

**HIGH COURT OF TRIPURA
AGARTALA**

W.P. (CrI.) 5/2025

Smt. Subhadra Debbarma, wife of Rupan Miah, resident of Fulkumari, Udaipur, District- Gomati, Tripura

.... Petitioner

On behalf of,

Rupan Miah, son of Uttam Miah, resident of Fulkumari, Udaipur, District- Gomati, Tripura

-----Accused-in-custody

Versus

1. The State of Tripura, to be represented by the Secretary, Government of Tripura, Home Department, New Secretariat Building, New Capital Complex, Agartala, Tripura West.

2. The Chairman, Advisory Board, Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, represented by the Secretary, Advisory Board State of Tripura, Agartala, Tripura.

3. The Director General of Police, Police Head Quarter Complex, Agartala, West Tripura.

4. The Superintendent of Police, Udaipur, Gomati, Tripura.

-----Respondents

For the Petitioner(s) : Mr. Bhaskar Deb, Advocate

For the Respondent(s) : Mr. Raju Datta, PP

Date of hearing : **21.01.2026**

Date of delivery
of Judgment & Order : **03.02.2026**

Whether fit for reporting : **Yes**

BEFORE

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER

(Dr.T.Amarnath Goud, J)

Heard Mr. Bhaskar Deb, learned counsel, appearing for the petitioner. Also heard Mr. Raju Datta, learned PP appearing for the respondents.

2. By means of filing the instant writ petition, the petitioner has sought for the following reliefs:

- "i) Admit this writ petition of the petitioner and call for records relevant to the subject matter from the custody of the Respondents.
ii) Issue writ directing the Respondents to take appropriate step in respect of the prayer dated: 01.04.2025 filed by the petitioner and also against the order dated: 05.03.2025 & 06.06.2025 and after hearing Hon'ble Court would be kind enough to direct the respondents to release the petitioner immediately or to take appropriate action if require as this Hon'ble Court may seem fit and proper.
iii) Issue notice upon the respondents.
iv) Pass such other or further order/orders and/or direction/directions as to Your Lordship deem fit and proper having regard to the facts and circumstances of the case;"

3. This writ petition is at the instance of the detenu, Rupan Miah, detained under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, 'PIT NDPS Act') against the detention order dated 06.03.2025 passed by the Secretary, Government of Tripura in exercise of power conferred under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (for short, PITNDPS) Act, 1988, following which on 17.03.2025, said Rupan Miah was detained at RK Pur police station, and thereby the petitioner by filing this writ petition is questioning the legality and validity of the detention order passed by the respondents. At the very outset, it is necessary to highlight the detention order dated 06.03.2025. The detention order dated 06.03.2025, reads as follows:

Detention order dated 06.03.2025 :

"No.F.15(6)-PD/2025/673
GOVERNMENT OF TRIPURA
HOME DEPARTMENT

Dated, Agartala, the 6th March, 2025

ORDER

WHEREBAS, the Director General of Police, Tripura has sent a proposal for detention of accused Rupan Miah(38), S/o-Uttam Miah of Banduar, Fulkumari, PS-RKPur, Gomati District, Tripura under PITNDPS Act, 1988 along with reports under Section 3(1) of the Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988;

AND

WHEREAS, on perusal of reports as submitted by the Director General of Police, Tripura, it appears that accused Rupan Miah (38), S/o-Uttam Miah of Banduar, Falkumari, PS-RKPur, Gomati District, Tripura was associated with smuggling of NDPS articles and illicit drug trafficking and was arrested in connection with the following cases:-

- (I) RK Pur PS case No.2022RKP040 dated 19.04.2022 U/s-21(c)/22(c)/25/27A/29 of NDPS Act, 1985.
(II) RKPur PS case No.2024RKP004 dated 17.01.2024 U/s 21(b)/25/29 of NDPS Act, 1985.
(III) Kakraban PS Case No.2019KKB079 dated 05.08.2019 U/s-22(c)/25/27A/29 of NDPS Act, 1985,
(IV) Sonamura PS Case No.2024SNM023 dated 10.03.2024 U/s- 20(b)(ii)(c)/25/29 of NDPS Act, 1985. In all the cases charge sheets were submitted after thorough investigation he was bailed out in all the above mentioned cases.

AND

WHEREAS, on perusal of the reports, it is learnt that significant quantity of NDPS articles has been seized from the accused in connection with the above mentioned cases. Accused Rupan Miah is a habitual offender and continuously involved in legal activities regarding carrying, possessing and selling of various NEPS articles and contraband drugs like Heroin & Yaba tablets, Spasmo-Proxixon Capsules & Phensedyl etc.;

AND

WHEREAS, as per reports furnished by the DGP, Tripura, it is also revealed that despite of arrest in different cases, said Rupan Miah has not rectified himself yet and is still continuously involved in illegal business i.e. dealing with possession, carrying, selling of NDPS items and spoiling the future generation;

AND

WHEREAS, he is a repeated offender and very harmful for the society and a good number of youths are moving towards drug addiction. Among the customers/drug users of said Rupan Miah most of them are aged between 15 to 25 and are mostly students. Under the influence of drugs, several youths are getting involved in criminal activities like chain snatching, bike lifting, burglary etc;

AND

WHEREAS, Director General of Police, Tripura has proposed to prevent accused Rupan Miah(38), S/o-Uttam Miah of Banduar, Fulkumari, PS-RK Pur, Gomati District, Tripura from continuing his harmful and prejudicial activity by engaging in illicit traffic of narcotic drugs and psychotropic substances in the better interest of society.

