

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**W.P.(CrI.) No. 7 of 2025**

Shri Lisham Premananda Singh @ Tony @ Brajamohon  
***Petitioner***

***Vs.***

The District Magistrate and 3 Others  
***Respondents***

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. KEMPAIAH SOMASHEKAR  
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

**ORDER**

*(K. Somashekar, C.J. and A. Bimol Singh, J)*

**06.08.2025**

[1] Heard Mr. L. Shashibhushan, learned senior counsel assisted by Md. Fakharuddin, learned counsel appearing for the petitioner; Mr. Phungyo Zingkhei, learned Deputy GA appearing for respondent Nos. 1, 2 and 4 and Mr. BR Sharma, learned CGSC appearing for respondent No. 3.

[2] The present writ petition has been filed assailing the order dated 06.02.2025 passed by the District Magistrate, Kakching District detaining the petitioner under the provisions of the National Security Act, 1980, order dated 14.02.2025 issued by the Commissioner (Home), Government of Manipur approving the detention order passed by the District Magistrate, Kakching District and also order dated 13.03.2025 issued by the Commissioner (Home) Government of Manipur confirming the order of detention and ordering for detaining the petitioner for a period of 12 (twelve) months from the date of detention.

[3] Even though several grounds have been raised in the present writ petition, the learned senior counsel for the petitioner advanced only one ground before use in assailing the impugned detention orders.

[4] It has been submitted by the learned senior counsel that the District Magistrate, while issuing the said detention order dated 06.02.2025 failed to mention that the petitioner is likely to be released on bail and that on his being release on bail the petitioner is likely to continue to carry out prejudicial activities. The learned senior counsel submitted that the District Magistrate passed the impugned detention order without application of mind and on this ground alone, the impugned detention orders are liable to be quashed and set aside. In support of his contention, the learned senior counsel relied on the judgments rendered by the Hon'ble Supreme Court in the case of **Union of India vs. Paul Manickam and another** reported in **(2003) 8 SCC 342** wherein it has been held at paragraph No. 14 as under :

*"14. So far as this question relating to procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must*

*depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability, etc. ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. 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, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See N. Meera Rani v. Govt. of Tamil Nadu and : Dharmendra Suganchand Chelawat v. Union of India). The point was gone into detail in Kamarunnissa v. Union of India. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed : (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or possibility of release on bail.”*

[5] The learned senior counsel also relied on the judgment rendered by the Hon'ble Apex Court in the case of **Champion R. Sangma vs. State of Meghalaya and another** reported in **(2015) 16 SCC 253** wherein at paragraph Nos. 9 to 15 of the said judgment it has been held as under :

*"9. Coming to the ground on which we intend to allow this appeal, we may point out that even if the appellant is in jail in connection with some criminal case(s) there is no prohibition in law to pass the detention order. Law on this aspect is well settled and stands crystallised by plethora of judgments of this Court. However, a reading of those very judgments also clarifies that there are certain aspects which have to be borne in mind by the detaining authority and satisfaction on those aspects is to be arrived at while passing the detention order.*

*10. There are three such factors which were restated in Kamarunnissa v. Union of India & Anr. reported in (1991) 1 SCC 128 :*

*"13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if*

*bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in the case of **Ramesh Yadav** was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody."*

**11.** *The aforesaid dicta is reiterated in subsequent judgments as well. Some of which are as under :*

- (i) T.V. Sravanan v. State, (2006) 2 SCC 664,*
- (ii) K.K. Saravana Babu v. State of T.N.,(2008)9 SCC 89*
- (iii) Huidrom Konungjao Singh v. State of Manipur and Ors., (2012) 7 SCC 181*

**12.** *In the present case, as already pointed out above, the appellant was under incarceration as he is implicated in as many as 8 cases. In fact till date he is in jail and has not been granted bail.*

**13.** *In view of the above, it was for the respondents to satisfy the Court as to whether the triple requirements, as postulated*

*above, stand satisfied in the present case. We find that the respondents have miserably failed to fulfill this requirement.*

