GAHC020003982026 2026:GAU-NL:473-DB

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

Case No. : W.P.(Crl.)/15/2026

SHRI MD ANISH KHAN
S/O MD AYUB KHAN, R/O KHUMIDOK IPUM MAPAL, P.O. PANGEI YANGDONG, EAST - IMPHAL, MANIPUR - 795114

VERSUS

STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND, KOHIMA

2:THE UNION OF INDIA
REPRESENTED BY THE JOINT SECRETARY (PITNDPS)
THE MINISTRY OF FINANCE
ROOM NO. 202
JEEVAN TARA BUILDING
2ND FLOOR
PARLIAMENT STREET
NEW DELHI - 110001

3:THE SPECIAL SECRETARY
TO THE GOVT. OF NAGALAND
HOME DEPARTMENT
POLITICAL BRANCH
NORTH BLOCK 1ST FLOOR
NAGALAND CIVIL SECRETARIAT
NAGALAND
KOHIMA - 797004

4:THE SUPERINTENDENT OF JAIL
CENTRAL JAIL
DIMAPUR
NAGALAN

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocate for the Petitioner : Mr. A. Sophie
Pheniang Lushang

Advocate for the Respondent
Nos. to 1,3 & 4 : Ms. Inaholi, Govt. Advocate

Advocate for the Respondent No.2 : Mr.Z.N. Ngullie

Date on which judgment is reserved : **02.09.2026**

Date of pronouncement of judgment : **17.09.2026**

Whether the pronouncement is of the Operative part of the judgment ? : No

Whether full judgment has been pronounced ? : Yes

JUDGMENT & ORDER (CAV)

(Y. Longkumer, J.)

The present petition under Article 226 of the Constitution of India has been preferred by the petitioner, who is the cousin brother of the detenu Mustaaq, praying for quashing and setting aside the impugned detention order dated 27.10.2025, the impugned confirmation order dated 28.01.2026, and the impugned extension order dated 28.04.2026. The

petitioner has also prayed for an order directing the state respondents to pay an amount of Rs. 50,000/- as compensation for illegal detention of Shri Mustaaq by the order dated 28.04.2026.

2. Heard learned counsel Mr. A. Sophie for the petitioner. Also heard Ms. Inaholi, learned Government Advocate for the state respondents, and Mr. Z. N. Ngullie, learned CGC for respondent No. 2

3. The case of the petitioner herein is that a suo moto FIR dated 30.08.2025 was lodged at the Government Railway Police Station, stating that the detenu Mustaaq was arrested by the GRPS police while performing random checking at the Dimapur Railway Station with another co-accused on the allegation that the detenu was in possession of 39 kgs (approximately) of suspected ganja, and thereafter he was booked in connection with GR Case No. 462/2025 arising out of GRPS Case No. 0024/2025 under Section 20(b)(ii)(C) of the NDPS Act.

4. Subsequently, the Special Secretary (Home), Government of Nagaland, passed the impugned detention order No. CON/PIT-NDPS/21/2025/233 dated 27.10.2025, detaining the detenu at Central Jail, Dimapur. The State Government approved the detention order and issued a confirmation order No. CON/PIT-NDPS/21/2025/04 dated 28.01.2026, directing that the detenu be detained for a period of three months from 29.01.2026 to 28.04.2026. The detenu submitted his representation dated 06.04.2026 for revocation of the detention order, but the same was rejected by the State Government vide order dated 08.04. 2026 and order dated 15.04.2026. The State Government subsequently issued another extension order dated 28.04.2026 detaining the detenu for another period of three months by order No. CON/PIT-NDPS/21/2025/30 dated

28.04.2026, detaining the detenu from 29.04.2026 to 28.07.2026. Being aggrieved, the petitioner is before this Court.

5. It is the submission of the learned counsel for the petitioner that, as per the order dated 28.04.2026, the State Government purportedly exercised the powers conferred upon it under Section 9 (f) of The Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as "the PITNDPS Act"). However, as per Section 9 (f) of the PITNDPS Act, the Government can confirm and continue the detention of a person basing on the report of the Advisory Board only, and not on the report of the Addl Director General of Police, Nagaland. Therefore, it is submitted that the order dated 28.04.2026 is illegal and the detenu has been illegally detained for three months without any authority and as such, it is prayed that the state respondents may be directed to pay Rs. 50,000/- as compensation.

