

GAHC020000932025

2025:GAU-NL:125-DB



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

Case No. : W.P.(Crl.)/6/2025

SHRI JEILEI KONYAK
S/O LONGSHA, AGED ABOUT 33 YEARS, ELECTRICAL COLONY,
KOHIMA, DISTRICT, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
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 GOVERNMENT OF NAGALAND
HOME DEPARTMENT
POLITICAL BRANCH
NORTH BLOCK 1ST FLOOR
NAGALAND CIVIL SECRETARIAT
NAGALAND
KOHIMA

4:THE SUPERINTENDENT OF JAIL
CENTRAL JAIL
DIMAPUR

NAGALAN

Advocate for the Petitioner : A. SOPHIE, AKHRIEU CHUSI,ASENLA LONGKUMER

Advocate for the Respondent : GOVT ADV NL,

Linked Case : W.P.(Crl.)/4/2025

SMTI. J. PAVIRHII
W/O JACKISS
R/O TADUBI
PHAIBUNGKHUNUO
SENAPATI
MANIPUR
REPRESENTING JACKISS

VERSUS

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

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

3:THE SUPERINTENDENT OF JAIL
CENTRAL JIAL
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4:THE UNION OF INDIA
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MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
ROOM NO 202
JEEVAN TARA BUILDING
2ND FLOOR

PARLIAMENT STREET
NEW DELHI-110001

For the Petitioner(s) : Mr. A. Sophie, Advocate
Mr. Pakinrichapbo, Advocate

For the Respondent(s) : Ms. Livika V. Sumi, Government Advocate
Mr. Z.N. Ngullie, CGC

Date of Hearing : **02.04.2025**

Date of Judgment : **04.04.2025**

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MR. JUSTICE BUDI HABUNG

JUDGMENT AND ORDER (CAV)

(D. Baruah, J)

Heard Mr. A. Sophie, the learned counsel appearing on behalf of the writ petitioner in W.P.(CrI.)/6/2025 and Mr. Pakinrichapbo, the learned counsel appearing on behalf of the writ petitioner in W.P.(CrI.)/4/2025. Ms. Livika V. Sumi, the learned Government Advocate appears on behalf of the respondent Nos. 1, 2 and 3 in both the writ petitions and Mr. Z.N. Ngullie, the learned CGC appears on behalf of the respondent No. 4 in both the writ petitions.

2. Both the writ petitions are taken up together for disposal by this common judgment and order taking into account that both

the detenues were arrested on 24.05.2024 in connection with Narcotic P.S. Case No. 09/2024 registered under Sections 21(C)/29/60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act of 1985"). As in both the cases, the Detention Orders, the Confirmation Orders and the Orders passed by the Advisory Board as well as the Extension Orders are separate, we find it pertinent to narrate the facts in both the cases separately which are as herein under:

W.P. (CrI.)/4/2025

3. The present writ petition is filed by the wife of the detenu-Mr. Jackiss who was detained under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Act 1988 (for short, "the Act of 1988").

4. The facts involved in the instant writ petition are that an FIR was lodged by the UBSI. Zasilie Angami of Narcotic Cell P.S., PHQ Kohima, Nagaland alleging inter alia that on 23.05.2024, the said officer along with accompanying staff from the Narcotic Cell P.S., PHQ Kohima were detailed for MVCP duty. While conducting routine checking of the vehicles at NH-2 near Agri-Link Road, in between Khuzama and Viswema at around 8.00 P.M., one Maruti Breeza SUV B/R No. AS11Y 3818 (White) with three occupants

coming from Manipur were stopped for routine checking. The said occupants were, (1) Mr. Petok Konyak (2) Mr. Tolong Wangsu (3) Mr. Aman Pansa. The said Mr. Tolong Wangsu is the detenu for whom W.P.(CrI.)/6/2025 was filed.

