2025 INSC 321

**Non-Reportable**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NOs. 4872-4873 OF 2024**

**Mortuza Hussain Choudhary ….. Appellant**

**Versus**

**The State of Nagaland and others ….. Respondents**

**J U D G M E N T**

**SANJAY KUMAR, J**

Ashraf Hussain Choudhary and his wife, Adaliu Chawang, were subjected to preventive detention under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for brevity, 'the Act of 1988'), *vide* separate orders dated 30.05.2024 passed by the Special Secretary, Home Department, Government of Nagaland. Challenge thereto by Mortuza Hussain Choudhary, the brother of Ashraf

Hussain Choudhary, by way of WP (Crl.) Nos. 10 and 11 of 2024 came to naught when the Gauhati High Court dismissed both the writ petitions on 29.08.2024. Hence, these appeals.

2. Preventive detention is a draconian measure whereby a person who has not been tried and convicted under a penal law can be detained and confined for a determinate period of time so as to curtail that person's anticipated criminal activities. This extreme mechanism is, however, sanctioned by Article 22(3)(b) of the Constitution of India. Significantly, Article 22 also provides stringent norms to be adhered to while effecting preventive detention. Further, Article 22 speaks of the Parliament making law prescribing the conditions and modalities relating to preventive detention. The Act of 1988 is one such law which was promulgated by the Parliament authorizing preventive detention so as to curb illicit trafficking of narcotic drugs and psychotropic substances.

Needless to state, as preventive detention deprives a person of his/her individual liberties by detaining him/her for a length of time without being tried and convicted of a criminal offence, the prescribed safeguards must be strictly observed to ensure due compliance with constitutional and statutory norms and requirements.

3. We may briefly note the admitted facts in the cases on hand: Three individuals, viz., Nehkhoi Guite (the driver of the vehicle) and two ladies, Hoinu @ Vahboi and Chinneilhing Haokip @ Neopi, were apprehended by the police on the night of 05.04.2024 in Khuzama village area while travelling in a Mahindra TUV Vehicle. Upon search of the vehicle, 20 soap cases of Heroin were found concealed in the gear lever cover. The seized Heroin weighed 239 grams. Thereupon, *Suo Motu* FIR No. 005/2024 was registered on 06.04.2024 on the file of the Narcotics PS under Sections 22(b) and 60 of the Narcotic Drugs and Psychotropic Substances Act,

1985. Upon interrogation, Chinneilhing Haokip @ Neopi implicated Adaliu Chawang and stated that she had supplied Heroin earlier also to Adaliu Chawang and received money. Ashraf Hussain Choudhary and Adaliu Chawang were arrested at Dimapur on 12.04.2024 and were remanded to custody.

4. While so, the Investigating Officer of the case submitted proposals for the preventive detention of Ashraf Hussain Choudhary and Adaliu Chawang. These proposals were forwarded to the Special Secretary, Home Department, Government of Nagaland, by the Additional Director General of Police (Administration), Nagaland, under letters dated 14.05.2024 and 17.05.2024. Acting thereupon, the Special Secretary, Home Department, Government of Nagaland, issued separate orders dated 30.05.2024, in exercise of power under Section 3(1) of the Act of 1988, directing that Ashraf Hussain Choudhary and Adaliu Chawang be detained and kept in the District Jail, Dimapur, for an

initial period of 3 months. Both the detenus submitted individual representations dated 12.06.2024 seeking revocation of their detention. Therein, both of them asserted that they had been served copies of the detention orders in a language they were not familiar with and that no copy of the detention order was served to them in a language that they understood. They also pointed out that they were already in custody after their arrest on 12.04.2024 and that there was no mention in the orders that their detention was required under the Act of 1988 as they were likely to be released on bail. They contended that the detention orders were passed mechanically and without application of mind, violating their fundamental rights enshrined in Article 21 of the Constitution.

5. However, their representations were rejected by the Special Secretary, Home Department, Government of Nagaland, *vide* separate orders dated 13.06.2024. Thereafter, the Chief Secretary, Government

of Nagaland, affirmed the rejection of their representations by way of separate orders dated 18.06.2024. On 19.06.2024, the representations of the detenus were forwarded to the Joint Secretary, PITNDPS, Government of India. Upon considering the records and affording an opportunity of hearing to the detenus, the Advisory Board, Nagaland, submitted report dated 09.08.2024. Therein, the Board opined that there was sufficient cause for the detention of Ashraf Hussain Choudhary and Adaliu Chawang in connection with Narcotics PS Case No. 005/2024. The Government of India, through its PITNDPS Division, Department of Revenue, Ministry of Finance, rejected the representations of the detenus under Memorandum dated 27.08.2024. The Government of Nagaland then issued confirmation orders dated 02.09.2024, extending the period of detention of both the detenus till 02.12.2024. Their detention was thereafter extended from 03.12.2024 till

02.03.2025 under order dated 30.11.2024 (pertaining to Adaliu Chawang) and order dated 02.12.2024 (pertaining to Ashraf Hussain Choudhary) issued by the Chief Secretary, Government of Nagaland.

6. Notably, Ashraf Hussain Choudhary and Adaliu Chawang were granted statutory bail in Narcotics PS Case No. 005/2024 by the learned Special Judge, NDPS, Kohima, Nagaland, *vide* order dated 28.11.2024, as the prosecution failed to file a charge-sheet within the prescribed time. However, they still remain incarcerated owing to the impugned detention orders.

7. It would be apposite at this stage to take note of the statutory regime of the Act of 1988. Section 3(1) thereof empowers the authorized officers, either of the Central Government or of a State Government, to detain any person with a view to prevent him/her from engaging in illicit traffic in narcotic drugs and psychotropic substances. Section 3(2) requires a State Government

that passes such a detention order to forward a report of the same to the Central Government within ten days. Section 3(3) mandates communication of the grounds on which the detention order has been made to the detenu as soon as may be after the detention, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention. The sub-section records that this requirement is for the purposes of Article 22(5) of the Constitution, which mandates such communication as soon as may be. Section 6 of the Act of 1988 provides that the grounds of detention are severable and an order of detention shall not be deemed to be invalid or inoperative merely because one or some of the grounds is either found to be vague, non-existent, irrelevant or not connected with such persons or is invalid for any other reason. Section 6 specifically records that where a person has been detained pursuant to an

order of detention under Section 3(1), which has been made on two or more grounds, such order shall be deemed to have been made separately on each ground. This indicates that the order of detention must be accompanied by the 'grounds of detention' made by the detaining authority itself. Section 11 of the Act of 1988 speaks of the maximum period of detention and states that the same may be extended up to 2 (two) years from the date of detention.

8. We may now note precedential law on the subject. In ***Kamarunnissa vs. Union of India***[1], the detenus were already in judicial custody at the time the orders of preventive detention were passed against them. This Court affirmed that detention orders could be validly passed against detenus who were in jail, provided the officers passing the orders were alive to the factum of the detenus being in custody and there was material on record to justify the conclusion that they would

[1] (1991) 1 SCC 128

indulge in similar activities, if set at liberty. Reference was made to the earlier decision of this Court in ***Binod Singh vs. District Magistrate, Dhanbad, Bihar***[2]***,*** wherein it was held that there must be cogent material before the officer passing the detention order to infer that the detenu was likely to be released on bail and such an inference must be drawn from the material on record and must not be the *ipse dixit* of the officer passing such order. This Court, therefore, emphasized that before passing the detention order in respect of a person who is in jail, the concerned authority must satisfy himself and such satisfaction must be reached on the basis of cogent material that there is a real possibility of the detenu being released on bail and, further, if released on bail, the material on record must reveal that he/she would indulge in prejudicial activity again, if not detained.

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[2] (1986) 4 SCC 416

9. On similar lines, in ***Rekha vs. State of Tamil Nadu***[3]***,*** a 3-Judge Bench of this Court affirmed that, where a detention order is passed against a person already in jail, there should be a real possibility of the release of that person on bail, that is, he must have moved a bail application which is pending. It was observed that if no bail application is pending it logically followed that there is no likelihood of the person in jail being released on bail. The Bench, however, pointed out that the exception to this Rule would be where a co-accused, whose case stood on the same footing, was granted bail. The Bench cautioned that details in this regard have to be recorded, otherwise the statement would be mere *ipse dixit* and cannot be relied upon. The law laid down in ***Rekha*** (*supra*) was reiterated and followed in ***Huidrom Konungjao Singh vs. State of Manipur and others***[4].

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3 (2011) 5 SCC 244

4 (2012) 7 SCC 181

10. Earlier, in ***Union of India vs. Paul Manickam and another***[5]***,*** this Court observed that, where detention orders are passed against persons who are 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 persons on bail. It was observed that 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 was 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 material, that there is a real possibility of the detenu being released on

[5] (2003) 8 SCC 342

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. This principle was again reiterated and applied in ***Union of India and another vs. Dimple Happy Dhakad***[6].

11. We may now refer to the Constitution Bench judgment in ***Harikisan vs. State of Maharashtra and others***[7] in the context of proper communication of the grounds of detention to the detenu so as to protect his/her right under Article 22(5) of the Constitution of making an effective representation against such detention. In that case, the grounds of detention were in English and the authorities asserted that the same were explained to the detenu in Hindi, a language known to the detenu, and that it would amount to satisfactory compliance. This plea was, however, rejected. The

6 (2019) 20 SCC 609
7 AIR 1962 SC 911

observations of the Bench in this regard read as under:

> "In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the 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 the law. As has been explained by this Court in the case of *State of Bombay* v. *Atma Ram Sridhar Vaidya* [1951 SCC 43 : (1951) SCR 167] clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenue as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenue should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenue should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge

against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenue would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenue effective knowledge of the facts and circumstances on which the Order of Detention is based."

The Constitution Bench went on to affirm that, if the detenu is not conversant with the English language, in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he/she can understand and in a script which he/she can read, if he/she is a literate person.

12. Given the settled legal position, as set out *supra*, we are of the opinion that the orders of detention passed against Ashraf Hussain Choudhary and Adaliu Chawang cannot be sustained. The authorities concerned paid mere lip service to the mandatory requirements and mechanically went through the motions while dealing with the cases of these two individuals. The proposals submitted by the Investigating Officer noted the fact that both the detenus were arrested on 12.04.2024 and that they had not been released on bail. Reference was also made to their involvement in earlier cases. In the case of Adaliu Chawang, the Investigating Officer stated that she was arrested in Meghalaya in connection with FIR dated 21.04.2021 but noted that she was not treated as absconding after being granted bail. In the case of Ashraf Hussain Choudhary, the Investigating Officer stated that he was earlier arrested in connection with a case registered by Dimapur East PS

in the year 2022, but noted that he was also not absconding in relation thereto after securing bail.

13. The Investigating Officer, however, did not state anything about either of the detenus seeking bail in relation to Narcotics PS Case No. 005/24, after being arrested on 12.04.2024. The covering letters dated 14.05.2024 and 17.05.2024 addressed by the Additional Director General of Police to the Special Secretary, Home Department, Government of Nagaland, reiterated the factum of both the detenus having been arrested on 12.04.2024 and their being in judicial custody on that date. He, however, went on to state that, if granted bail, there was a great chance of both of them continuing with illicit trafficking of narcotic drugs and psychotropic substances. There was no basis whatsoever for this *ipse dixit* statement, as it is an admitted fact that neither Ashraf Hussain Choudhary nor Adaliu Chawang had applied for bail at the time the

detention orders were passed against them. As noted earlier, it was only on 28.11.2024 that they were granted default bail owing to the failure of the prosecution to do the needful within the prescribed time. Therefore, the edicts of this Court, referred to *supra*, would squarely apply as there was no material for the detaining authority to have formed an opinion that there was a likelihood of either Ashraf Hussain Choudhary or Adaliu Chawang being released on bail.

14. Further, it is an admitted fact that neither Ashraf Hussain Choudhary nor Adaliu Chawang knew English, the language in the orders of detention and the supporting documents. They specifically raised this issue in their individual representations dated 12.06.2024. The proposals for their detention also recorded that the only languages known to Adaliu Chawang were Nagamese, Manipuri and Hindi, while Ashraf Hussain Choudhary knew Nagamese, Bengali and Hindi. However, the authorities claimed that

the contents of the orders and the grounds of detention were explained to them in Nagamese and that the same would suffice. This argument must necessarily fail in the light of the law enunciated by a Constitution Bench in ***Harikisan*** (*supra*). Such oral communication, even if true, did not amount to adequate communication, in terms of Article 22(5) of the Constitution.

15. We may also note that the proposals for detention of Ashraf Hussain Choudhary and Adaliu Chawang and the documents relating thereto were quite voluminous. The proposal letter dated 14.05.2024 for Ashraf Hussain Choudhary's detention contained not only the proposal of the Investigating Officer but also documents in Annexures A to T, i.e., 20 documents in all. Similarly, the proposal letter dated 17.05.2024 for the detention of Adaliu Chawang enclosed not only the proposal of the Investigating Officer but also documents in Annexures A to H, i.e., 8 documents in total. Expecting these

detenus to remember what was orally explained to them from these compendious documents on 03.06.2024 over a length of time and to recall the same so as to make effective representations on 12.06.2024 would be practically an impossibility.

16. Lastly, the material placed on record reflects that the detaining authority, viz., the Special Secretary, Home Department, Government of Nagaland, did not even make separate grounds of detention but merely acted upon the proposals for detention forwarded to her by the Additional Director General of Police (Administration), Nagaland. The cryptic orders of detention passed by her on 30.05.2024 merely recorded that she was satisfied, on careful examination of such proposals and other supporting documents, that sufficient grounds were made out for the detention of Ashraf Hussain Choudhary and Adaliu Chawang. This is not in keeping with the statutory scheme, inasmuch as Section 6 of

the Act of 1988 specifically refers to the order of detention ‘being made’ on separate grounds. Further, Section 3(1) also records that the authorized officer, be it of the Central Government or of a State Government, must be ‘satisfied’ that the person concerned required to be detained so as to prevent him/her from engaging in illicit trafficking of narcotic drugs and psychotropic substances. Such ‘satisfaction’ of the detaining authority necessarily has to be spelt out after application of mind by way of separate grounds of detention made by the detaining authority itself and cannot be by inference from a casual reference to the material placed before such detaining authority or a bald recital to the effect that the detaining authority was ‘satisfied on examination of the proposals and supporting documents’ that the detention of the individuals concerned was necessary.

17. On the aforestated analysis, we hold that the Gauhati High Court erred in the

application of settled legal norms while testing the validity of the impugned detention orders. The common judgement dated 29.08.2024 passed by the Gauhati High Court dismissing the two writ petitions is accordingly set aside and the appeals are allowed.

In consequence, the detention orders dated 30.05.2024 passed by the Special Secretary, Home Department, Government of Nagaland, confirmed and continued thereafter by way of extension orders, shall stand quashed. The detenus, Ashraf Hussain Choudhary and Adaliu Chawang, shall be set at liberty forthwith, unless their continued incarceration is warranted in connection with any other case.

**……....., J**
**(Sanjay Kumar)**

**……....., J**
**(Augustine George Masih)**

**March 5, 2025**
**New Delhi.**