6. The learned Counsel for the petitioner, by referring to Section 9(f) of the PITNDPS Act, submits that the said provision clearly enunciates that it is only when the Advisory Board submits a report 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. He submits that in view of the said provision of law, once the Advisory Board has submitted its report showing sufficient cause for the detention of a person, the State Government can detain the person concerned up to a maximum period of 1 year, as provided in Section 11 of the PIT NDPS Act. The learned Counsel, therefore, submits that basing on the opinion of the Advisory Board, the State Government, vide confirmation order dated 28.01.2026,

in exercise of the powers conferred by Section 9(f) of the PITNDPS Act, detained the detenu up to 28.04.2026.

7. However, the State Government, by the impugned order dated 28.04.2026, has detained the detenu for another period of 3 months with effect from 29.04.2026 till 28.07.2026, basing on the report of the Additional Director General of Police, who is not the competent authority under the PITNDPS Act to give an opinion regarding the continued detention of the detenu. The learned Counsel, therefore, submits that the impugned order dated 28.04.2026 has been passed without any authority and the same is illegal and the detenu has been therefore, illegally detained from 29.04.2026 to 28.07.2026. Hence, the learned Counsel submits that this is a fit case where the State Respondents should be directed to pay compensation of Rs. 50,000/- to the detenu for his illegal detention.

8. Per contra, Learned Government Advocate, Ms. Inaholi, appearing on behalf of the State Respondents No. 1, 3, and 4, submits that the instant petition has been filed basing on the wrong premise of law. The learned Government Advocate submits that the detention order dated 27.10.2025 was duly confirmed by the State Government vide order dated 28.01.2026 based on the opinion given by the Advisory Board vide report dated 19.11.2025, wherein it was observed that there is sufficient cause for detention of the detenu. Further, the extension order dated 28.04.2026 was issued by the State Government basing on the report submitted by the Additional Director General of Police, who is the Chairman of the Screening Board, PITNDPS Act. The learned Government Advocate submits that the opinion of the Advisory Board was already obtained and

accordingly, the confirmation order dated 28.01.2026 was issued extending the period of detention for 3 months, i.e., from 29.01.2026 to 28.04.2026 in line with the direction of the Supreme Court in the case of ***Cherukuri Mani vs. Chief Secretary, Government of Andhra Pradesh, (2015) 13 SCC 722***. It has been mandated in the case of ***Cherukuri Mani*** (supra) that the detention orders have to be reviewed every 3 months. Since the opinion of the Advisory Board had already been obtained, there was no further need to obtain the opinion of the Advisory Board afresh for subsequent extension vide order dated 28.04.2026.

9. The learned Government Advocate submits that Section 9(f) of the PITNDPS Act says that in every case where the Advisory Board has reported that there is, in its opinion, sufficient cause for 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. As such, the said provision has not been violated and the order dated 28.04.2026 is merely another extension for 3 months basing on the opinion of the Advisory Board which was first obtained following the initial detention order. As such, there is no illegality in passing the said extension order dated 28.04.2026.

10. The learned Government Advocate has relied on the case of ***Pesala Nookaraju v. Government of Andhra Pradesh, reported in (2023) 14 SCC 641***. Relying on the cited case, learned Government Advocate submits that the Hon'ble Supreme Court has held that in a case of preventive detention the final period of preventive detention cannot be pre-determined before the Advisory Board's report. The Supreme Court emphasized that the initial detention is preventive and not punitive and

the period for which detention should continue must be determined in accordance with the constitutional/statutory procedure after the Advisory Board considers the case. Therefore, learned Government Advocate submits that the order dated 28.04.2026 has not specifically mentioned that the opinion of the Advisory Board has been obtained as the said opinion had already been obtained while passing the confirmation order dated 28.01.2026. She submits that the report of the Additional Director General of Police was only obtained in order to ascertain whether the grounds for his continued detention still exist. Therefore, it cannot be said that the order dated 28.04.2026 was issued without the report of the Advisory Board. Learned Government Advocate therefore submits that the instant petition is misconceived and may be dismissed.

