



2025:GAU-NL:487-DB

THE GAUHATI HIGH COURT

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

KOHIMA BENCH**WRIT PETITION (CRL.) NO. 16/2025**

Mr. H. Absalom, aged about 33 years, S/o – Happymoon, temporary resident of New Ministers' Hill Colony, P.S. – Kohima South Police Station, Kohima, Nagaland, Permanent resident of Lower Phaibung Village, P.S. – Tadubi.

.....Petitioner

-Versus-

1. The State of Nagaland, represented by the Chief Secretary, Government of Nagaland, Nagaland Civil Secretariat, Kohima, Nagaland, 797004.
2. The Special Secretary [Home], North Block 1st Floor, Nagaland Civil Secretariat, Kohima, Nagaland, 797004.
3. The Chairman, PIT-NDPS, Advisory Board, C/o – Office of the Special Secretary [Home], North Block, 1st Floor, Nagaland, Civil Secretariat, Kohima, Nagaland, 797004.
4. The Deputy Secretary, [PIT-NDPS], Department of Revenue, Ministry of Finance, Room no. 202, Jeevan Tara Building 5, Parliament Street, New Delhi – 110001.

.....Respondents

Advocates :

Petitioner : Mr. A. Zho, Advocate

Respondent : Mr. Inaholi, Government Advocate

Respondent : Mr. Yangerwati, Central Government Counsel

Date of Hearing : 17.09.2025

Date of Judgment & Order : 25.09.2025

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

JUDGMENT & ORDER

[*M. Choudhury, J.*]

1. This writ petition under Article 226 of the Constitution of India for a writ in the nature of habeas corpus is preferred by the petitioner who is a brother of a detenu, Sri Rockson Poumai, who has been detained in the Central Jail, Dimapur pursuant to an Order dated 09.05.2025 passed by the Special Secretary to the Government of Nagaland, Political Branch, Home Department [the respondent no. 2] in exercise of the powers conferred by sub-section [1] of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 [‘the PIT-NDPS Act’, for short]. Assail is also made to an Order dated 12.08.2025, passed by the Chief Secretary to the Government of Nagaland. By the Order dated 12.08.2025, the Chief Secretary to the Government of Nagaland [the respondent no. 1] on behalf of the State Government had confirmed the Detention Order dated 09.05.2025 and also extended the period of detention for another period of three months w.e.f. 13.08.2025 to 12.11.2025.

2. It is apposite to exposit the relevant and anterior events which occurred leading to the passing of the Order of Detention dated 09.05.2025, at first, and thereafter, the Order of Confirmation dated 12.08.2025.
3. On 25.02.2025, one Sri Vikishe Choppy, an Assistant Sub-Inspector of Police & In-Charge, Anti-Extortion Team [AET], Chumoukedima, Dimapur lodged a First Information Report [FIR] [Suo-Moto] before the Officer In-Charge, Chumoukedima Police Station stating inter-alia that at around 16-00 hours on 25.02.2025, an information was received from the Assistant Commissioner of Police [ACP], Chumoukedima that one suspected drug trafficker was travelling to Dimapur from Manipur via Chumoukedima and drugs would be carried out in a hidden compartment of a vehicle. On receipt of the information, a team proceeded to Patkai Bridge area for intercepting the drug trafficker. On reaching the place, checkings of motor vehicles were conducted and, in the process, the alleged drug trafficker, who was travelling in a Bolero Vehicle [Green colour] bearing registration no. NL-02/C-9921 [‘the subject-vehicle’, for short], was identified. The drug trafficker and the subject-vehicle were brought to Chumoukedima Police Station for search. The informant mentioned that the provisions of Section 41[2], Section 42 and Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [‘the NDPS Act’, for short] were duly followed in the process. The informant stated that the subject-vehicle was thoroughly searched in presence of the Assistant Commissioner of Police [ACP], Chumoukedima and independent witnesses under videography and at around 17-00 hours, six soap cases, containing suspected drugs locally known as sunflower, were found concealed inside the gear liver of the subject-vehicle. Another twenty-four soap cases containing suspected drugs, sunflower were recovered from the backlight compartment of the subject-vehicle. It was stated that the recovered soap cases were seized by preparing a seizure memo in presence of independent witnesses. On examining the apprehended person, he identified himself as Rockson Poumai, Son of Happymoon, resident of Lower Phaibung, Tadubi, Sub-

Division – Senapati Purul in the State of Manipur. The seized suspected drugs were found weighing 315 grams [approx.]. The apprehended person, Rockmoi Poumai and the seized suspected drugs were handed over with the FIR to Chumoukedima Police Station for further necessary action.

4. On receipt of the FIR, the Officer In-Charge, Chumoukedima Police Station registered it as Chumoukedima Police Station Case no. 09 of 2025 under Section 21[c], NDPS Act read with Section 3[5], Bharatiya Nyaya Sanhita [BNS], 2023 on 25.02.2025 and entrusted the investigation of the case to one Imliwapang, an Assistant Sub-Inspector [ASI] of Police attached to the said Police Station.

5. A proposal for preventive detention of Rockson Poumai who had been arraigned and arrested as an accused in Chumoukedima Police Station Case no. 09 of 2025, under the provisions of the PIT-NDPS Act was submitted by the I.O. on 05.03.2025. In the proposal, it was inter-alia mentioned that on 25.02.2025, the proposed detenu was arrested and thirty soap cases containing suspected heroin were seized. It was mentioned that on weighment, the suspected contraband, heroin was found to be weighed 315 grams [approx.]. In the proposal, it was mentioned that the proposed detenu was arrested on 25.02.2025 and was not released on bail by the court. The proposal further mentioned that the statement of the proposed detenu was recorded on 26.02.2025 and he was forwarded to judicial custody on 03.03.2025. At the time of the proposal, the proposed detenu was lodged in the Central Jail, Dimapur. The proposal also mentioned that investigation of the case was in progress. The proposal reported about the proposed detenu's present and permanent address as Village – Lower Phaibung, Post Office & Police Station – Phaibung, District – Senapati, Manipur. The proposal also contained descriptions of the items seized from the proposed detenu. The situation under which the proposed detenu was apprehended found mentioned in the proposal. It was reported that during the course of investigation, it was ascertained from the proposed detenu