5. Upon inspection being made of the vehicle, narcotic drugs suspected to be heroin concealed in 2 (two) sacks covered by king chilli and under the spare tyre cavity were detected. Information was immediately given to the superior officers i.e. O.C. Narcotic P.S. & SP (N&P). During the search of the vehicle 111 (one hundred eleven) soap boxes suspected to be containing heroin were recovered from the vehicle i.e. 54 (fifty four) soap boxes from the 2 (two) king chilli sacks and 57 (fifty seven) soap boxes from the spare tyre cavity. The suspected narcotic drugs were taken out, weighed separately and the total weight approximately was 1 Kg 259 grams and was duly seized. It is relevant to take note of that during the process of investigation, the detenu- Mr. Jackiss was arrested based on CDR analysis and the statement made by Mr. Tolong Wangsu who is the detenu in W.P.(CrI.)/6/2025.

6. The record further reveals that the detenu upon being arrested on 24.05.2024 from Senapati Town, Manipur was forwarded before the learned Chief Judicial Magistrate, Kohima

on 25.05.2024. The Investigating Officer of Narcotic P.S. Case No. 09/2024 prayed for 6 (six) days police remand and the learned Chief Judicial Magistrate, Kohima vide an order dated 25.05.2024 allowed the prayer of the Investigating Officer and granted 6 (six) days police remand.

7. The record further reveals that on 01.07.2024, the Additional Director General of Police (L&O) & Chairman Screening Board PITNDPS Act, Nagaland submitted a proposal for detention of the detenu- Mr. Jackiss under Section 3(1) of the Act of 1988. The grounds of detention in the proposal are reproduced herein under:

“1. The accused is having active involvement in the illicit trafficking as observed from the CDR analysis and Bank Statement analysis. Without keeping him in the preventive detention, the offender shall be moving freely and continuing the illicit traffic of NDPS. Without putting him in preventive detention, he cannot be stopped from engaging in illicit traffic of NDPS.

2. As per section 10 of PITNDPS Act, Nagaland being falling under the explanation of 'area vulnerable to such illicit traffic' and thus require extra caution in ensuring that not a single step is left to prevent the Illicit traffic of NDPS.

3. His detention is desirable to disrupt the network that he is part of

and catch other co-accused.”

8. It is further seen that on the basis of the said proposal dated 01.07.2024, the detention order bearing No. CON/PITNDPS/21/2024/113 was passed on 09.07.2024 by the Special Secretary to the Government of Nagaland so far as the detenu in the present case is concerned. The said order dated 09.07.2024 for the sake of convenience is referred to as the **Detention Order No. I**. The said Detention Order No. I was served upon the detenu- Mr. Jackiss on 12.07.2024 along with the grounds of detention in Annexure-A; the information to the detainee in Annexure-B along with the police report and other supporting documents to the case. The records so produced by Ms. Livika, the learned Government Advocate further shows that the detenu was informed about the contents of the Detention Order No. I and its enclosures which were explained to him in English and Nagamese in presence of the witnesses.

9. At this stage it is very pertinent to mention that from the records as produced, the Acknowledgment Certificate refers to a Detention Order No. CON/PITNDPS/21/2024 /113 dated 12.07.2024 whereas the Detention Order No. I bear the same number but is dated 09.07.2024. At this stage, this Court finds it relevant to take note of the Grounds of Detention which was

Annexure-A to the Detention Order No. I. The said grounds of detention are reproduced herein under:

*“1. In the instant case, you **Mr. Jackiss (M/33yrs)**, are actively involved in the illicit trafficking of illegal drugs as observed from your CDR and bank statement analysis. This has been further corroborated by your admission and the statement of your co-accused in the instant case, Tolong Wangsu. Without keeping you under preventive detention, you will be moving freely and continuing in the illicit trafficking of NDPS.*

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.

3. That, your detention is desirable to disrupt the network of illicit drug trafficking that you are part of and apprehend other co-accused(s).

4. That, you are presently under judicial custody. On the basis of the 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.”

