

GAHC020006392024

2024:GAU-NL:664-DB



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

Case No. : W.P.(Crl.)/20/2024

SHRI GURMEJ SINGH BATTH
S/O KABAL SINGH BATTH
R/O BELTOLA LALMATI NEAR SBI ATM
PATARKUCHI ROAD
GUWAHATI KAMRUP ASSAM

VERSUS

STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND
NAGALAND KOHIMA

2:THE UNION OF INDIA
REPRESENTED BY THE JOINT SECRETARY(PITNDPS)
THE MINISTRY OF FINANCE
ROOM NO. 202
JEEVAN TGARA BUILDING
2ND FLOOR
PARLIAMENT STREET
NEW DELHI-110001

3:THE SPECIAL SECRETARY
HOME DEPT. (POLITICAL BRANCH)
NORTH BLOCK 1ST FLOOR
NAGALAND CIVIL SECRETARIAT
NAGALAND KOHIMA

4:THE SUPERINTENDENT OF JAIL
CENTRAL JAIN
DIMAPUR JAI

Linked Case : W.P.(Crl.)/22/2024

SMTI. JAIMOTI KURMI
WIFE OF NASEEB SINGH

PRESENTLY RESIDING AT GARUBANDHA
VILLAGE NO.2
LAKHIMPUR
ASSAM
787033

PH. NO. 6000104021

VERSUS

THE STATE OF NAGALAND AND 3 ORS.
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF NAGALAND
NAGALAND
KOHIMA

2:THE SPECIAL SECRETARY
HOME DEPARTMENT
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GOVERNMENT OF NAGALAND
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CENTRAL JAIL
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ROOM NO.202
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2ND FLOOR
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NEW DELHI-110001

For the Petitioner(s)
For the Respondent(s)

: Mr. A. Sophie, Advocate
: Mr. K. Angami, P.P. Nagaland,
: Mr. Z. N. Ngullie, CGC

Date of Hearing : **10.12.2024**
Date of Judgment : **12.12.2024**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (CAV)

(Devashis Baruah, J)

“Born free, as free as the wind blows,
As free as the grass grows,
Born free to follow your heart.
Born free and beauty surrounds you,
The world still astounds you,
Each time you look at a star.
Stay free, with no walls to hide you,
You’re as free as the roving tide,
So there’s no need to hide.
Born free and life is worth living,
It’s only worth living, if you’re born free.”

2. The above is a verse from a song which was introduced in the cinematographic version of Joy Adamson’s memorable classic “Born Free” which aptly describe the concept of personal liberty and individual freedom. The said personal liberty and individual freedom can be curtailed by preventive detention laws, which could be used to consign an individual to the confines of jail without any trial, on the basis of the satisfaction arrived at by the detaining authority on the basis of the material placed before him. The Supreme Court in the case of ***Union of India Vs. Ranu Bhandari reported in (2008) 17 SCC 348***

observed that the Courts which are empowered to issue prerogative writs have, therefore to be extremely cautious in examining the manner in which a Detention Order is passed in respect of an individual so that his right to personal liberty and individual freedom is not arbitrarily taken away from him even temporarily without following the procedure prescribed by law.

3. In that backdrop, let us proceed to adjudicate the present writ petitions.

4. Both the writ petitions herein are taken up together for disposal by this common judgment and order taking into account that both the detenues were arrested together on 11.05.2024 in connection with Narcotic P.S. Case No.07/2024 registered under Sections 18(b)/60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985'). As in both the cases, the detention orders, confirmation orders and the orders passed by the advisory board are separate, we find it pertinent to narrate the facts in both the cases separately which are as herein under:

W.P.(Crl.) No.20/2024

5. The instant writ petition is filed by the cousin brother of the detenu – Shri Karj Singh who was detained in the Central Jail, Dimapur under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'the Act of 1988').