that he was supposed to deliver the suspected contraband substance [sunflower] to one Aslam of Bokajan, Assam at Dimapur if he had reached Dimapur. Operation was conducted to trace and arrest Aslam but he could not be traced and arrested. It was further ascertained that Rockson Poumai had brought the soap cases from one lady named Nenem Kuki of Seikul, Manipur on 21.02.2025. The proposal further mentioned that in his statement given by him before the I.O., the proposed detenu stated to have brought sunflower on two occasions earlier from Nenem Kuki for making delivery to Aslam. In the conclusion part of the proposal, the I.O. concluded that the proposed detenu had sold narcotic drugs and psychotropic substances to Aslam multiple times at Dimapur. The conclusion was to the effect that the activities of the proposed detenu had posed a serious threat to the health and welfare of the people and the society as he admitted himself to be a carrier.

6. The proposal submitted by the I.O. for preventive detention was, in turn, forwarded by the Deputy Commissioner of Police, Chumoukedima to the Superintendent of Police [Organized Crime], Nagaland, Kohima vide an Office Letter dated 19.03.2025 giving the gists of the statements of the informant and the arrested accused, that is, the proposed detenu. Mention was made about the financial transactions and the call records of the proposed detenu. The grounds for which preventive detention was proposed were also outlined in the Office Letter dated 19.03.2025.
7. The proposal was thereafter, placed before the Screening Board, PIT-NDPS Act, Nagaland for detention of the detenu. The Screening Board, PIT-NDPS Act, Nagaland, which has been constituted under the PIT-NDPS Act, had purportedly held one of its sittings to look into the proposal submitted in connection with the detenu and to make recommendation. The Screening Board which was headed by the Additional Director General of Police [L&O], Nagaland as its Chairman, after perusal of the proposal and the documents submitted therewith by the I.O., formed an opinion that sufficient materials

were available for placing the proposed detenu, an accused in Chumoukedima Police Station Case no. 09 of 2025, under preventive detention. The Screening Board accordingly, recommended to forward the proposal to the Special Secretary to the Government of Nagaland, Home Department with a further recommendation to place the proposed detenu under preventive detention, as provided for in Section 3[1] of the PIT-NDPS Act.

8. The proposal for preventive detention was forwarded to the Special Secretary to the Government of Nagaland, Home Department on 01.04.2025 by the Additional Director General of Police [L&O], Nagaland & Chairman, Screening Board, PIT-NDPS Act, Nagaland vide an Office Letter of even date giving a summary of the activities of the proposed detenu.
9. On 11.04.2025, the Deputy Secretary to the Government of Nagaland, Political Branch, Home Department wrote a Letter to the Additional Director General of Police [L&O], Nagaland, Kohima requesting the following information : '[i] Has the proposed detenu moved for bail or is there cogent material to show that there is likelihood of the detenu being released on bail? and [ii] Any other relevant information'. In response to the said Letter dated 11.04.2025, the Additional Director General of Police [L&O], Nagaland, Kohima responded in writing on 07.05.2025 enclosing therewith a Reply letter dated 22.04.2025 received from the Deputy Commissioner of Police, Chumoukedima. By the Reply letter dated 22.04.2025, it was informed that the proposed detenu, that is, the accused arrested in connection with Chumoukedima Police Station Case no. 09/2025 moved any application for bail till that date.
10. On the basis of the proposal received from the Additional Director General of Police [L&O], Nagaland & Chairman, Screening Board, PIT-NDPS Act, Nagaland, the Special Secretary to the Government of Nagaland, Political Branch, Home Department [the respondent no. 2] purportedly reached

satisfaction on examination of the proposal and the supporting documents, to form the view that there were sufficient grounds for detention of the proposed detenu. The respondent no. 2 as the Detaining Authority had thereafter, passed the impugned Detention Order dated 09.05.2025 in exercise of powers conferred by sub-section [1] of Section 3[1] of the PIT-NDPS Act to direct that the proposed detenu be detained and kept in the Central Jail, Dimapur for an initial period of three months.

11. Subsequent to issuance of the Detention Order dated 09.05.2025, the Detaining Authority vide an Office Letter dated 09.05.2025 forwarded copies of the Detention Order together with the Grounds of Detention and other supporting documents to the Additional Director General of Police [L&O], Nagaland to serve the same upon the detenu and to obtain a receipt from him certifying that the contents had been explained to him in a language understood by him in presence of at least two independent witnesses. It was directed to ensure that the detenu should receive one set each of the Detention Order and its enclosures. A Report under Section 3[2] of the PIT-NDPS Act was forwarded to the Central Government on 09.05.2025.
12. The copies of the Detention Order, the Grounds of Detention and the supporting documents were served upon the detenu on 13.05.2025. By another Letter dated 09.05.2025 which was also served upon the detenu on 13.05.2025, the Detaining Authority conveyed to the detenu that the detenu had a right to represent against the detention to :- [i] the Detaining Authority, [ii] the State Government, [iii] the Central Government, and [iv] the Advisory Board. The Deputy Superintendent of Police [Crime], PHQ, Nagaland, Kohima reported to the Detaining Authority on 22.05.2025 in writing that the Detention Order was served upon the detenu on 13.05.2025.
13. On 19.05.2025, the detenu submitted an application before the Detaining Authority requesting to supply the Detention Order, the Grounds of Detention and all other relied upon documents/enclosures in Poumai Naga

dialect [vernacular]. In the application, it was mentioned that the detenu having studied up to Class-IV, is an illiterate person. The detenu stated that in order to enable him to make an effective representation, he should be supplied the afore-stated documents in a language understood and known to him, namely, Poumai Naga Dialect or at least in Manipuri or Nagamese.

