

GAHC020008122024

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THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

KOHIMA PERMANENT BENCH

Writ Petition (Crl.) No.27/2024

1. Shri Sarunao Shangreingam,
Aged about 48 years,
Husband of Smti. Sara Asongliu,
Permanent resident of Tamei Bazar,
District Tamenglong-795125,
Manipur.

.....Petitioner.

-VERSUS-

1. The State of Nagaland,
Through the Chief Secretary to the Government of Nagaland,
Nagaland, Kohima.

2. The Special Secretary,
Home Department (Political Branch),
Nagaland, Kohima.

3. The Union of India through the Joint Secretary, (PITNDPS),
Department of Revenue,

Ministry of Finance, Room No.202,
Tara Building, 2nd Floor,
Parliament Street,
New Delhi -110001.

.....Respondents.

Advocates for the petitioner : Mr. I. Imchen.

Advocate for the respondents : Ms. Inaholi Wotsa, Govt. Advocate.
Mr. Z.N. Ngullie, CGC.

BEFORE

HON'BLE MR. JUSTICE KAKHETO SEMA

HON'BLE MR. JUSTICE KARDAK ETE

Date of hearing :19.02.2025.

Date of judgment : 24.02.2025.

JUDGMENT & ORDER (CAV)

(Kardak Ete, J.)

Heard Mr. I. Imchen, learned counsel for the petitioner. Also heard Ms. Inaholi Wotsa, learned State Counsel, for the State respondent Nos. 1 and 2, and Mr. Z.N. Ngullie, learned Central Government Counsel, for the respondent No. 3.

2. This writ petition is filed by Shri Sarunao Shangreingam, claims to be the husband of Smti. Sara Asongliu (detenue) challenging the impugned detention order No.CON/PITNDPS/26/2024/163, dated 29.08.2024, passed by the Special Secretary to the Govt. of Nagaland, by which the detenue has been detained in exercise of power under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (hereinafter referred to as 'the PITNDPS Act, 1988' in short) and the

confirmation order No.CON/PITNDPS/26/2024/230, dated 27.11.2024, passed by the Chief Secretary to the Govt. of Nagaland, confirming the detention order dated 29.08.2024 of the detainee, thereby extended the period of detention for another three (3) months w.e.f. 01.12.2024 till 28.02.2025, in exercise of power under Clause (f) of Section 9 of the PITNDPS Act, 1988.

3. The brief facts of the case is that on 06.07.2024, at around 09:30 A.M., a written FIR was received from THC Tokihe Achumi, AET, Dimapur, stating that on 05.07.2024, at around 20:30 hrs., information was received from reliable source about possible suspects of NDPS smuggling at Dhobinallah Police Point, next to Zeliangrong Village welcome gate. In this regard, ACP West Dimapur was informed and the GD entry was also made at West Police Station. After intimation of the information to Superior Officers, a joint operation team was formed wherein AET, Dimapur along with ACP West and West Police Station party proceeded to the said area, and took respective positions and cordoned the suspected exchange point. However, the exchange point was changed to G.S. Road, and thereupon, the whole team proceeded to G.S. Road area. The point of exchange was again changed to Railway Station, Dimapur; and lastly, the point of exchange was confirmed at Haralu Colony. After final confirmation of the exchange point, ACP East/OC East Police Station was duly informed and due GD entry was also made. Thereafter, the operation team then proceeded to Haralu Colony and after conducting surveillance of the colony, identified the exchange point to House No.27-B, Haralu Colony which falls under East Police Station, Dimapur.

4. Accordingly, Dimapur East Police Station party and the operation team cordoned the apartment and apprehended two persons namely, (1) Mrs. Athui Zeliang and (2) Mrs. Sara Asongliu (detainee herein) on 06.07.2024 for possession of suspected Narcotic Drugs and Psychotropic Substances (in short NDPS). Upon arresting the suspected persons, the Gaon Burah and the Chairman of Haralu Colony were duly informed and search of the house was conducted in their presence. Upon thorough checking by women police personnel in the presence of Gaon Burah and Chairman of Haralu colony, 49 Nos. of soap cases containing suspected drugs (sunflower) was

seized from the detainee which were concealed inside black carry bag and 50 Nos. of soap cases containing suspected drugs (sunflower) was also seized from Mrs. Athui Zeliang concealed in a green gunny (rice) bag. A total of 99 (Ninety nine) boxes (soap cases) of suspected NDPS (sunflower) were seized from the possession of the above two individuals.

