

GAHC020000682025

2025:GAU-NL:170-DB



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

Case No. : W.P.(CrI.)/3/2025

SMTI NGAPNON
R/O LONGWA WASA VILLAGE, DISTRICT MON, NAGALAND
P/A NORTHEAST THEOLOGICAL SEMINARY, SENAPATI, MANIPUR,
REPRESENTING APHOT SHEIPHA,
PRESENTLY LODGED AT CENTRAL JAIL, DIMAPUR

VERSUS

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

2:THE SPECIAL SECRETARY
GOVERNMENT OF NAGALAND
HOME DEPARTMENT (POLITICAL BRANCH)
KOHIMA
NAGALAND

3:THE SUPERINTENDENT OF JAIL
CENTRAL JAIL
DIMAPUR
NAGALAND

4:THE UNION OF INDIA
REPRESENTED BY THE JOINT SECRETARY
(PITNDPS)
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
ROOM NO 202
JEEVAN TARA BUILDING
2ND FLOOR

PARLIAMENT STREET
NEW DELHI-11000

Advocate for the Petitioner : ALEMWAPANG AO,
PAKINRICHAPBO,
M ANYEI,
Y S PHOM

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA
HON'BLE MR. JUSTICE BUDI HABUNG

JUDGMENT & ORDER (CAV)

Date : 24-04-2025
(Budi Habung, J)

Heard Mr. Alemwapang Ao, learned counsel for the petitioner. Also heard Ms. Inaholi Wotsa, learned Government Advocate for respondents Nos. 1, 2, and 3, and Mr. Z. N. Ngullie, learned CGC for respondent No. 4.

2. This writ petition is filed by Smti. Ngapnon, who claims to be a friend of Mr. Aphot Sheipha (detenue), challenging the following orders:

(i) Detention Order No. CON/PITNDPS/30/2024/151 dated 17.08.2024, passed by the Special Secretary to the Government of Nagaland, under which the detenue has been detained in exercise of powers under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the PITNDPS Act, 1988);

(ii) Confirmation Order No. CON/PITNDPS/30/2024/224 dated 18.11.2024, passed by the Chief Secretary to the Government of Nagaland, confirming the Detention Order dated 17.08.2024, thereby extending the period of detention for another three months,

effective from 20.11.2024 until 17.02.2025, in exercise of powers under Clause (f) of Section 9 of the PITNDPS Act, 1988; and

(iii) Order No. CON/PITNDPS/30/2024/52 dated 14.02.2025, passed by the Chief Secretary to the Government of Nagaland, whereby the detention of the detainee has been further extended for another three months, effective from 18.02.2025 until 17.05.2025, in exercise of powers under Clause (f) of Section 9 of the PITNDPS Act, 1988.

3. The facts leading to the filing of this writ petition are as follows: On 11.07.2024, a written FIR was received from the 43rd Assam Rifle stating that, based on specific input received from their own source regarding a likely move of a drug consignment on the Niuland-Dimapur Road, on 10.07.2024, at around 2200 hours, a MVCP was launched in the general area of Niuland Dimapur Bridge. At around 2315 hours, a vehicle, Hyundai Eon AS01AY 7288, was intercepted. Upon searching the vehicle, three individuals were found in possession of 81 soap cases of suspected heroin. Consequently, the three persons, including the present detainee, were apprehended and taken to their camp for questioning. Thereafter, all three apprehended individuals were handed over to the Diphupar police station along with the seized consignment on 11.07.2024. Upon receipt of the written FIR, the OC DPR PS registered a case under Section 22(c) of the NDPS Act, read with Section 3(5) of the BNS, and initiated an investigation. Accordingly, the apprehended accused persons, including the present detainee, were arrested in the presence of witnesses.

4. During the course of the investigation, the arrested persons were examined, and the seized drugs were sealed and packed in the presence of a Magistrate before being sent for FSL examination. Upon examination, the detainee narrated the entire event leading to their arrest and admitted that the seized consignment of 81 cases of suspected heroin, locally known as sunflower,

belonged to him. The detainee stated that he had purchased it from one Reipei of Senapati, supposedly to be delivered to one Jailong Alem of Khammoi village. However, during the process, they were apprehended by the 43rd Assam Rifle and Police from the Referral Hospital Bridge. The arrested persons, including the detainee, were subsequently sent to judicial remand.