14. The matter of preventive detention was referred to the Advisory Board vide a Reference dated 27.05.2025 in terms of Section 9[b] of the PIT-NDPS Act. The Advisory Board had its sitting on 28.06.2025. The detenu was produced before the Advisory Board and the Advisory Board heard the detenu in person. The Advisory Board recorded its opinion in a Report submitted on 23.07.2025. In its opinion, the Advisory Board recorded that there was sufficient cause for the detention of the detenu.
15. On the basis of the opinion of the Advisory Board recorded in its Report dated 23.07.2025, the State Government, in exercise of the powers conferred by Section 9[f] of the PIT-NDPS Act, had confirmed the Detention Order dated 09.05.2025 vide an Order dated 12.08.2025. By the Order dated 12.08.2025, the State Government extended the period of detention for a further period of three months w.e.f. 13.08.2025 till 12.11.2025.
16. We have heard Mr. A. Zho, learned counsel for the petitioner/detenu; Ms. Inaholi, learned Government Advocate, Nagaland for the respondent nos. 1, 2 & 3; and Mr. Yanger Wati, learned Central Government Counsel for the respondent no. 4.
17. Mr. Zho, learned counsel for the petitioner/detenu has submitted that during the period from 03.03.2025 to 09.05.2025, the detenu was in judicial custody. When the Detaining Authority had issued the Detention Order on 09.05.2025, the detenu was in judicial custody and the Detaining Authority was well aware of the said fact. After his arrest on 25.02.2025, the detenu had not preferred any application seeking his release on bail in connection with Chumoukedima Police Station Case no. 09 of 2025. In view of

involvement of commercial quantity of contraband, the matter of the detenu's release on bail is subject to the rigours of Section 37 of the NDPS Act. There was failure on the part of the Detaining Authority to apply his mind properly to examine the issue whether there was a real possibility of the detenu being released on bail. He has, thus, contended that there was no compelling reason justifying such preventive detention. Mr. Zho has further contended that after the Detention Order was served upon the detenu, the detenu submitted the application on 19.05.2025 requesting for supplying copies of the Detention Order, the Grounds of Detention and other relied upon materials in a language known to him, Poumai Naga dialect or at least in Manipuri or Nagamese. But, till the date of filing of the writ petition the Detaining Authority did not supply the translated copies of those documents. Such inordinate delay has infringed the right of the petitioner to make an effective representation before the authorities competent to consider for revocation. It has also been contended by him that the Confirmation Order was passed only on 12.08.2025 which was beyond a period of three months from the Detention Order dated 09.05.2025. He has, thus, submitted that for all the afore-stated reasons, the Detention Order and also the Confirmation Order are liable to be set aside and/or quashed as the preventive detention of the petitioner is vitiated and illegal.

18. Ms. Inaholi, learned Government Advocate, Nagaland appearing for the State respondents has submitted that the Detaining Authority at the time of taking the decision in the matter of detaining the detenu preventively, had taken into consideration all the relevant materials. The aspects that the detenu was in judicial custody and on his release from custody he would indulge in similar prejudicial activities were taken into consideration by the Detaining Authority. Ms. Inaholi has further submitted that when the detenu was served with the Detention Order with the supporting documents and communicated with the Grounds of Detention on 13.05.2025, the contents of the documents were read over and explained to him in Nagamese. The request made by the detenu vide his application dated 19.05.2025 was

acceded to subsequently by providing him translated copies of the Detention Order and other relevant documents on 03.08.2025. Therefore, it is not open for the detenu to raise a ground that he was prevented for making any effective representation. The learned State Counsel has further submitted that as the Detention Order dated 09.05.2025 was executed on 13.05.2025, the date of detention is to be taken as 13.05.2025 and as such, the Confirmation Order was passed within a period of three months from 13.05.2025. Therefore, the ground urged on behalf of the detenu that the Confirmation Order dated 12.08.2025 was not passed within a period of three months is misconceived. It has been contended that there is no basis for interference with either the Detention Order or the Confirmation Order as the State respondents had extended all the procedural safeguards.

19. Mr. Yangerwati, learned Central Government Counsel appearing for the respondent no. 4 has submitted that immediately after the Detention Order dated 09.05.2025, the State Government had forwarded a Report to the Central Government in terms of Section 3[2] of the PIT-NDPS Act on 09.05.2025 itself. He has further pointed out that the detenu has not preferred any Representation before the Central Government till date.
20. We have given due consideration to the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. We have also perused the records of the detention proceeding regarding the detenu contained in the file, which has been placed by the learned Government Advocate during the course of hearing. The decisions which the learned counsel for the parties have referred to, are duly perused and their reference would be made in the later part of the Judgment.
21. In order to consider and appreciate the submissions of the learned counsel for the parties on the aspects of legality, validity and sustainability of the Detention Order passed on 09.05.2025, it appears appropriate to refer to the

Detention Order dated 09.05.2025. For ready reference, the Detention Order dated 09.05.2025 is extracted in its entirety hereinunder :-

GOVERNMENT OF NAGALAND
HOME DEPARTMENT POLITICAL BRANCH

ORDER

Dated Kohima, the 9th May, 2025.

NO. CON/PITNDPS/10/2025/126 :: Whereas, the Addl. DGP [L&O], Nagaland has sent a proposal for detention of Mr. Rockson Poumai [40 Yrs]; S/o – Happymoon; Village – Phaibung; P.S. – Phaibung; Present Address – Lower Phaibung, Senapati; Permanent Address – Lower Phaibung, Senapati under PIT-NDPS Act, 1988 along with records under Section 3[1] of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

And whereas, on perusal of records as submitted by the Addl. DGP [L&O], Nagaland, it appears that Mr. Rockson Poumai [40 Yrs]; S/o – Happymoon; Village – Phaibung, Senapati, P.S. – Phaibung; Present Address – Lower Phaibung, Senapati; Permanent Address – Lower Phaibung, Senapati was involved in the following case :-

[1] CMD PS Case no. 009/25 U/S 21[c] NDPS Act r/w 3[5] BNS.