10. It is further seen from the materials on record that the detenu- Mr. Jackiss had submitted a representation to 1) The Central Government 2) The Chief Secretary, Government of Nagaland, 3) The Chairman PITNDPS, Advisory Board and 4) The

Special Secretary (Home), Government of Nagaland dated 05.10.2024. The said representation made by the detenu was rejected by the Detaining Authority vide the order dated 08.10.2024. The Chief Secretary to the Government of Nagaland rejected the representation vide an order dated 09.10.2024. The Central Government rejected the representation vide an order dated 06.11.2024. Nothing appears from the record as to whether the Advisory Board had taken into consideration the representation.

11. Be that as it may, it is seen from the records that the Advisory Board submitted its report dated 23.09.2024 wherein it was opined that there exists basis for formation of subjective satisfaction of the detaining authority for the purpose of making a preventive detention under the Act of 1988 and the preventive detention of the detenu- Mr. Jackiss under the Act of 1988 was justified and there existed sufficient cause.

12. On the basis of the said report being submitted by the Advisory Board, the Chief Secretary to the Government of Nagaland passed the Confirmation Order dated 07.10.2024 hereinafter for the sake of convenience referred to as the **Confirmation Order No. I**. In the said Confirmation Order No. I, the detention period was further extended for three more

months w.e.f. 12.10.2024 till 11.01.2025 with a stipulation that within this period, the detention of the detenu shall be reviewed as required under the provisions of the Act of 1988.

13. Subsequent thereto, vide another order dated 11.01.2025, the detention period was further extended by another three months w.e.f 12.01.2025 till 11.04.2025, with a further stipulation that within this period the detention of the detenu would be reviewed as required under the Act of 1988. This order dated 11.01.2025 is hereinafter referred to as the **Extension Order No. I.**

14. Being aggrieved, the petitioner, who is the wife of the detenu, has filed the instant writ petition on 27.02.2025. This Court vide an order dated 03.03.2025 had issued notice and the respondents who were duly represented, were also furnished the copies of the writ petition. The writ petition was listed on 18.03.2025. Time was granted to file reply. The respondents, however, did not file any affidavit, in spite having an opportunity to do so. On 02.04.2025 when the matter was listed before this Court, Ms. Livika, the learned Government Advocate, produced the records. Taking into account, that a case of preventive detention is required to be dealt with utmost urgency, the instant writ petition was heard on the basis of the materials available

before us.

W.P.(Crl.) No/6/2025

15. The instant writ petition is filed by the friend of the detenu- Shri Tolong Wangsu who was also arrested on 24.05.2024 in connection with Narcotic Cell P.S. Case No. 09/2024 registered under Section 21(C)/29/60 of the Act of 1985. In terms with the FIR which was registered on 24.05.2024, the details which have been mentioned in the previous segment of the instant judgment, it would transpire from the FIR that the detenu in the present writ petition- Mr. Tolong Wangsu was one of the occupants of the Vehicle Maruti Breeza SUV B/R No. AS11Y 3818 (White) and allegedly from the said vehicle the soap boxes suspected to be containing heroin was seized.

16. In the case of the present detenu- Shri Tolong Wangsu, the Additional Director of General Police (L&O) & Chairman Screening Board PITNDPS Act, Nagaland had submitted a proposal on 01.07.2024 to the effect that the detenu should be detained under Section 3(1) of the Act of 1988. The grounds of detention so submitted in the proposal reads are under:

“1. The accused is having active involvement in the illicit trafficking as observed from the CDR analysis and Bank Statement

analysis. Without keeping him in the preventive detention, the offender shall be moving freely and continuing the illicit traffic of NDPS. Without putting him in preventive detention, he cannot be stopped from engaging in illicit traffic of NDPS.

2. As per section 10 of PITNDPS Act, Nagaland being falling under the explanation of 'area vulnerable to such illicit traffic' and thus require extra caution in ensuring that not a single step is left to prevent the Illicit traffic of NDPS.