NOW, THEREFORE, the undersigned, being specially empowered officer of the State Government in exercise of powers conferred under sub-section (1) of section (3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and after careful examination of the proposal of the Director General of Police, Tripura and other supporting documents, found sufficient grounds for detention of accused Rupan Miah and being satisfied that with a view to prevent him from further engaging in illicit traffic in NDPS, it is necessary to detain him and accordingly directs for detention of Rupan Miah (38), S/o-Uttam Miah of Banduar, Fulkumari, PS-RKPur, Gomati District, Tripura.

It is mentioned that the accused Rupan Miah(38), S/o-Uttam Miah of Banduar, Fulkumari, PS-RKPur, Gomati District, Tripura may submit his representation to the Central/State Government against this order of detention. Such representation may be submitted to the undersigned for onward transmission to the Central/State Government.

The accused is to be informed that he will get all reasonable opportunity for making representation against this order to the Central/State Government, he may therefore state to the undersigned what opportunity he needs for this purpose. The accused is to be appraised of his right to make representation before the undersigned against this detention order. The accused is to be informed that he also has a right to be heard before the Advisory Board.

The concerned Superintendent of Police or Central Jail/District Jail/Sub-Jail as the case may be, is requested to depute a responsible officer at the time of effecting detention order to the addressee who shall explain in details the contents of this order along with grounds of detention. Even assistance of another Government official or any other person may be taken to brief him about the order etc. in the language which the said detainee understands in presence of two witnesses on receipt of signature or thumb impression in token from the detainee/detenu.

The concerned Superintendent of Central Jail/District Jail/Sub-Jail as the case may be, is directed to extend all assistance to the detenu in making representation to the concerned authority. The assistance provided by the Superintendent of Central Jail/District Jail/Sub-Jail may include stationary and any other items as desired by the accused. The Superintendent of Central Jail/District Jail/Sub-Jail will also provide a literate person who shall assist the detenu, if he is not literate, in drafting the representation to the Central/State Government."

3. Initiation of the case launched with the proposal dated 18.01.2025 of the Superintendent of Police, Gomati and report of the Director General of Police, with a request to pass an order of detention upon the detenu, Rupan Miah, under the provisions of the PIT NDPS Act. Basing on proposal dated 18.01.2025 (supra) and report of the Director General of Police, the Secretary, Department of Home, Government of Tripura, passed the detention order dated 06.03.2025. After passing the detention order, the Assistant Inspector General of Police (Crime) on behalf of Director General of Police, requested the SP, Gomati, to execute the detention order dated 06.03.2025, and on receipt of the same, on 17.03.2025, the SDPO, Udaipur, brought the detenu to RK Pur police station and detained him in pursuance

of detention order dated 06.03.2025, and served the detention order, grounds of detention and other documents relied upon by the detaining authority in presence DCM, Udaipur. At that time detention order, grounds of detention and other documents relied upon by the detaining authority were read over and explained to the detainee in the language he understands and also apprised him that he has a right to make representation before appropriate authority against the order of detention. At the time of detention, the detainee was served with all relevant documents which were taken into consideration for passing the detention order in presence of Executive Magistrate and his family members whereunder on satisfaction, the detainee and his wife, the petitioner herein put their respective signatures. For convenience, Order dated 11.03.2025, and the grounds for detention are reproduced here-in-below:

Order dated 11.03.2025:

"MOST URGENT
TIME BOUND

GOVERNMENT OF TRIPURA
OFFICE OF THE DIRECTOR GENERAL OF POLICE
TRIPURA:AGARTALA

No.442/DXVI/PHQ/2017(Vol III)

Dated, the 11th March, 2025

To
The Superintendents of Police,
Gomati District, Udaipur

Subject :- Issuance of detention order U/S-3(1) of PITNDPS Act, 1988 in respect of accused Rupan Miah (38), S/o Uttam Miah of Banduar, Fulkumari, PS -R.K Pur, Gomati Tripura.

Sir,

Please find enclosed herewith a copy of letter No. F.15(6)-PD/2025/683 dated 06-03-2025 of the Home Department, Govt. of Tripura alongwith Detention Order No. F.15(6)-PD/2025/683 dated 06-03-2025 and ground for detention in respect of the aforementioned accused, contents of which are self explanatory.

2. The above mentioned Detention Order may be executed at the earliest. During detention, Detention Order, grounds of detention and other related documents as mentioned in the proposal vide no. 558/F.4 (I)/CS/SP(G)/TPA/2025 dated 18-01-2025 of SP(Gomati) needs to be served upon Rupan Miah as desired by the Home Department, Govt. of Tripura vide letter dated 06-03-2025. The copy of acknowledgement of all documents and certificate duly filled in, in original, may be returned to this office within two days on priority basis after execution of the said Detention Order.

Matter is most urgent."

Grounds for Detention :

"Grounds for detention of accused Rupan Miah(38), S/o Uttam Miah of Banduar,Fulkumari, PS-RK Pur, Gomati District, Udaipur.

Following are the grounds for detention of accused Rupan Miah(38), S/o-Uttam Miah of Banduar, Fulkumari, PS-RK Pur, Gomati District, Tripura under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drug & Psychotropic Substance Act, 1988.

[1] As per report of Director General of Police, Tripura, it is revealed that the aforesaid Rupan Miah(38), S/o-Uttam Miah of Banduar, Fulkumari, PS-RK Pur, Gomati District, Tripura was associated with smuggling of NDPS articles and illicit drug traffickers and was arrested in connection with the following cases wherein a significant quantity of NDPS articles were seized from the accused:-

- (I) RKPur PS case No.2022RKP040 dated 19.04.2022 U/s-21(c)/22(c)/25/27A/29 of NDPS Act, 1985.
- (II) RKPur PS case No.2024RKP004 dated 17.01.2024 U/s-21(b)/25/29 of NDPS Act, 1985.
- (III) Kakraban PS Case No.2019KKB079 dated 05.08.2019 U/s-22(c)/25/27A/29 of NDPS Act, 1985,
- (IV) Sonamura PS Case No.2024SNM023 dated 10.03.2024 U/s-20(b)(ii)(c)/25/29 of NDPS Act, 1985.

In all the cases charge sheets were submitted after thorough investigation he was bailed out in all the above mentioned cases.

[2] He is still active in illicit trafficking of NDPS articles as revealed from field information. On investigation of the cases registered against him it is revealed that despite of arrest in different cases said Rupan Miah has not rectified himself yet and is still continuously involved in illegal business. i.e. dealing with possession, carrying, selling of NDPS items and spoiling the future generation;

[3] He is a repeated offender and very harmful for the society and a good number of youths are moving towards drug addiction. Among the customers/drug users of said Rupan Miah most of them are aged between 15 to 25 and are mostly students, Under the influence of drugs, several youths are getting involved in criminal activities;

[4] He is a habitual offender and continuously involved in illegal activities regarding carrying possessing and selling of various NDPS articles and contraband drugs like Heroin, Yaba tablets, etc, and issue of detention order under PITNDPS against Rupan Miah will also help Police in 'Initiating financial investigation laid down under Chapter-V(A) of NDPS Act."

4. The detainee herein was involved with illicit trafficking of NDPS articles relating to which he was arrested in connection with different cases and subsequently was bailed out from all the cases, but continued with his illicit trading. During the pendency of criminal cases, in order to prevent the petitioner from indulging into further criminal activities and illicit trafficking of NDPS articles, proceeding under the PITNDPS Act, 1988, was initiated. The same culminated in issuance of the impugned Detention Order dated 06.03.2025.

5. Since the detainee has a right to make representation to the detaining authority, he submitted his representation on 01.04.2025 through the Superintendent, Jail, Udaipur. Upon receipt of his representation, the detaining authority, by a detailed Order dated 07.04.2025, had rejected the said representation as there was no justifiable grounds to revoke the order of detention. For convenience, the Order dated 07.04.2025, is reproduced here-in-below:

Order dated 07.04.2025 :

"No.F.15(6)-PD/2025/1137
GOVERNMENT OF TRIPURA
HOME DEPARTMENT

7th April, 2025

O-R-D-E-R

WHEREAS, the Director General of Police has sent a proposal for detention of accused person named Rupan Miah, S/o-Uttam Miah of Banduar, Fulkumari PS-RK Pur Gomati Tripura, under PITNDPS Act, 1988 along with records under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988;

AND

WHEREAS, on perusal of records as submitted by the Director General of Police, Tripura it appears that Rupan Miah, S/o-Uttam Miah of Banduar, Fulkumari PS-RK Pur Gomati Tripura, it is learnt that he was arrested in connection with the following cases:-

- (I) RKPur PS case No.2022RKP040 dated 19.04.2022 U/s-21(c)/22(c)/25/27A/29 of NDPS Act, 1985.
- (II) RKPur PS case No.2024RKP004 dated 17.01.2024 U/s-21(b)/25/29 of NDPS Act, 1985.
- (III) Kakraban PS Case No.2019KKB079 dated 05.08.2019 U/s-22(c)/25/27A/29 of NDPS Act, 1985,
- (IV) Sonamura PS Case No.2024SNM023 dated 10.03.2024 U/s-20(b)(ii)(c)/25/29 of NDPS Act, 1985. In all the cases charge sheets were submitted after thorough investigation he was bailed out in all the above mentioned cases;

AND

WHEREAS, due to his involvement in conducting business of NDPS articles and illicit drug trafficking in connection with the above mentioned 4(four) cases and due to his active engagement in illicit trafficking of NDPS articles as revealed from field information accused Rupan Miah was detained as per Home Department order No.F.15(6)-PD/2025/683 dated 06.03.2025;

AND

WHEREAS, in the mean time a representation of Rupan Miah, S/o-Uttam Miah of Banduar, Fulkumari PS-RK Pur Gomati Tripura, was received through Udaipur District Jail, dated 01.04.2025 for Gomati Tripura vide letter No.F.46/UDP/DJ/2025/1028-30 setting aside/cancellation of the detention order dated 06.03.2025 issued against him u/s 3 of PITNDPS Act, 1988;

AND

WHEREAS, Rupan Miah, S/o-Uttam Miah of Banduar, Fulkumari PS-RKPur Gomati Tripura in his representation dated 01.04.2025 has stated that he has been falsely detained in connection with the aforementioned cases under the PITNDPS Act and that there are no specific reasons for passing the detention order against him and he is being unnecessarily harassed by the Police.

AND

WHEREAS, Rupan Miah (Detenue), in his representation dated 01.04.2025 also stated that no order from Advisory Board justifying his detention has been provided to substantiate his detention. However, it is pertinent to mention that the detention order has been served upon Rupan Miah along with grounds of detention explaining all the details in presence of witness and acknowledgement receipt has also been obtained in this regard.

AND

WHEREAS, it is also to mention here that reference has already been made to the Advisory Board and action in this regard will be taken by the Advisory Board in due time in accordance with law.

AND

WHEREAS, the representation submitted by Rupan Miah, S/o-Uttam Miah of Banduar, Fulkumari PS-RKPur Gomati Tripura was considered by the State Government and after careful examination of the reports received from the O/o the Director General of Police, Tripura and the reports furnished by the Superintendent of Police, Gomati District, Tripura it appears that accused Rupan Miah has been involved in the above mentioned cases, which indicates he is continuously doing illegal activities.

AND

WHEREAS, from the reports furnished by the Superintendent of Police, Gomati District, Tripura and reports received from O/o the Director General of Police, Tripura it is revealed that Rupan Miah (Detenue), is a repeated offender and is continuously doing illegal activities and is still active in illicit trafficking of NDPS articles as revealed from field information. This is very dangerous for the society at large where several youths are heading towards drug addiction, which further decrease the national productivity in all walks of life. Despite of arrest in different cases said Rupan Miah, S/o-Uttam Miah of Banduar, Fulkumari PS-RK Pur Gomati Tripura did not mend his ways and is continuously spoiling the future generation

NOW, THEREFORE, the State Government after careful to examination of the records available is pleased reject the prayer/representation of Rupan Miah, S/o-Uttam Miah of Banduar, Fulkumari PS-RKPur Gomati Tripura for his release from detention under the PITNDPS Act, 1988."

6. Subsequent thereto, on 28.03.2025, his case was referred to State Advisory Board (PITNDPS), Tripura, by the Home Department, and thereafter detenue was heard by the Advisory Board and lastly, the Advisory Board submitted its report dated 27.05.2025, opining that there is sufficient cause for detention of the detenue. After receipt of the report dated 27.05.2025, the State Government confirmed the detention by order dated 06.06.2025, for a period of one year from 17.03.2025 i.e. the date of his detention. For better appreciation, details of the cases under which the

detenue was intercepted by the police, and the Order dated 06.06.2025, are as under:

Details of the cases under which the accused was intercepted :

PS Case No.	Sections	Arrested	Bailed Out
(i) Kakraban PS Case No. 2019 KKB 079, dated 05.08.2019	22(c)/25/27A/29 of NDPS Act, 1985	05.08.2019	29.02.2020
(ii) RK Pur PS case No. 2022 RKP 040 dated 19.04.2022	21(c)/22(c)/25/27A/29 of NDPS Act, 1985	19.04.2022	20.06.2022
(iii) RKPur PS case No.2024 RKP 004 dated 17.01.2024	21(b)/25/29 of NDPS Act, 1985	10.03.2024	13.06.2024
(iv) Sonamura PS Case No.2024 SNM 023 dated 10.03.2024	20(b)(ii)(c)/25/29 of NDPS Act, 1985	11.03.2024	10.09.2024

Order dated 06.06.2025 :

"No.F.15(6)-PD/2025/1890
GOVERNMENT OF TRIPURA
HOME DEPARTMENT

Dated, Agartala, the June, 2025

O-R-D-E-R

WHEREAS, Rupan Miah, 3/o-Uttam Miah of Banduar, Fulkumari, PS-RK Pur, Gomati District, Tripura has been detained vide order No.P.15(6)-PD/2025/683 dated 06.03.2025 issued by the Home Department, Government of Tripura under Section 3 of the Prevention of Illicit Traffic in Narcotics Drugs & Psychotropic Substances Act, 1988 (in short PITNDPS Act);

AND

WHEREAS, as required under Section 9 of the PITNDPS Act, the matter was referred to the Advisory Board along with grounds for detention and other documents vide order No.F.15(6)-PD/2025/1106 dated 28.03.2025. The said Advisory Board after examination of records and documents placed before it, has passed its report vide order dated 27.05.2025, wherein it has inter-alia opined as under:

"In view of the discussion made above, the board is of the opinion that there were sufficient causes before the detaining authority for issuing the detention order and it was not issued casually without application of mind";

AND

WHEREAS, As per Section 9(f) of the PITNDPS Act, in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such a period as it thinks fit;

AND

WHEREAS, As per Section 11 of the PITNDPS Act, 1988, the maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Clause (1) of Section 9 of the PITNDPS Act, 1988, may be 1(one) year from the date of detention;

NOW, THEREFORE, in pursuance of the opinion passed by the Advisory Board on 27.05.2025, the detention order No.F.15(6)-PD/2025/683 dated 06.03.2025 issued by the Home Department, Government of Tripura in respect of said Rupan Miah, S/o-Uttam Miah of Banduar, Fulkumari, PS-RK Pur, Gomati District, Tripura has been confirmed under Section 3 of the Prevention of Illicit Traffic in Narcotics Drugs & Psychotropic Substances Act, 1988 and the detention period shall continue until the expiration of 1(one) year from the date of his detention in respect of said Rupan Miah, S/o- Uttam Miah of Banduar, Fulkumari, PS-RK Pur, Gomati District, Tripura."

6. To begin with, learned counsel for the petitioner, Mr. B. Deb, has questioned legality and sustainability of the detention order dated 06.03.2025. It is further submitted that with regard to the FIRs taken into consideration, the detenue had been enlarged on bail, and in each cases as the detenue has not been found guilty and thus, he is presumably innocent. It was further argued that when the cases are pending before the concerned

court, the detention order cannot be passed merely based on charge sheet. Learned counsel further submits that the grounds of detention along with the relied-upon documents were provided in English language and there is no material to show that the documents were explained to the detainee in the language he understands, which is a clear violation of Articles 21 and 22 of the Constitution of India. Learned counsel further submitted that the detention order was passed violating the mandate of Section 3(3) of the NDPS Act as the same was not communicated within five days of passing the detention order, and there is also no explanation regarding such delay. Learned counsel further submits that the detainee was lastly released on 13.06.2024 in connection with RK Pur PS case No. 4 of 2024, but the detention order was passed on when he was in custody. Learned counsel has also pointed out that the detention order was passed on 05.03.2025 and the same was executed and communicated to the detainee on 17.03.2025. Learned counsel has raised question regarding the eligible copies supplied to the detainee. Further, learned counsel has submitted that the Advisory Board had arbitrarily rejected the representation of the detainee and no copy of the opinion was also served upon the detainee. In fine, learned counsel for the petitioner has submitted that taking into consideration the loopholes on the part of the detaining authority, the impugned detention order is liable to be quashed. To substantiate his submission, learned counsel for the petitioner has relied upon the judgments rendered by the Hon'ble Apex Court in *Sama Aruna vs. State of Telengana and anr.*, reported in (2018) 12 SCC 150; *Sushanta Kumar Banik vs. State of Tripura & ors.*, reported in 2022 SCC OnLine Tri.376.

7. *Per contra*, Mr. Raju Datta, learned PP appearing for the respondent-State has submitted that no mandate under the PITNDPS Act has been violated while passing the detention Order and the said detention Order has been passed in accordance with law, and also that the fundamental rights of the detainee has also not been infringed. Mr. Datta, learned PP has further submitted that the cases in which the detainee has been booked and released on bail are all old cases, but there is no order of acquittal. Learned PP has further submitted that the State-respondents have filed their counter affidavit denying all the averments made in the writ petition with elaborate discussion. Learned PP has also submitted that after enlarging on bail from each of the cases, the detainee used to deal with his illegal trafficking of NDPS articles subsequent to which he was arrested with another case, which clearly indicates that he is a habitual offender with a high propensity for committing crimes upon being released on bail and that he is a habitual offender. It is further submitted that previous criminal records of the detainee were thoroughly considered while passing the detention order hence to protect the society from significant risk, his detention is necessary. Additionally, learned PP has submitted that the grounds of detention were duly translated and read over to the detainee in the language he understands and all relevant documents, along with the impugned detention order and other materials, were duly supplied to him. He further submitted that the detainee submitted his representation in English language, and the same speaks that he can understand and write English. Learned PP has further submitted that the grounds of detention and the detention order were passed in accordance with the law, only after the sanctioning authority had thoroughly scrutinized all the facts and materials available on record after

due application of mind. Mr. Datta, further submitted that in view of Section 9(e) of PIT NDPS Act, he is not entitled to the report of Advisory Board. Mr. Datta, further submitted that as per Section 3(3) of PIT NDPS Act, limitation for serving copy of the detention order and grounds of detention starts from the date of detention and not from the date of passing the detention order. To conclude, learned PP has submitted that the grounds taken by the detainee in the instant writ petition are misconceived and untenable and without any merit, hence urged to dismiss the instant writ petition. Learned PP has placed his reliance upon *Haradhan Saha vs. State of West Bengal and ors.*, reported in (1975) 3 SCC 198; *Jaseela Shaji vs. Union of India and ors.*, reported in (2024) 9 SCC 53; *Pesala Nookaraju vs. Government of Andhra Pradesh and ors.*, reported in (2023) 14 SCC 641; *Judgment dated 20.08.2025 in WP(C)(HC) 01 of 2025 [Smt. Pinki Saha Roy on behalf of detainee in custody, Raju Barman vs. The State of Tripura and ors.]*

8. We have meticulously gone through the case records, the orders and the judgments relied upon by the learned counsel to the *lis*, contained therein.

9. It is upon the basis of the aforementioned FIRs, the detaining authority came to characterize the detainee as a hardcore habitual offender and a drug peddler who being a habitual offender is involved in many criminal offences and blatantly violating the rule of law including drug addiction and thereby horrifying the innocent citizens. The detainee has been identified to be a history sheeter whose activities were highly prejudicial to maintenance of public order as well as security of the society and also threat of significant risk to the youth. Taking into consideration this aspect, the

detention order was passed on 06.03.2025, and on 17.03.2025, the said detention order was executed upon the accused in RK Pur PS notifying him the grounds and supplying all relevant materials, and on perusal of the documents, it is conclusively seen that the documents supplied to the detainee bears his signature. Admittedly, on 17.03.2025, the accused was detained at RK Pur PS and on the same date, the detention order along with grounds of detention was furnished to the detainee which would be evident as per the acknowledgement slip filed as Annexure-9 to the writ petition, that the detention order along with grounds of detention were received by the detainee 17.03.2025 when he was detained. As per Section 3(3) of PIT NDPS Act, limitation for serving copy of the detention order and grounds of detention starts from the date of detention and not from the date of passing the detention order. As per Section 9(e) of PIT NDPS Act, the detainee is not entitled to the report of Advisory Board. He is only entitled to the opinion of the Advisory Board and same was communicated to him when the detention order was confirmed by order dated 06.06.2025 (Annexure 14). Thus, there is no violation of Sections 3 and 9 of PITNDPS Act and also Article 22 of the Constitution of India. For better appreciation, Sections 3 and 9 of PIT NDPS Act and Article 22 of the Constitution of India, are quoted here-in-below:

Section 3 of PIT NDPS Act-

“3. Power to make orders detaining certain persons.—(1) The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing not later than fifteen days, from the date of detention.”

Section 9 of PIT NDPS Act-

“9. Advisory Boards.-For the purposes of sub-clause (a) of clause (4) and subclause (c) of clause (7) of article 22 of the Constitution,-

(a) the Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards each of which shall consist of a Chairman and two other persons possessing the qualifications specified in sub-clause (a) of clause (4) of article 22 of the Constitution;

(b) save as otherwise provided in section 10, the appropriate Government shall, within five weeks from the date of detention of a person under a detention order, make a reference in respect thereof to the Advisory Board constituted under clause (a) to enable the Advisory Board to make the report under sub-clause (a) of clause (4) of article 22 of the Constitution;

(c) the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person, called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned;

(d) when there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board;

(e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential;

(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.”

Article 22 of the Constitution of India:

“22. Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

[The following clause (4) to come into effect on enforcement of Section 3 of Constitution (Forty-fourth Amendment) Act, 1978]

28[(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention:

Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court:

Provided further that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) of clause (7).

Explanation. In this clause, "appropriate High Court" means,-

(i) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the Union territory of Delhi,

(ii) in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than a Union territory), the High Court of that State; and

(iii) in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament in this behalf.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

It is clear on plain reading of language of Section 3(1) of PITNDPS Act, that the exercise of the power of detention is made on the subjective satisfaction of the detaining authority with a view of preventing a person from acting in a pre-judicial manner. Here in this case, prior to passing of the detention order, the Detaining Authority has observed that the detainee is continuously engaging in illicit trafficking in narcotic drugs and psychotropic substances which poses a serious threat to the health and welfare of the people and the young generation. The Detaining Authority, after recording its subjective satisfaction, has passed the impugned order of detention. The Detaining Authority was aware that detainee was engaged in illicit trafficking of drugs and the FIRs lodged against him are concerned with illicit trafficking of narcotic substance, and these acts were against the general public, therefore, making it necessary to detain the detainee.

Aim and Object of Article 22(5) of the Constitution of India, is to save society from activities that are likely to deprive and ruin a large number of people of their right to life and personal liberty.

Further, clause 5 of Article 22 read with Section 3(3) of PITNDPS Act, it is evident that the detainee had been detained as preventive measure. Thus, following clause 5 of Article 22 read with Section 3(3) of PITNDPS

Act, the procedure of detention has been maintained, causing thereby no illegality.

10. Submission of learned counsel for the petitioner that the detention order passed on 06.03.2025, and thereafter the detinue was detained on 17.03.2025 i.e. after 11 days of passing the order, and thus, the same is violation of statutory provision under the Act. Section 3(1) of PIT NDPS Act, specifies for passing the detention order, and Section 3(3) of the Act specifies the limitation for serving the copies of the detention order and other documents within 5(five) days from detention, and not from passing the detention order. Further submission of learned counsel for the petitioner that the order of detention was not explained to the detinue in Bengali language cannot be accepted as from the counter affidavit submitted by the respondent it is conclusively seen that the contents of the detention order was translated to the detinue in Bengali language and on understanding the same he has put his signature. Apart from this, the detinue submitted representation in English language and in no where he has stated that the same was prepared by any other person and explained the same to him. From this, it reveals that he can read and write English language. On that score, submissions of learned counsel for the petitioner on both the aspects cannot be accepted.

11. The objective of PITNDPS Act is to prevent persons of such propensity to continue with their prejudicial activities which would be detrimental to the society. The aims and objectives of the PITNDPS Act, read as under:

“An Act to provide for detention in certain cases for the purpose of preventing illicit traffic in narcotic drugs and psychotropic substances and for matters connected therewith

Whereas illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and the activities of persons engaged in such illicit traffic have a deleterious effect on the national economy;

And whereas having regard to the persons by whom and the manner in which such activities are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to the illicit traffic in narcotic drugs and psychotropic substances, such activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities to provide for detention of persons concerned in any manner therewith."

The framework of preventive detention has been dealt with by the Apex Court in *Khudiram Das v. State of West Bengal & ors.*, reported in (1975) 2 SCR 83, as under:

"The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof."

In *Naresh Kumar Goyal v. Union of India*, reported in (2005) 8 SCC 276, the Apex Court observed:

"It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so."

12. It is well settled that the purpose of the preventive detention by detaining a person is not to punish him, but to prevent him from doing a particular act which is prejudicial in nature. In *Haradhan Saha (supra)*, the Hon'ble Supreme Court has held that *there is no parallel between prosecution in a Court of law and a detention order under the Public Safety Act. One is a punitive action and the other is a preventive act. In one case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in the Act. The relevant part of the judgment is reproduced as under:-*

"The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an

act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent."

15. In *WP(C)(HC) 01 of 2025*, this Court has dealt with Section 5-A of the Act, and in paragraphs 25 to 29, has made a detailed observation. For reference, the relevant paragraphs are quoted here-in-below:

"25. In the case of *Bimla Dewan Smt. v. Lieutenant Governor of Delhi*¹, the Supreme Court held that if in the detention order there are references to criminal cases, but in some of those cases, the detenu was found to be acquitted or discharged, they cannot be legitimately taken into consideration for detaining the detenu under Section 3(2) of the NSA. The Supreme Court held that since the Detaining Authority would naturally have been influenced by the reference to the said criminal cases for coming to the conclusion that the detenu required to be detained under the provisions of the Act, the entire order of detention is unsustainable.

26. The judgment in *Bimla Dewan* (1 supra) though rendered under the National Security Act, 1980, it was rendered at a time when Section 5A was not there in the said statute book as the said provision was introduced by Act 60 of 1984 with retrospective effect from 21.06.1984.

27. In fact, provision akin to Section 5A was already there in the COFEPOSA Act, 1974 i.e. the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 by the date of the judgment in *Bimla Dewan* (1 supra).

The petitioner in *Bimla Dewan* (1 supra) contended that because there was no provision like Section 5A of the COFEPOSA Act, 1974 in the National Security Act, 1980 at that point of time, the whole order would get vitiated if one of the grounds is bad and the entire order has to be quashed and this argument was accepted by the Supreme court. It held :

" 6. ... Mr Ram Jethmalani, Senior Advocate who appeared for the petitioner in this case submitted that in the National Security Act there is no provision like Section 5-A in COFEPOSA (Conservation of Foreign Exchange and Prevention of Smuggling Activities Act) and, therefore, if one of the grounds is bad the order of detention has to be quashed in its entirety and that as the detaining authority has based the order of detention of Grounds 1 to 24 and 28 also, the order of detention is unsustainable. The learned counsel for the respondent did not submit anything to controvert that submission of Mr Ram Jethmalani. We are of the opinion that since the detaining authority would naturally have been influenced by these grounds as well for coming to the conclusion that the detenu requires to be detained under the provisions of the Act, the entire order of detention is unsustainable." (emphasis supplied)

28. Thus it appears that absence of provision like Section 5-A of the COFEPOSA Act in the National Security Act, 1980 at the time the judgment was rendered, made the Supreme court to take the view that the entire detention order is vitiated if any of the grounds of the detention is not valid.

29. But the instant case has arisen long after introduction of Section 5-A in the National Security Act, 1980 by Act 60 of 1984 w.e.f 21.6.1984. This is in *pari materia* with the Section 5-A of the COFEPOSA Act. Section 5A of the National Security Act, 1980 specifically provides that an order of detention will not be deemed to be invalid or inoperative merely because one or some of the grounds are invalid for any other reason whatsoever [Clause (v) of Section 5A]."

Further, this High Court in paragraphs 34, 35 and 36 of *WP(C)(HC) 01 of 2025*, has discussed regarding the factum that even after the detenu is acquitted in a criminal Case, a detention order can still be passed. Relevant paragraphs are reproduced hereunder:

"34. Moreover, the Supreme court had held that even after the detenu is acquitted in a criminal Case, a detention order can still be passed. (*Haradhan saha v. The State Of West Bengal*, (1975) 3 SCC 198)

35. In the case of *Pesala Nookaraju v. Government of Andhra Pradesh and others*⁵ the Supreme Court held that the power of preventive detention is qualitatively different from punitive detention. It is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. It may also be made with or without prosecution and in anticipation or after discharge or even acquittal.

36. Therefore, merely because the detenu has secured acquittal in two criminal cases, it cannot be said that the order of preventive detention is vitiated."

Further, this High Court, in *WP(C)(HC) 01 of 2025*, has made its observation on the ground of *mere reference to the grant of bail in the documents supplied by the Sponsoring Authority to the Detaining Authority without placing on record the bail orders vitiates the said orders as the subjective satisfaction cannot be said to be there of the Detaining Authority.*

The relevant paragraphs are reproduced here-in-below:

“43. Strong reliance was placed on the judgment of the Supreme Court in the case of *M. Ahamed Kutty v. Union of India and another*, reported in (1990) 2 SCC 1 .

In that case, it was held that bail application and bail order were vital materials for consideration and if those were not considered, the satisfaction of the detaining Authority itself would have been impaired, and if those had been considered, they would be documents relied on by the detaining Authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detainee with the grounds of detention, and without them, the grounds themselves could not be said to have been complete. In that case, Supreme Court set aside the detention order on the said ground.

44. But in several later cases, the Supreme court held that application for bail or order in the bail application need not invariably and mandatorily be placed before the detaining authority and copies thereof supplied to the detainee. (*Sunlia Jain v. Union of India*, reported in (2006) 3 SCC 321, *K. Varadharaj vrs. State of Tamilnadu and another*, reported in (2002) 6 SCC 735 and *Vinod K.Chawla v. Union of India*, reported in (2006) 7 SCC 337).

In *K. Varadharaj* (supra), the Supreme Court held that it cannot read into the observations in *M. Ahmed Kutty* (8 supra) that in every case where there is an application for bail and an order made thereon, the detaining authority must as a rule be made aware of the said application and order made thereon. It held that the judgment in *M. Ahamed Kutty* (supra) does not lay down a mandatory principle of law that in every case the application for bail and the order made thereon should be placed before the Court. It held that such a requirement would depend upon the facts of each case and on the contents of those documents and if the documents do contain some material which on facts of that case would have some bearing on the subjective satisfaction of the detaining authority, then like any other vital material, even this document may have to be placed before the detaining authority.

45. Even in the judgment of the Supreme Court in the case of *Jaseela Shaji v. Union of India and others*, reported in (2024) 9 SCC 53, relied upon by the counsel for the petitioner, the judgment of *Ahamed Kutty* (8 supra) was referred to. But at paragraph-31 thereof, it was held that a copy of every document mentioned in the order is not required to be supplied to the detainee and copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detainee is necessary are required to be supplied to him. It thus reiterated that only copies which form the ground for detention are to be supplied and non-supply thereof would prejudice the detainee and the documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detainee is prejudiced.

46. In any event, the detainee was in custody in one of the criminal cases (item (i)) at the time the detention order was passed. So he cannot complain that the detaining authority’s subjective satisfaction was vitiated on the ground of lack of knowledge of contents of the bail/Anticipatory bail orders.”

16. Analysing thus, it comes to fore that the grounds of detention are definite and free from any ambiguity. The detainee was provided with sufficient materials required for his detention. The detaining authority has narrated the facts that made it to exercise its powers under Section 3 of the PIT NDPS Act, and record subjective satisfaction that the detainee was required to be placed under preventive detention in order to prevent him from committing any act relating to illicit trafficking of NDPS articles. The

detaining authority has informed the detainee that he was involved in a number of cases relating to illicit trafficking of NDPS articles, which poses serious threat to the society especially young generation.

17. Thus, from what has been held above, this Court is of the opinion that the detention order dated 06.03.2025, does not suffer from any legal infirmity and grounds of detention are free from any ambiguity. None of the constitutional or statutory remedy available to the detainee has been violated. In view of the aforesaid, there is no merit in this petition, and the same is, accordingly, *dismissed*.

Pending application(s), if any, also stands dismissed.

S.DATTA PURKAYASTHA,J

DR.T. AMARNATH GOUD,J



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