And whereas, the Addl. DGP [L&O], Nagaland has proposed to prevent Mr. Rockson Poumai [40 Yrs]; S/o – Happymoon; Village – Phaibung, Senapati; P.S. – Phaibung; Present Address – Lower Phaibung, Senapati; Permanent Address – Lower Phaibung, Senapati, under PIT-NDPS 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 as his activities in such illegal traffic has a deleterious effect on the national economy.

And whereas, I, XXXXXXXXXX, 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 Mr. Rockson Poumai [40 Yrs]; S/o – Happymoon; Village – Phaibung. Senapati; P.S. Phaibung; Present Address – Lower Phaibung, Senapati; Permanent Address – Lower Phaibung, Senapati, 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. Rockson Poumai [40 Yrs]; S/o – Happymoon; Village – Phaibung, Senapati; P.S. – Phaibung; Present Address – Lower Phaibung, Senapati; Permanent Address – Lower Phaibung, Senapati, be detained and kept in Central Jail, Dimapur for an initial period of three months.

[XXXXXXXXXXXXX] IPS.

Special Secretary to the Govt. of Nagaland.

22. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 [‘the PIT-NDPS Act’] has been enacted providing for preventive detention of persons engaged in any kind of illicit traffic in

narcotic drugs and psychotropic substances and for matters connected therewith as illicit traffic poses a serious threat to the health and welfare of the people and the activities of persons engaged in such illicit traffic have a deleterious effect on the national economy. The definition of 'illicit traffic' has been provided in Section 2[e] of the PIT-NDPS Act. As per Section 2[e], 'illicit traffic' inter-alia means engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances.

23. The power to make orders detaining certain persons under the PIT-NDPS Act has been provided for in sub-section [1] of Section 3. Section 3[1] reads as under :-

3. Power to make orders detaining certain persons :-

[1] The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person [including a foreigner] that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

[2] * * * * *

[3] * * * * *

24. Sub-section [1] of Section 3 has empowered the Central Government or the State Government or any Officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of that section by the Government, or any Officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of that section by that Government, to make an order of detention, if satisfied, with respect to any person [including a foreigner] with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances.
25. It is needless to mention that preventive detention is resorted to for the purpose of preventing future action. The object behind preventive detention is not to punish a person for having done something but to intercept before he does it and to prevent him from doing. Preventive detention under Section 3[1] of the PIT-NDPS Act is a drastic measure whereby a person who has not been tried and convicted under the NDPS Act for his involvement with contraband substances can be detained for a period upto one year from the date of detention with the sole purpose to curb the person's anticipated activities in illicit trafficking of contraband substances. The antecedent of the detenu is a relevant factor though the same itself may not always be the sole critical factor. A detaining authority empowered under Section 3[1] of the PIT-NDPS Act, to reach his satisfaction, can take into consideration the nature of the antecedent activities of the proposed detenu in order to arrive at the conclusion that it is likely that after his release from custody he will again indulge in activities of illicit trafficking and it is necessary to detain him from engaging in such activity.
26. In the present case, the detenu was apprehended in connection with Chumoukedima Police Station Case no. 09 of 2025 for his alleged involvement in illicit trafficking of narcotic substance, suspected to be heroin, on 25.02.2025. In the Arrest Memo, he was shown arrested at 18-30 hours on 25.02.2025 at Chumoukedima Police Station. On 26.02.2025, the detenu

was produced before the Court of learned Judicial Magistrate, First Class, Dimapur in connection with G.R. Case no. 92 of 2025, arising out of Chumoukedima Police Station Case no. 09 of 2025. While producing the detenu before the Court of learned Magistrate, the I.O. prayed for police remand of five days to carry out further investigation and the said prayer was allowed by the learned Court ordering police remand. The learned Court also directed the I.O. to produce the detenu on 03.03.2025. When the Detention Order was passed on 09.05.2025, the detenu was in judicial custody as an accused in connection with Chumoukedima Police Station Case no. 09 of 2025. Thereafter, the Detention Order and the Grounds of Detention along with the supporting materials were served upon the detenu on 13.05.2025 when he was at the Central Jail, Dimapur.

27. We have perused the contents of all the supporting materials along with the proposal for detention placed by the sponsoring/proposing authority before the Detaining Authority and the relevant aspects have already been narrated above briefly. In the proposal for detention, the detenu was mentioned as a farmer by occupation hailing from Village – Lower Phaibung, Post Office & Police Station – Phaibung, District – Senapati, State – Manipur. It was mentioned that the detenu was not released on bail and the detenu did not also apply for bail. On the issue whether the proposed detenu was earlier involved in any previous case, the proposal mentioned 'nil'. Nagamese and Manipuri were mentioned as languages and scripts known to the proposed detenu. On the aspect whether the proposed detenu was earlier involved in activities of illicit trafficking, the I.O. reported in the proposal that the proposed detenu was involved in such activities, as per the statement of the detenu given by the detenu, in custody, before him. It was concluded that if he was not kept in preventive detention, the detenu would likely to continue to indulge in illicit trafficking activities of narcotic drugs and psychotropic substances. It was further mentioned that without putting him in preventive detention he could not be stopped from engaging in illicit trafficking and his preventive detention was also necessary to disrupt the existing network.

28. The supporting materials inter-alia consisted of the FIR [Suo-Moto]; Arrest Memo; Arrest Information to family; Property Search & Seizure Memo; Compliance Reports under Section 41[2] and Section 50 of the NDPS Act; a Statement of Accounts of the detenu's bank account at the State Bank of India, Senapati Bazaar Branch, Manipur; the Remand Order dated 26.02.2025; the Inventory prepared under Section 52A[2] of the NDPS Act with certification of the Magistrate; Forwarding of exhibit for expert opinion; a photograph of the detenu; and a copy of the Letter dated 11.04.2025 together with the Replies received thereto, as referred above.