5. The detainee also disclosed that he began selling drugs during the first week of January 2024 when he went to Senapati and purchased two soap cases of drugs (sunflowers) from his friend Reipei for an amount of Rs. 65,000 per soap case, totaling Rs. 1,30,000 (Rupees one lakh thirty thousand), which he sold to Jailong Alem of Khammoi Village for Rs. 70,000 (Rupees seventy thousand) per soap case. After that, he travelled to Senapati multiple times. The second time he went on 28.02.2024 and purchased five soap cases for Rs. 35,000 (Rupees thirty-five thousand) per soap case, which he sold to Jailong Alem. The third time, on 12.04.2024, he purchased 43 soap cases; the fourth time, on 29.04.2024, he purchased 50 soap cases at Rs. 15,000 (Rupees fifteen thousand) per soap case; the fifth time, on 16.05.2024, he purchased 63 soap cases at Rs. 14,500 (Rupees fourteen thousand five hundred) per soap case; and the sixth time, on 13.06.2024, he purchased 62 soap cases at Rs. 14,500 (Rupees fourteen thousand five hundred) per soap case. Regarding the mode of transportation, the detainee stated that he would leave Dimapur by taxi around 5:00 AM to 6:00 AM for Senapati. After receiving the drugs from Reipei at Senapati Bazaar, he would return the same day around 11:00 AM to 12:00 PM by catching the Imphal-Guwahati bus, and upon reaching Dimapur that evening, he would return to Mon by night bus. The next day, when he reached Mon Town, he would take a taxi (Sumo) to reach his village Khammoi by 9:00 AM. He further stated that he sold the drugs to Jailong Alem of Khammoi village. He also mentioned that three to four times, the driver Reipei had

delivered the consignment to him at Dimapur along the four-lane National Highway area. Subsequently, he ordered soap cases and received deliveries on several occasions.

6. By Letter No. DCP/CMD/CRIME-28/24-25/718 dated 24.07.2024, the Deputy Commissioner of Police, Chumoukedima, Nagaland, sent a proposal for the detention of the detainee along with the records under Section 3(1) of the PITNDPS Act, 1988. Upon receipt of the proposal for preventive detention of the detainee, the Special Secretary (Home Department) to the Government of Nagaland, vide Detention Order No. CON/PITNDPS/30/2024 dated 17.08.2024, found that the detainee was continuing harmful and prejudicial activities by engaging in illicit traffic in narcotic drugs and psychotropic substances, which posed a serious threat to public health and welfare. The activities of the detainee engaged in such illegal traffic had a deleterious effect on the national economy; therefore, it was proposed that the detainee be detained in Central Jail, Dimapur, for an initial period of three months. The detainee was furnished with the grounds of detention along with the orders.

7. Thereafter, by order dated 18.11.2024, the Chief Secretary to the Government of Nagaland, in exercise of powers conferred under Clause (f) of Section 9 of the PITNDPS Act, 1988, confirmed the detention order issued in respect of the detainee and further ordered that the detainee shall be detained for another three months, effective from 20.11.2024 until 17.02.2025, during which period his detention would be reviewed as required under the provisions of the PITNDPS Act, 1988.

8. Subsequently, based on the report dated 31.01.2025, by order dated 14.02.2025, the Chief Secretary to the Government of Nagaland, in exercise of

powers conferred under Clause (f) of Section 9 of the PITNDPS Act, 1988, further ordered the detention of the detainee for another period of three months, effective from 18.02.2025 until 17.05.2025, during which period his detention would be reviewed as required under the provisions of the PITNDPS Act, 1988.

9. Mr. Alemwapang Ao, the learned counsel for the petitioner, submits that the respondent authorities passed the Detention Order without proper consideration, as it was issued in a mechanical manner. The order of detention is liable to be quashed on the grounds that the procedure was not followed, as the detainee was not served with a copy of the order before his detention. Another ground is that recourse to ordinary criminal law would have sufficed in the present case. He further submits that the detainee is already in judicial custody and has not applied for bail. Even if he were to apply for bail, the stringent provisions of the NDPS Act would apply as a precondition for granting bail. The grounds for detention do not disclose any condition under which the detainee, who is already in judicial custody, can be preventively detained. Moreover, the respondent authorities have not provided any reason as to why recourse to ordinary criminal law would not be sufficient. He also submits that neither in the proposal nor in the order of preventive detention is there any finding recorded that the detainee is likely to be released on bail. In fact, such a finding cannot be recorded because the detainee has not even applied for bail.

