

GAHC020004812025

2025:GAU-NL:427-DB



IN THE GAUHATI HIGH COURT_

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

KOHIMA BENCH

WP(Crl.) 17/2025

Smti. Afia Begum
W/O Abdul Ali,
Present R/O Hovukhu
Village, Niuland,
Permanent R/O Betapur,
Golaghat, Assam

.....Petitioner

-VERSUS-

1. State Of Nagaland and 3 Ors
Represented by the Chief Secretary,
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 Govt. Of Nagaland

Home Department Political Branch

North Block 1st Floor

Nagaland Civil Secretariat

Nagaland Kohima.

4. The Superintendent of Jail,

Central Jail,

Dimapur, Nagaland.

.....Respondents

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

HON'BLE MR. JUSTICE PRANJAL DAS

Advocates

For the petitioner : Mr. A. Sophie

For the respondents : Ms. Livika, G.A.

: Mr. Z.N. Ngullie, CGSC.

Date of hearing : 03.09.2025

Date of Judgment : 04.09.2025

JUDGMENT & ORDER (CAV)

(Pranjal Das, J)

Heard Mr. A. Sophie, the learned counsel appearing on behalf of the petitioner and Ms. Livika, learned Government Advocate on behalf of the State respondent nos.1, 3 and 4, Mr. Z.N. Ngullie, learned CGSC appears on behalf of the respondent no. 2.

2. This writ petition under Article 226 of the Constitution of India, has been filed by the petitioner Smti Afia Begum, impugning the detention Order no. CON/PITNDPS/09/2025/107 dated 8th April, 2025 passed by the

Special Secretary (Home) to the Government of Nagaland, whereby, the husband of the petitioner namely, Abdul Ali @ Keramat Ali, has been detained under the provisions of the Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (herein after the PITNDPS Act, 1988).

3. The facts in brief giving rise to the instant proceeding is that on 23.02.2025 a suo-moto FIR was lodged at Nuiland Police Station, Nagaland stating that on 23.02.2025 at around 12:30 Hrs during routine checking, two vehicles were intercepted near Ghotovi NEC road Nuiland and after searching both the vehicles, 50 soap cases of suspected drugs were found concealed inside the speaker compartment and front dashboard of a vehicle bearing No.AS-12-CC-5411(Bolero Pick-up White Colour) and that the same was being driven by the **detainee Abdul Ali**.

4. It is further alleged that upon searching the other vehicle, being a Scorpio having registration no. AS-01-AR204, driven by one Sadam Hussain, nothing illegal was recovered and it was found that the two persons in connivance with each other were transporting illegal drugs, where the Scorpio vehicle driven by the said Sadam Hussain was working as an escort to the vehicle carrying the illegal drugs. Subsequently, the **FIR lodged was** registered into **Nuiland P.S. Case No.03/2025**, under Section 21(C) NDPS Act R/W Section 3(5) BNS. A copy of the said FIR dated 23.02.2025 has been annexed and marked as Annexure-A.

5. It is further stated that subsequent to this development, on 28.03.2025, the learned Addl. Director General of Police (Adm) & Chairman Screening Board PITNDPS Act, Nagaland, Kohima vide letter dated 28.03.2025 addressed to the Special Secretary (Home) to the

Government of Nagaland made a proposal for preventive detention of Abdul Ali, under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 (PITNDPS). The said letter has been annexed as Annexure-B. The Special Secretary (Home) to the Government of Nagaland, passed a **detention order dated 08.04.2025** based on the aforesaid proposal. The said detention order is Annexure-C of the petition.

6. Subsequently, the detainee submitted a representation dated 06.05.2025 to the concerned authorities, praying for revocation of the detention order dated 08.04.2025. A copy of the representation has been annexed as Annexure-D. However, the said representation was rejected by the Special Secretary, Government of Nagaland (Home department) by his order dated 08.05.2025 and the Chief Secretary to the Government of Nagaland, vide order dated 12.05.2025 also rejected the representation. Copies of the said orders have been annexed and marked as Annexure-E & F respectively.

7. Thereafter, the Chief Secretary to the Government of Nagaland, issued the **confirmation order dated 10.7.2025** extending the detention of the detenue Abdul Ali for another period of 3(three) months w.e.f **11.07.2025 till 10.10.2025**. The confirmation order has been annexed and marked as Annexure-G. Such order of the Chief Secretary was also based on the opinion of the Advisory Board.

