detaining them under the NSA. It is the further case of the petitioners that none other than the Detaining Authority could have sworn the affidavit-in-opposition explaining his subjective satisfaction for detaining the detenues

under the NSA. However, the Principal Secretary to the Govt. of Nagaland, Home Department had sworn the affidavit instead and on this ground, the detention of the detainees is also vitiated. The further case of the petitioners is that the representations of the detainees was considered and disposed of after a considerable delay. There is also no explanation for the delay as well. Under such circumstance, the Detention Order should be set aside.

[19.] The Apex Court, in the case of *Jagdish Prasad* (supra) in the given facts of the case which was also a matter relating to a petition for issuance of a writ in the nature of habeas corpus held that the affidavit that was sworn was by the Upper Division Assistant (Special), Home Department, whereas it should have been the District Magistrate who should have sworn the affidavit. Therefore, the affidavit sworn was not with personal knowledge but with paper wisdom. A Division Bench of this Court, in the case of *Ananta Gogoi* (supra) in the given facts of that case held that filing of an affidavit on behalf of the Detaining Authority and not by a Detaining Authority having regard to the provision of NSA was not proper. In fact the Order of Detention is made by the Detaining Authority after having subjective satisfaction for detaining the detainee, and therefore, it will not be proper for someone else to swear an affidavit

against the habeas corpus petition stating that the detention of the detainee was made with the subjective satisfaction of the Detaining Authority. Accordingly, the impugned Detention Orders were set aside by the Court and the detainee set at liberty.

[20.] In the case of *Phukan Daimary@Fungjarang* (supra) a Division Bench of this Court similarly held that the detention of the detainee was not sustainable in view of the fact that the Detaining Authority has not filed any affidavit but it was filed by the Successor in Office. The Court found that the affidavit filed by the Successor in Office cannot say anything about the subjective satisfaction arrived at by the earlier District Magistrate, and therefore, the Detention Order was not sustainable and was accordingly interfered with.

[21.] In the present case as well, there is no dispute to the fact that the Detention Order dated 31.08.2023 was passed by the Commissioner of Police, who was also the District Magistrate of Dimapur. Section 3(3) of the NSA may be abstracted herein for ready perusal:-

“(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is

necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time."

[22.] From the above abstract it may be seen that the District Magistrate or a Commissioner of Police or the State Government, upon being satisfied by an Order in writing direct the detention of any person with a view to prevent him or her from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order etc. direct his detention. Therefore, it can be seen that there has to be a subjective satisfaction of the Detaining Authority to detain a person. Such detention shall however be for a specific time-frame of twelve (12) days and can continue, subject to the approval of the State Government. From the various authorities as

referred to herein above, it is the subjective satisfaction of the Detaining Authority, i.e. the Commissioner of Police/District Magistrate which is required for the detention of the person concerned. The Commissioner of Police in the instant case has otherwise not filed the affidavit-in-opposition, and therefore, the Principal Secretary to the Government of Nagaland could not have explained the subjective satisfaction of the Commissioner of Police for the detention of the detainee.

[23.] The next issue to be considered is regarding the delay in disposing the representation filed by the detainee. The detainee in all the three (3) cases filed their representation through the Jail Superintendent, Central Jail, Dimapur and their representations came to be rejected by the State after 9 to 18 days and by the Central Government after 23 to 37 days. The delay in the disposal of the representations is by the State has hardly been explained. Likewise, the stand of the Central Government in the Ministry of Home Affairs is that the representations were belatedly received. The Apex Court in the case of *Rajammal* (supra) in the given facts of that case in paragraph Nos. 7, 8 & 11 held as follows:-

“7. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no

period is prescribed by [Article 22](#) of the Constitution for the decision to be taken on the representation the words "as soon as may be" in clause (5) of [Article 22](#) convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a constitution Bench of this Court in [K.M. Abdulla Kunhi v. Union of India and others](#). The following observations of the Bench can profitably be extracted here:

"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 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."

8. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

11. We are, therefore, of the opinion that the delay from 9-2-1998 to 14-2-1998 remains unexplained and such unexplained delay has vitiated further detention of the detenu. The corollary thereof is that further detention must necessarily be disallowed. We therefore allow this appeal and set aside the impugned judgment. We direct the appellant-

detenu to be set at large forthwith."

[24.] From the above abstract it may be seen that the Apex Court came to a finding that no explanation was given as to why the Minister concerned could not deal with the representation from 09.02.1998 to 14.02.1998. No explanation was made in this regard, and therefore, the Apex Court interfered with the Order of Detention. In the present cases as well, apart from stating that the matter was to be forwarded to the State Government for consideration and thereafter the order of rejection was passed, no other explanations have been made. Therefore, considering the provision of the NSA and the fact that the liberty of a person has been curtailed in such a manner the delay in disposing of his representation cannot be accepted.

[25.] In the case of *Union of India vs. Paul Manickam and another*, the Apex Court in the given facts of that case held that if the Detaining Authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities and the Detention Order can

be validly made. Where a person already in custody does not indicate that the detenu was likely to be released on bail, the Order would be vitiated.

[26.] The Apex Court in the case of *Huidrom Konungjao Singh* (supra) in the given facts of that case after taking into account other decisions rendered by the same Court 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:-

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

(ii) 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 and

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

According to the Apex Court in case either of the above two facts do

not exist, the detention order would stand vitiated. In the present case as well the Orders of Detention passed by the Commissioner of Police do not indicate that the detenues are likely to be released on bail, and therefore, in view of what has been held by the Apex Court, the orders of their detention cannot be sustained. This principle of law was also explained by the Apex Court in the case of *N. Meera Rani vs. Government of Tamil Nadu and another*, reported in (1989) 4 SCC 418, *Dharmendra Suganchand Chelawat vs. Union of India and Others*, reported in (1990) 1 SCC 746 and *Kamarunnisa vs. Union of India and another*, reported in (1991) 1 SCC 128.

[26.] The petitioner in WP (Crl) No. 14/2023 has taken the ground that the Detaining Authority can pass the Detention Order only when he is authorized by the order of the State Government as provided under Section 3 (3) of NSA. In this connection, the State Counsel after obtaining instructions has produced a Notification issued by the Govt. of Nagaland in the Home Department, Political Branch under Memo No. COM/NSA/DELE/2008/99 dated 28.11.2023 delegating the power to the District Magistrates in the State/Commissioner of Police, Dimapur in accordance with Section 3(3) of the NSA to detain certain persons as a preventive measure under the NSA effective for a period of three (3)

months with effect from 01.12.2023 to 28.02.2024. Therefore, it is seen that the State Government has delegated power to the Commissioner of Police, Dimapur under the NSA in this regard. However, the detention in the present cases relates to a period prior to the issuance of Notification dated 28.11.2023. Be that as it may, in view of the findings arrived at herein above, this issue need not detain this Court. At the same time, this Court observes that the authorities concerned should act only within the ambit of the powers and jurisdictions conferred by the Act and not otherwise.

[27.] In view of what has been stated above, we do not consider it necessary to go into the other points raised and also the other authorities relied upon. The writ petitions in our considered opinion deserve to be allowed. In the result, the impugned Orders are hereby set aside and the detenues are directed to be set at liberty, if not otherwise wanted in any other case.

[28.] All the three (3) writ petitions are accordingly disposed of.

Sd/-

JUDGE

Sd/-

JUDGE

Comparing Assistant