10. Mr. Alemwapang Ao, the learned counsel for the petitioner, further submits that detention under the PITNDPS Act can be ordered only if there is evidence to suggest that the person is likely to engage in illicit drug trafficking in the future. However, no such finding has been made by the detaining authority, and there is nothing on record to show that the detainee will engage

in illicit drug trafficking unless preventively detained. The learned counsel for the petitioner further submits that the alleged offenses can be tried by any ordinary court of law, which does not warrant invoking the stringent law of preventive detention. He argues that the Supreme Court has held that cases which can be tried ordinarily before a court of law should not be randomly booked under preventive detention laws, as such laws directly contravene the constitutional right to life and personal liberty.

11. Mr. Alemwapang Ao, the learned counsel for the petitioner, further submits that there have been procedural lapses on the part of the respondent authorities, as the detainee was served with only a single page of the Detention Order dated 17.08.2024 and a Confirmation Order dated 18.11.2024, with no other documents or materials provided. The detainee learned about the representation or the hearing before the Advisory Committee from other inmates. He inquired with the jail authority for such documents; however, the jail authority could not provide any additional documents. Therefore, the detainee engaged a learned Advocate to represent him in this case. The learned counsel approached the jail authority on 02.01.2025, seeking additional documents related to the detention and confirmation orders. However, the authority could only provide the same single-page detention order dated 17.08.2024 and the Confirmation Order dated 18.11.2024. The jail authority could not furnish any other documents, as they did not have any additional records, leaving the detainee unaware of his rights since no other documents were served upon him.

12. Subsequently, being aggrieved by the impugned Detention Order dated 17.08.2024 and the Confirmation Order dated 18.11.2024, the detainee submitted a representation against his detention to the State Government as

well as the Central Government through the Superintendent of Police/Jailer of Central Jail, Dimapur, on 04.01.2025. However, respondent No. 2 rejected the representation on 13.01.2025, stating that there were no justified grounds to revoke the order of detention. Similarly, respondent No. 1 rejected the representation on 16.01.2025 on similar grounds. Likewise, respondent No. 4, upon examining the material facts available on record, rejected the detainee's representation on 13.01.2025, being devoid of merit.

13. The learned counsel for the petitioner further submits that the Special Secretary to the Government of Nagaland, Home Department, while passing the impugned detention order, failed to mention that the detainee was already in judicial custody and that there were compelling reasons justifying such detention despite this fact. In this regard, the learned counsel for the petitioner referred to the case of ***Charmendra Sugachnad Chelawat & Other -vs- Union of India and Ors***, reported in ***(1990) 1 SCC 746***, where it was held that preventive detention of a person already in custody must not be ordered unless there are compelling reasons to believe that he is likely to be released on bail or due to acquittal or discharge. The relevant paragraph is reproduced: *"Preventive detention of a person, who is already in custody of the State agencies in connection with the commission of offence under substantive law allegedly committed, must not be ordered. Preventive detention of such a person can be ordered only if the detaining authority has "compelling reasons" to believe that he is likely to be released in the substantive offence either on bail or due to his acquittal or discharge."*

14. The learned counsel for the petitioner submits that the extraordinary powers of detaining an individual under the provisions of the Constitution are not warranted in this case, as the materials presented before the detaining

authority do not disclose any cogent evidence to support the subjective satisfaction of the detaining authority. Furthermore, the Constitution guarantees that no person shall be deprived of life or personal liberty except in accordance with the procedure established by law. In this case, although the power is vested in the concerned authorities, unless invoked and implemented justifiably, such actions by the detaining authority are not sustainable in the eyes of the law. Therefore, the detention order must satisfy the provisions and protections guaranteed by the Constitution of India under Article 21 & 22 (2) of the Constitution of India,.