5. All 99 (Ninety nine) boxes (soap cases) of suspected NDPS were weighed in the presence of Gaon Burah and the Chairman of Haralu Colony and found to be weighing around 1163 (one thousand one hundred sixty three) grams approx. Further, all the mobile Phones (4 in numbers) of the four persons were also seized for further investigation. Three more suspected persons were also arrested. Accordingly, the Officer-in-Charge, Dimapur, East Police Station, taking cognizance of the offence, registered a case vide East P.S. Case No. 0111/24, under Section 21(C) of the NDPS Act, 1985, read with Section 3(6) of the BNS, 2023.

6. In the course of investigation, the arrested persons were examined and another person namely, Phungraibilu Kalingta was named to be involved in the case, who has also been arrested on 06.07.2024 and one mobile phone was seized from her possession for further investigation of the case.

7. The detainee was thoroughly examined and she had narrated the entire events and admitted before the police that she and one N.K. Athui divided the drugs stored in the bag into two halves, one half in a black bag and the other half in the rice bag and proceeded to Athui's friends place. On arrival at the said location at Haralu Colony, the police came and apprehended them along with the drugs. The detainee thereafter sent to judicial remand.

8. Vide letter dated 06.08.2024, the Addl. Director General of Police, (L&O) & Chairman Screening Board PITNDPS Act, Kohima, Nagaland had sent a proposal for preventive detention of the detainee along with records under Section 3(1) of the PITNDPS Act, 1988. Upon receipt of the proposal for preventive detention of the

detenue, the Special Secretary (Home) to the Govt. of Nagaland vide detention order dated 29.08.2024, having been found continuing her 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 her engaged in such illegal traffic have a deleterious effect on the national economy and therefore, proposed that the detenue be detained and kept in District Jail, Dimapur for an initial period of three months. The detenue was furnished the grounds of detention along with the order.

9. Thereafter, vide order dated 27.11.2024, the Chief Secretary to the Govt. of Nagaland, in exercise of power conferred under Clause (f) of Section 9 of the PITNDPS Act, 1988, confirmed the detention order issued in respect of the detenue and further ordered that the detenue shall be detained for another three (3) months w.e.f. 01.12.2024 till 28.02.2025, within which period her detention will be reviewed as required under the provisions of the PITNDPS Act, 1988.

10. Mr. I. Imchen, learned counsel for the petitioner submits that the respondent authorities have passed the detention order without application of mind as the same has been passed in a mechanical manner. The order of detention is liable to be quashed on the ground that recourse to ordinary criminal law would have been suffice in the facts of the present case. He submits that the detenue is already under the judicial custody and have not applied for bail. Even if she applied for bail, the stringent rigors of Section 37 of the NDPS, 1988 would apply as a pre-condition for grant of bail. The grounds of detention also do not disclose any condition in which the detenue, who is already in the judicial custody can be preventively detained. Moreover, the respondent authorities have not shown any reason as to why recourse to ordinary criminal law would not suffice. He submits that neither the proposal nor the order of preventive detention, no finding is recorded that the detenue is likely to be released on bail. In fact, such a finding cannot be recorded because the detenue has not even applied for bail.

11. Mr. I. Imchen, learned counsel for the petitioner submits that detention under the PITNDPS Act, 1988 can be ordered, 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 arrived at by the detaining authority and there is nothing on record to show that the detenue will indulge in illicit drug trafficking unless preventively detained. The learned counsel for the petitioner further submits that the alleged offences can be tried by any ordinary court of law, which does not call for invocation of the stringent law of preventive detention. He submits that the Hon'ble Apex Court in catena of decisions cautioned that cases which can be tried ordinarily before the ordinary court of law should not be randomly booked under the preventive detention laws, because preventive detention laws are a direct contravention of the Article 21 of the Constitution of India and the scope of Article 22(5), authorizing the preventive detention, is not an unlimited power to be exercised and the power under Article 22(5) of the Constitution of India has to be sparingly exercised. Therefore, he submits that the impugned detention order No.CON/PITNDPS/ 26/2024/163, dated 29.08.2024 and the impugned confirmation order dated 27.11.2024, be set aside and quashed.