*14. In the instant case, though the detention order and even the grounds of detention record the factum of appellant's being in custody, no satisfaction has been recorded by the detaining authority that there was reliable material before the authority on the basis of which it would have reasons to believe that there was real possibility of his release on bail. It is not mentioned as to whether any bail application was even moved by the appellant or not, what to take out likely fate of such an application. The order is also conspicuously silent on the aspect as to whether there was any probability of indulging in activity if the appellant would be released on bail. On the contrary, we are amazed that the averments made in the counter-affidavit which are self-defeating and clinching the issue against the respondent at Page 171 Para 3 of the paper book which reads as under :*

*"3. I state that the submission of the learned Senior Counsel for the petitioner that the detaining authority was satisfied that there was some likelihood of the petitioner being released on bail and thereafter the detention order was passed to prevent such contingency is completely unfounded. In fact the detention order was passed on 29-1-2013 and from the detention order it no way reflects that with a view to pre-empt the petitioner from getting the bail in the pending 8 criminal cases that the detention order 2013 was passed. In fact after noticing the fact that the petitioner was arrested by the police in various unlawful activities and crimes like extortion, dacoity, kidnapping, murder and robbery with deadly weapons for ransom, for disruption of public order, etc. and being satisfied that if the petitioner is*

*allowed to remain at large he would act in a manner prejudicial to the security of the State and shall be a constant threat to peace that the detention order was passed under Section 3(1) of the Meghalaya Preventive Detention Act, 1995.*

*15. We, thus, have no option but to hold that the detention order suffers from material illegality, thereby vitiating the same. This appeal is accordingly allowed, setting aside the impugned judgment of the High Court and quashing the detention order."*

Relying on the said judgments, the learned senior counsel prays for quashing the impugned detention order.

[6] In the present case, counter affidavit on behalf of the respondent No. 3, i.e. Union of India and counter affidavit on behalf of respondent No. 4, i.e. Superintendent, Manipur Central Jail, Sajiwa has been filed. However, no counter affidavit on behalf of respondents No. 1 and 2, who are the detaining authorities and who issued the impugned detention orders, have not filed any counter affidavit and did not deny any averments made by the petitioner in the present writ petition. However, the learned Deputy GA produced and placed before us the relevant Government file relating to the issuance of the impugned detention orders.

[7] The learned Deputy GA appearing for the respondents No. 1, 2 and 4 submitted that in the impugned detention order, the District Magistrate, Kakching mentioned that an application for granting bail has been filed on behalf of the petitioner. However, the District Magistrate failed

to specifically mention that the petitioner is likely to be released on bail. According to the learned Deputy GA, such non-mentioning is not fatal and in support of his contention, the learned Deputy GA relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Union of India and Another vs. Dimple Happy Dhakad** reported in **(2019) 20 SCC 609** wherein at paragraphs No. 38 to 40 it has been held as under :

*"38. In the light of the well settled principles, we have to see, in the present case, whether there was awareness in the mind of the detaining authority that detenu is in custody and he had reason to believe that detenu is likely to be released on bail and if so released, he would continue to indulge in prejudicial activities. In the present case, the detention orders dated 17-05-2019 record the awareness of the detaining authority:*

- (i) that the detenu is in custody;*
- (ii) that the bail application filed by the detenus have been rejected by the Court.*

*Of course, in the detention orders, the detaining authority has not specifically recorded that the "detenu is likely to be released". It cannot be said that the detaining authority has not applied its mind merely on the ground that in the detention orders, it is not expressly stated as to the "detenue's likelihood of being released on bail" and "if so released, he is likely to indulge in the same prejudicial activities". But the detaining authority has clearly recorded the antecedent of the detenus and its satisfaction that detenus Happy Dhakad and Nisar Aliyar have the high propensity to commit such offences in future.*

*39. The satisfaction of the detaining authority that the detenu is already in custody and he is likely to be released on bail and on*

*being released, he is likely to indulge in the same prejudicial activities is the subjective satisfaction of the detaining authority. In **Senthamilselvi v. State of T.N. and Another** (2006) 5 SCC 676, the Supreme Court held that the satisfaction of the authority coming to the conclusion that there is likelihood of the detenu being released on bail is the “subjective satisfaction” based on the materials and normally the subjective satisfaction is not to be interfered with.*