15. Mr. Alemwapang Ao, the learned counsel for the petitioner, in support of his submission, has placed reliance on a judgment of the Hon'ble Supreme Court in the case of ***Rekha v. State of Tamil Nadu*** reported in **(2011) 5 SCC 244**, where, at para 30 it was held that:

"30. Whenever an order under a preventive detention law is challenged on of the questions the Court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with situation? If the answer is in affirmative, the detention order will be illegal. In the present case, the charge against the detenue was of selling expired drugs after changing their labels. Surely the relevant provisions in the Indian Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence in our opinion, for this reason also the detention order was illegal"

16. On the other hand, Ms. Inaholi Wotsa, learned State counsel appearing for the State respondents, while referring to the affidavit filed by the State respondents, submitted that there were no procedural lapses and that all procedural safeguards were strictly adhered to by the detaining authority within the stipulated time frame as per the law. She submitted that in compliance with

the relevant provisions, the report of the detention was communicated to the Central government on the same day of detention, i.e., on 17.08.2024, both by email and speed post; as per the provisions, the communication of the detention to the detainee was made on the fourth day of detention, i.e., on 20.08.2024. Again, in compliance with the relevant provisions, the reference before the Advisory Board was made on the seventh day from the date of detention, i.e., on 23.08.2024. The Advisory Board submitted its report within the stipulated time frame of 11 weeks (77 days), i.e., on 22.10.2024. The representation of the detainee was forwarded by the Central Jail Authorities to the Central Government both by email and speed post on 10.01.2025 and 11.01.2025, respectively. The same was disposed of by the Central Government on 30.01.2025. Therefore, there has been no violation of procedural provisions of law, and as such, the detention passed by the Detaining Authority is just and in accordance with the law and requires no interference.

17. Ms. Inaholi Wotsa, learned Government Advocate, submitted that the sponsoring authority clearly mentioned in the grounds of detention in its proposal dated 17.08.2024 that the detainee was under judicial remand and that it anticipated that if bailed, the detainee would pose a threat to the peace and security of the State of Nagaland, with a likelihood of committing a breach of peace and tranquility, thereby endangering the lives of many innocent citizens and potentially causing law and order problems in the State.

18. She further submitted that the relevant documents were served to the detainee, which he acknowledged on every page, and he was informed that he could file a representation against his detention before the appropriate authority. Accordingly, the detainee made a representation before the authority, which was rejected as submitted by the learned counsel for the petitioner.

19. Ms. Inaholi Wotsa, the learned State counsel, submitted that in a series of decisions, the Supreme Court has held that it is the subjective satisfaction of the detaining authority that determines whether a person should be detained for a particular period. In the present case, the grounds for detention provided by the respondent authorities detailed all the reasons for passing the detention order to prevent the detainee from abetting the supply of narcotic drugs and psychotropic substances.

20. In support of her submission, Ms. Inaholi, the learned State counsel, has placed reliance on a judgment of the Hon'ble Supreme Court in the case of ***Baby Devassy Chully alias Bobby Vs. Union of India and Ors*** reported in ***(2013) 4 SCC 531***, where at paragraphs 13 and 17 it was held as below:

“13. In a series of decisions, this Court has held that it is the subjective satisfaction of the detaining authority whether a person is to be detained for a particular period of time or not. In the impugned grounds of detention, the detaining authority has narrated all the reasons for passing the detention order detaining the appellant with a view to prevent him from abetting the smuggling of goods in future.

17. For the same reason, the other contention, namely, that there is no compelling necessity to pass the order of detention, is to be rejected. As a matter of fact, the learned counsel for the detaining authority took us through various grounds/details/materials adverted to in the impugned order and we are satisfied that it cannot be claimed that there was no compelling necessity to pass the order of detention. We have already pointed out that it is the subjective satisfaction of the detaining authority whether the order of detention is to be invoked or not. Accordingly, we reject the above contention also.”

21. Mr. Z. N. Ngullie, the learned CGC for respondent No. 4, while referring to the affidavit-in-opposition filed by respondent No. 4, submitted that there has been no procedural error in this case. As there are no allegations against respondent No. 4, he has nothing further to submit. However, he submitted that

the Detention Order dated 17.08.2024 was issued by the Special Secretary (Home), Government of Nagaland to the detainee. A report under the relevant provisions was forwarded from the Government of Nagaland on 17.08.2024, which was received by the Department of Revenue and duly recorded on 27.08.2024.