12. Mr. I. Imchen, learned counsel for the petitioner, in support of his submission, has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Rekha vs. State of Tamil Nadu and another**, reported in **(2011) 5 SCC 244**.

13. On the other hand, Ms. Inaholi Wotsa, learned State Counsel for the State respondent Nos. 1 and 2, while referring to the affidavit filed by the State respondents, submits that there was no procedural lapses and all procedural safeguards have been strictly adhered to by the detaining authority and within the stipulated time frame, as per the law. She submits that in compliance of Section 3(2) of the PITNDPS Act, 1988, the report of the detention was communicated to the Central Government on the same day of detention i.e. on 29.08.2024, as per Section 3(3) of the PITNDPS Act, 1988, the communication of the detention to the detenue was made on the 3rd day of detention i.e. on 31.08.2024. Again, in compliance of the Section 9(b) of the PITNDPS Act, 1988, reference before the Advisory board was made on the 12th day from the date of

detention i.e. on 09.09.2024. As per Section 9(c) of the PITNDPS Act, 1988, the Advisory Board submitted its report before the stipulated time frame of 11 weeks (77 days) i.e. on 12.11.2024. Therefore, there has been no violation of the procedural provisions of law and as such the detention order passed by the detaining authority is just and in accordance with law and need no interference.

14. Ms. Inaholi Wotsa, learned State Counsel submits that the Sponsoring Authority had clearly mentioned in para 3 of grounds of detention in its proposal for detention dated 06.08.2024, that the detainee was under judicial remand and that it anticipated that if bailed the detainee will be a threat to peace and security of the State of Nagaland and there is likelihood of the accused committing breach of peace and tranquillity of the State thereby endangering the lives of many innocence, peaceful existence of citizens and may warrant law and order problem in the state. She submits that the detainee never made or attempted to make any representation before the detaining Authority i.e. the State Government or the Central Government at any point of time despite providing all opportunity to her. The relevant documents were served to the detainee which she acknowledged, and she has been informed that she can file representation against her detention before the appropriate authorities.

15. Ms. Inaholi Wotsa, learned State Counsel submits that in catena of decisions, the Hon'ble Supreme 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 present case, in the grounds of detention, the respondent authorities have narrated all the reasons for passing the detention order detaining the detainee with a view to prevent her from abetting the smuggling of narcotic drugs and psychotropic substances in future.

16. In support of her submissions, Ms. Inaholi Wotsa, learned State Counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Baby Devassy Chully @ Bobby vs. Union of India and others**, reported in **(2013) 4 SCC 531**.

17. Mr. Z.N. Ngullie, learned Central Government Counsel for the respondent No.3, while placing the copy of the affidavit during the course of hearing, has submitted that there is no allegation against the respondent No.3, Union of India. Therefore, he has no comments to offer. However, he submits that the detention order dated 29.08.2024 was issued by the Special Secretary (Home), Government of Nagaland against the detainee as per the requirement of law, a report in this regard was forwarded from the Government of Nagaland on 30.08.2024, which was received in PITNDPS Section, Department of Revenue, Ministry of Finance on 05.09.2024 and the same has been taken on record. Mr. Z.N. Ngullie, learned Central Government Counsel submits that no representation addressed to the Secretary, Department of Revenue or Joint Secretary (PITNDPS), Department of Revenue was received by the PITNDPS Division of Department of Revenue, Ministry of Finance, Government of India in the instant case.

18. We have given due consideration to the submissions advanced by the learned counsels for the parties and also perused the materials on record.