6. The facts involved in the instant writ petition is that an FIR was

lodged by the Narcotic Cell Police Station, PHQ, Kohima on 11.05.2024 stating inter alia that on 11.05.2024 during routine checking of the vehicles between Khuzama and Viswema Village, a vehicle bearing Registration No.BR33AZ-2878 (Maruti Brezza White Colour) wherein there were two occupants namely Shri Karj Singh (the detenu in the present proceedings) and Shri Naseeb Singh [the detenu in W.P.(Crl.) No.22/2024] were stopped and search was conducted. It was alleged that while conducting the said search, in the specially built cavity chamber in the running board of the vehicle, drugs suspected to be opium were found inside the chamber. It was further mentioned that 30 packets suspected to be containing opium i.e. 15 packets in each running board of the vehicle were recovered. The suspected narcotic drugs were taken out, weighed separately and total weight approximately 31 Kilo 213 Grams were seized. On the basis of the said FIR, a case was registered as Narcotic P.S. PHQ Case No.07/2024 under Section 18(b)/60 of the Act of 1985 against both the detenues in the two writ petitions presently being adjudicated upon. It is relevant at this stage to take note of that both the persons i.e. Shri Karj Singh and Shri Naseeb Singh thereupon had been in police custody and judicial custody since then.

7. The record further reveals that the Additional Director General of Police (L & O) and Chairman Screening Board PITNDPS Act, Nagaland issued a communication on 27.06.2024 to the Special Secretary (Home) to the Government of Nagaland, Home Department thereby sending his proposal for detention of Shri Karj Singh under Section 3(1) of the Act of 1988. The grounds of detention as set out in the

proposal dated 27.06.2024 reads as under:

“1. The accused is having active involvement in the illicit trafficking as observed from the CDR analysis. Without keeping him in the preventive detention, the offender shall be moving freely and continuing the illicit traffic of NDPS. Without putting him in preventive detention, he cannot be stopped from engaging in illicit traffic of NDPS.

2. As per section 10 of PITNDPS Act, Nagaland being falling under the explanation of 'area vulnerable to such illicit traffic' and thus require extra caution in ensuring that not a single step is left to prevent the Illicit traffic of NDPS.

3. His detention is desirable to disrupt the network that he is part of and catch other co-accused.”

8. It is further seen that on the basis of the said proposal dated 27.06.2024, the detention order was passed on 04.07.2024 in the case of Shri Karj Singh herein after for the sake of convenience referred to as the **Detention Order No.I**. The said Detention Order No.I was served upon the detenu – Shri Karj Singh on 09.07.2024 along with the grounds of detention in Annexure-A, the information to the detainee about his rights in Annexure-B as well as the other enclosures. The record in the present proceedings shows that the detenu was also informed about the contents of the detention order as well as its enclosures which were explained to him in Hindi language in presence of witnesses. It is also seen from the records that on 04.07.2024 itself, the Detention Order No.I was forwarded to the Central Government by the State Government.

9. At this stage, it is also relevant to take note of the ground of detention which was Annexure-A to the Detention Order No.I. The grounds for the detention are reproduced herein under:

*“1. In the instant case, you **Mr. Karj Singh** are actively involved in the illicit trafficking of illegal drugs as observed from your action of transporting 30 (thirty) packets, weighing 31 kg 215 gms (approx.) of suspected opium. This has been further corroborated by your admission and the statement of your co-accused Naseeb Singh and, CDR analysis. Without keeping you under preventive detention, you will be moving freely and continuing in the illicit trafficking of NDPS.*

2. That, the State of Nagaland lies within an area highly vulnerable to such illicit traffic of Narcotic Drugs and Psychotropic Substances as mentioned under section 10(v)(c) of the PITNDPS Act, 1988.

3. That, your detention is desirable to disrupt the network of illicit drug trafficking that you are part of and apprehend other co-accused(s).

4. That, you are presently under judicial custody. On the basis of the 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.”

10. It is further seen from the records that the detenu – Shri Karj Singh submitted representation through the Jail Authority to (i) Central Government, (ii) Chief Secretary, Government of Nagaland (iii) Chairman, PITNDPS Advisory Board, Nagaland and (iv) Superintendent of Jails on 05.08.2024. The said representations dated 05.08.2024 so

submitted by the detenu – Shri Karj Singh was rejected by the Special Secretary to the Government of Nagaland on 06.08.2024. The representation to the Chief Secretary to the Government of Nagaland was rejected on 07.08.2024. The Central Government had also rejected the said representation on 03.10.2024.