22. Mr. Z. N. Ngullie, the learned CGC, further submitted that on 04.01.2025, a representation was submitted by the detainee to the Joint Secretary (PITNDPS), Department of Revenue, requesting revocation of the detention order. On 10.01.2025, the representation was received by the PITNDPS Section via email and forwarded to the State Government/Detaining Authority for comments. On 21.11.2024, the State Government sent a copy of the confirmation order dated 18.11.2024, which mentioned that the Advisory Board had found sufficient cause for detention. He further submitted that on 17.01.2025, a comment on the representation was received from the State Detaining Authority. On 20.01.2025, the opinion of the State Advisory Board dated 18.10.2024 was received, confirming sufficient cause for detention. After receiving comments from the Detaining Authority/State Government, the representation, along with material facts and records, was placed before the Secretary, Department of Revenue, for his perusal. On 30.01.2025, after reviewing all facts and records, the representation was disposed of by the Secretary, Department of Revenue, as no merit was found in the contentions of the representation.

23. On 30.01.2025, the rejection memorandum was sent to the State Detaining Authority and jail authorities for serving to the detainee. He further submitted that on 31.01.2025, the rejection memorandum was served upon the detainee. Mr. Z. N. Ngullie, learned CGC, therefore submits that there were no procedural lapses or any delay on the part of the Government of India in this case.

24. We have heard and considered the rival submissions made by the parties. We have also carefully perused the materials available on record.

25. The record reveals that the detainee was arrested on 11.07.2024 in connection with DPR PS case No. 0032/2024 under Section 22(c) of the NDPS Act, read with Section 3(5) of the BNS. The case arose from a proposal dated 07.08.2024 made by the Additional Director General of Police and Chairman of the Screening Board, PITNDPS, Nagaland, Kohima, which was addressed to the Special Secretary (Home) to the Government of Nagaland, proposing preventive detention under the provisions of the PITNDPS Act, 1988. The proposal mentioned that the accused (detenue herein) was under judicial remand.

26. The grounds for detention are also provided in the said proposal. It states that the detention will effectively immobilize the detainee from engaging in any kind of illicit traffic in narcotic drugs and psychotropic substances. Upon consideration of the proposal for detention against the detainee, the Special Secretary (Home Department), Government of Nagaland, passed the impugned Detention Order dated 17.08.2024 along with the grounds. The same is reproduced bellow:

**“ GOVERNMENT OF NAGALAND
HOME DEPARTMENT: POLITICAL BRANCH
ORDER**

Dated Kohima, the 17th August, 2024

NO CON/PITNDPS/30/2024/: *Whereas, the Adl. DOP (L & O), Nagaland has sent a proposal for detention of Mr. AphotSheipha (M/24 yrs) S/o late. Akhah, V/o: Khammoi; PO/PS: Mon: District: Mon; Mon, State Nagaland, Per/add Khammoivillage, Mon, under PITNDPS Act 1988 along with records under Section 3 (1) of the Prevention of licit Traffic is Narcotic Drugs and Psychotropic Substances Act, 1988.*

And whereas, perusal of records as submitted by the Addl. DGP (L&O), Nagaland, it appears that, Mr. AphotSheipha (M/24

ys) S/o. Lt. Akhah, V/o: Khammoi, PO/PS Mon, District Mon State: Nagaland; Per/add: Khammoi village, Mon, was involved in the following case: -

(1)DPR PS Case no. 0032/24 U/S 22 (c)NDPS Act R/W 3 (5) BNS.

And whereas, the Addl. DGP (L&O), Nagaland has proposed to prevent Mr. AphotSheipha (M/24 yrs), S/o Lt. Akhak V/o Khammoi, PO/PS: Mon, District Mon Nagaland Per/add Khammoi village, Mon, under PITNDPS Act, 1988 from continuing his harmful and prejudicial activity by engaging in illicit traffic in narcotic drugs and psychotropic substances which poses a serious threat to people's health and welfare and the activities of him engaged in such Illegal traffic have a deleterious effect on the national economy.

And whereas, I, Sonia Singh, Special Secretary (Home), Nagaland, specially empowered under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (as amended), am satisfied on careful examination of the proposal of the AL. DGP (LAO), Nagaland and other supporting documents, found sufficient grounds for detention of Mr. AphotSheipha (M/24 yrs); S/o Lt. Akhak V/o Khammoi, PO/PS: Mon, District Mon Nagaland Per/add Khammoi village, Mon, and being satisfied that with a view of preventing him from engaging in Illicit traffic in NDPS, it is necessary to detain him.

