



2025:GAU-NL:486-DB

THE GAUHATI HIGH COURT

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

KOHIMA BENCH**WRIT PETITION (CRL.) NO. 20/2025**

Shri Thangtinlen Changsan, aged about 28 years,
Brother of Ch. Lamkhonei Khongsai, Resident of
Lhungjang Village, Kangpokpi District, Manipur.

.....Petitioner

-Versus-

1. The State of Nagaland, represented by the Chief Secretary, Nagaland, Kohima.
2. The Special Secretary [Home], North Block 1st Floor, Nagaland Civil Secretariat, Nagaland, Kohima.
3. The Superintendent of Jail, District Jail Dimapur, Nagaland.
4. The Union of India, represented by the Joint Secretary [PIT-NDPS], Ministry of Finances, Department of Revenue, 6th Floor, B Wing, Janpath Bhawan, New Delhi – 11000.

.....Respondents

Advocates :

Petitioner : Mr. Zasitsolie, Advocate

Respondent nos. 1 – 3 : Mr. Inaholi, Government Advocate, Nagaland

Respondent no. 4 : Mr. Z.N. Ngullie, Central Government Counsel

Date of Hearing : 19.09.2025

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. The present writ petition under Article 226 of the Constitution of India is preferred by the petitioner, brother of a detenu named Smti. Ch. Lamkhonei Khongsai, who has been detained in the Central Jail, Dimapur pursuant to an Order dated 20.12.2024 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]. Challenges are also made to two Orders, dated 19.03.2025 & dated 20.06.2025, passed by the Chief Secretary to the Government of Nagaland. By the Order dated 19.03.2025, the Chief Secretary to the Government of Nagaland [the respondent no. 1] on behalf of the State Government had confirmed the Detention Order dated 20.12.2024 and also extended the period of detention for another period of three months w.e.f. 21.03.2025 till 20.06.2025. By the subsequent Order dated 20.06.2025, the respondent no. 1 had extended the period of detention for another period of three months w.e.f. 21.06.2025 till 20.09.2025.
2. It is apposite to exposit the relevant events which occurred prior to the passing of the Order of Detention dated 20.12.2024, at first.

3. On 09.08.2024, the Officer In-Charge, Narcotic Police Station, PHQ, Kohima lodged a First Information Report [FIR] [Suo-Moto] stating inter-alia that at around 22-30/23-30 hours on 08.08.2024, one MVCP team of Narcotic Police Station intercepted one vehicle, Alto LXi [Red Colour] bearing registration no. MN-08/A-0740 [‘the subject-vehicle’, for short], which was proceeding towards Kohima from Manipur side. There were six occupants including a minor boy, inside the subject-vehicle. Having suspected that the occupants were acting in contravention of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 [‘the NDPS Act’, for short], the Duty Commander informed the Deputy Superintendent of Police [Narcotics] and the Officer In-Charge, Narcotic Police Station, PHQ. Thereafter, the team checked the subject-vehicle at the place of occurrence in presence of independent witnesses. During checking, 29 [twenty-nine] soap cases containing suspected heroin were recovered. Out of 29 [twenty-nine] soap cases, 21 [twenty-one] soap cases were found concealed inside the spare tyre of the subject-vehicle and six soap cases were found wrapped in a blue ladies’ shawl belonging to Smti. Ch. Lamkhonei Khongsai [the detenu]. The remaining two soap boxes were found inside a blue ladies’ handbag belonging to one R. Ponga. The FIR further mentioned that all the 29 [twenty-nine] soap cases containing suspected heroin were seized by preparing a seizure memo in presence of independent witnesses. Thereafter, the soap cases were weighed, packed and sealed under videography and a seizure panchnama was prepared. The seized soap cases were serially numbered and individually weighed. The total weight of suspected heroin were found to be approximately 359 grams. The occupants along with the subject-vehicle and the seized items were escorted to the Narcotic Police Station, PHQ, Kohima and produced before the Officer In-Charge. Thereafter, five of the six occupants, excluding the minor, were arrested by serving arrest memos and informing their family members about the arrests made.
4. The five occupants so arrested were :- [1] R. Ponga; [2] Ch. Lamkhonei Khongsai [the detenu]; [3] K. Sangi; [4] Kamson Khongsai; and [5]

Haotinlen Haokip. By lodging the FIR [Suo-Moto], a crime case, Narcotic Police Station Case no. 13 of 2024 was registered by the Officer In-Charge, Narcotic Police Station, PHQ, Kohima on 09.08.2024 for the offences under Section 21[c], Section 29 and Section 60 of the NDPS Act and entrusted the investigation of the case to one L. Lisemong, a Sub-Inspector attached to the said Police Station.

5. After registration of Narcotic Police Station Case no. 13 of 2024, the Investigating Officer [I.O.] of the case recorded the statements of the five arrested accused persons, who were the occupants of the subject-vehicle, under Section 180, Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS]. During the course of investigation, the I.O. also collected Call Detail Records [CDRs] of few of the arrested accused persons.
6. A proposal for preventive detention of Smti. Ch. Lamkhonei Khongsai who had been arraigned and arrested as an accused in Narcotic Police Station Case no. 13 of 2024, under the provisions of the PIT-NDPS Act was submitted by the I.O. In the proposal, it was inter-alia mentioned that on 09.08.2024, the proposed detenu was arrested and twenty-nine soap cases containing suspected heroin were seized. It was mentioned that on weighment, the soap cases were found to be 359 grams [approx.]. In the proposal, it was mentioned that the proposed detenu was then in judicial custody at Kohima Jail. The proposal also intimated about the proposed detenu's present and permanent address at Village – Lhungjang, Police Station – Saikul, District – Kangpokpi within the State of Manipur. The proposal contained descriptions of the items seized from the proposed detenu. The statements of the five accused persons of Narcotic Police Station Case no. 13 of 2024, recorded under Section 180 of the BNSS, were made part of the proposal along with CDR Analysis Reports of the proposed detenu and the co-accused, R. Ponga. The situation under which the proposed detenu and the other co-accused persons were apprehended found mention in the proposal.

7. In the proposal, it was mentioned that during the course of investigation, it was revealed that the proposed detenu was to deliver the soap cases to an unknown person at Dimapur and she was to receive a sum of Rs. 87,000/- as commission and profit. It was mentioned that one Smti. Chongneo @ U. Chong S.P. Mna, who was suspected to be the main supplier, had made the arrangement. The proposal further mentioned that based on the statement of the proposed detenu, Smti. Chongneo @ U. Chong S.P. Mna was put under lawful interception and it was revealed that the proposed detenu had acted as a carrier. It was reported that the proposed detenu was actively involved in illicit trafficking in an organized manner and if the proposed detenu was not kept in preventive detention, she was likely to continue in illicit trafficking of narcotic drugs and psychotropic substances. The proposal made a mention of Section 10 of the PIT-NDPS Act to indicate that the areas in Nagaland was an area vulnerable to such illicit trafficking.
8. 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 held one of its sittings on 13.12.2024 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, formed an opinion that sufficient materials were available for placing the proposed detenu, an accused in connection with Narcotic Police Station Case no. 13 of 2024, 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 the preventive detention, as provided under Section 3[1] of the PIT-NDPS Act.
9. The proposal for preventive detention was forwarded to the Special Secretary to the Government of Nagaland, Home Department on 13.12.2024 by the Additional Director General of Police [L&O], Nagaland & Chairman,

Screening Board, PIT-NDPS Act, Nagaland vide an Office Letter of even date. 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 a 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 20.12.2024 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.

10. Subsequent to issuance of the Detention Order dated 20.12.2024, the Detaining Authority vide an Office Letter dated 20.12.2024 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 her certifying that the contents had been explained to her in a language understood by her 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.
11. The copies of the Detention Order, the Grounds of Detention and the supporting documents were served upon the detenu on 21.12.2024. By another communication dated 20.12.2024 which was also served upon the detenu on 21.12.2024, 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 detenu submitted Representations before the afore-stated authorities on 05.02.2025.

12. The Representation of the detenu-representationist, dated 05.02.2025, for revocation of the Detention Order dated 20.12.2024 was rejected by the Detaining Authority [the respondent no. 2] by an Order bearing no. CON/PITNDPS/43/2024/44 immediately on the next day, that is, on 06.02.2025. The Representation submitted by the detenu-representationist before the State Government came to be dismissed by an Order dated 07.02.2025 passed under the hand of the Chief Secretary to the Government of Nagaland. It was on 13.03.2025, the Representation submitted by the detenu-representationist before the Central Government was rejected by a Memorandum of even date of the Department of Revenue, PIT-NDPS Division, Ministry of Finance, Government of India [GoI] after consideration given by the Secretary, Department of Revenue, GoI and the reason for rejection was that there was no merit.
13. The respondent no. 1 issued the Confirmation Order on 19.03.2025 after the Advisory Board recorded its opinion that there was sufficient cause for detention of the detenu under the PIT-NDPS Act and the continued detention of the detenu would be necessary in order to prevent her from further indulging in illicit traffic of contraband. By the Confirmation Order, the detention period was extended for three months w.e.f. 21.03.2025 to 20.06.2025. Subsequently, by the Order dated 20.06.2025, the period of detention was extended for another period of three months w.e.f. 21.06.2025 to 20.09.2025.
14. We have heard Mr. Zasitsolie, learned counsel for the detenu/petitioner; Ms. Inaholi, learned Government Advocate, Nagaland for the respondent nos. 1 – 3; and Mr. Z.N. Ngulie, learned Central Government Counsel [CGC] for the respondent no. 4.
15. Mr. Zasitolie, learned counsel appearing for the detenu/petitioner has submitted that the detenu was apprehended and arrested on 09.08.2024 and since then, she was in custody. It was after more than four months the Detaining Authority passed the Detention Order on 20.12.2024. On

20.12.2024, the detenu was in judicial custody and during the entire custody period, the detenu did not move any application seeking her release on bail. He has, thus, contended that there was no real possibility that the detenu was likely to be released from custody in the near future when the Detaining Authority passed the Detention Order. He has further contended that the Detention Order was passed after near about four and half months from the alleged prejudicial activity of the detenu. By that time, the matter had become stale. He pointing out to the proposal submitted by the I.O. of Narcotic Police Station Case no. 13 of 2024, has contended that the initial proposal was moved on 31.08.2024. But the proposal was considered at different levels showing recalcitrant and indifferent attitude. He has further contended that the detenu was served with the Detention Order, the Grounds of Detention and other supporting materials in English on 21.12.2024. As the detenu was only conversant with Kuki and Manipuri language, as reflected in the proposal itself, the detenu had been deprived of the opportunity of making an effective representation before the authorities who were authorized to revoke the Order of Detention. In support of his submissions, Mr. Zasitolie has referred to a number of decisions, which would be referred to in the subsequent paragraphs of this Judgment, wherever found appropriate and necessary.

16. Ms. Inaholi, learned Government Advocate, Nagaland appearing for the State respondents has submitted that all material and relevant aspects were considered by the Detaining Authority at the time of taking the decision in the matter of preventive detention. The Detaining Authority was aware of the fact that the detenu was in judicial custody at the time of passing the Detention Order and the said fact was duly taken into consideration. The Detaining Authority was satisfied that the detenu if released on bail, would again indulge in activities of illicit trafficking. It has been submitted that after the detenu was served with the Detention Order along with the supporting documents and communicated with the Grounds of Detention on 21.12.2024, the contents of those documents were duly read over and explained to her in Manipuri, a language with which she was conversant

with. Ms. Inaholi has further contended that after the proposal was initiated, the proposal was processed and considered with promptitude. The contention that translated copies were not furnished to the detenu cannot be countenanced as in the Representations submitted by the detenu on 05.02.2025 before all the four authorities, there was no whisper that due to non-supply of the translated copies, the detenu was prejudicially affected in any manner. She has referred to the decisions in **Jayanta Jadav vs. the State of West Bengal, [1974] 4 SCC 503**; and **Prakash Chandra Mehta vs. Commissioner and Secretary, Government of Kerala and others, 1985 [Supp] SCC 144**.

17. Mr. Ngullie, learned Central Government Counsel [CGC] appearing for the respondent no. 4, Union of India has submitted that after the Detention Order dated 20.12.2024, a Report under Section 3[2] of the PIT-NDPS Act was forwarded to the Central Government on 20.12.2024 by the State Government. He has further submitted that on receipt of the Representation dated 05.02.2025, the Central Government considered the same and without delay, the same was given consideration by the Secretary, Department of Revenue, GoI and finding no merit therein, the Representation was rejected. The information regarding rejection was duly intimated vide the Memorandum dated 13.03.2025.
18. In his Reply submissions, Mr. Zasitolie has submitted that in a writ petition seeking issuance of a writ in the nature of habeas corpus when a person is preventively detained, strict rules of pleading are not applicable. He has contended that though the ground regarding delay in consideration of the detention proposal has not been urged specifically in the writ petition, the burden always lies on the Detaining Authority to provide explanation regarding the delay when such an issue is brought to the notice of the Court.
19. We have given our consideration to the submissions of the learned counsel for the parties and have also gone through the materials on record. We have also perused the records of the detention proceeding regarding the detenu,

contained in the file, placed by the learned Government Advocate during the course of hearing.

20. In order to consider and appreciate the submissions of the parties on the aspects of legality, validity and sustainability of the Detention Order passed on 20.12.2024, it appears appropriate to refer to the Detention Order. For ready reference, the Detention Order dated 20.12.2024 is extracted in its entirety hereinunder :-

GOVERNMENT OF NAGALAND
HOME DEPARTMENT : POLITICAL BRANCH
ORDER

Dated Kohima, the 20th December, 2024

NO. CON/PITNDPS/43/2024/265 :: Whereas, the Addl. DGP [L&O], Nagaland has sent a proposal for detention of Mrs. Ch. Lamkhonei Khongsai [35 yrs]; D/o – Palung; Village – Lhungjang, Kangpokpi, Manipur, P.O./P.S. – Saikul; Present Add – Lhungjang Village, Namgailong; Permanent Add – Lhungjang Village, Namgailong, 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 Mrs. Ch. Lamkhonei Khongsai [35 yrs]; D/o – Palung, Village – Lhungjang, Kangpokpi, Manipur, P.O./P.S. Saikul; Present Add – Lhungjang, Village – Namgailong; Permanent Add – Lhungjang Village, Namgailong, was involved in the following case :- [i] Narcotics Police Station Case no. 0013/2024 u/s 21[c]/29/60 NDPS.

And whereas, the Addl. DGP [L&O], Nagaland has proposed to prevent Mrs. Ch. Lamkhonei Khongsai [35 yrs]; D/o- Palung; Village – Lhungjang, Kangpokpi, Manipur, P.O./P.S. Saikul; Present Add – Lhungjang, Village – Namgailong; Permanent Add – Lhungjang Village, Namgailong, under PIT-NDPS 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 as her activities in such illegal traffic has a deleterious effect on the national economy.

And whereas, I, XXXXXXXX, 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. Ch. Lamkhonei Khongsai [35 yrs]; D/o – Palung, Village – Lhungjang, Kangpokpi, Manipur, P.O./P.S. Saikul; Present Add – Lhungjang Village, Namgailong; Permanent Add – Lhungjang Village, Namgailong, 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. Ch. Lamkhonei Khongsai [35 yrs]; D/o – Palung, Village – Lhungjang, Kangpokpi, Manipur, P.O./P.S. Saikul; Present Add – Lhungjang Village, Namgailong; Permanent Add – Lhungjang Village, Namgailong, be detained and kept in District Jail, Dimapur for an initial period of three months.

(XXXXXXXXXXXXX) IPS.

Special Secretary to the Govt. of Nagaland.

21. 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.
22. 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]	*	*	*	*	*

23. 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.
24. 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. The antecedent of the detenu is a relevant factor but the same itself may not always be sufficient. 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. 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.
25. In the case in hand, the detenu was arrested in connection with Narcotic Police Station Case no. 13 of 2024 for her alleged involvement with narcotic

substance, suspected to be heroin, on 09.08.2024. When the Detention Order was passed on 20.12.2024, the detenu was in judicial custody as an accused in connection with Narcotic Police Station Case no. 13 of 2024. Thereafter, the Detention Order and the Grounds of Detention along with the supporting materials were served upon the detenu on 21.12.2024 when she was in judicial custody and at District Jail, Kohima. The issue which, therefore, arises is whether a person who is in jail can be detained under provisions of preventive detention law like the PIT-NDPS Act. The issue has been examined and answered many a times earlier.

26. In **Dharmendra Suganchand Chelawat vs. Union of India and others, [1990] 1 SCC 746**, it has been observed that an order for detention can be validly passed against a person in custody and for that purpose, it is necessary that the grounds of detention must show that [i] the detaining authority was aware of the fact that the detenu is already in detention; and [ii] there are compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression 'compelling reasons' in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that : [a] the detenu is likely to be released from custody in the near future; and [b] taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.
27. It has been expressed by the Hon'ble Supreme Court in the case of **Union of India vs. Paul Manickam and another, [2003] 8 SCC 342**, to the effect that where detention order is passed against a person who is already in jail, the detaining authority should apply its mind and show awareness in the grounds of detention of the chances of release of such person on bail. The detaining authority must be reasonably satisfied, on the basis of cogent material, that there is a likelihood of the detenu's release and in view of

his/her antecedent activities, which are proximate in point of time, he/she must be detained in order to prevent him/her from indulging in such prejudicial activities. It has been held that an order of detention would be valid in such circumstances only if the authority passing the order is aware of the fact that the detenu is actually in custody; the authority has a reason to believe, on the basis of reliable materials, that there is a real possibility of his/her being released on bail, and that upon such release, he/she would, in all probability, indulge in prejudicial activities; and it is felt essential to detain him/her to prevent him/her from so doing.

28. In **Rekha vs. State of Tamilnadu, [2011] 5 SCC 244**, a three-Judge Bench of the Hon'ble Supreme Court has held that there is a possibility of release of a person 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. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing has been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu 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.

29. The Hon'ble Supreme Court in **Huidrom Konungjao Singh vs. State of Manipur and others, [2012] 7 SCC 181**, after considering a number of earlier decisions, has proceeded to observe as under :-

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

- [1] The authority was fully aware of the fact that the detenu was actually in custody.
- [2] There was reliable material before the said authority on the basis of which it could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.
- [3] In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated.

- 30. It has been held as well settled in **the Union of India and another vs. Dimple Happy Dhakad, [2019] 20 SCC 609**, that the order of detention can be validly passed against a person in custody and for that purpose, it is necessary that the grounds of detention must show that the detaining authority was aware of the fact that the detenu was already in custody. The detaining authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities. The satisfaction of the detaining authority that the detenu may be released on bail cannot be ipse dixit of the detaining authority.
- 31. 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.

32. The case in hand is required to be examined in the light of the afore-stated legal propositions. We have perused the contents of the supporting materials

along with the proposal for detention placed by the sponsoring/proposing authority before the Detaining Authority. In the proposal for detention, the detenu was mentioned as a housewife hailing from Village – Lhungjang, Police Station – Saikul, District – Kangpokpi, State – Manipur. It was mentioned that at the time of sending the proposal for detention, the proposed detenu was in judicial custody at District Jail, Kohima and the proposed detenu would be detained in the Central Jail, Dimapur, which is a designated centre for detention under the PIT-NDPS Act. On the issue whether the proposed detenu was earlier involved in illicit trafficking activities, the proposal mentioned 'verified and not available'. Kuki and Manipuri were mentioned as languages and scripts known to the proposed detenu. It was concluded that the proposed detenu was actively involved in illicit trafficking in a very organized manner. It was observed that if she was not kept in preventive detention, she would likely to continue in illicit trafficking activities of narcotic drugs and psychotropic substances. It was further mentioned that without putting her in preventive detention she could not be stopped from engaging in illicit trafficking and her preventive detention was also necessary to disrupt the existing network.

33. The supporting materials consisted of the FIR [Suo-Moto]; the Arrest Memo; a Seizure Memo; the Statements of all the five accused persons arrested in connection with Narcotic Police Station Case no. 13 of 2024; a Medical Report and a photograph of the detenu; and CDR Analysis Reports of the detenu and Smti. R. Ponga, a co-accused.
34. The contents of the FIR [Suo-Moto] had already been adverted to in a preceding paragraph of this order. The Arrest Memo indicates that she was arrested at 06-30 hours on 09.08.2024. The Seizure Memo [time and date not mentioned] indicates about seizure of 29 [twenty-nine] soap cases, containing suspected heroin and weighing 359 grams [approx.] along with seizure of one Aadhar Card, one Voter ID Card, one PAN Card, one Blue Shawl and one Mobile Phone [Realme]. Without going into the aspects of acceptability and probative value of an inculpatory statement and/or an

exculpatory statement given by an accused in custody to the I.O. in a matter of proposed preventive detention, the statements of all the five arrested accused persons are perused, assuming that whatever have been said therein were correct. When from such standpoint the statements are read, the view that can be arrived at is that it was the detenu and the arrested co-accused, R. Ponga, also a housewife by occupation, who appeared to have accepted a plan devised by one Mrs. Chongneo @ U. Chong S.P. Mna to carry the alleged contraband for money. The statement of the arrested co-accused, R. Ponga was also an inculpatory one. The statements of the other three arrested co-accused persons were exculpatory ones.

35. What has distinctly emerged is that other than the incident leading to the registration of the FIR [Suo-Moto] as Narcotic Police Station Case no. 13 of 2024 neither the detenu nor the other co-accused, R. Ponga 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 submitted that there is no criminal antecedents of the detenu and she was arrested for the first time in connection with Narcotic Police Station Case no. 13 of 2024. It has also been asserted that no criminal case, other than Narcotic Police Station Case no. 13 of 2024, was registered against the detenu arraigning her as an accused. It is already noticed that the proposal for detention did not indicate anything regarding criminal antecedent of the detenu prior to the incident occurred on 08.08.2024, which led to her arrest. There is no material in the records of the detention proceeding indicating involvement of the detenu in any other criminal case, other than Narcotic Police Station Case no. 13 of 2024.
36. As noted above, the Detaining Authority had served the copies of the Detention Order dated 20.12.2024 and the Grounds of Detention along with the supporting materials to the detenu on 21.12.2024. The detenu had been communicated with the following Grounds of Detention :-

Subject :- Communication of Grounds of Detention under Section 3[1] of the PIT-NDPS Act, 1980.

Whereas, the undersigned has made a 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. Ch. Lamkhonei Khongsai [35 years] are actively involved in illicit trafficking of drugs in a very organized manner. Without keeping you under preventive detention, you are likely to continue the illicit trafficking of NDPS.
- [2] That your preventive detention is necessary to disrupt the existing NDPS network on a large scale and provide a relief to the State of Nagaland struggling with the menace of drugs.
- [3] That, as per Section 10 of PIT-NDPS Act, the State of Nagaland lies within an area highly vulnerable to such Illicit Traffic of Narcotic Drugs and Psychotropic Substances thus requiring extra caution to prevent the illicit traffic of NDPS.
- [4] 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.

In the light of the above facts and circumstances, I have no hesitation in arriving at the conclusion that you, Mrs. Ch. Lamkhonei Khongsai [35 years] through your above acts has engaged itself in prejudicial activities involving illicit trafficking in narcotic drugs and therefore, is a fit case for detention under the PIT-NDPS Act, 1988.

37. It is noticed that in Ground no. [3], the Detaining Authority has referred to Section 10 of the PIT-NDPS Act to mention that the State of Nagaland lies within an 'area highly vulnerable to such illicit traffic' in narcotic drugs and

psychotropic substances. It is found that in Explanation-1 to Section 10[1], the meaning of the expression, 'area highly vulnerable to such illicit traffic' has been provided. In the meaning so provided, the inland area of one hundred kilo metres in width from the India-Burma border in the State of Nagaland is included. An Explanation to a statutory provision is ordinarily used to explain the meaning and effect of the main provision and it clears any doubt or ambiguity in it. The purpose of an Explanation is to clarify the meaning of the provision and an Explanation is to be read in conjunction with the main Section. Sub-section [1] of Section 10 of the PIT-NDPS Act is with a non-obstante clause. On a plain reading, Section 10[1] speaks of an order of detention made under the PIT-NDPS Act at any time before 31.07.1999. It has provided for detention for a period longer than three months without the opinion of an Advisory Board. The provisions in Section 10[1] has made it limited to exercise such power only by the Central Government or to a specially empowered Officer of the Central Government, for the purposes of the Section. The provisions of Section 10[1] has not provided such power to the State Government or to any Officer of the State Government. Having regard to the provisions contained in Section 10 of the PIT-NDPS Act, this Court is of the view that the Detaining Authority could not have taken shelter under Section 10 of the PIT-NDPS Act to preventively detain the detenu.

38. The supporting materials have indicated that the twenty-nine soap boxes, suspected to have contained heroin, were found to have weighed 359 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 falls in commercial quantity. Section 29 of the NDPS Act has provided for punishment for abatement and criminal conspiracy. Section 60 of the NDPS Act has provided for confiscation of illicit drugs, substances, plants, articles and conveyances.

39. 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/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, the maximum period of remand under Section 167, CrPC/Section 187, BNSS also stands extended accordingly.

40. 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.
41. From the materials on record including the supporting materials placed by the proposing authority and relied on by the Detaining Authority, it does not emerge that the detenu was involved or arraigned as an accused or arrested as an accused in connection with any criminal case involving narcotic drugs and psychotropic substances in more than one case. 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 her arrest in connection with Narcotic Police Station Case no. 13 of 2024. Any previous activity of the detenu in illicit trafficking may 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.
42. 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 is necessary to disrupt the existing network of illicit trafficking in narcotic drugs and psychotropic substances carried out on a large scale.

43. In the Detention Order dated 20.12.2024, the Detaining Authority had simply recorded that it had derived satisfaction on careful examination of the proposal and the other supporting documents and 'found sufficient grounds for detention' with no reflection as regards the process of considering the materials placed before it and the justification for exercising the extraordinary power of preventive detention.
44. There must be reflection in the grounds of detention that the Detaining Authority has reason to believe on the basis of the materials available before him, which must albeit be cogent, reliable and credible, that there is a real possibility of the detenu being released on bail and that on being so released, the detenu would in all probabilities continue to indulge in prejudicial activities of illicit trafficking of contraband substances. 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 material for the Detaining Authority to reach the requisite subjective satisfaction. Such relevant materials were not available before the Detaining Authority. In the grounds communicated, the Detaining Authority had recorded that the detenu was then in judicial custody, meaning thereby, the Detaining Authority had the awareness that the detenu was in custody. The Detaining Authority had merely recorded that on the basis of the materials placed before him, he was satisfied that the detenu was likely to indulge 'similar' prejudicial activities involving illicit trafficking in narcotic drugs and psychotropic substances unless she was prevented from doing so by an appropriate order of preventive detention. There is no indication that the Detaining Authority had reached a satisfaction that there was real and imminent possibility of the detenu being released from the custody. There was no reflection in the Grounds of Detention that the Detaining Authority

was reasonably satisfied that there was real and imminent possibility of the detenu's release.

45. With assertion from the detenu's side that there was no application preferred seeking release of the detenu on bail till the date of the Detention Order and with no material, not to speak of cogent, credible and reliable material, before the Detaining Authority to reach any kind of subjective satisfaction that there was real and imminent possibility of the detenu being released on bail, more particularly, in view of the statutory rigours containing Section 37 of the NDPS Act for release of a person on bail allegedly involved in an offence involving commercial quantity of contraband, it is evidently clear that the Detaining Authority to its satisfaction had not taken vital and relevant materials and factors into consideration and was guided by irrelevant and immaterial considerations.
46. In so far as the contention advanced on behalf of the detenu that there was a long time period between the date of the proposal and the date of passing of the Detention Order is concerned, it is found that it has not been taken as a ground in the writ petition. In a writ petition seeking writ in the nature of habeas corpus, strict rules of pleadings are not applicable. In **Icchu Devi Choraria vs. Union of India, [1980] 4 SCC 531**, the Hon'ble Supreme Court has observed that even when the writ petition did not have the requisite pleadings, any order of preventive detention, if found illegal, is to be declared illegal in view of infringement of the fundamental right of life and personal liberty. It has been held that when large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and makes out a prima facie case in support of those grounds before a rule is issued or to hold that the Detaining Authority should not be liable to do any thing more than just meet the specific grounds of challenge put forward by the petitioner in the writ petition. It has been held that the burden of showing that the detention is in

accordance with the procedure established by law has always been placed on the detaining authority because Article 21 of the Constitution has provided in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law.

47. The personal liberty is the highest form of a person's freedom and it is high in the scale of constitutional values. The constitutional courts have consistently followed and insisted that whenever there is any deprivation of life or personal liberty, the State machinery, more particularly, the authorities responsible for such deprivation of life and personal liberty have to satisfy the courts that they have acted in accordance with the procedure established by law. The laws of preventive detention are strictly construed and therefore, a strict compliance with the procedural safeguards, however technical, is insisted upon by the courts. In **Ichhu Devi Choraria** [supra], the Hon'ble Court has observed that preventive detention is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detenu even though the detention may have been valid till the breach occurred.

48. As the issue regarding delay in consideration of the detention proposal has been raised, the records pertaining to the detention proceeding under reference have been looked into. Having glanced at the proposal forwarded by the I.O., it is noticed that the proposal did not bear the signature of the I.O. and the date of the proposal. However, the List of Documents, which appears to be an appendix to the proposal, bore the signature of the I.O. The I.O. had signed the same on 31.08.2024. The subsequent stages where the proposal was dealt with have already been deliberated above. When there is a long delay between the last prejudicial activity of the proposed detenu and the passing of detention order, the Court can scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a plausible and satisfactory explanation regarding the delay, when called

upon to do so. As in the case in hand, the ground has not been urged there was no occasion for the State respondents and/or the Detaining Authority to provide an explanation of the delay, if the proposal is assumed to be initiated on 31.08.2024 and ultimately, resulting in the Detention Order dated 20.12.2024.

49. The Hon'ble Supreme Court in **Sushanta Kumar Banik vs. State of Tripura and others**, [2022] 13 S.C.R. 484, has observed as an underlying principle that if there is unreasonable delay between the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently, render the detention order bad and invalid because of the snapping of the live and proximate link between the grounds of detention and the purpose of detention. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case. In **Sushanta Kumar Banik** [supra], the proposal to pass an appropriate order of detention under the provisions of the PIT-NDPS Act was submitted by the sponsoring authority on 28.06.2021 and the detention order was passed on 12.11.2021. The Hon'ble Court has found that the circumstances indicated that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude and as there was no explanation as regards the delay, the live and proximate link between the grounds of detention and the purpose of detention had been found to have been snapped.
50. If in the case in hand, the order of initiation of the proposal is taken as 31.08.2024, then it was after more than three and half months the Detention Order was passed on 20.12.2024. Viewed in such context, it raises a doubt on the genuineness of the requisite subjective satisfaction of the Detaining Authority in passing the Detention Order. Be that as it may. As such a ground has not been pleaded in the writ petition and as a result, the

State respondents and/or the Detaining Authority did not get any opportunity to provide explanation for the delay, this Court refrains from making further observation in this regard. But, it has weakened the already vulnerable Detention Order.

51. Summing up, for the findings reached at and the reasons assigned after the discussion made above, this Court is of the clear view that the Detention Order dated 20.12.2024 cannot be upheld. It is settled 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, quashi-judicial and administrative proceedings equally. As the Detention Order dated 20.12.2024 stands set aside, the Confirmation Orders passed subsequently on 19.03.2025 and 20.06.2025 whereby the Detention Order dated 20.12.2024 was confirmed with extension upto 20.06.2025 and 20.09.2025 respectively also stand quashed along with the Detention Order dated 20.12.2024.
52. As the two decisions referred to by the learned Government Advocate, Nagaland are not on the points on which the Detention Order and the other subsequent and consequential Orders are interfered with, the same are not discussed.
53. Consequently, the writ petition is allowed, without costs. As a corollary, it is ordered that the detenu, Smti. Ch. Lamkhonei Khongsai is to be released from detention forthwith if he is not required to be detained in any other case.

Sd/-

JUDGE

Sd/-

JUDGE

Comparing Assistant