11. It is also seen from the records that the matter pertaining to the detention of the detenu – Shri Karj Singh was placed before the Advisory Board on the 15th day of detention. The Advisory Board thereupon after hearing the detenu in-person vide an order dated 17.09.2024 opined that there were sufficient causes for the detention of Shri Karj Singh – detenu. Thereupon, on 07.10.2024, the Chief Secretary to the Government of Nagaland had passed the Confirmation Order in terms with Section 9(f) of the Act of 1988 and further ordered that the detenu – Shri Karj Singh shall be detained for another period of 3 (three) months w.e.f. 09.10.2024 till 08.01.2025 and within which period, the detention of the detenu – Shri Karj Singh would be reviewed as required under the provisions of the Act of 1988. The said order dated 07.10.2024 is hereinafter referred to as the **Confirmation Order No.I.**

12. The Petitioner who is the cousin brother of the detenu thereupon approached this Court on 15.10.2024 by filing the instant writ petition. This Court vide an order dated 16.10.2024 issued notice making it returnable by 4 (four) weeks. The record reveals that the Respondent Nos. 1, 3 and 4 have filed a joint affidavit-in-opposition through the Special Secretary to the Government of Nagaland, Department of

Home. It is however relevant to mention that in spite of various opportunities being granted to the Central Government to file their affidavit, no affidavit was filed.

W.P.(CrI.) No.22/2024

13. The instant writ petition is filed by the wife of the detenu – Shri Naseeb Singh who was also arrested along with Shri Karj Singh on 11.05.2024 in connection with Narcotic P.S. Case No.007/2024 under Section 18(b)/60 of the Act of 1985. The detenu – Shri Naseeb Singh was initially remanded to police custody from 12.05.2024 to 23.05.2024 and since 23.05.2024 he has been in judicial custody. In the case of the present detenu – Shri Naseeb Singh, the Additional Director General of Police (L & O) & Chairman Screening Board PITNDPS Act, Nagaland had submitted a proposal on 04.07.2024 to the effect that the husband of the Petitioner should be detained under the provisions of the Act of 1988. The grounds of detention so submitted in the proposal reads as under:

“1. The accused is having active involvement in the illicit trafficking as observed from the CDR analysis. Without keeping him in the preventive detention, the offender shall be moving freely and continuing the illicit traffic of NDPS. Without putting him in preventive detention, he cannot be stopped from engaging in illicit traffic of NDPS.

2. As per section 10 of PITNDPS Act, Nagaland being falling under the explanation of 'area vulnerable to such illicit traffic' and thus require extra caution in ensuring that not a single step is left to prevent the Illicit traffic of NDPS.

3. *His detention is desirable to disrupt the network that he is part of, and to arrest other co-accused."*

14. Subsequent thereto, on 12.07.2024, the Detention Order was passed by the Special Secretary to the Government of Nagaland, Department of Home. For the sake of convenience, the Detention Order dated 12.07.2024 is referred to as the **Detention Order No.II**. The records reveal that the said Detention Order No.II was forwarded to the Central Government on 12.07.2024. The detenu was served with the Detention Order No.II; the grounds of detention in Annexure-A as well as the information to the detainee in Annexure-B. In addition to that, the various documents relied upon was also served upon the detenu on 15.07.2024 itself. The grounds of detention as mentioned in Annexure-A to the Detention Order No.II are reproduced herein below:

*"1. In the instant case, you **Mr. Naseeb Singh** are actively involved in the illicit trafficking of illegal drugs as observed from your act of collaborating with co-accused, Shri. Karj Singh in purchasing illegal drugs (opium) from Manipur and selling it at Punjab. This has been further corroborated by your admission and the statement of co-accused in the instant case, Shri Karj Singh and through CDR analysis. Without keeping you under preventive detention, you will be moving freely and continuing in the illicit trafficking of NDPS.*

2. That, the State of Nagaland lies within an area highly vulnerable to such illicit traffic of Narcotic Drugs and Psychotropic Substances as mentioned under section 10(v)(c) of the PITNDPS Act, 1988 thus requiring extra caution in ensuring that not a single step is left to prevent the illicit traffic of illicit drugs.

3. That, your detention is desirable to disrupt the network of

illicit drug trafficking that you are part of and apprehend other co-accused(s).

4. That, you are presently under judicial custody. On the basis of the 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."

