

Sl. No. 12

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

WP(Crl.) No. 18 of 2025

Shri Umananda Sharungbam, aged about 37 years,
S/o Sh. Raja Singh of Haoreibi Awang Leikai, P.S.
Wangoi, District-Imphal West, Manipur at present
lodged in Sajiwa Jail.

Petitioner

Vs.

1. The District Magistrate, Imphal West District,
Government of Manipur, Imphal West, Manipur.
2. The State of Manipur represented by the Under
Secretary (Home), Government of Manipur,
Imphal West, Manipur, Babupara, Imphal West,
Manipur.
3. The Superintendent of Jail, Manipur Central Jail,
Sajiwa, Imphal East, Manipur.

Respondents

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

ORDER

(Order of the Court was made by M. Sundar, CJ)

23.09.2025

[1] In the captioned matter, the writ petitioner has sought issue
of a writ of habeas corpus.

[2] Nucleus of captioned writ petition is, a detention order dated
17.06.2025 bearing Reference No. CrI/NSA/No.3 of 2025 (impugned order)
made by R1 in exercise of powers under Section 3(2) of 'National Security

Act, 1980 (Act No. 65 of 1980)' hereinafter 'NSA' for the sake of brevity, convenience and clarity). Approval on 25.06.2025 and confirmation on 23.07.2025 also stand assailed.

[3] Mr. S. Rajeetchandra, learned counsel for the writ petitioner (to be noted, the detenu himself is writ petitioner before this Court) and Mr. Athouba Khaidem, learned PP for respondents No. 1 to 3 are before this Court.

[4] The last of the cases against the detenu is vide an FIR dated 20.04.2025 on the file of Wangoi Police Station in Imphal West District, Manipur being FIR No. 25(4) 2025 WGI-PS. In and vide the said FIR, the provision invoked *qua* the detenu is Section 20 of the 'Unlawful Activities (Prevention) Act, 1967 (37 of 1967)' hereinafter 'UAPA' for the sake of brevity.

[5] After hearing learned counsel on both sides, the following facts come to light :

- i) There were three earlier FIRs against the detenu but detenu has been enlarged on bail in all the three cases. The learned counsel for the writ petitioner asserts that in all three cases, the petitioner/detenu was released on default bail. Learned Prosecutor submits that he is not in a position to dispute this assertion;

- ii) As regards said FIR, the detenu was arrested on 20.04.2025 and he remains incarcerated since then;
- iii) There is no dispute or contestation that the timeline for filing the final report is 90 (ninety) days and the same elapsed long ago in July of 2025 but the final report has not been filed until this day;
- iv) Pertinently, the Prosecution has not resorted to Section 43D (2)(b) proviso of 'UAPA' and sought extension of time for filing the final report/extension of remand beyond 90 days on the ground that investigation could not be complete but the ninety days;
- v) The sequitur of the above is, the detenu is now entitled to default bail. The detenu is yet to file default bail application and it is submitted that the impugned detention order has been the reason for the detenu not applying for default bail as he cannot be enlarged even after default bail;
- vi) Be that as it may, there is no dispute as alluded to supra that the Prosecution has not resorted to Section 43D (2)(b) proviso of 'UAPA' and sought extension of time for filing the final report/extension of remand beyond ninety days.

[3] In the light of the aforesaid backdrop, we of the considered view that celebrated ***Ram Manohar Lohia*** judgment which holds the field (reported in AIR 1966 SC 740) comes into play. In ***Ram Manohar Lohia***, Hon'ble Supreme Court explained law and order, public order and national security by applying the three concentric circles illustration. In the case on hand, even as regards law and order, Prosecution has neither filed final report within the prescribed timeline nor sought for extension of the same though there is a provision to do so vide Section 43D (2)(b) proviso of 'UAPA'.

[4] The State not having done so, cannot now use preventive detention to keep the detenu incarcerated more particularly when he is not required in any matter.

[5] Another aspect of the case is, we find that the detaining authority in the impugned detention order though has adverted to bail risk, has not recorded subjective satisfaction that there is no imminent possibility of the detenu being enlarged on bail notwithstanding Section 43-D(5) proviso of UAPA though Section 20 of UAPA is slotted under Chapter IV.