29. The contents of the FIR [Suo-Moto] have already been adverted to in a preceding paragraph. The Seizure Memo indicates about seizure of 30 [thirty] soap cases, containing suspected heroin and weighing 315 grams [approx.], along with the subject-vehicle and a mobile phone from the accused. The statement of the detenu recorded as an accused of Chumoukedima Police Station Case no. 09 of 2025 was not made part of the documents relied upon either by the Detaining Authority or by the sponsoring/proposing authority. What has distinctly emerged is that other than the incident leading to the registration of the FIR [Suo-Moto] as Chumoukedima Police Station Case no. 09 of 2025, there is no material to show that the detenu was ever arrested in connection with any other criminal case. The detenu has categorically asserted in the writ petition and the learned counsel for the petitioner has specifically canvassed that there is no criminal antecedents of the detenu and he was arrested for the first time in connection with Chumoukedima Police Station Case no. 09 of 2025. It has also been asserted that no criminal case, other than Chumoukedima Police Station Case no. 09 of 2025, was registered against the detenu arraigning him as an accused. It is already noticed that the proposal for detention did not indicate anything regarding criminal antecedents of the detenu prior to the incident occurred on 25.02.2025 leading to his arrest. There is no material in the records of the detention proceeding indicating involvement of

the detenu in any criminal case, other than Chumoukedima Police Station Case no. 09 of 2025.

30. As noted above, the Detaining Authority had served the copies of the Detention Order dated 09.05.2025 and the Grounds of Detention along with the supporting materials to the detenu on 13.05.2025. The detenu was communicated with the following Grounds of Detention :-

Sub: Communication of Grounds of Detention under section 3[1] of the PIT-NDPS 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. You, Mr. Rockson Poumai, are involved in the illicit trafficking of Narcotic Drugs and Psychotropic Substances. In the instant case 30 [thirty] soap cases of suspected sunflower drugs, weighing about 315 grms were seized from your possession. Further, you have also admitted to indulging in trafficking of illegal drugs on several occasion from Manipur to Dimapur and Assam. Thus, confirming to acts under Section 2[e] of PITDPS Act 1988.
2. That, the State of Nagaland/North eastern States lies within the area highly vulnerable to such illicit traffic of Narcotic Drugs and Psychotropic Substances. Also, you have stated that the seized drugs recovered from your possession were bought from Nenem Seikul, Manipur to be delivered to Aslam of Bokajan, Assam. This indicates that you have an inter-district/inter-state linkage spreading across the states of Manipur-Nagaland-Assam.

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. Taking into account the nature of your antecedent activities, it is likely that after your release from custody you will indulge in similar prejudicial activities and it is necessary to detain you in order to prevent you from engaging in such activities.
4. That, your involvement in the illicit trafficking in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and your activities in such illicit traffic have a deleterious effect on the national economy.
5. That, there has been a huge public outcry concerning traffic of illicit drugs 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.
6. That if you are kept at large or bailed, you will be a threat to the peace and security of the state of Nagaland/North Eastern States and there is likelihood of you committing breach of peace and tranquillity thereby endangering the lives of many innocent people, peaceful existence of citizens and may warrant law and order problems.

In light of the above facts and circumstances, I have no hesitation in arriving at the conclusion that you, Rockson Poumai through your above acts engaged yourself in possession and transportation of narcotic drugs, therefore, a fit case for detention under the PIT-NDPS, Act 1988.

31. Clause [5] of Article 22 of the Constitution of India has contained a prescription that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Article 22[5] has cast a dual obligation on the authority making the order of preventive detention, firstly, to communicate to the person detained as soon as may be the grounds on which the order of detention has been made; and secondly, to afford the person detained the earliest opportunity of making a representation against the order of detention.

32. In the Arrest Memo dated 25.02.2025, the arresting authority recorded that the detenu had educational qualification of Class-IV and was conversant with Manipuri/Nagamese language. While forwarding the proposal for detention, the sponsoring/proposing authority mentioned that the languages and scripts known to the detenu were Nagamese and Manipuri. In the application dated 19.05.2025, the detenu requested to supply him the Detention Order, the Grounds of Detention and all other supporting documents in a language known to him, namely, Poumai Naga dialect or at least in Manipuri or Nagamese. In the application, the detenu mentioned that he studied only upto Class-IV. In the writ petition, it has been reiterated that the detenu studied only upto Class-IV and he was a farmer by occupation. It has been further stated that after coming to know about his right to make a Representation, he took assistance to make the application on 19.05.2025 to the Detaining Authority through the Central Jail Authority for providing him translated copies of the Detention Order and all other relied upon documents

in Poumai Naga dialect or in Manipuri or Nagamese so as to enable him to make an effective representation before the authorities to seek revocation of the Detention Order. In Reply to such statements and averments made in the writ petition, the State respondents, in their affidavit-in-opposition, have asserted that while serving the Detention Order and the other relevant documents to the detenu on 13.05.2025, their contents were explained to the detenu in the language he understands, that is, Nagamese. The respondents further mentioned that when the detenu was heard in person on 28.06.2025 by the Advisory Board, the proceedings was carried out in Nagamese as the detenu responded that he being a Naga, was well conversant with Nagamese. The fact of reading over and explaining the contents of the above documents to the detenu in Nagamese language is a clear pointer towards the detenu's familiarity with Nagamese language and non-familiarity with English language. Evidently, at first point of time, the transcripts of the Detention Order, the Grounds of Detention and the supporting documents were provided to the detenu only in English language and not in a language the detenu is conversant with.