11. The learned CGC Mr. Z. N. Ngullie appearing for the Union of India has also adopted the submissions made by the learned Government Advocate and submits that all the mandatory timelines and procedures in the PITNDPS Act have been complied with.

12. The Court has given its due consideration to the submissions made by the learned counsel for the parties and perused the pleadings as well as the records.

13. It is seen that during the pendency of the instant petition, by an Order No. CON/PITNDPS/61/2025/62 dated 23.07.2026, the detenu has been released from detention under the PIT NDPS Act. Therefore, the vital point for consideration in the instant writ petition is the question as to whether the impugned second extension order dated 28.04.2026 after the first extension/confirmation order dated 28.01.2026, can be said to be a valid extension order passed in accordance with the provisions of the

PITNDPS Act, 1988, and whether the detenu is entitled to payment of compensation in the event the order dated 28.04.2026 is found to be in violation of the provisions of the PITNDPS Act.

14. The contents of Order dated 28.01.2026 and 28.04.2026 are reproduced herein below:

GOVERNMENT OF NAGALAND

HOME DEPARTMENT: POLITICAL BRANCH

CONFIRMATION ORDER

Dated Kohima, the 28th January, 2026.

NO. CON/PITNDPS/21/2025/04 :: Mr. Md. Mustaaq (M/19 yrs), S/o- Md. Ayajuddin; V/o- Semaijin Hagul Ngakhpat; Permanent/Addl: Kishangarh, Vasant Kunj, Delhi, has been detained under the PITNDPS Act, 1988 by the Special Secretary (Home), Nagaland vide order NO. CON/PITNDPS/21/2025/233 dated 27.10.2025 for an initial period of 3 (Three) months till 28.01.2026.

Whereas, the detention of the said detenue Mr. Md. Mustaaq (M/19 yrs), S/o- Md. Ayajuddin; V/o- Semaijin Hagul Ngakhpat; Permanent/Addl: Kishangarh, Vasant Kunj, Delhi, was referred to the PITNDPS Advisory Board constituted by the Government of Nagaland under Section 9 of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988.

And whereas, the Advisory Board is of the opinion that there is sufficient cause for detention of the detenue under the PITNDPS Act, 1988 and that the continued detention of the detenue Mr. Md. Mustaaq (M/19 yrs), S/o- Md. Ayajuddin; V/o- Semaijin Hagul Ngakhpat; Permanent/Addl: Kishangarh, Vasant Kunj, Delhi, will be necessary in order to prevent him from further indulging in illicit traffic in narcotic drugs and psychotropic substances warranting his detention under the preventive law.

Now, therefore, the State Government in exercise of powers conferred by Clause (f) of Section 9 of the PITNDPS Act, 1988, hereby confirm the detention order issued in respect of the said detenue Mr._Md. Mustaaq (M/19 yrs), S/o- Md. Ayajuddin; V/o- Semaijin Hagul Ngakhpat; Permanent/Addi: Kishangarh, Vasant Kunj, Delhi, and further order that he shall be detained for another period of 3 (Three) months w.e.f, 29.01.2026 to 28.04.2026 within which period his detention will be reviewed as required under the provisions of the PITNDPS Act, 1988.

Sd/-SENTIYANGER IMCHEN, IAS
Chief Secretary to the Govt. of Nagaland.

NO.CON/PITNDPS/21/2025/ Dated Kohima, the 28th January, 2026

Copy to :-

1. The Deputy Secretary (PITNDPS), Department of Revenue, Ministry of Finance, Room No. 202, Jeevan Tara Building-5, Parliament Street, New Delhi-110001
2. The Dy. Secretary to chief Secretary, Nagaland, Kohima.
3. The Director General of Police, Nagaland, Kohima.
4. The Director General of Prison, Nagaland, Kohima.
5. The ADGP (L & O), Nagaland, Kohima.
6. The Inspector General of Police (INT), Nagaland, Kohima.