8. Aggrieved by the said detention order, rejection of his representation and confirmation of the detention thereby extending his preventive detention till 10.10.2025, the detainee Abdul Ali @ Keramat Ali has filed the instant writ petition. The main grounds contended by the petitioner in

support of his prayer for quashing the detention that the detention order was passed mechanically, even though the detainee was already in custody in connection with the aforementioned case under the NDPS Act. Secondly, it is contended that the concerned authorities have not given sufficient reasons in support of their subjective satisfaction that the detainee is likely to be released on bail. Thirdly, it is contended that, the detention order and the grounds of detention have not been conveyed to the detainee in a language that he understood. With these contentions, the detainee is seeking interference with the order of preventive detention in exercise of powers under Article 226 of the Constitution of India. Though, the respondent authorities have not filed any counter-affidavit; however, the records in original have been placed.

9. We have perused the petition and the annexed documents and also perused the relevant portions of the case record produced before this court.

10. We have also considered the submissions of the learned counsel for the petitioner and also the learned counsel for the respondents.

11. The learned counsel for the respondents on the basis of the records submit and contend that there is no infirmity in the detention order, which was necessary considering the dangers posed by the detainee to societal interest and therefore, the court may be pleased not to quash the detention order at this stage.

12. I have perused the original copies of the order of detention; the proposal for detention; the confirmation of the detention of the detainee; the reasons given by the Advisory Board with regard to the detention of the detainee and other relevant materials. What emerges from the original

records is that, the detention of the detainee was considered to be necessary, as he was stated to be involved in trafficking of illegal narcotic drugs and that his detention was necessitated by the objective of preventing such activities and reducing the incidence of drug trafficking and supply of illegal drugs in the region.

14. While the records reveal that the concerned authorities were aware of the fact that the detainee is in custody in connection with the Nuiland P.S. Case No.03/2025, under Section 21(c) NDPS Act R/W 3(5) BNS; however, we did not notice adequate reasons in support of the satisfaction of the concerned authorities that the detainee is likely to be released on bail. It has been merely stated that there is possibility of his being enlarged on bail in which case, it is likely that he shall go back to indulging in illegal activities of trafficking narcotic drugs to the detriment of society.

15. Before proceeding further, a reference may be made to a decision of the Hon'ble Supreme Court and the relevant extracts thereof:-

HuidromKonungjao Singh Vs. State of Manipur reported in ***(2012) 7 SCC 181.***

“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.

In case either of these facts does not exist the detention order would stand vitiated. The present case requires to be examined in the light of the aforesaid settled legal proposition.”

16. Thus, the principles of law laid down are that while a person already in custody can also be subjected to preventive detention; but the same is contingent on the following three factors:- firstly, that the authority must be aware that the detainee is already in custody; secondly the authority must have sufficient reasons to hold that the detainee is likely to be released on bail and thirdly, the authority must have reasons to believe that upon being released on bail the detainee is likely to indulge in active activities prejudicial to public order and public safety.

17. In the context of these principles, we go back to the facts of this case and the relevant documents of the original case record. As already stated, the authorities were aware of the fact that the detainee was already in custody. However, the authorities have only speculated that if this person, is released on bail, he will indulge in prejudicial activities. We find that no cogent reasons have been adduced by the authorities regarding their belief that there is a possibility of the detainee being released on bail.

18. The authorities have also overlooked the fact that the penal provision of the NDPS Act under which the case has been registered pertains to commercial quantity, for which the statutory period for investigation is 180 days and even that is extendable up to one year.

Secondly, because of the penal provision pertaining to commercial quantity the rigors of Section 37 of the NDPS Act would also be applicable and only upon passing the rigorous twin tests incorporated therein - the question of the detenue being released on bail would arise. The authorities overlooked these aspects of the matter.

19. Therefore, we are of the considered opinion that the reasons in support of the satisfaction of the authorities about the possibility of the detenue being released on bail is not sufficient in terms of the principles laid down in the aforementioned judgment.

20. Thus, upon perusing the materials, we find that the detention order of the detenue suffers from the infirmity; that the authorities did not record sufficient reasons in support of their satisfaction that the detenue is likely to be released on bail.

21. According, in the facts and circumstances, we have no option but to quash the preventive detention of the detenue.

22. Therefore, the detention order dated 08.04.2025 with regard to detenue Abdul Ali and all the other consequential orders such as approval order dated 12.05.2025 and the confirmation order dated 10.07.2025 are all **set-aside** and **quashed** and the original records are hereby returned to the Learned Govt. Advocate Ms. Livika.

23. The instant writ petition stands **allowed** and **disposed of**.

JUDGE

JUDGE

Comparing Assistant