33. In the Constitution Bench Judgment in **Harikisan vs. State of Maharashtra and others**, AIR 1962 SC 911, the detention order and the grounds of detention were served on the appellant-detenu in English. The appellant-detenu was found to have studied upto Class-VII in Hindi standard. The appellant-detenu claimed that he was unable to understand the contents and he asked for their Hindi version. The said request was denied on the ground that the documents were served in the official language, English. The Hon'ble Supreme Court has held that the same was not sufficient compliance with the requirements of Article 22[5] of the Constitution of India. It has been held that to a person, who is not conversant with the English language, service of the detention order and the grounds of detention in English, with their oral translation or explanation by the Police Officer serving them does not fulfil the requirements of law. The Hon'ble Court has proceeded to hold that any oral translation or explanation given by the Police Officer serving

those on the detenu would not amount to communicating the grounds. Communication must mean bringing home to the detenu effective knowledge of the facts and circumstances of which the order of detention is based. A detenu who is not conversant with the English language, in order to satisfy the requirements of the Constitution, must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person. The Constitution Bench had proceeded to declare the detention of the appellant-detenu illegal only on the ground that he had been denied of the opportunity of making an effective representation against his detention and the same violated the safeguards available to the detained person under clause [5] of Article 22 of the Constitution.

34. In **Lallubhai Jogibhai Patel vs. Union of India and others**, [1981] 2 SCC 427, the grounds of detention, served on the detenu, were drawn up in English. The detenu did not know English. The Police Officer who served the grounds of detention on the detenu, had explained the grounds of detention in Gujarati to the detenu. In such background, the Hon'ble Supreme Court has held that the same is not sufficient compliance with the mandate of Article 22[5] of the Constitution, which requires that the grounds of detention must be 'communicated' to the detenu. Terming 'communicate' as a strong word, the Hon'ble Supreme Court has observed that 'communicate' means sufficient knowledge of the basic facts constituting the 'grounds' should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the 'grounds' to the detenu is to enable him to make a purposeful and effective representation. If the 'grounds' are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22[5] is infringed.
35. Reverting back to the facts of the case in hand, the detenu after he was served with the Detention Order, the Grounds of Detention and the supporting documents on 13.05.2025 by providing their oral explanation to

him, submitted an application on 19.05.2025 requesting translated copies of those documents. Apart from stating that their contents were orally explained to the detenu, the State respondents, in their affidavit-in-opposition, have taken a stand that the Detaining Authority vide an Office Letter dated 24.07.2025 forwarded the application of the detenu for translation of the Detention Order and the other supporting documents to Poumai Naga dialect and accordingly, the translated copies were provided to the detenu, under his acknowledgment, on 03.08.2025.

36. It needs to iterate, at the cost of repetition, that in order to fulfil the constitutional requirement under Article 22[5] of the Constitution, the Detaining Authority must, as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made in a language which he understands and in a script which he can read, so as to afford the detenu the earliest opportunity of making an effective representation against the order of detention before the authorities who are authorised to revoke the order of detention. The State respondents including the Detaining Authority have failed to explain the reasons for taking measures to provide translated copies only on 24.07.2025 when the detenu made the application for translated copies on 19.05.2025. It is a constitutional imperative in a matter of preventive detention to proceed with such an application of the detenu with utmost promptitude. When the records of the detention proceeding are looked at by us, there is no material found even to suggest that after receipt of the application dated 19.05.2025 of the detenu, any process to provide the translated copies was initiated before 24.07.2025. The writ petition was preferred on 27.06.2025, that is, much after the application dated 19.05.2025. The unexplained and inordinate delay in providing the translated copies of the afore-stated documents, as sought for by the detenu, by the Detaining Authority is clearly a failure to discharge the constitutional obligation to communicate the grounds of detention in terms of Article 22[5] of the Constitution. In view of non-supply of the translated copies, the opportunity of preferring an effective

representation by the detenu stood deferred by such period, which was intolerably long. It is pertinent to note that the detenu had not preferred any Representation against the Detention Order till the filing of the writ petition and the reason can clearly be attributable to the non-supply of the translated copies.

37. It is always an obligation on the Detaining Authority making the Order of Detention to furnish copies of all the supporting documents, as relied on by the Detaining Authority, along with the Order of Detention and the grounds of detention to a person, preventively detained, in a language he understands within the mandatory time-period set forth in Section 3[3] of the PIT-NDPS Act. Its strict compliance can only discharge the obligation cast on the Detaining Authority for enabling the detenu to make an effective representation against the order of detention for compliance of constitutional postulate contained in Article 22[5] of the Constitution. The Detaining Authority cannot discharge such responsibility by merely furnishing the copies of the detention order, the grounds of detention and the other supporting documents in a language other than a language understood by the detenu and such an act will fall short of Constitutional mandate contained in Article 22[5] of the Constitution and Section 3[3] of the PIT-NDPS Act. In the case in hand, non-supply of translated copies of the Detention Order, the Grounds of Detention and the other supporting documents in a language understood by the detenu, who studied up to Class-IV standard, within time has clearly resulted in infraction of the fundamental right of the detenu guaranteed under Article 22 [5] of the Constitution, along with the right under Section 3 [3] of the PIT-NDPS Act.
38. From the materials on record including the supporting materials placed by the sponsoring/proposing authority and relied on by the Detaining Authority, it does not emerge that the detenu was earlier involved or arraigned as an accused or arrested as an accused in connection with any criminal case involving narcotic drugs and psychotropic substances. There is also no

material on record to indicate that the detenu was involved or arraigned as an accused or arrested as an accused in connection with any criminal case involving offences under any other penal law. In other words, there is no material to draw any satisfaction that the detenu had any criminal antecedent, other than his arrest in connection with Chumoukedima Police Station Case no. 09 of 2025. Any previous activity of the detenu in illicit trafficking can be taken into consideration to form an opinion that the detenu is going to engage in such activities also in the future and the same may be a rational proposition in a matter of preventive detention for reaching the subjective satisfaction for the reason that many persons follow a pattern of criminal activity. It is found to be a settled proposition that the detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances. In the present case, such materials are missing.