7. The Inspector General of Police (CID), Nagaland, Kohima.
8. The Commissioner of Police, Dimapur, Nagaland.
9. The Deputy Commissioner of Police, Dimapur, Nagaland.
10. The Superintendent of Police (N & P), Nagaland, Kohima.
11. The Superintendent of Jail, Central Jail, Dimapur, Nagaland.
12. Mr. Md. Mustaaq (19Yrs), c/o Superintendent of Jail, Central Jail, Dimapur, Nagaland
13. Office Copy.

(BENJAMIN LONGKAP) NCS
Deputy Secretary to the Govt. of Nagaland.

Order dated 28.4.2026

GOVERNMENT OF NAGALAND
HOME DEPARTMENT : POLITICAL BRANCH

ORDER

Dated Kohima, the 28th April, 2026.

NO. CON/PITNDPS/21/2025/30 Ayajuddin; V/o- Semaijin Hagul Ngakhpat; Permanent/Add: Kishangarh, Vasant Kunj, Delhi, was detained under the PITNDPS Act, 1988 by the Special Secretary (Home), Nagaland vide order NO.CON/PITNDPS/21/2025/233 dated 27.10.2025 for an initial period of 3 (Three) months till Whereas, Mr. Md. Mustang (19 yrs); S/o: Lt. Md. 28.01.2026.

Whereas, vide Confirmation Order NO. CON/PITNDPS/21/2025/04 dated 28.01.2026, the detention period of Mr. Md. Mustaaq (19 yrs); S/o: Lt. Md. Ayajuddin; V/o- Semaijin Hagul Ngakhpat; Permanent/Add: Kishangarh, Vasant Kunj, Delhi, was extended for another period of 3 (Three) months w.e.f, 29.01.2026 till 28.04.2026.

Whereas, the Addl. Director General of Police (ADM), Nagaland, Kohima, had submitted a report to the State Government vide letter No.PHQ/IGP/CID/P-CELL/21/2025/625, dated 15.04.26, wherein it opined that continued detention of Mr. Md. Mustaaq (19 yrs); S/o: Lt. Md. Ayajuddin; V/o- Semaijin Hagul Ngakhpat; Permanent/Add: Kishangarh, Vasant Kunj, Delhi, under the Act beyond the expiry period of 28.04.2026 is required as circumstances and grounds for his continued detention still exist.

And whereas, the State Government of Nagaland on perusal and careful examination of the report submitted by the Addl. Director General of Police (ADM), Nagaland, Kohima, is satisfied with the view that circumstances and grounds for continued detention of Mr. Md. Mustaaq still exists.

Now, therefore, the State Government in exercise of powers conferred by Clause (f) of Section 9 of the PITNDPS Act, 1988 further order that Mr. Md. Mustaaq shall be detained for another period of 3 (Three) months w.e.f, 29.04.2026 till 28.07.2026 within which period his detention will be reviewed as required under the PITNDPS Act, 1988.

By order & in the name of the Governor of Nagaland.

Sd/-SENTIYANGER IMCHEN, IAS
Chief Secretary, Govt. of Nagaland.

NO. CON/PITNDPS/21/2025/ 30 Dated Kohima, the 28th April, 2026.

Copy to:-

1. The Deputy Secretary, (PITNDPS), Department of Revenue, Ministry of Finance, Room No.202, Jeevan Tara Building 5, Parliament Street, New Delhi-110001.
2. The Joint Secretary to Chief Secretary, Nagaland, Kohima.
3. The Director General of Police, Nagaland, Kohima.
4. The ADGP (L&O), Nagaland, Kohima.
5. The Inspector General of Police (INT), Nagaland, Kohima.
6. The Inspector General of Police (CID), Nagaland, Kohima.
7. The Inspector General of Prisons, Nagaland, Kohima.
8. The Commissioner of Police, Dimapur, Nagaland,
9. The Deputy Commissioner of Police, Dimapur, Nagaland.
10. The Superintendent of Police (N&P), Nagaland, Kohima.
11. The Sr. Superintendent of Jail, Central Jail, Dimapur, Nagaland.
12. Mr. Md. Mustaaq, c/o Sr. Superintendent of Jail, Central Jail, Dimapur, Nagaland.
13. Office copy.