15. The detenu thereupon submitted representations on 05.08.2024 through the Jail Authority to the Central Government; the Chief Secretary to the Government Nagaland; the Chairman PITNDPS, Advisory Board; the Superintendent of Central Jail, Dimapur. The representation so submitted to the Special Secretary to the Government of Nagaland, Department of Home was rejected vide an order dated 06.08.2024. The Chief Secretary to the Government Nagaland had also rejected the representation on 07.08.2024. The representation so submitted to the Central Government was rejected on 03.10.2024. It is also seen from the records that on the 8th day from the date of initial detention, the matter was placed before the Advisory Board. The Advisory Board vide a report dated 17.09.2024 after hearing the detenu in-person opined that there were sufficient causes for detention of the detenu – Shri Naseeb Singh. Subsequent thereto, on 08.10.2024, the Confirmation Order was passed by the Chief Secretary to the Government of Nagaland thereby confirming the detention order and further ordering that the detenu – Shri Naseeb Singh be detained for another period of 3 (three) months w.e.f. 15.10.2024 to 14.01.2025 within which period, his detention would be reviewed as required under the provisions of the Act of 1988. The said

order hereinafter referred to as the **Confirmation Order No.II.**

16. The record further reveals that on 22.10.2024, the instant writ proceedings were filed. Vide an order dated 23.10.2024, this Court issued notice.

17. The Respondent No.1, 2 and 3 had filed an affidavit-in-opposition. The Union of India however did not file any affidavit-in-opposition in spite of ample opportunities being provided.

18. In the backdrop of the above facts, let this Court take note of the submissions so made by the learned counsels for the parties.

19. Mr. A. Sophie, the learned counsel appearing on behalf of the Petitioner in both the writ petitions submitted that the detenues i.e. Shri Karj Singh as well as Shri Naseeb Singh were in judicial custody at the time when both the detention orders were passed and continue to remain till date. He submitted that a perusal of the proposal so submitted by the Additional Director General of Police (L & O) & Chairman Screening Board PITNDPS Act, Nagaland as well as the Detention Orders in respect to both the detenues do not in any manner show that the Detaining Authority had duly taken into consideration that the detenues were already in judicial custody since 23.05.2024 and there were cogent materials to support that the detenues were likely to be released on bail. The learned counsel for both the Petitioners therefore submitted that this is a case of complete non-application of mind for which the Detention Orders as well as the Confirmation Orders which have been assailed in both the writ

petitions are required to be interfered with. In that regard, the learned counsel referred to the judgment of the Supreme Court in the case of ***Huidrom Konungjao Singh Vs. State of Manipur and Others*** reported in ***(2012) 7 SCC 181*** as well as the judgment and order dated 07.12.2023 passed by the Co-ordinate Bench of this Court in the case of ***Smti Nancy Vs. State of Nagaland and others [W.P.(Crl.) No.12/2023]***.

20. Per contra, Mr. K. Angami, the learned Public Prosecutor appearing on behalf of the State of Nagaland submitted that the Detention Orders were made in view of the fact that during the course of investigation, it revealed that both the detainees - Shri Karj Singh and Shri Naseeb Singh used to buy opium (drugs) from Manipur drug supplier namely Haokosat Kuki to sell them at Tarn Taran (Punjab). It was also revealed during the investigation that all the finances were invested by Shri Karj Singh and Shri Naseeb Singh drove the vehicle for transporting the drugs and Shri Karj Singh used to paid Shri Naseeb Singh Rs.10,000/- to Rs.50,000/- per trip depending on the quantity of the opium that Shri Karj Singh used to buy and sell. The learned Public Prosecutor further submitted that the investigation also revealed that both the detainees have been in this business for 4/5 years and have transported at least 85 Kilo of opium from Imphal (Manipur) to Tarn Taran (Punjab). In addition to that, the CDR analysis from the year 2023-2024 revealed the frequency of calls between the detainees which was more than 500 calls (3,00,055 minutes). The learned Public Prosecutor further submitted that all the procedural requirements have been duly followed and as such the question of interference with the Detention Orders as well as the Confirmation Orders ought not to be

made by this Court. He even submitted that the Advisory Board had also opined that there existed sufficient causes for detention of both the detenues.

21. Mr. Z. N. Ngullie, the learned CGC submitted that the Union of India having taken into account the materials placed before it along with the representations and having considered the same have rejected the representations so submitted by both the detenues.