39. A three-Judge Bench of the Hon'ble Supreme Court in **Nenvath Bujji etc. vs. the State of Telangana and others**, [2024] 3 SCR 1181, in the findings, has inter-alia concluded that the detaining authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction. Wherever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant and remote. If the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated. While making a detention order, the detaining authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention. The Hon'ble Court has proceeded to observe that the satisfaction cannot be inferred by mere statement in the order that it was necessary to prevent the detenu from acting in a prejudicial manner. Rather, the detaining authority will have to justify from the material that existed before him and the process of considering the said material

should be reflected in the order of detention while expressing its satisfaction. Justification for a detention order should exist in the grounds furnished to the detenu to reinforce the order of detention. It cannot be explained by reasons/grounds not furnished to the detenu. The decision of the detaining authority must be natural culmination of the application of mind to the relevant and material facts available on the record. To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first, examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedents reflect that he has been acting in a prejudicial manner and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a prejudicial manner in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.

40. In the case of the detenu in hand, with no criminal antecedents of involvement in any criminal case earlier under any penal law, not to speak of any offence relating to narcotic drugs and psychotropic substances and/or under the NDPS Act, it is difficult to comprehend how the Detaining Authority had arrived at the subjective satisfaction on the aspects, firstly, that the detenu was actively involved in illicit trafficking of drugs in a very organized manner, and if the detenu was not kept under preventive detention, the detenu is likely to continue in illicit trafficking of narcotic drugs and psychotropic substances; and secondly, the detenu's preventive detention would be necessary to disrupt the existing network of illicit trafficking in narcotic drugs and psychotropic substances carried out on a large scale.

41. It is a well settled position that when the Detaining Authority is aware of the fact that the proposed detenu is already in custody, there must be reliable and credible materials before the Detaining Authority on the basis of which it can have reasons to believe that there is real possibility of the proposed detenu's release on bail and on being released on bail, he would probably indulge in activities from which he has been sought to be prevented.

42. In connection with Chumoukedima Police Station Case no. 09 of 2025, quantity of suspected heroin seized allegedly from the possession of the detenu was 315 grams [approx.]. The weight of the suspected heroin is material in the context of the NDPS Act, more particularly, Section 21[c] thereof. As per Section 21[c] of the NDPS Act, whoever, in contravention of any provision of the NDPS Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug is punishable where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakhs rupees. 'Commercial quantity', in relation to narcotic drugs and psychotropic substances, means, as per Section 2[viia], any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. In the relevant notification issued inter-alia in exercise of the powers conferred by Clause [viia] of Section 2 of the NDPS Act, Entry no. 56 is heroin and the notification has stipulated that a quantity of 250 grams or above of heroin falls in commercial quantity.

43. If in a case commercial quantity of heroin is involved, then the consideration for bail is governed by the provisions of Section 37 of the NDPS Act, apart from Section 439, Code of Criminal Procedure [CrPC], 1973/Section 483 of the Bharatiya Nagarik Suraksha Sanhita [BNSS], 2023. Section 37[1][b] has

inter-alia stipulated that no person accused of an offence involving commercial quantity is to be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. Section 36A[4] has prescribed that in respect of persons accused of an offence involving commercial quantity, the maximum period of remand, in the context of Section 167, CrPC/Section 187, BNSS, is one hundred and eighty days. In addition, the proviso to sub-section [4] of Section 36A has further provided for extension of the investigation period upto one year subject to fulfilment of the conditions contained therein and in the event of extension of the period of investigation, the maximum period of remand under Section 167, CrPC/Section 187, BNSS also gets extended accordingly.

44. It is also relevant to mention that under Section 11 of the PIT-NDPS Act, the maximum period of detention is one year from the date of detention if the Order of Detention is confirmed under Clause [f] of Section 9.
45. In the above fact situation obtaining in the case, it is appropriate to refer to the following observations made by the Hon'ble Supreme Court of India in the case of **Sayed Abul Ala vs. Union of India, [2007] 15 SCC 208**, which are found to be of pertinence and relevance, :-

19. An application for bail is required to be filed and considered by the appropriate court in terms of Section 439 of the Code of Criminal Procedure but in cases involving the provisions of the NDPS Act, the detaining authority was required to take into consideration the restrictions imposed on the power of the court to grant bail having regard to the provisions of Section 37 thereof.

* * * * *

The statute, thus, puts limitation on the jurisdiction of the court in the matter of grant of bail. They cannot be ignored by any court of law. Several decisions of this Court and of the High Court operate in the field.

21. Proper application of mind on the part of the detaining authority must, therefore, be borne out from the order of detention. In cases where the detenu is in custody, the detaining authority not only should be aware of the said fact but there should be some material on record to justify that he may be released on bail having regard to the restriction imposed on the power of the court as it may not arrive at the conclusion that there existed reasonable grounds for believing that he was not guilty of such offence and that the detenu could not indulge in similar activity, if set at liberty.

22. The detaining authority furthermore is required to bear in mind that there exists a distinction between the 'likelihood of his moving an application for bail' and 'likelihood to be released on bail'. While arriving at his subjective satisfaction that there is likelihood of the detenu being released on bail, recording of the satisfaction on the part of the detaining authority that merely because an application for grant of bail had been filed, would not be enough.

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24. In *Amritlal vs. Union Govt.* [(2001) 1 SCC 341 : 2001 SCC (Cri) 147] wherein this Court, following the decision in *Binod Singh v. DM* [(1986) 4 SCC 416 : 1986 SCC (Cri) 490] held as under: [SCC p. 344, paras 6-7]

6. The requirement as noticed above in Binod Singh case [(1986) 4 SCC 416 : 1986 SCC (Cri) 490] that there is 'likelihood of the petitioners being released on bail' however is not available in the reasoning as provided by the officer concerned. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis, however, in Binod Singh case [(1986) 4 SCC 416 : 1986 SCC (Cri) 490] that before passing the detention order the authority concerned must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

The said decision is of no assistance to the learned counsel for the respondents.

* * * * *

26. No doubt antecedents of the detenu would be a relevant factor but the same by itself may not be sufficient to press an order of detention inasmuch as the principles which govern the field so as to enable the court to arrive at a decision that the order of detention can be validly passed despite the detenu being in custody are :

[1] if the authority passing the order is aware of the fact that he is actually in custody;

[2] if he had a reason to believe on the basis of reliable material placed before him –

[a] that there is a real possibility of his being released on bail, and

[b] that on being released, he would in all probability indulge in prejudicial activities; and

[3] it is felt essential to detain him to prevent him from so doing.