(CHUBASANGLA LONGKUMER)
Joint Secretary to the Govt. of Nagaland.

15. The basic constitutional mandate under Article 22(4) of the Constitution is that detention beyond three months requires an Advisory Board report before the expiry of three months, opining that there is sufficient cause for detention. In the present case, the State Government had already received a favorable Advisory Board report and on that basis had passed a confirmation order dated 28.01.2026 under Section 9(f) of the PITNDPS Act, 1988 extending the detention only up to 28.04.2026.

16. This Court, therefore, has to examine whether the State Government could have passed a fresh extension order from 29.04.2026 to 28.07.2026 merely on the basis of the report of the Additional Director General of Police without obtaining a fresh Advisory Board opinion. Section 9(f) of the PITNDPS Act is reproduced herein for the sake of convenience:

> "*(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.*"

Section 9(f) of the Act provides that where the Advisory Board reports that there is a sufficient cause for detention, the appropriate Government may confirm the detention order and continue the detention for such period as it deems fit. It has to be read together with Section 11 of the Act which prescribes the maximum period, i.e., ordinarily one year where Section 10 does not apply and two years where Section 10 applies. Therefore, the Advisory Board's opinion is the jurisdictional foundation for continuation of detention beyond the initial period. But once a valid Section 9(f) confirmation has been made, the Government can determine the period of continuation, subject to Section 11. Section 9(f) does not expressly say that every subsequent extension must be based on a fresh Advisory Board report.

17. In the case of ***Pesala Nookaraju (supra),*** the Supreme Court held that under Article 22(4)(a) of the Constitution, the Advisory Board would have to give its opinion within a period of three months from the date of detention, and depending upon the opinion expressed by the Advisory Board, the State Government can either confirm the order of detention or

continue the detention of the person concerned for a maximum period of 12 months. If the order of detention is confirmed, then the period of detention can be extended up to the maximum period of 12 months from the date of detention. The Supreme Court was of the view that it is not necessary that before the expiration of three months, the State Government had to review the order of detention. Once the Advisory Board has opined that there is sufficient cause for detention of the person concerned and on that basis a confirmatory order is passed by the State Government to detain a person, such detention can be for a maximum period of 12 months, thereby overruling the earlier requirement of extension for three months each as held in the case of ***Cherukuri Mani (supra).*** The Supreme Court was also of the view that the 3 months limitation period as mandated in Article 22(4) (a) operates before the Advisory Board's report. The Court held that the 3 months period is relatable to the period prior to the Advisory Board's report and not to the period after the Board has opined that there is sufficient cause for detention. Hence, there is an important distinction to be made between continuation of detention before the Advisory Board report and extension after the Advisory Board opinion under Section 9(f) of the Act.

18. Applying the said principle of law in the instant case, it is clear that after the first detention order dated 27.10.2025 was passed, detaining the detenu for an initial period of three months, the opinion of the Advisory Board was duly obtained before the expiry of the three months and the Government has already exercised its power under Section 9(f) of the Act and fixed the period of detention up to 28.04.2026. I am of the view that after the Government has already exercised its power under Section 9(f)

and extended the detention up to 28.04.2026, the State Government could not have subsequently extended the detention further merely on the basis of the report of the Additional Director General of Police. The State Government could have very well extended the period of detention even up to a maximum of one year after the opinion of the Advisory Board was obtained in view of ***Pesala Nookaraju***. The State Government has also not identified the statutory source of power for the second extension order dated 28.04.2026. A mere administrative report from the Additional Director General of Police cannot by itself, confer statutory power. The Government must demonstrate that the order dated 28.04.2026 is an independent and lawful exercise of the power under Section 9(f) of the Act. However, the order dated 28.04.2026 is simply an "administrative extension" outside the statutory scheme.