*40. The satisfaction of the detaining authority that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the facts and circumstances of the present case, the subjective satisfaction of the detaining authority that the detenu is likely to be released on bail is based on the materials. A reading of the grounds of detention clearly indicates that detenu Nisar Aliyar has been indulging in smuggling gold and operating syndicate in coordination with others and habitually committing the same unmindful of the revenue loss and the impact on the economy of the nation. Likewise, the detention order qua detenu Happy Dhakad refers to the role played by him in receiving the gold and disposing of the foreign origin smuggled gold through his multiple jewellery outlets and his relatives. The High Court, in our view, erred in quashing the detention orders merely on the ground that the detaining authority has not expressly recorded the finding that there was real possibility of the detenus being released on bail which is in violation of the principles laid down in **Kamarunnisa v. Union of India**, (1991) 1 SCC 128 and other judgments and Guidelines 24. The order of the High Court quashing the detention orders on those grounds cannot be sustained.”*

[8] In the present case, it is an undisputed fact that in the impugned detention order as well as in the grounds of detention, the

detaining authority did not mention that the petitioner is likely to be released on bail even though it was mentioned that he has applied an application for granting bail. We also notice that the detaining authority failed to mention that upon his being release on bail, the petitioner is likely to indulge in the same prejudicial activities. We have carefully perused the judgments rendered by the Hon'ble Apex Court in the case of **Dimple Happy Dhakad** (supra) and we are of the view that the Hon'ble Apex Court took notice that in that particular case, the detaining authority has specifically mentioned in the grounds of detention that the detenu is likely to be released on bail and that on his being release on bail, the detenue is likely to continue to indulge in the same prejudicial activities and that such factum has been based on the materials available on record. In our considered view, the aforesaid judgment is quite distinguishable in that, in the present case, neither in the detention order nor in the grounds of detention, the detaining authority ever mentioned that the petitioner is likely to be released on bail and that on his being release on bail, he is likely to continue to indulge in the same prejudicial activities and there is also no material available on record to arrive at such subjective satisfaction.

[9] In view of such undisputed facts, we are satisfied that while passing the detention order, the detaining authority has not applied his mind. Needless to mention here that if a person is already in custody, there is no possibility of his continuing to indulge in prejudicial activities. Therefore, while issuing an order for detaining a person under the

preventive detention law, the detaining authority must take into consideration on the basis of cogent materials available before him that the person is likely to be released on bail and that on his being released on bail, he is likely to continue to indulge in prejudicial activities. In the absence of any materials available on record, we cannot agree that while passing the impugned detention orders, the detaining authority has applied his mind based on cogent materials. Accordingly, we come to the conclusion that the impugned detention order has been issued by the detaining authority without application of mind and as such, the impugned detention orders are vitiated thereby rendering the continued detention of the petitioner illegal. Accordingly, the impugned detention orders dated 06.02.2025 issued by the District Magistrate, Kakching, the impugned order dated 14.02.2025 issued by the Commissioner (Home) approving the detention order and the impugned order dated 07.03.2025 issued by the Commissioner (Home) confirming the detention order are hereby quashed and set aside. Consequently, we direct the respondents to release the petitioner from his detention forthwith unless his continued detention is necessary in connection with any other cases pending against him.

[10]            However, in a given peculiar facts and circumstances in this matter, the learned DGA has facilitated the judgment for reliances but keeping in view the scope of the said provision of law and also the observation made by the Hon'ble Supreme Court of India in the matters relating to COFEPOSA of 1974 in **Dimple Happy Dhakad** (supra) and that

judgment is not squarely applicable to the present case on hand related to the detailed orders rendered by the District Magistrate. Accordingly, we are forming an opinion in this matter for seeking intervention, if not there shall be some miscarriage of justice.

[11] Whereas, in this writ petition, it is relevant to address the scope of Article 21 of the Constitution of India having declared that no person shall be deprived of his life or personal liberty except according to procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ petition as initiated under Article 226 of the Constitution of India is "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable *ex debito justitiae*. Though a writ of right, it is not a writ of course. The applicant/petitioner/detenu/accused must show a *prima facie* case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right." However, in this writ petition, taking all the grounds which are available on record and also in the materials which have been facilitated by the detaining authority and also the investigating agency, even on this premises also, it is required to be intervention of the detention orders rendered by the District Magistrate. Therefore, on the aforesaid reasons and findings, it is deemed appropriate that the writ petition is hereby allowed and consequently, setting aside the detention orders rendered by the detaining authority/District Magistrate.

[12] With the above observations and directions, the present writ petition is disposed of.

*Sushil*

**JUDGE**

**CHIEF JUSTICE**