19. The detainee was arrested on 06.07.2024 in connection with the Dimapur East P.S. Case No. 0111/24, under Section 21(C) of the NDPS Act, 1985, read with Section 3(6) of the BNS, 2023. The case has arisen on the proposal dated 06.08.2024, by the Addl. Director General of Police, (L&O) & Chairman Screening Board PITNDPS Act, Kohima, Nagaland by which a letter addressed to the Special Secretary (Home) to the Govt. of Nagaland proposing preventive detention under the provisions of the PITNDPS Act, 1988. In the proposal, it is mentioned that the accused (detainee herein) is under judicial remand. The grounds for detention are also provided in the said proposal. It is also provided that the detention will definitely immobilize her from engaging herself in illicit traffic of NDPS substance. After consideration of the proposal for detention against the detainee, the Special Secretary (Home Department) to the Govt. of Nagaland has passed the impugned detention order dated 29.08.2024, along with grounds, which is reproduced here-in-below:

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

ORDER

Dated Kohima, the 29th August, 2024

NO. CON/PITNDPS/26/2024//63 Whereas, the Addl. DGP (L&O), Nagaland has sent a proposal for detention of Mrs. Sara Asongliu; W/o: Shangreigam; V/o: Nongtamps Tamei, District: Tamenlong; State: Manipur; P/add: Tamei Bazar, under PITNDPS Act, 1988 along with records under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

And wherens, on perusal of records as submitted by the Addl. DGP (L&O), Nagaland, it appears that, Mrs. Sara Asongliu; W/o: Shangreigam; V/o: Nongtamps Tamei, District: Tamenlong; State: Manipur, P/add: Tamei Bazar, was involved in the following case:-

(i) Dimapur East PS Case no. 0111/24 U/S 21(c) NDPS Act R/W 3(6) BNS 2023.

And whereas, the Addl. DGP (L&O). Nagaland has proposed to prevent Mrs. Sara Asongliu; W/o: Shangreigam; V/o: Nongtamps Tamei; District: Tamenlong; State: Manipur, P/add: Tamei Bazar, under PITNDPS Act, 1988 from continuing her 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 her 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 Addl. DGP (L&O), Nagaland and other supporting documents, found sufficient grounds for detention of Mrs. Sara Asongliu, W/o: Shangreigam; V/o: Nongtamps Tamei; District: Tamenlong; State: Manipur, P/add: Tamei Bazar, and being satisfied that with a view of preventing her from engaging in illicit traffic in NDPS, it is necessary to detain her.

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 Mrs. Sara Asongliu; W/o: Shangreigam; V/o: Nongtamps Tamei; District: Tamenlong; State: Manipur, P/add: Tamei Bazar, be detained and kept in District Jail, Dimapur for an initial period of three months.

Sd/-

Special Secretary to the Govt. of Nagaland.”

“GROUNDS OF DETENTION”

To,

Mrs. Sara Asongliu

W/o : Shangreigam

V/o : Nongtamps Tamei

District : Tamenlong

State : Manipur

P/add : Tamei Bazar.

Subject: Communication of Grounds of Detention under section 3 (1) of the PIINDPS 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 Mrs. Sara Asongliu have admitted to illegal trafficking of Narcotic Drugs & Psychotropic Substances marketing the same substances in and around Dimapur town 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 of 1163 gms of sunflower recovered from your possession was received from Thontaliu from Kangtokbi bazar, Manipur and brought to Dimapur. You

along with NK Athui Zeliang tried selling the drugs with the assistance of K. Tamasenbou, Vester @ Sylvester Dungdung and Phungraibiliu Kalengta. This indicates that you have an inter-state linkage spreading across the States of Manipur-Nagaland.

3. That, you are presently under judicial remand. 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.

4. That, you if at large or if bailed will be a threat to the peace and security of the State of Nagaland and there is likelihood of you committing breach of peace and tranquility of the State thereby endangering the lives of many innocents, peaceful existence of citizens and many warrant law and order problems in the State.

5. that, there has been a huge public outcry concerning traffic of licit drugs i 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.