3. His detention is desirable to disrupt the network that he is part of and catch other co-accused."

17. Subsequent thereto, on 09.07.2024, the detention order was passed by the Special Secretary to the Government of Nagaland, Department of Home. This Detention Order for the sake of convenience is referred to as the **Detention Order No.**

II.

18. The records which have been produced before this Court show that the detenu was served with a Detention Order on 12.07.2024; the grounds of detention in Annexure-A as well as the information to the detainee in Annexure-B, in addition to that various documents relied upon were also served upon the detenu.

19. It is very pertinent to mention that in the Acknowledgment

Certificate wherein the detenu had put his signature, it is reflected that the order of detention bears the No. CON/PITNDPS/22/2024/114 dated 12.07.2024, whereas the Detention Order No. II bears the same number but is dated 09.07.2024. The grounds of detention so mentioned in Annexure-A to the Detention Order No. II are reproduced herein below:

*“1. In the instant case, you **Mr. Tolong Wangsu**, are actively involved in the illicit trafficking of illegal drugs as observed from your action of transporting/possessing 111 (one hundred eleven) soap cases, weighing 1 Kg 259 gms (approx.) of suspected heroin. This has been further corroborated by your admission and the statement of your co-accused in the instant case, Mr. Jackiss, CDR analysis and bank statement. Without keeping you under preventive detention, you will be moving freely and continuing in the illicit trafficking of NDPS.*

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.

3. That, your detention is desirable to disrupt the network of illicit drug trafficking that you are part of and apprehend other co-accused(s).

4. That, you are presently under judicial custody. On the basis of the

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."

20. The Detention Order No. II was referred to the PITNDPS Advisory Board under Section 9 of the Act of 1988 on 19.07.2024. The Advisory Board vide an report dated 23.09.2024 opined that there exists basis for formation of subjective satisfaction of the detaining authority for the purpose of making a preventive detention under the Act of 1988 and that the preventive detention of the detenu under the Act of 1988 was justified and there was sufficient cause for preventive detention of the detenu.

21. The record further reveals that on 08.10.2024, the Chief Secretary to the Government of Nagaland confirmed the order of detention and further extended the period of detention w.e.f. 12.10.2024 to 11.01.2025 with a stipulation that within this period the detention of the detenu would be reviewed as required under the provisions of the Act of 1988. This order of confirmation is hereinafter for the sake of convenience is referred to as the **Confirmation Order No. II**.

22. Subsequent thereto, on 11.01.2025 vide another order issued by the Chief Secretary, Government of Nagaland, the

detention of the detenu- Mr. Tolong Wangsu was further extended for another three months w.e.f 12.01.2025 to 11.04.2025 with the stipulation that within this period the detention of the detenu would be reviewed in terms with the Act of 1988. This order dated 11.01.2025 is hereinafter referred to as the **Extension Order No. II.**

23. The record further reveals that the detenu submitted representations on 03.02.2025 to 1) The Special Secretary to the Government of Nagaland 2) The Chief Secretary to the Government of Nagaland as well as to the Central Government. The Special Secretary to the Government of Nagaland rejected the representation vide an order dated 05.02.2025. The Chief Secretary to the Government of Nagaland rejected the representation of the detenu vide an order dated 06.02.2025. The Central Government vide an order dated 20.02.2025 rejected the representation of the detenu. It is under such circumstances the instant petition has been filed on 05.03.2025. This Court vide an order dated 06.03.2025 had issued notice and the respondents who were duly represented, were furnished the copies of the writ petition. The matter thereupon was listed on 18.03.2025 on which date, time was sought for by the respondents. No affidavit was filed by the respondents in spite of having an opportunity to do so. Ms. Livika. V. Sumi, the learned

Government Advocate produced the records.

24. In the backdrop of the above facts, let this Court take note of the submissions so made by the learned counsels for the parties.

