

GAHC020004972025

2025:GAU-NL:552-DB



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

**Case No. : W.P.(Crl.)/18/2025**

SMTI. AMENA KHATUM  
WIFE OF SHRI SADAM HUSSAIN, PERMANENT R/O TENGATAL  
PANCHAMUKHI, GOLAGHAT, ASSAM

VERSUS

STATE OF NAGALAND AND 3 ORS  
THROUGH THE CHIEF SECRETARY, GOVT. OF NAGALAND,  
NAGALAND KOHIMA

2:THE SPECIAL SECRETARY  
HOME DEPT. (POLITICAL BRANCH)  
NAGALAND KOHIMA

3:THE DEPUTY COMMISSIONER  
NIULAND  
NAGALAND-797112

4:UNION OF INDIA  
THROUGH THE JOINT SECRETARY (PITNDPS)  
DEPT. OF REVENUE  
MINISTRY OF FINANCE  
ROOM NO. 202  
JEEVAN TARA BUILDING  
2ND FLOOR  
PARLIAMENT STREET-110001  
NEW DELH

**Advocate for the Petitioner : POKYIM YADEN,**

**Advocate for the Respondent : GOVT ADV NL,**

**BEFORE**  
**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**  
**HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER**

**ORDER**

**Date : 18-11-2025**

*(M.Zothankhuma, J)*

Heard Mr. Pokyim Yaden, learned counsel for the petitioner. Also heard the learned Public Prosecutor, Ms. Livika. Mr. Yangerwati, learned CGSC appears for the Union of India.

**2.** The petitioner is aggrieved with the Detention Order No. CON/PITNDPS/11/2025/145 dated 05.06.2025 passed by the Special Secretary to the Government of Nagaland (Home), Political Branch, Nagaland, Kohima and the impugned Confirmation Order No. CON/PITNDPS/11/2025/209 dated 08.09.2025 passed by the Chief Secretary to the Government of Nagaland, Nagaland, Kohima, by which the petitioner has been put under preventive detention under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as PITNDPS Act, 1988 in short).

**3.** The facts of the case in brief is that one Abdul Ali and the present petitioner Sadam Hussain were intercepted and apprehended by the Nagaland Police along with the vehicles that they were driving, i.e., Bolero Pickup bearing Registration No. AS-12CC-5411 and Scorpio bearing Registration No. AS-01AR-2041. In the vehicle that was being driven by Abdul Ali, i.e., the Bolero Pickup, 50 soap cases of Suspected Heroin weighing approximately 581.88 grams were recovered. No drugs were

recovered from the vehicle driven by the present petitioner Saddam Hussain. However, on the alleged disclosure made by the co-accused Abdul Ali against Saddam Hussain, to the fact that Saddam Hussain was the owner of the drugs recovered, the petitioner was arrested along with Abdul Ali on 23.02.2025 and a case was registered by the Niuland Police Station, as Niuland PS GDE No. 003/2025 under Section 21(c) NDPS Act read with Section 3(5) BNS.

**4.** The petitioner was granted bail by the Court of the Special Judge, NDPS, Dimapur, Nagaland vide Order dated 27.05.2025 in GR Case No. 88/2025, by holding that the Enforcement Agency had not complied with Section 47 BNSS. Accordingly, he was granted bail as the non-compliance with Section 47 of BNSS was in violation of the judgment of the Hon'ble Supreme Court in the case of ***Vihaan Kumar Versus State of Haryana***, reported in ***2025 SCC Online SC 269***.

**5.** After the petitioner was granted bail on 27.05.2025 by the Special Court, the petitioner was placed under detention by the State Government on the basis of the Detention Order dated 05.06.2025 made under Section 3(1) of the PITNDPS Act, 1988 by the Special Secretary to the Government of Nagaland. The Detention Order dated 05.06.2025 shows that the authorities were under the impression that the petitioner was under judicial custody. The petitioner was put under preventive detention on the ground that the petitioner was likely to indulge in similar prejudicial activity unless he was prevented from doing so, by way of the impugned Communication dated 05.06.2025.