22. On the basis of the materials on record and the submissions so made by the parties, the point for determination which arises for consideration before us is as herein under:

Whether in the facts of the instant cases, the detention orders as well as the confirmation orders can be interfered with on the ground of not reflecting the existence of cogent materials that the detenues were likely to be released on bail?

23. The contours of judicial review upon the legality of an order of preventive detention that can be examined by a Constitutional Court was observed by the Supreme Court in the case of ***Ameena Begum Vs. State of Telengana and Others reported in (2023) 9 SCC 587***. Paragraph Nos. 28 and 29 of the said judgment being relevant are quoted herein under:

“28. In the circumstances, of a given case, a constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether:

28.1 The order is based on the requisite satisfaction, albeit

subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

28.2. In reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

28.3. Power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

28.4. The detaining authority has acted independently or under the dictation of another body;

28.5. The detaining authority, by reason of self-created rules of policy or in any other manner not authorised by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

28.6. The satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

28.7. The satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

28.8. The ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject

matter of the inquiry in respect whereof the satisfaction is to be reached;

28.9. The grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

28.10. The timelines, as provided under the law, have been strictly adhered to.

29. Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong."

24. From the above quoted paragraphs, it would be seen that an order of preventive detention is based upon the requisite subjective satisfaction of the Detaining Authority and in the absence of such satisfaction as to the existence of a matter of fact or law upon which validity of exercise of power is predicated would be the *sine qua non* for exercise of the power not being satisfied. It was further observed that in reaching such requisite subjective satisfaction, the detaining authority has to apply its mind to all relevant circumstances and the same cannot be based on material extraneous to the scope and purpose of the statute. It was also observed that the ground on which the order of preventive detention rests should not be vague but should be precise, pertinent and relevant which with sufficient clarity inform the detenu the satisfaction for the detention giving him the opportunity

to make a suitable representation. It was categorically observed that if a Constitutional Court finds that the exercise of the power to be bad and/or to be vitiated applying any of the tests so laid down in subparagraphs of Paragraph No. 28 of the said judgment, it renders the detention order vulnerable and such detention order is required to be interfered with.

25. In the backdrop of the above, let this Court now take up the point for determination which has been formulated herein above.

26. The point for determination which arises in the instant proceedings is as to whether the detenues who were in judicial custody can be detained under the detention laws without cogent materials showing that the detenues were likely to be released on bail. In the case of ***Dharmendra SuganChand Chelawat Vs Union of India reported in (1990) 1 SCC 746***, it was observed that an 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:

- (i) The detaining authority was aware of the fact that the detainee was already in detention; and
- (ii) There were compelling reasons justifying such detention despite the fact that the detainee is already in detention.

The Supreme Court further clarified the expression “compelling reasons” in the context of making an order for detention on a person already in custody to mean that there must be cogent materials before

the Detaining Authority on the basis of which it may satisfy that:

- a) The detenu is likely to be released from custody in 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. We further find it relevant to take note of another judgment of the Supreme Court in the case of ***Amrit Lal Vs Union of India reported in (2001) 1 SCC 341***, wherein an issue arose as regards the legality of the subjective satisfaction of the Detaining Authority for passing an order of detention under the Act of 1980 in view of the fact that the person who was already in jail was going to move a bail application. The Supreme Court observed in the case of ***Amrit Lal (Supra)*** that although in the grounds of detention it has been mentioned that there was a likelihood of the detenu moving an application for bail, for which the detention was necessary but there must be cogent materials before the authority passing the Detaining Order that there was likelihood of the detenu being release on bail.

28. It is also pertinent to take note of the judgment of the Supreme Court in the case of ***Geetha Vs State of Tamil Nadu reported in (2006) 7 SCC 603*** wherein the Supreme Court observed that the Detaining Authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be

released on bail cannot be ipsi dixit of the Detaining Authority.

29. Further to the above, we find it apt to note the judgment in the case of **Huidrom Konungjao Singh (supra)** wherein the Supreme Court culled out the three propositions as to when a person, who is in jail can be detained under the detention laws. Paragraph 9 of the said judgment being relevant is quoted herein below:

“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.”