46. From the materials on record including the communications exchanged between the Detaining Authority and the sponsoring/proposing authority, it can be clearly noticed that the authorities were aware that after the detenu was taken into custody on 25.02.2025, the detenu after initial period of five days of Police remand, was remanded to judicial custody and since 03.03.2025, he was in judicial custody. When the Reply letter was forwarded by the sponsoring/proposing authority on 07.05.2025 along with a Report dated 22.04.2025, it was reported to the Detaining Authority that the detenu did not move any application for his release on bail till that date. In the Grounds of Detention prepared by the Detaining Authority on 08.05.2025, it was a ground informed to the detenu that if he was kept at large or bail, he would be threat to the peace and security and there was likelihood of him committing breach of peace and tranquillity. Information whether the I.O. had submitted the charge-sheet along with a positive forensic report or was expected to complete the investigation within the stipulated period of time without seeking extension or there would be an application for seeking extension to complete the investigation, etc. would have been relevant material for the Detaining Authority to reach the subjective satisfaction. Such relevant materials were not available before the Detaining Authority. The Detaining Authority was silent on the aspect that no further remand of the detenu would be granted by the competent court when he would be produced after the previous remand period vis-à-vis the restrictions put under Section 37 of the NDPS Act for release of a person on bail allegedly involved in an offence involving commercial quantity of contraband and the

provision for permitting extension of the period of investigation. There was evidently no cogent, reliable and credible material placed before him to the effect that the detenu had preferred an application for his release on bail and there was a real possibility of his being released on bail. There was no material in the Grounds of Detention lending support to an apprehension that the detenu would soon be released on bail.

47. There was already absence of any cogent, reliable and credible materials before the Detaining Authority on the basis of which the Detaining Authority could have reasons to believe that there was real possibility of the detenu being released on bail. Thus, in the considered view of this Court, the Detention Order and the Confirmation Order, impugned in the writ petition, is based upon mere ipse dixit of the Detaining Authority and as such, the satisfaction shown to be arrived at is found to be not validly arrived at and therefore, they are found to be unsustainable in law.
48. In so far as the contention advanced regarding issuance of the Confirmation Order after a period of three months from the initial order of detention is concerned, the contentions is found to be misplaced. From the decisions in **Shibapada Mukherjee vs. The State of West Bengal, [1974] 3 SCC 50**, and **Nirmal Kumar Khandelwal vs. Union of India and others, [1978] 2 SCC 508**, relied upon by the learned counsel for the petitioner/detenu, the provisions regarding reference to the Advisory Board, the duty cast upon the Advisory Board to submit its report with its opinion whether or not there is sufficient cause for the detention of the person concerned, and the discretion available to the appropriate Government either to confirm or not to confirm the Detention Order and not to continue the detention despite a report of the Advisory Board with the opinion that there is sufficient cause for the detention are found *pari materia* to the provisions of the PIT-NDPS Act. The proposition which has been laid down therein and which is also applicable to a matter of prevention detention under the PIT-NDPS Act is that the appropriate Government, upon receipt of a report from the Advisory Board

stating that there is sufficient cause for the detention of a person, may confirm the order of detention and continue the detention for such period not exceeding the maximum period specified in Section 11 of the PIT-NDPS Act. The appropriate Government has, therefore, the discretion whether or not to confirm the detention upon receipt of the report of the Advisory Board recording sufficient cause for detention. Article 22[4] of the Constitution has specified the maximum limit of initial detention period to three months and it is embedded therein that the detention for a period longer than three months can only be made on the basis of the report of the Advisory Board. If the appropriate Government is of the view that detention of the person for a period longer than three months is required then the appropriate Government can do so only after receipt of the report of the Advisory Board stating that there is sufficient ground for detention of the person. Confirmation is necessary to continue the detention after the expiry of initial three months. The condition precedent for continuing the detention made beyond the period of three months is the confirmation of the detention order by the appropriate Government. Conversely, non-confirmation of the initial order by the appropriate Government before the expiry of the period of three months' detention shall automatically result in revocation and termination of the legal authority for its continuance. It has been specifically laid down that if the initial order of detention is not confirmed by the appropriate Government within a period of three months from the date of detention, the detention after the expiry of that period ipso facto becomes unauthorised and illegal.

49. The order of detention in the present case was passed on 09.05.2025. Though on that date, that is, on 09.05.2025 the detenu was in judicial custody, the Detention Order, the Grounds of Detention and the supporting materials were served upon the detenu on 13.05.2025. Why it took the Detaining Authority four days to serve when the detenu was already in judicial custody, a fact well known to the Detaining Authority, has not been explained. No exception can, however, be taken in view of Article 22[5] of

the Constitution and Section 3[3] of the PIT-NDPS Act. As the date of detention of the detenu is 13.05.2025 and the Confirmation Order was shown to have been passed on 12.08.2025, the contention advanced on behalf of the detenu that the confirmation was not passed within a period of three months from the date of detention of the detenu is found to be lacking force.

50. Notwithstanding non-acceptance of the contention regarding the issuance of Confirmation Order beyond the initial period of three months, the Detention Order has been found to be vulnerable and unsustainable on two counts, already discussed above. It is a settled proposition that if the initial action is not in consonance with law, all subsequent and consequent proceedings would fall through for the reason that illegality strikes at the root and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally. For the reasons stated above, the Detention Order dated 09.05.2025 has been found unsustainable in law. It is, therefore, set aside. Consequently, the Order dated 12.08.2025 whereby the Detention Order dated 09.05.2025 was confirmed with extension upto 12.11.2025 with effect from 13.08.2025 is also set aside with the Detention Order dated 09.05.2025.
51. The writ petition is allowed to the extent indicated above. As a corollary, it is ordered that the detenu, Sri Rockson Poumai is to be released forth with if he is not required to be detained in any other case.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant