

Sl. No. 19

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

WP(Crl.) No. 26 of 2025

Wairakpam Ibochouba Singh

Petitioner

Vs.

State of Manipur and 2 others

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)

09.10.2025

[1] Captioned writ petition has been filed with a habeas corpus plea.

[2] In the captioned writ petition, a preventive detention order dated 13.05.2025 bearing Reference No. Cril-2/NSA/DM-BPR/2025 made by 3rd respondent has been assailed.

[3] In this order, for the sake of convenience, 3rd respondent shall be referred to as 'detaining authority' and the afore-referred preventive detention order shall be referred to as 'impugned preventive detention order'.

[4] To be noted, impugned preventive detention order has been made under the 'National Security Act, 1980 (Act No. 65 of 1980)' ('NSA' for the sake of brevity).

[5] Mr. N. Mahendra, learned counsel for the writ petitioner, predicated his campaign against impugned prevention detention order, on 4 (four) points and the four points are as follows :

- i) Normal criminal law is sufficient in the circumstances of the case and therefore, impugned preventive detention order is unwarranted;
- ii) There is non-application of mind on the part of the detaining authority making the impugned preventive detention as the clear distinction between sub-sections (3) and (2) of Section 3 of NSA having been overlooked;
- iii) Instances of bail in similar cases have not been cited in the impugned preventive detention order or grounds;
- iv) The State Government has not communicated the impugned preventive detention order to the Central Government as required under sub-section (5) of Section 3 of NSA.

[6] On the aforesaid points, we heard Mr. Y. Ashang, learned senior counsel appearing for on behalf of all the three respondents.

[7] We consider the submissions of the writ petitioner on the above points in the light of the submissions to the contrary made by the learned State counsel and set out our discussion and dispositive reasoning on the same infra :

i) As regards the first point that normal criminal law is sufficient and resort to Preventive Detention Act is not necessary, we find that this principle which was laid down in **Rekha** reported in **(2011) 5 SCC 244** was held to be not the correct exposition of law in **Ameena Begum** reported in **(2023) 9 SCC 587**. In **Ameena Begum**, Hon'ble Supreme Court made it clear that **Rekha** does not consider the declaration of law made by Constitution Bench in **Haradhan Saha** reported in **(1975) 3 SCC 198** and therefore, is not correct exposition of law. In **Haradhan Saha**, maintenance of Internal Security Act, 1971 (Act No. 26 of 1971) *vires* was challenged and while dealing with *vires*, Hon'ble Supreme Court declared the law (Constitutional Bench) by saying that the purposes of preventive detention and punitive proceedings under ordinary criminal law are completely different and therefore, comparing the two would be not an ideal principle. As regards **Ameena Begum**, where this part of **Rekha** was held to be not the correct exposition of law, the relevant paragraphs are paragraphs 24, 25 and 26 and the same read as follows :

“24. In *Rekha vs. State of Tamil Nadu*, this Court observed that:

"21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that *in substance* a detention order of one year (or any other period) is a punishment of one year's imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive?

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29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the Rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal."

(emphasis in original)

25. There could be little doubt with the thought process that although the executive would pass an order under the preventive detention laws as a preventive or a precautionary measure, its effect viewed strictly from the stand point of the detenu is simply and plainly punitive. Significantly, an order of detention is not relatable to an alleged commission of offence which a court is seized of and, thus, the conduct of the accused complained of is yet to be found blameworthy; on the contrary, since it relates to an anticipated offence based on past conduct, the detenu could well feel that he is at the receiving end of a subjective satisfaction of the executive despite he not being proved to be on the wrong side of the law on any previous occasion. If someone loses his liberty and lands up in prison not having a semblance of a chance to resist or protest, the very circumstance of being put behind bars for such period as specified in the order of detention based on an anticipation that an offence is likely to be committed by him seems to be an aspect which does not sync with the norms and ethos of our very own Constitution and the decisions of this Court in which the concept of 'LIFE' has been explained in such a manner that 'LIFE' has been infused in the letters

of Article 21 (see *Common Cause vs. Union of India*). Nonetheless, so long clause (3) of Article 22 of the Constitution itself authorises detention as a preventive measure, there can be no two opinions that none can take exception to such a measure being adopted and it is only a limited judicial review by the Constitutional Courts that can be urged by an aggrieved detenu wherefor too, in examining challenges to orders of preventive detention, the Courts would be loath to interfere with or substitute their own reasoning for the subjective satisfaction arrived at by the detaining authority. Since the object of a preventive detention law is not punitive but preventive and precautionary, ordinarily it is best left to the discretion of the detaining authority.

26. We, however, hasten to observe here that though the decision in *Rekha* reflects on an important aspect of loss of liberty without trial by taking recourse to preventive detention laws, the decision of the Constitution Bench in *Haradhan Saha* still holds the field and to the extent the learned Judges in *Rekha* sound a note discordant with the law laid down in *Haradhan Saha* ought not to be construed as acceptance by us as the correct exposition of law.”

(underlining made by this Court for ease of reference)

In the light of the aforementioned obtaining position of law, the first point on sufficiency of criminal law does not find favour with us.

[8] This takes this Court to the next point. As regards Section 3 (2) and 3 (3) of NSA and non-application of mind we find that 3(2) is the power to clamp preventive detention orders and 3 (3) is the power of the State Government to confer powers make preventive detention order on either District Magistrates or Commissioners of Police. The only limiting

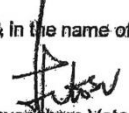
factor is proviso to sub-section 3 which says that when the State Government confers such powers on the District Magistrate or Commissioner of Police, the same shall not exceed a period of 3 (three) months at any one time. In the case on hand, learned State counsel has placed before us proceedings of the State Government dated 01.04.2025 bearing reference No. H-1701/86/2020-HD-HD wherein powers under Section 3(2) have been conferred by the State Government on the District Magistrates of all the districts in the State of Manipur for a period of 3 (three) months. A scanned reproduction of this order is as follows :-

GOVERNMENT OF MANIPUR
SECRETARIAT: HOME DEPARTMENT

ORDERS BY THE GOVERNOR: MANIPUR
Imphal, the 1st April, 2025

No.H-1701/86/2020-HD-HD: In continuation of this Government order of even No. dated 30.12.2024 and in exercise of the powers conferred by Section 3(3) of the National Security Act, 1980 and also considering the prevailing law & order situation of the State, the Governor of Manipur is pleased to direct the District Magistrates of Manipur namely, Imphal East District, Imphal West District, Bishnupur District, Thoubal District, Tamenglong District, Ukhrul District, Senapati District, Chandel District, Churachandpur District, Kakching District, Kamjong District, Kangpokpi District, Pherzawl District, Jiribam District, Tengnoupal District and Noney District to exercise the powers conferred by Sub-section (2) of Section 3 of the Act within their respective Districts for a further period of 3 (three) months with effect from 03.04.2025 if such District Magistrate is satisfied as provided in Section 3(2) of the said Act.

By orders & in the name of Governor,


(Dr. Mayengbam Veto Singh)
Joint Secretary (Home),
Government of

Copy to:-

1. Secretary to Governor of Manipur, Raj Bhavan, Imphal.
2. Secretary to Govt. of India, Ministry of Home Affairs, New Delhi.
3. Staff Officer to Chief Secretary, Govt. of Manipur.
4. Director General of Police, Manipur.
5. Inspector General of Police (Prisons), Manipur.
6. All District Magistrates, Manipur.
7. Superintendent of Police, CID(SB), Manipur.
8. Superintendent of Manipur Central Jail, Imphal, Manipur.
9. Superintendent of Manipur Central Jail, Sajiwa, Manipur.
10. GAD Central Dispatch, Manipur Secretariat.
11. Guard file.

It is seen that the 3 (three) months period of inherent powers is from 03.04.2025 to 02.07.2025 and the impugned preventive detention order has been made on 13.05.2025. This Court is acutely conscious that the 3rd respondent is Additional District Magistrate, Bishnupur but in the light of District Magistrate, Bishnupur having been nominated for participating in Mid-Career Training Programme (MCTP) for IAS Officers to be held between 12.05.2025 to 06.06.2025 in Mussoorie, State Government has vide proceedings dated 08.05.2025 bearing reference No. TRNGE-1/12021-DP-DP conferred the powers of District Magistrate, Bishnupur on Additional District Magistrate. We also find that the Additional District Magistrate is not lower in hierarchy. This aspect came up for consideration before this very Division Bench in **Tongbram Ichan Devi** case and vide order dated 06.10.2025 in WP(Crl.) No. 21 of 2025, this Bench dealt with this aspect vide paragraph 7 and 9 of 06.10.2025 order in **Tongbram Ichan Devi** and the same reads as follows :

“[7] The affidavit-in-opposition, in Para – 11, no doubt says that there is no delegation in favour of second respondent. Nonetheless, today learned State counsel drew our attention to an order of State Government dated 08.05.2025 bearing reference No. TRNGE-1/12021-DP-DP. This order has been placed by the learned State counsel as Annexure, X-1 before us. A careful perusal of this 08.05.2025 order, made by the State Government, makes it clear that duties of certain officers who have been deputed to participate in 22nd Round of Phase – III training of Mid-Career Training Programme (MCTP) for IAS Officers schedule from 12.05.2025 to 06.06.2025 at LBSNAA, Mussoorie have been conferred on certain other officers for ‘looking after’ (‘L/A’ is the abbreviation used by State) the affairs. It has been mentioned that 7 (seven) officers would be attending MCTP. Out of 7 (seven) officers, duties of 3 (three)

officers have been conferred/assigned on 3 (three) other officers to look after their work. A careful perusal of Annexure, X-I makes it clear that second respondent is one of the officers who has been conferred/assigned powers of District Magistrate, Bishnupur who undisputedly is an officer to whom detention powers have been conferred by State Government.

[9] To be noted, second respondent is Additional District Magistrate, Bishnupur, he is looking after (L/A) duties of the District Magistrate, Bishnupur and second respondent is not lower in hierarchy qua District Magistrate. As there is no contestation as regards Annexure X-I, it is not necessary to dilate on definition of State Government. In this view of the matter, the argument that the second respondent has not been vested with powers to make the impugned preventive detention order pales into insignificance. Therefore, the first point does not find favour with us.”

[9] This Court deems it appropriate to record that learned counsel for the writ petitioner submitted that the term ‘State Government’ has not been correctly construed with regard to the distinction between 3(2) and 3(3) of NSA. In support of his argument, learned counsel drew our attention to sub-section 60 of Section 3 of the General Clause Act, 1897 (GC Act). This Court is of the considered view that it is not necessary to resort to the definition under the GC Act as ‘State Government’ has been defined in NSA itself. In NSA, ‘State Government’ has been defined vide Section 2(1) (e) which reads as follows :

“(e) “State Government”, in relation to a Union territory, means the administrator thereof.”

[10] Besides defining State Government, ‘appropriate government’ has also been defined vide Section 2(1)(a) of NSA and the same reads as

follows :

"2. Definitions.—In this Act, unless the context otherwise requires,— (a) “appropriate Government” means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government."

[11] The principle regarding reading of a Statute is clear and resort to GC Act would be made only when a particular term has not been defined in the Statute concerned itself. In the case on hand, the term State government has been defined in NSA itself and therefore, resort to sub-section 60 of Section 3 of GC Act is really not necessary. As regards the definition of 'State Government' within the meaning of 2(1) (e) of NSA, we find that there is no infirmity with regard to 3(2) and 3(3) particularly, in the light of proceedings dated 01.04.2025 wherein there is conferment of power. In this view of the matter, the arguments predicated on 3(60) of GC Act is also a non-starter.

This means that the second point urged on the basis of distinction between sub-sections (2) and (3) of Section 3 of NSA also pale into insignificance. In other words, it does not cut ice with us i.e., it does not find favour with us.

[12] This takes this court to the next point of instances of bail not being cited. The law is well settled that subjective satisfaction recorded by

a detaining authority with regard to imminent possibility of a detenu being enlarged on bail is no doubt justifiable but justiciability is limited to certain aspects of the matter. In the case on hand, as we find this argument to tread upon an area of examining the subjective satisfaction in terms of articulation as done while sitting in appeal and therefore, it does not find favour with us. This means that this point also fails and it does not come to the aid of the petitioner in his campaign against the impugned preventive detention order.

[13] This takes this court to the last point which turns on sub-section (5) of Section 3 of NSA. Sub-section (5) of Section 3 of NSA makes it clear that the State Government whenever it makes any order of approval, the same shall be communicated to the Central Government within 7 (seven) days. The language in which Sub-section (5) of Section 3 is couched makes it clear that it is either an 'order' or an 'approval'. In the case on hand, State counsel has placed before us the entire file pertaining to the impugned preventive detention order. A careful perusal of the file placed before us by learned State Counsel brings to light that approval of the impugned preventive detention order has been made by the State Government on 23.05.2025 vide an order of even date bearing reference No. Cril-2/NSA/DM-BPR/2025. This 23.05.2025 approval has been duly communicated to the Central Government under cover of electronic mail dated 24.05.2025. Therefore, the approval of the State Government has been communicated to the Central Government the very day, well within 7 (seven) days from the date of approval.

[14] As already alluded to supra, Sub-section (5) of Section 3 talks about an 'order' or an 'approval'. In the instant case it is approval made on 23.05.2025 which has been communicated to the Central Government on 24.05.2025 itself. Therefore, this court is of the considered view that the arguments regarding Section 3 (5) of NSA is also a non-starter and therefore the same does not find favour with us.

[15] Ergo, sequitur, is all the 4 (four) points raised by the learned counsel for the writ petitioner in the campaign against the impugned preventive detention order file and the further section is captioned further is dismissed. There shall be no order as to cost.

Sushil

JUDGE

CHIEF JUSTICE

Upload forthwith