30. In the said judgment, i.e. in the case of **Huidrom Konungjao Singh (Supra)**, the Supreme Court also observed that merely because somebody else in similar cases had been granted bail, there could be no presumption that in that case also if the detenu applied for bail could have been released on bail. Paragraph 15 of the said judgment being relevant is reproduced hereinbelow:

“15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other coaccused, if any, had been enlarged on bail, resorting to the provisions of the Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eye of the law. ”

31. In the backdrop of the above propositions of law as settled, we would like to revert to the facts already delineated supra. The proposals so submitted to the Detaining Authority by the Additional Director General of Police (L & O) & Chairman Screening Board, PITNDPS Act, in the case of both the detenues do not in any manner state that there were reliable materials on the basis of which one could have reasons to believe that there was a real possibility of the detenues to be released on bail and further on being released they would probably indulge in activities which are prejudicial to public order. The Detention Order No.I as well as the Detention Order No.II dated 04.07.2024 as well as 12.07.2024 respectively passed by the Detaining Authority and the grounds of detention so enclosed as Annexure-A to the said Detention Orders do not in any manner mention that there were materials available with the authorities on the basis of which it had reasons to believe that there was a real possibility of the detenues being released on bail. In the grounds of detention in

both the cases, though the Detaining Authority acknowledges that the detainees are presently under judicial custody but there is no mention of cogent materials on the basis of which the Detaining Authority had reasons to believe that the detainees in both the cases had a likelihood of being released on bail.

32. We further find it relevant to take note of the representation so submitted by both the detainees on 05.08.2024 wherein in clear and categorical terms, it was mentioned that the detainees were in judicial custody and there was no application of mind as to whether there was any semblance of awareness to ascertain as to whether the detainees had any chance of being released on bail. However, while rejecting the representations by the Chief Secretary to the Government of Nagaland, the Special Secretary to the Government of Nagaland, Department of Home as well as by the Central Government, the said aspect in the representation submitted by the detainees have not been taken into consideration. Further to that, it also surprises us to take note of that the representations submitted by the detainees were also placed before the Advisory Board, Government of Nagaland, PITNDPS Act. However, the Advisory Board did not take into consideration the said aspect though the law has been fairly and squarely settled by the Supreme Court more than a decade ago.

33. We have perused the records so produced before us and there is also no material on record to show that the Detaining Authority had any cogent materials that there was a likelihood of the detainees being released on bail.

34. We further find it very relevant to take note of that from a perusal of the FIR dated 11.05.2024, it is seen that the allegations contained therein was that both the detenues were caught red-handed with 31.213 Kgs of suspected opium. In terms with the notification issued by the Central Government, specifying small quantity and commercial quantity, it is seen at Serial No.92 therein that a quantity of 2.5 Kg and above would be considered to be a commercial quantity. We further find it relevant to take note of Section 37(1)(b) of the Act of 1985 which imposes stringent conditions for a person to be released on bail in respect to offences involving commercial quantity.

35. We further take note of Section 36A(4) of the Act of 1985 which stipulates that in respect to persons accused of offence punishable for offences involving commercial quantity, the reference in Sub-Section (2) Section 167 of the Code of Criminal Procedure, 1973 shall be construed as 180 days. Further to that, the proviso to Sub-Section (4) of Section 36A of the Act of 1985 stipulates that if it is not possible to complete the investigation within the said period of 180 days, the Special Court may extend the said period up to 1 (one) year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for detention of the accused beyond the said period of 180 days.

36. We have further taken note of Section 11 of the Act of 1988 wherein the maximum permissible period for which a person may be detained in pursuance of any Detention Order which have been confirmed under Clause (f) of Section 9 of the Act of 1988 shall be 1

(one) year from the date of the detention. Under such circumstances, in absence of any reliable materials before the Detaining Authority on the basis of which the Detaining Authority had reasons to believe that there was a realistic possibility of the detenues herein would be released on bail, it is our opinion that the Detention Orders as well as the Confirmation Orders so assailed in both the writ petitions are based upon mere ipse dixit statements in the grounds of detention and cannot be sustained in law.

37. Accordingly, we dispose of both the writ petitions with the following observations and directions:

(i) The Detention Order No.I as well as the Confirmation Order No.I as regards the detenu **Shri Karj Singh** is set aside and quashed.

(ii) The Detention Order No.II as well as the Confirmation Order No.II insofar as the detenu **Shri Naseeb Singh** are set aside and quashed.

38. The records which were produced by Mr. K. Angami, the learned Public Prosecutor are returned herewith.

JUDGE

JUDGE

Comparing Assistant