Now, therefore, the undersigned, in exercise of powers conferred by sub-section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 do hereby issue this order directing Mr. AphotSheipha (M/24 yrs), S/o: Lt. Akhah, V/o Khammoi: PO/PS, Mon, District: Mon; State: Nagaland; Per/add: Khammoi village, Mon, be detained and kept in Central jail, Dimapur for an initial period of three months.

(SONIA SINGH) IPS

Special Secretary to the Govt. of Nagaland"

27. The grounds of detention provided to the detainee on the same day are reproduced below:

‘GROUND OF DETENTION’

To,

Mr. Aphot Sheipha (M/24 yrs),
S/o : Lt. Akhah
V/o : Khammoi
District : Mon
State : Nagaland
Per/add : Khammoi Village.

Subject:*Communication of Grounds of Detention under section 3 (1) of the PITNDPS Act, 1980.*

“Whereas, the undersigned has made detention order against you under the provision of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 on the following grounds:

1. In the instant case, you Mr. AphotSheipha has admitted to illegal trafficking of Narcotic Drugs & Psychotropic Substances on several occasions from Senapati to Dimapur and further to Khammoi village in Mon district confirming to acts under Sec 2(e) of PITNDPS Act 1988.

2. That, the State of Nagaland lies within an area highly vulnerable to such illicit traffic of Narcotic Drugs and Psychotropic Substances as mentioned under section 10 (v) (c) of the PITNDPS Act 1988 and it is pertinent to mention that you have admitted that the seized contraband recovered from your possession was received from one Reipei at Senapati bazar to be delivered to Jailong Alem of Khammoi village, Mon. This indicates that you have an inter district/inter-state linkage spreading across the States of Manipur-Nagaland.

3. That, your involvement in illicit traffic in Narcotic Drugs and Psychotropic Substances pose a serious threat to the health and welfare of the people and your activities in such illicit traffic has a deleterious effect on the National economy. Thus you on bail will be a threat to the peace and security of the State of Nagaland.

4. That, you are presently under judicial custody. On the basis of material placed before me, I am satisfied that you are likely to indulge in similar prejudicial activity unless you are prevented from doing so by an appropriate order of preventive detention.

5. That, there has been a huge public outcry concerning traffic of illicit drugs in the State which is causing problems of abuse and addiction of all age groups especially that of teenage school children. You are suspected to be directly involved in the intra and inter-State network of smuggling and trafficking of illicit drugs whereby luring youngsters to addiction, resulting in them becoming peddlers/carriers for easy earnings to cover the cost of their consumption/addiction."

28. Thereafter, by order dated 18.11.2024, the Chief Secretary to the Government of Nagaland confirmed the Detention Order, which is reproduced below:

***"GOVERNMENT OF NAGALAND
HOME DEPARTMENT: POLITICAL BRANCH***

CONFIRMATION ORDER

Dated Kohima, the 18th November, 2024.

NO. CON/PITNDPS/30/2024/ ::Mr.AphotSheipha; S/o: Lt. Akhah; Village: Khammoi, PO/PS: Mon; District: Mon; State: Nagaland; P/Ad: Khammoi Village, Mon, has been detained under the PITNDPS Act, 1988 by the Special Secretary (Home), Nagaland vide order NO.CON/PITNDPS/19/2024/139 dated 17.08.2024 for an initial period of 3 (Three) months till 19.11.2024.

Whereas, the detention of the said Mr. AphotSheipha, S/o: LL.Akhah; Village: Khammoi, PO/PS: Mon, District: Mon; State: Nagaland; P/Ad: Khammoi Village, Mon, was referred to the PITNDPS Advisory Board constituted by the Government of Nagaland under Section 9 of the Prevention of Illicit Traffic in Narcotic 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 detenueMr.AphotSheipha; S/o: Lt.Akhah; Village: Khammoi; PO/PS: Mon; District: Mon, State: Nagaland; P/Ad Khammoi

Village, Mon, 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 Mr.AphotSheipha; S/o: Lt.Akhah; Village: Khammoi, PO/PS: Mon; District: Mon, State: Nagaland, P/Ad. Khammoi Village, Mon, and further order that he shall be detained for another period of 3 (Three) months w.e.f, 20.11.2024 till 17.02.2025 within which period his detention will be reviewed as required under the provisions of the PITNDPS Act, 1988.

Sd/- Dr. J. ALAM, IAS

Chief Secretary to the Govt. of Nagaland.”

29. Upon perusal of the Detention Order dated 17.08.2024 and the grounds for detention under Section 3(1) of the PITNDPS Act, 1988, it appears that Paragraph 4 of the grounds of detention reflects that the detainee is under judicial remand, and the authorities are satisfied that he is likely to indulge in similar prejudicial activity unless prevented from doing so by an appropriate order of preventive detention. It is also stated that if the detainee is at large or if bailed, he will pose a threat to the peace and security of the State of Nagaland, with a likelihood of committing a breach of peace and tranquillity, thereby endangering the lives of many innocent citizens and potentially causing law and order problems in the State. Furthermore, the grounds of detention indicate that there has been significant public outcry concerning the trafficking of illicit drugs in the State, which is causing problems of abuse and addiction among all age groups, especially teenage school children. The detainee is suspected to be directly involved in the intra- and inter-State network of smuggling and trafficking of illicit drugs by luring youngsters into addiction, resulting in them becoming peddlers or carriers for easy earnings to cover the costs of their consumption and addiction.

30. The main argument advanced by the petitioner is that since the petitioner has not filed any application for bail and is already in judicial remand, no preventive detention would be required under the PITNDPS Act, as the detinue would be sufficiently tried by the ordinary law of the land. In response to the learned counsel for the petitioner, we are of the view that merely because the detinue has not moved any application for bail and is therefore likely to be released on bail does not negate the subjective satisfaction of the authorities, based on the facts and circumstances of the case, which warrants preventive detention. The Detaining Authority has reasonably concluded that there is a likelihood of the detinue being involved in the trafficking of narcotic drugs and psychotropic substances, which would be prejudicial to the public at large. Even if the person is liable to be tried by the criminal court for committing a criminal offense or is actually being tried, that does not preclude the authorities from issuing a Detention Order under preventive detention.

31. In this case, the learned State counsel submitted that, apart from the prima facie case found against the detinue, including the recovery and seizure of substances from their possession on the spot, the bank statements of the detinue also corroborate his transactions with other accused persons as disclosed by him. The other grounds urged by the learned counsel for the petitioner, including the claim that the detinue was not furnished with copies of the documents, are contradicted by the fact that the detinue acknowledged receipt on all pages of the documents.

32. We have also noted that the representation submitted by the detinue has been rejected by the authorities, and it was fairly admitted by the learned counsel for the petitioner that the Rejection Orders were received by the detinue.

33. In light of the above, we find that there is no violation of any provisions of law in passing the Detention Order as well as the Confirmation Order. The

Detaining Authority has demonstrated just and reasonable circumstances under which the detainee has been detained. The record reveals that in compliance with the section 3 (2) of PITNDPS Act,1988, the report of the detention was communicated to the central government on the same day of detention, i.e., on 17.08.2024, both by email and speed post. As per the section 3 (3) of PITNDPS Act, 1988, the communication of the detention to the detainee was made on the fourth day of detention, i.e., on 20.08.2024. Again, in compliance with the section 9 (b) of the PITNDPS Act, 1988, the reference before the Advisory Board was made on the seventh day from the date of detention, i.e., on 23.08.2024. And as per section 9 (c) of the PITNDPS Act,1988, the Advisory Board submitted its report within the stipulated time frame of 11 weeks (77 days), i.e., on 22.10.2024.

34. Upon careful consideration of the materials available on record, we find that the vital materials were placed before the detaining authority, and the authority duly considered them, from which it derived its subjective satisfaction. The materials available on record reveal that the requisite subjective satisfaction, which is a condition precedent for passing a detention order, has been duly considered, and the materials that had bearing on the issue of the satisfaction of the detaining authority were neither withheld nor suppressed by the sponsoring authority.

35. We are conscious of the fact that preventive detention is a serious invasion of personal liberty, and the normal methods available to a person charged with a commission of an offense to disprove the charge or prove his innocence at trial are not available to a person preventively detained. As held by the Supreme Court, the safeguards provided by the Constitution and the enactment authorizing such detention are of utmost importance and must be strictly adhered to. However, in the present case, we find that the authorities have complied with the provisions of law in passing the impugned detention

order dated 17.08.2024.