In light of the above facts and circumstances, I have no hesitation in arriving at the conclusion that you Mrs. Sara Asongliu through your above acts engaged yourself in prejudicial activities involving illicit trafficking in narcotic drugs, therefore, a fit case for detention under the PITNDPS, Act 1988.

Enclosures: Police Report and all supporting documents to the case.

Sd/-

Special Secretary to the Govt. of Nagaland”

20. Thereafter, vide order dated 27.11.2024, the Chief Secretary to the Govt. of Nagaland has confirmed the detention order which is reproduced here-in-below:

**“GOVERNMENT OF NAGALAND
HOME DEPARTMENT ; POLITICAL BRANCH I**

CONFIRMATION ORDER

Dated Kohima, the 27th November, 2024.

NO. CON/PITNDPS/26/2024/ :: Mrs. Sara Asongliu; W/o: Shangreigam, V/o: Nongtamps Tamei; District: Tamenlong; State: Manipur; Padd: Tamei Bazar, has been detained under the PITNDPS Act, 1988 by the Special Secretary (Home), Nagaland vide order NO.CON/PITNDPS/26/2024/261 dated 29.08.2024 for an initial period of 3 (Three) months till 30.11.2024.

Whereas, the detention of the said Mrs. Sara Asongliu; W/o: Shangreigam; V/o: Nongtamps Tamei; District: Tamenlong; State: Manipur, P/add: Tamci Bazar, 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, vide letter No.CON/PITNDPS/RPT/3/2023/175 dated Kohima the 9th September 2024.

And whereas, the Advisory Board is Advisory of the opinion that there is sufficient cause for detention of the detenue under the PITNDPS Act, 1988 and that the continued detention of the detenue Mrs. Sara Asongliu; W/o: Shangreigam; V/o: Nongtamps Tamei; District: Tamenlong; State: Manipur, P/add: Tamei Bazar, will be necessary in order to prevent her from further indulging in illicit traffic in narcotic drugs and psychotropic substances warranting her 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 Mrs. Sara Asongliu; W/o: Shangreigam; V/o: Nongtamps Tamei; District: Tamenlong; State: Manipur; P/add: Tamei Bazar and further order that she shall be detained for another period of 3 (Three) months w.e.f, 01.12.2024 till 28.02.2025 within which period her detention will be reviewed as required under the provisions of the PITNDI'S Act, 1988.

Sd/-

Chief Secretary to the Govt. of Nagaland.

Dated Kohima, the 27th November, 2024".

21. On perusal of the detention order dated 29.08.2024 and the grounds for detention of the detainee under Section 3(1) of the PITNDPS Act, 1988, it reflects at para 3 of the grounds of detention that the detainee is under judicial remand and the authorities are satisfied that she is likely to indulge in similar prejudicial activity unless she is prevented from doing so by an appropriate order of preventive detention. It is also provided that if the detainee is at large or if bailed, she will be a threat to the peace and security of the State of Nagaland and there is likelihood of her committing breach of peace and tranquillity of the State thereby endangering the lives of many innocents, peaceful existence of citizens and may warrant law and order problems in the State. It is also further stated in the grounds of detention 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 and the detainee is 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 earning to cover the cost of their consumption/addiction.

22. The main thrust of argument advanced by the learned counsel for the petitioner is that since the detainee has not filed any application for bail and she is already in judicial remand, no preventive detention would be required under the PITNDPS, Act 1988, as the detainee would be sufficiently dealt with by the ordinary law of the land.

23. On consideration of submissions of learned counsel for the petitioner, we are of the view that merely because the detainee has not moved any application for bail and therefore, is unlikely to be released on bail and the ordinary law of the land would deal with, cannot be accepted in as much as it is the subjective satisfaction of the authorities 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 detainee to be involved in the trafficking of NDPS substance, which will be prejudicial to the public at large. Even, if a person is liable to be tried in a criminal court for commission of a criminal offence, or is actually being so tried, that does not

debar the authorities from passing a detention order under a preventive detention law. The other grounds which the learned counsel for the petitioner has urged have also fall flat as the same are contrary to the records.