**6.** The operative portion of the Communication dated 05.06.2025 which is at paragraph 3 is reproduced herein below:

*"3. 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."*

**7.** The Chief Secretary to the Government of Nagaland thereafter issued a Confirmation Order dated 08.09.2025 stating that the PITNDPS Advisory Board constituted by the Government of Nagaland under Section 9 of the PITNDPS Act, 1988, was of the opinion that there was sufficient cause for detention of the petitioner under PITNDPS Act, 1988 and that the preventive detention of the petitioner was necessary, in order to prevent him from further indulging in illicit traffic in narcotic drugs and psychotropic substances. By way of the impugned Confirmation Order dated 08.09.2025, the petitioner's preventive detention Order was extended for another period of three months w.e.f. 09.09.2025 till 08.12.2025.

**8.** The learned counsel for the petitioner submits that when there is no other case against the petitioner except for the present case, i.e., GR Case No. 88/2025, there was no basis for the respondent authorities to come to a finding that the petitioner was likely to indulge in similar activities, i.e., transportation of drugs. He further submits that when there was nothing recovered from the vehicle driven by the petitioner, the petitioner could not be stated to be guilty of being the owner of the recovered drugs on the basis of a statement made by the co-accused, which is inadmissible in evidence. He accordingly submits that the impugned Detention Order and the Confirmation Order having been made without any basis, there is no justification for the continued detention of the petitioner.

**9.** Mr. Pokyim Yaden, learned counsel for the petitioner further submits

that while the co-accused Abdul Ali was in judicial custody, a similar Order of Detention dated 08.04.2025 had been issued by the Special Secretary (Home) to the Government of Nagaland and the same was confirmed by the Confirmation Order dated 10.07.2025 issued by the Chief Secretary to the Government of Nagaland. However, the Detention Order dated 08.04.2025 and the Confirmation Order dated 10.07.2025 relating to Abdul Ali had been set aside and quashed by the Coordinate Bench of this Court vide Order dated 14.09.2025 passed in W.P.(Crl.)/17/2025, on the ground that the reasons in support of the satisfaction of the authorities about the possibility of the detenu Abdul Ali being released on bail was not sufficient, in terms of the principles laid down in the judgment of the Hon'ble Supreme Court in the case of **Huidrom Konungjao Singh Vs. State of Manipur** reported in **(2012) 7 SCC 18**, wherein it has been held as follows:-

" 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 he 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 aforesaid settled legal proposition."

The Coordinate Bench, thus held that the Detention Order suffered from infirmity. The petitioner's counsel further submits that chargesheet

has not been submitted in GR Case no. 88/2025 till date.

**10.** Ms. Livika, learned Public Prosecutor who has brought the records, fairly admits that there is nothing stated in the records as to the grounds for issuing Preventive Order of Detention to the petitioner regarding the past antecedents of the petitioner. She submits that there is nothing on record to show that the petitioner had indulged in any activity of transporting or selling drugs in the past.

**11.** On considering the facts and circumstances of the case, we find that the petitioner had already been released on bail on 27.05.2025. However, the Detention Order dated 05.06.2025 has stated that the petitioner was presently under judicial custody. Further, there is no past antecedents or cause showing that the petitioner had been indulging in any similar activity of transporting or selling or dealing in drugs. The above two facts clearly points to the fact that the respondent authorities have acted mechanically and have not applied their minds, while passing the Detention Order and the Confirmation Order. When the reasons for the Preventive Detention Order and Confirmation Order are made without any basis, the grounds for detention and confirmation would have to be held to be arbitrary. As such, we are of the view that the impugned Detention Order and the Confirmation Order cannot be sustained in law. They are accordingly set aside.

**12.** The writ petition is accordingly allowed.

**JUDGE**

**JUDGE**

**Comparing Assistant**