36. We have considered the judgment of **Rekha (Supra)** relied upon by the learned counsel for the petitioner. In that case, it was held that where the detention order is served on a person already in jail, there should be a real possibility of release of a person on bail who is already in custody, provided he has moved a bail application that is pending. It logically follows that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order would be illegal. However, it was also held that there can be exceptions to this rule, such as when a co-accused whose case stands on the same footing has been granted bail, allowing the detaining authority to reasonably conclude that there is a likelihood of the detainee being released on bail, even if no bail application is pending. However, details of such alleged similar cases must be provided; otherwise, the bald statement of the authority cannot be believed.

37. In the present case, the argument made by the learned counsel for the petitioner is that no bail application has been filed and the detainee is already in judicial custody; therefore, preventive detention is unnecessary. We are of the view that it cannot be said that merely because no bail application has been filed, the detainee will not be released. Moreover, the detention order has been issued based on the subjective satisfaction of the detaining authority, following all procedural safeguards under the law. Therefore, the case relied upon by the learned counsel for the petitioner is clearly distinguishable from the present case, as the facts are different.

38. The Supreme Court in the case of **Baby Devassy Chully** (Supra) has held as under:

“13. In a series of decisions, this Court has held that it is the subjective satisfaction of the Detaining Authority whether a person has to be detained for a particular period of time or not. In the

impugned grounds of detention, the Detaining Authority has narrated all the reasons for passing the detention order detaining the appellant with a view to prevent him from abetting the smuggling of goods in future.

16. *It is clear that if a person concerned is in custody and there is no imminent possibility of his being released, the rule is that the power of preventive detention should not be exercised. In the case on hand, it is not in dispute that on 12.04.2005 itself, the competent Court has granted bail but the appellant did not avail such benefit. In other words, on the date of the detention order, i.e., 03.05.2005, by virtue of the order granting bail even on 12.04.2005, it would be possible for the detenu to come out without any difficulty. In such circumstances, while reiterating the principle of this Court enunciated in the above decision and in view of the fact that the detenu was having the order of bail in his hand, it is presumed that at any moment, it would be possible for him to come out and indulge in prejudicial activities, hence, the said decision is not helpful to the case of the appellant. In view of the above circumstances and of the fact that the Detaining Authority was aware of the grant of bail and clearly stated the same in the grounds of detention, we reject the contra arguments made by the learned counsel for the appellant. On the other hand, we hold that the Detaining Authority was conscious of all relevant aspects and passed the impugned order of detention in order to prevent the appellant from abetting the smuggling of goods in future.*

17. *For the same reason, the other contention, namely, that no compelling necessity to pass the order of detention is to be rejected. As a matter of fact, learned counsel for the Detaining Authority took us through various grounds/details/materials adverted to in the impugned order and we are satisfied that it cannot be claimed that there was no compelling necessity to pass the order of detention. We have already pointed out that it is the subjective satisfaction of the Detaining Authority whether the order of detention is to be invoked or not. Accordingly, we reject the above contention also."*

39. It is true that if a person is in custody and there is no imminent possibility of his being released, the rule is that the power of preventive detention should not be exercised. In this case, nothing indicates that there is no imminent

possibility of the detainee being released on bail, except that no application for bail is pending. In fact, the materials available on record reveal that there are sufficient and cogent grounds for the preventive detention of the detainee. The detention order passed by the detaining authority is supported by sufficient grounds, and thus, in our view, there is no infirmity in the impugned detention order, as the respondent authorities have duly complied with all the requirements of law in passing the order.

40. In light of the above, we find that the grounds taken on behalf of the detainee—that there has been a procedural error as no copies were served upon him and that the detainee is in judicial custody without filing any bail application—cannot be grounds for setting aside the detention order, which is otherwise validly passed based on the subjective satisfaction of the detaining authority. Thus, the grounds urged are not accepted.

41. For the foregoing reasons and conclusions reached herein, we find no infirmity or illegality in the impugned detention order dated 17.08.2024, passed by the Special Secretary (Home Department) to the Government of Nagaland, and the confirmation order dated 18.11.2024, passed by the Chief Secretary to the Government of Nagaland, confirming the detention order dated 17.08.2024, and the order dated 14.02.2025 passed by the Chief Secretary, further extending the detention of the detainee until 17.05.2025 and therefore, the same warrants no interference.

42. In the result, the writ petition stands dismissed as being devoid of merit.

43. Return the record immediately.

JUDGE

JUDGE

Comparing Assistant