25. The learned counsels appearing on behalf of the petitioner in both the writ petitions submitted that the detenues i.e. Mr. Jackiss as well as Mr. Tolong Wangsu were in judicial custody at the time when both the detention orders were passed and continue to remain till date. They submitted that a perusal of the proposals so submitted by the Additional Director General of Police (L&O) & Chairman Screening Board PITNDPS Act, Nagaland as well as the Grounds of Detention enclosed to the Detention Orders in respect to both the detenues do not in any manner show that the Detaining Authority had duly taken into consideration that the detenues were already in judicial custody since 24.05.2024 and there were cogent materials to support that the detenues were likely to be released on bail. The learned counsels for both the petitioners therefore submitted that this is a case of complete non-application of mind for which the Detention Orders, Confirmation Orders and the Extension Orders which have been assailed in both the writ petitions are required

to be interfered with. In that regard, the learned counsel referred to the judgment of the Supreme Court in the case of ***Huidrom Konungjao Singh Vs. State of Manipur and Others*** reported in ***(2012) 7 SCC 181*** as well as the judgment and order dated 10.12.2024 passed by the Coordinate Bench of this Court in the case of ***Shri Gurmej Singh Batth Vs. State of Nagaland and 3 Others [W.P.(Crl.) No. 20/2024]***.

26. Per contra, Ms. Livika V. Sumi, the learned Government Advocate appearing on behalf of the State of Nagaland submitted that the Detention Orders were made in view of the fact that during the course of investigation, it revealed that both the detenues – Mr. Jackiss and Mr. Tolong Wangsu were involved in trafficking of drugs and their detention were required for public safety. The learned Government Advocate further submitted that all the procedural requirements have been duly followed and as such the question of interference with the Detention Orders, Confirmation Orders and Extension Orders ought not to be made by this Court. She further submitted that the Advisory Board had also opined that there existed sufficient causes for detention of both the detenues.

27. Mr. Z. N. Ngullie, the learned CGC submitted that the Union of India having taken into account the materials placed before it

along with the representations and having considered the same have rejected the representations so submitted by both the detenues.

28. On the basis of the materials on record and the submissions so made by the parties, the point for determination which arises for consideration before us is as herein under:

Whether in the facts of the instant cases, the Detention Orders, Confirmation Orders as well as the Extension Orders can be interfered with on the ground of not reflecting the existence of cogent materials that the detenues were likely to be released on bail?

29. The contours of judicial review upon the legality of an order of preventive detention that can be examined by a Constitutional Court was observed by the Supreme Court in the case of ***Ameena Begum Vs. State of Telengana and Others*** reported in ***(2023) 9 SCC 587***. Paragraph Nos. 28 and 29 of the said judgment being relevant are quoted herein under:

“28. In the circumstances, of a given case, a constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether:

28.1 The order is based on the requisite satisfaction, albeit

subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

28.2. In reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

28.3. Power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

28.4. The detaining authority has acted independently or under the dictation of another body;

28.5. The detaining authority, by reason of self-created rules of policy or in any other manner not authorised by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

28.6. The satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

28.7. The satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which

is stale;

28.8. The ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject matter of the inquiry in respect whereof the satisfaction is to be reached;

28.9. The grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

28.10. The timelines, as provided under the law, have been strictly adhered to.

29. Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong."

30. From the above quoted paragraphs, it would be seen that an order of preventive detention is based upon the requisite subjective satisfaction of the Detaining Authority and in the absence of such satisfaction as to the existence of a matter of fact or law upon which validity of exercise of power is predicated

would be the sine qua non for exercise of the power not being satisfied. It was further observed that in reaching such requisite subjective satisfaction, the detaining authority has to apply its mind to all relevant circumstances and the same cannot be based on material extraneous to the scope and purpose of the statute. It was also observed that the ground on which the order of preventive detention rests should not be vague but should be precise, pertinent and relevant which with sufficient clarity inform the detenu the satisfaction for the detention giving him the opportunity to make a suitable representation. It was categorically observed that if a Constitutional Court finds that the exercise of the power to be bad and/or to be vitiated applying any of the tests so laid down in sub paragraphs of Paragraph No. 28 of the said judgment, it renders the detention order vulnerable and such detention order is required to be interfered with.