[6] This Court also finds that the **Banik's** principle comes into play. By **Banik's** principle, this Court refers to the ratio laid down by Hon'ble Supreme Court in ***Sushanta Kumar Banik Vs. State of Tripura and others*** reported in ***2022 SCC OnLine SC 1333***. **Banik's** principle is one where Hon'ble Supreme Court has held that when the live and proximate

link between the arrest and grounds of detention has snapped that would be an infraction *qua* the detention order in a habeas corpus legal drill. In the case on hand, the arrest was on 20.04.2025 but the impugned detention order has been made only on 17.06.2025. Though an affidavit-in-opposition has been filed, there is no explanation forthcoming to demonstrate that the live and proximate link between arrest and grounds of detention has not snapped and that it continues to exist notwithstanding the ground having been raised by petitioner.

[7] Therefore, this Court makes it clear that this Court would be interfering *qua* the detention order on the ground that final report has not been filed within 90 (ninety) days the detenu has become entitled to default bail and Prosecution has not resorted to 43D (2)(b) proviso of UAPA and sought extension of remand.

[8] There is yet another point which causes infraction of the impugned detention order.

[9] Post detention order, detenu sent a representation dated 24.06.2025 to the detaining authority but this representation has been rejected by the SDC(HQ)/Executive Magistrate, District Magistrate Office, Imphal West District who is below the detaining authority in the hierarchy and who is not vested with powers to clamp a detention order under Section 3(2) of NSA. In this regard, we respectfully, refer to the ratio Hon'ble Supreme Court in ***Kamlesh Kumar Ishwardas Patel and Another Vs.***

Union of India and others reported in ***1995 (4) SCC 51*** wherein the Hon'ble Supreme Court made it clear that when the detenu submits a representation to the detaining authority namely the officer who is specially empowered to make an order of detention and the said officer does not consider the representation, the same will be a direct violation of Sanctus constitutional safeguard ingrained Article 22(5). The relevant paragraphs in ***Kamlesh Kumar*** is paragraph Nos. 43 and 48 and the same read as follows :-

"43. The Full Bench of the Bombay High Court has taken note of the decision in Smt. Santosh Anand (supra) but has placed reliance on the later decisions of this Court in Sat Pal v. State of Punjab, 1982 (1) SCC 12 and Rajkishore Prasad v. State of Bihar, 1982 (3) SCC 10, to hold that the Court must look at the substance of the matter and not act on mere technicality and that even though the constitutionally speaking a duty is cast on the detaining authority to consider the representation yet if in fact and in effect the appropriate Government has finally considered the representation of the detenu it cannot be said that there is contravention of Article 22(5).

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48. By order dated July 27, 1993 made under Section 3 of COFEPOSA Act by Shri Mahendra Prasad, Joint Secretary to

the Government of India, an officer who had been specially empowered under Section 3(1) of the COFEPOSA Act Jayantilal Somchand Shah, the husband of the appellant, was order to be detained. The writ petition filed by the appellant challenging the said detention was dismissed by the Bombay High Court by judgment dated October 27, 1993. One of the contentions that has been urged on behalf of the appellant before this Court was that he had addressed a joint representation dated September 14, 1993 to the detaining authority, the Central Government and the Advisory Board and the same was submitted through the Superintendent, Bombay Central Prison and that the said representation was rejected by the Central Government and it was not considered and decided independently by the detaining authority himself. These facts are not disputed on behalf of the respondents. Since the appellant had submitted a representation to the detaining authority, namely, the officer who was specially empowered to make an order of detention, and the said officer did not consider the representation there has been a denial of the constitutional safeguard guaranteed under Article 22(5) of the Constitution. As a result the detention of the appellant has to be held to be illegal and the said appeal has to be allowed.”

[10] Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.06.2025 bearing Reference No. CrI/NSA/No.3 of 2025 (impugned order) made by the first respondent is dislodged/set aside and the detenue **Shri Umananda Sharungbam, aged about 37 years, S/o Sh. Raja Singh of Haoreibi Awang Leikai, P.S.**

Wangoi, District-Imphal West, Manipur at present lodged in Sajiwa Jail is directed to be set at liberty forthwith if not required in connection with any other case/cases subject of course to he seeking default bail in the afore referred FIR No. 25(4) 2025 WGI-PS dated 20.04.2025 on the file of Wangoi Police Station in Imphal West District, Manipur and now pending in the Court of Special Judge NIA, Imphal West, Manipur.

[11] There shall be no order as to cost.

JUDGE

Sushil

CHIEF JUSTICE

PS I : Upload forthwith

PS II : all concerned to act on copy of this order on being uploaded in official website of High Court.