19. I am, therefore, of view that the impugned order dated 28.04.2025 is without authority of law due to the reasons that: (i) Section 9(f) was already exhausted by the State Government in the confirmation order dated 28.01.2026 and Section 9(f) cannot be invoked afresh merely on the opinion of the Addl DGP.(ii) the impugned order is contrary to the principles of ***Pesala Nookaraju*** as the first confirmation order 28.01.2026 expressly limited the detention upto 28.04.2026. Therefore, the State government cannot treat Section 9 (f) as a mechanism for successive three month extensions. Any subsequent extension must have a statutory foundation and independent application of mind and it cannot be justified by merely relying on the report of the Additional Director General of Police (iii)The report of the Addl DGP cannot replace the Advisory Board opinion. The view of the Addl DGP that continued

detention is required cannot by itself constitute the statutory satisfaction contemplated by Section 9 (f) which is triggered by the opinion of the Advisory Board

20. In view of the above discussion and observations, the impugned order dated 28.04.2026 cannot be justified merely by describing the said order as an extension of the earlier detention. The subsequent extension order dated 28.04.2026 is accordingly held to be without authority of law, illegal, and void in so far as it authorizes the detention of the detenue beyond 28.04.2026.

21. Consequently, the impugned extension order dated 28.04.2026 is quashed and set aside.

22. With regard to the prayer for compensation in respect of illegal detention, the Supreme Court in the case of ***Nilabati Behera vs. State of Orissa,*** reported in ***(1993) 2 SCC 746***, and the case of ***D.K. Basu vs. State of West Bengal, (1997) 1 SCC 416***, has laid down detailed safeguards regarding arrest and detention and when there is illegal detention and procedural violations, the Supreme Court has recognized compensation as an appropriate public law remedy for violation of Article 21 of the Constitution. The Supreme Court held that where there is a violation of the fundamental right to life and personal liberty under Article 21, the court can award monetary compensation under Article 32 or 226 as a public law remedy. Compensation is an appropriate and effective remedy for established violation of fundamental rights. The remedy is founded on strict liability for violation of fundamental rights. The purpose is not merely to compensate the victim but also to vindicate the fundamental right and to provide a deterrent against State abuse.

23. The Supreme Court also drew a distinction between public law compensation for breach of constitutional rights and damages in a private law action. The State has a constitutional obligation to protect the life and liberty of persons. Once continued detention is found to be without authority of law, detention constitutes deprivation of personal liberty. The Constitutional Court is therefore competent to award monetary compensation for the period of illegal detention in exercise of its public law jurisdiction, in accordance with the law laid down in ***Nilabati Behera (supra).***

24. Having held that the continued detention of the detenue by order dated 28.04.2026 was without authority of law and therefore illegal, I am of the considered view that the detenu is entitled to appropriate monetary compensation for the period during which his liberty was unlawfully curtailed. Accordingly, the State respondents, particularly the respondent No.3 is directed to pay the petitioner a sum of Rs.30,000/- as compensation for the illegal detention suffered by him from 29.04.2026 to 28.07.2026. The said amount shall be paid within a period of 2(two) months from the date of receipt of a copy of this order.

Sd/- ***Yarenjungla Longkumer***

JUDGE

(Robin Phukan, J.)

25. I have had the opportunity of going through the erudite judgment, authored by my esteemed Sister, Mrs. Longkumer and I am in complete agreement with the view taken by my esteemed Sister. However, I would like to add additional reasoning, while recording concurrence with my

esteemed Sister, in allowing the instant writ petition.

26. From a perusal of the record following factors emerge. The petitioner, namely, Mustaaq was arrested on the strength of a suo- motu FIR, dated 30.08.2025, of the Government Railway Police Station(GRPS) for joint possession of 39 kgs (approximately) of suspected Ganja along with another co-accused, upon which GRPS Case No. 0024/2025 under Section 20(b)(ii)(C) of the NDPS Act was registered. Thereafter, the Special Secretary (Home), Government of Nagaland, passed the impugned **detention order No. CON/PIT- NDPS/21/2025/233, dated 27.10.2025,** detaining the detenu at Central Jail, Dimapur.