31. In the backdrop of the above, let this Court now take up the point for determination which has been formulated herein above.

32. The point for determination which arises in the instant proceedings is as to whether the detenues who were in judicial custody can be detained under the detention laws without

cogent materials showing that the detainees were likely to be released on bail. In the case of ***Dharmendra SuganChand Chelawat Vs Union of India*** reported in ***(1990) 1 SCC 746***, it was observed that an order of detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that:

- (i) The detaining authority was aware of the fact that the detainee was already in detention; and
- (ii) There were compelling reasons justifying such detention despite the fact that the detainee is already in detention.

The Supreme Court further clarified the expression “compelling reasons” in the context of making an order for detention on a person already in custody to mean that there must be cogent materials before the Detaining Authority on the basis of which it may satisfy that:

- a) The detainee is likely to be released from custody in near future; and
- b) Taking into account the nature of the antecedent activities of the detainee, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such

activities.

33. We further find it relevant to take note of another judgment of the Supreme Court in the case of ***Amrit Lal Vs Union of India*** reported in ***(2001) 1 SCC 341***, wherein an issue arose as regards the legality of the subjective satisfaction of the Detaining Authority for passing an order of detention under the Act of 1980 in view of the fact that the person who was already in jail was going to move a bail application. The Supreme Court observed in the case of ***Amrit Lal (Supra)*** that although in the grounds of detention it has been mentioned that there was a likelihood of the detenu moving an application for bail, for which the detention was necessary but there must be cogent materials before the authority passing the Detaining Order that there was likelihood of the detenu being release on bail.

34. It is also pertinent to take note of the judgment of the Supreme Court in the case of ***Geetha Vs State of Tamil Nadu*** reported in ***(2006) 7 SCC 603*** wherein the Supreme Court observed that the Detaining Authority should be aware that the detenue is already in custody and is likely to be released on bail. The conclusion that the detenue may be released on bail cannot be ipsi dixit of the Detaining Authority.

35. Further to the above, we find it apt to note the judgment in

the case of **Huidrom Konungjao Singh (supra)** wherein the Supreme Court culled out the three propositions as to when a person, who is in jail can be detained under the detention laws. Paragraph 9 of the said judgment being relevant is quoted herein below:

“9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the Detaining Authority has to satisfy the Court the following facts:

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which it could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.”

36. In the said judgment, i.e. in the case of **Huidrom Konungjao Singh (Supra)**, the Supreme Court also observed that merely because somebody else in similar cases had been granted

bail, there could be no presumption that in that case also if the detenu applied for bail could have been released on bail. Paragraph 15 of the said judgment being relevant is reproduced herein below:

“15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of the Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eye of the law. ”

37. In the backdrop of the above propositions of law as settled, we would like to revert to the facts already delineated supra. The proposals so submitted to the Detaining Authority by the Additional Director General of Police (L & O) & Chairman Screening Board, PITNDPS Act, in the case of both the detenues do not in any manner state that there were reliable materials on the basis of which one could have reasons to believe that there was a real possibility of the detenues to be released on bail and

further on being released they would probably indulge in activities which are prejudicial to public order. The Detention Order No. I as well as the Detention Order No. II both dated 09.07.2024 passed by the Detaining Authority and the Grounds of detention so enclosed as Annexure-A to the said Detention Orders do not in any manner mention that there were materials available with the authorities on the basis of which it had reasons to believe that there was a real possibility of the detenues being released on bail. In the Grounds of detention in both the cases, though the Detaining Authority acknowledges that the detenues were under judicial custody but there is no mention of cogent materials on the basis of which the Detaining Authority had reasons to believe that the detenues in both the cases had a likelihood of being released on bail.

38. We further find it relevant to take note of the representations so submitted by both the detenues wherein in clear and categorical terms, it was mentioned that the detenues were in judicial custody and there was no application of mind as to whether there was any semblance of awareness to ascertain as to whether the detenues had any chance of being released on bail. However, while rejecting the representations by the Chief Secretary to the Government of Nagaland, the Special Secretary to the Government of Nagaland, Department of Home as well as

by the Central Government, the said aspect in the representations submitted by the detenues have not been taken into consideration. Further to that, it also surprises us to take note of that the Advisory Board, Government of Nagaland, PITNDPS Act did not take into consideration the above discussed settled position of law by the Supreme Court.

39. We have perused the records so produced before us and there is also no material on record to show that the Detaining Authority had any cogent materials that at the time of making the Detention Orders there was a likelihood of the detenues being released on bail.

40. We further find it very relevant to take note of that from a perusal of the FIR dated 24.05.2024, it is seen that the allegations contained therein was that both the detenues were involved in connection with 1.259 Kg of suspected heroin. In terms with the notification issued by the Central Government, specifying small quantity and commercial quantity, it is seen at Serial No. 56 therein that a quantity of 250 gm and above of heroin would be considered to be a commercial quantity. We further find it relevant to take note of Section 37(1)(b) of the Act of 1985 which imposes stringent conditions for a person to be released on bail in respect to offences involving commercial

quantity.

41. We further take note of Section 36A(4) of the Act of 1985 which stipulates that in respect to persons accused of offence punishable for offences involving commercial quantity, the reference in Sub-Section(2) Section 167 of the Code of Criminal Procedure, 1973 shall be construed as 180 days. Further to that, the proviso to Sub-Section (4) of Section 36A of the Act of 1985 stipulates that if it is not possible to complete the investigation within the said period of 180 days, the Special Court may extend the said period up to 1 (one) year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for detention of the accused beyond the said period of 180 days.

42. All these aspects were not at all considered by the Detaining Authority, the Conforming Authority, the Central Government as well as the Advisory Board. It appears to us that it has escaped the attention of the said Authorities that preventive detention laws have the effect of taking away the liberty of a person without any Trial and therefore the Authorities have to be very careful in exercising such powers. We find it very pertinent herein to observe that in spite of various judgments pronounced by us as well as by the Supreme Court as to what

parameters are required to be followed to invoke the powers of preventive detention, when a person is in judicial custody, the Authorities of the State of Nagaland seems to have ignored it. Even the Advisory Board constituted seems to have overlooked these vital aspects. We find it relevant to observe that the Advisory Board is bound to follow the law laid down by us as well as the Supreme Court. We upon perusal of the Reports of the Advisory Board express our concern, the manner in which the Advisory Board have dealt with the matter and submitted its report in both the cases.

43. We have further taken note of Section 11 of the Act of 1988 wherein the maximum permissible period for which a person may be detained in pursuance of any Detention Order which have been confirmed under Clause (f) of Section 9 of the Act of 1988 shall be 1 (one) year from the date of the detention. Under such circumstances, in absence of any reliable materials before the Detaining Authority on the basis of which the Detaining Authority had reasons to believe that there was a realistic possibility of the detenues herein would be released on bail, it is our opinion that the Detention Orders, Confirmation Orders and the Extension Orders so assailed in both the writ petitions are based upon mere ipse dixit statements in the grounds of detention and cannot be sustained in law.

44. Accordingly, we dispose of both the writ petitions with the following observations and directions:

(i) The Detention Order No. I, Confirmation Order No. I and the Extension Order No. I as regards the detenu **Mr. Jackiss** are set aside and quashed.

(ii) The Detention Order No. II, Confirmation Order No. II and the Extension Order No. II insofar as the detenu **Mr. Tolong Wangsu** are set aside and quashed.

(iii) The detenues namely **Mr. Jackiss** and **Mr. Tolong Wangsu** be released, if not required for detention in any other case(s).

45. The records which were produced by Ms. Livika V. Sumi, the learned Government Advocate are returned herewith.

46. A copy of this judgment be sent to the Advisory Board, Government of Nagaland, constituted under the Act of 1988.

JUDGE

JUDGE

Comparing Assistant