24. We also take note that no representation has been filed by the detenue despite receipt of the documents and on duly been informed. As fairly admitted by the learned counsel for the petitioner, we find that there is no violation of any provisions of law while passing the detention order as well as the confirmation order. The detaining authority have shown just and reasonable circumstances under which the detenue has been detained. Record reveals that in compliance of Section 3(2) of the PITNDPS Act, 1988, the report of the detention was communicated to the Central Government on the same day of detention i.e. on 29.08.2024, as per Section 3(3) of the PITNDPS Act, 1988, the communication of the detention to the detenue was made on 31.08.2024. In compliance of the Section 9(b) of the PITNDPS Act, 1988, reference before the Advisory Board was made on the 12th day from the date of detention i.e. on 09.09.2024. As per Section 9(c) of the PITNDPS Act, 1988, the Advisory Board submitted its report before the stipulated time frame of 11 weeks (77 days) i.e. on 12.11.2024.

25. On careful consideration of the materials available on record, we find that the vital materials were placed before the detaining authority and the same has been duly considered by the detaining authority from where the detaining authority has derived its subjective satisfaction. The materials available on record reveals that requisite subjective satisfaction, the formation of which is a condition precedent in passing of detention order has been duly considered as the materials which had bearing and weighed on the issue of the satisfaction of the detaining authority are neither withheld nor suppressed by the sponsoring authority and the same has been duly considered by the detaining authority before passing the detention order.

26. It is true that the preventive detention is a serious invasion of personal liberty and in normal methods upon the person charged with commission of offence to

disprove the charge or to prove his innocence at the trial is not available to the person preventively detained. As held by the Hon'ble Supreme Court, in preventive detention jurisprudence whatsoever little safeguard the Constitution and the enactment authorizing such detention assumes outmost importance and must be strictly adhered to. In the present case, we find that the authorities have duly complied with the provisions of law, in passing the impugned detention order dated 29.08.2024.

27. We have considered the judgment of the Hon'ble Supreme Court in the case of **Reka** (Supra) relied upon by the learned counsel for the petitioner. In that case, the Hon'ble Supreme Court has held that where the detention order is served on a person already in jail, there should be real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically 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 will be illegal. It also further held that there can be exception of this rule, that is, where a co-accused whose case stands on the same footing had been granted bail, the detaining authority can reasonably conclude that there is likelihood of the detainee being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.

28. In the present case, the main thrust urged by the learned counsel for the petitioner to the effect that no bail application has been filed and the detainee is already in judicial custody, therefore there is no requirement of preventive detention of the detainee, to which we are of the view that it cannot be said that merely because no bail application is filed, the detainee will not be released, more so, the detention order has been passed on the subjective satisfaction of the detaining authority by following all the procedural safeguards under the law. Therefore, the above case relied by the learned counsel for the petitioner is clearly distinguishable from the present case, as the facts are different.

29. The Hon'ble 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.”

30. 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 the present case, nothing is discernable that there is no imminent possibility of the detenu being released on bail, except that no application for bail is pending. In fact, the materials available on record reveals that there are sufficient and

cogent reasons/grounds in the proposal for preventive detention of the detainee. The detention order passed by the detaining authority is supported by sufficient ground and thus, in our view, there is no infirmity in the impugned detention order as the respondent authorities have duly complied with the requirements of law in passing the order.

31. In view of the above, we are of the view that the ground urged on behalf of the detainee, particularly, the detainee is in judicial custody without filing any bail application cannot be a ground for setting aside the detention order, which is otherwise validly passed on subjective satisfaction of the detaining authority. Thus, the ground urged is not accepted.

32. For the forgoing reasons and conclusion arrived at herein above, we find no infirmity or illegality in the impugned detention order dated 29.08.2024, passed by the Special Secretary (Home Department) to the Govt. of Nagaland and the confirmation order dated 27.11.2024, passed by the Chief Secretary to the Govt. of Nagaland, confirming the detention order dated 29.08.2024 and same warrants no interference.

33. In the result, the Writ Petition stands dismissed being devoid of merit. No order as to costs.

JUDGE

JUDGE

Barmen

Comparing Assistant