26.1. The matter was then placed before the Advisory Board and the Board had given a favorable **opinion dated 19.11.2025.** Thereafter, the State Government had confirmed the detention order, vide **confirmation order No. CON/PIT-NDPS/21/2025/04 dated 28.01.2026,** directing that the detenu be detained for a period of three months **from 29.01.2026 to 28.04.2026.** The detenu submitted his representation, dated 06.04.2026, for revocation of the detention order, but the same was rejected by the State Government vide **order dated 08.04.2026 and order dated 15.04.2026.** The State Government had, subsequently, issued another **extension order dated 28.04.2026,** detaining the detenu for another period of three months vide **order No. CON/PIT-NDPS/21/2025/30, dated 28.04.2026,** detaining the detune from **29.04.2026 to 28.07.2026,** on the basis of a report given by Additional Director General of Police, Nagaland, who has no authority under the PITNDPS Act to give such a report, which is under

challenge in this petition, amongst other.

26.2. As per the order, dated 28.04.2026, the State Government purportedly exercised the powers conferred upon it under Section 9 (f) of the PITNDPS Act, while extending the period of detention with effect from **29.04.2026 to 28.07.2026.**

26.3. However, the contention of the learned counsel for the petitioner is that, as per the order, dated 28.04.2026, the State Government purportedly exercised the powers conferred upon it under Section 9 (f) of the PITNDPS Act. His further contention is that as per Section 9 (f) of the PITNDPS Act, the Government can confirm and continue the detention of a person based on the report of the Advisory Board only, and not on the report of the Additional Director General of Police, Nagaland, and on such count, the order dated 28.04.2026 is illegal and liable to be interfered with and the petitioner may be compensated for being detained illegally.

26.4. The counter submission of Ms. Inaholi, learned Government Advocate, is that the detention order dated 27.10.2025 was duly confirmed by the State Government, on receipt of a favourable opinion of the Advisory Board, dated 19.11.2025, vide order dated 28.01.2026, and extended the period of detention for another 3 months, i.e., from 29.01.2026 to 28.04.2026, in view of the decision of Hon'ble Supreme Court in the case of **Cherukuri Mani (supra),** where it is mandated that the detention orders have to be reviewed every 3 months. Her further contention is that since the opinion of the Advisory Board had already been obtained, there was no further need to obtain the opinion of the Advisory Board afresh for subsequent extension vide order dated

28.04.2026, and the detention may continue for maximum of one year period. It is also her contention that the present petition has been filed under wrong premise of law. Referring to the case of **Pesala Nookaraju (supra)** Ms. Inaholi submits that in a case of preventive detention the final period of detention cannot be pre-determined before the opinion of Advisory Board, and as such the order dated 28.04.2026, is not illegal as the report of the Additional Director General of Police was only obtained in order to ascertain existence of the grounds for continued detention of the petitioner.

27. The submissions of learned counsel for both the parties received due consideration of this Court. But, I am unable to record concurrence to the submission of Ms. Inaholi, the learned Government Advocate for the respondent Nos. 1, 3, and 4, because of the following reasons :-

> **(i) Firstly,** the Chief Secretary had already passed a confirmatory order, under **Section 9(f) of the PITNDPS Act,** after receiving the positive report of the Advisory Board, and passed a confirmatory order under **Section 9(f)** of the PITNDPS Act, fixing the detention up to **28.04.2026,** up to which the detenue/petitioner could be detained. Once a definite period is prescribed in the confirmatory order, the detention remains valid only till that date. In holding so, we derive authority from the decision of the Hon'ble Supreme Court in the case of ***Pesala Nookaraju(supra),*** *specially paragraph No. 43, which is extracted herein below:-*
>
> "**43. We reiterate that the period of three**

months stipulated in Article 22(4)(a) of the Constitution is relatable to the initial period of detention up to the stage of receipt of report of the Advisory Board and does not have any bearing on the period of detention, which is continued subsequent to the confirmatory order being passed by the State Government on receipt of the report of the Advisory Board. The continuation of the detention pursuant to the confirmatory order passed by the State Government need not also specify the period of detention; neither is it restricted to a period of three months only. <u>If any period is specified in the confirmatory order, then the period of detention would be up to such period, if no period is specified, then it would be for a maximum period of twelve months from the date of detention.</u> The State Government, in our view, need not review the orders of detention every three months after it has passed the confirmatory order."

(underline is ours')

(ii) **Secondly,** the contention of Ms. Inaholi could have been accepted only if, in the confirmatory order, so passed under **Section 9(f) of the PITNDPS Act,** no period had been fixed and in that event the detention could have continued for maximum of one year period, on the basis of the favourable opinion of the Advisory Board, which had already been obtained. But, in the confirmatory order here, subsequent extension was fixed up to 28.04.2026.

(iii) Thirdly, there is no provision in the PITNDPS Act that permits the detaining authority to extend an already confirmed period of detention, on the basis of a subsequent police report. Notably, proviso to Section 11 only allows the Government to revoke or modify the detention order i.e., to shorten it *at an earlier time*. It does not authorize extension beyond the period already fixed. A confirmatory order fixing a specific period cannot be reviewed or extended.

(iv) Fourthly, only a fresh detention order, under Section 3 of the PITNDPS Act, on the basis of independent subjective satisfaction formed at that time, may be passed following the entire statutory procedure again, such as communication of grounds, opportunity of representation, reference to the Advisory Board if the proposed period exceeds three months, and confirmation etc.

(v) **Fifthly,** a report of the Additional Director general of Police can, at best, form part of the material that may be placed before the detaining authority while considering whether to pass a fresh order. It cannot, by itself, authorize an extension of the existing order, without, however, passing a fresh order under Section 3, would be without legal authority and liable to be set aside.

28. Notably, the decision in the case of **Cherukuri Mani (supra),** upon which Ms. Inaholi has relied upon to justify the extension of the

confirmatory order, has already been overruled in the case of ***Pesala Nookaraju (supra),*** *and as such*, *it* has *lost its precedential value and* does *not advance her argument.*

29. *In view of aforesaid factual and legal matrix*, *the order* dated 28.04.2026, by which the State Government had purportedly exercised the powers conferred upon it under Section 9 (f) of the PITNDPS Act, and extended the period of detention with effect from 29.04.2026 to 28.07.2026, has failed to withstand the legal scrutiny. And as such it is liable to be quashed. And accordingly, the same stands set aside and quashed.

30. Once the detention order is held to be illegal and without the sanction of law, the public law requires that the petitioner, who suffered legal injury for being detained illegally from 29.04.2026 to 28.07.2026, should be compensated under the long-standing principle of compensation for violation of fundamental rights at the hands of the State and its instrumentalities.

30.1. In the case of **Daudayal v. State of Rajasthan and Others,** reported in **2026 INSC 599,** decided on 29 May 2026 Hon'ble Supreme Court, has expressly surveyed and followed the established public-law principle of awarding monetary compensation, as exemplary damages based on strict liability for infringement of fundamental rights, particularly Article 21, by the State or its instrumentalities. In this case, Hon'ble Supreme Court has derived authority from its earlier decisions in :-

(i) Rudul Sah v. State of Bihar, reported in **(1983)**

4 SCC 141;

(ii) Sebastian M. Hongray v. Union of India, reported in **(1984) 3 SCC 82;**

(iii) Bhim Singh v. State of J&K, reported in **(1985) 4 SCC 677;**

(iv) Nilabati Behera v. State of Orissa, reported in **(1993) 2 SCC 746;**

(v) S. Nambi Narayanan v. Siby Mathews, reported in **(2018) 10 SCC 804;**

30.2. Notably, in the said case, the Hon'ble Supreme Court has awarded a sum of ₹11 lakh, as compensation to a convict, who remained in custody for extra 24 days, after the grant of permanent parole to him by High Court. It was held that the State of Rajasthan's failure to release him promptly amounted to illegal detention violating Article 21 of the Constitution. It has also held that bureaucratic delays cannot override personal liberty.

31. The quantum, which my esteemed Sister has determined in paragraph No.23 above, has to be paid to the petitioner, within the specified period.

32. In terms of the foregoing discussion and reasons, I am in complete agreement with the findings, so recorded by my esteemed Sister.

33. In the result, this writ petition stands allowed, leaving the parties to bear their own costs.

Sd/- ***Robin Phukan***
JUDGE

Comparing Assistant