GAHC020006652026 2026:GAU-NL:537-DB

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

Case No. : W.P.(Crl.)/25/2026

SAIFUL ISLAM (REPRESENTED BY HIS COUSIN BROTHER IMDADUL ISLAM)
S/O ABDUL MAJID, R/O VILLAGE - BIDYAPARA, CHIRANG, P.S. BIDYAPARA, DISTRICT - BONGAIGAON, ASSAM (PRESENTLY DETAINED AT CENTRAL JAIL, DIMAPUR), PRESENT ADDRESS - BEHARBARI, SONKUCHI, NEAR SPRING DALE INTERNATIONAL SCHOOL, P.S.BASISTHA, KAMRUP (METRO), ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE DEPUTY SECRETARY TO THE GOVT. OF INDIA, (PITNDPS), DEPARTMENT OF REVENUE ,MINISTRY OF FINANCE, ROOM NO.202, JEEVAN TARA BUILDING 5, PARLIAMENT STREET, NEW DELHI-110001

2:THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND
HOME DEPARTMENT
POLITICAL BRANCH
KOHIMA
NAGALAND

3:THE SPECIAL SECRETARY
TO THE GOVT OF NAGALAND
HOME DEPARTMENT
POLITICAL BRANCH
KOHIMA
NAGALAND

4:THE DIRECTOR GENERAL OF POLICE
NAGALAND
KOHIMA
NAGALAND

5:THE COMMISSIONER OF POLICE
DIMAPUR
NAGALAND

6:THE ADVISORY BOARD
PITNDPS ACT
1988
C/O OFFICE OF THE SPECIAL SECRETARY (HOME)
NORTH BLOCK
1ST FLOOR
NAGALAND CIVIL SECRETARIAT
KOHIMA
NAGALAND - 79700

Advocate for the Petitioner : MEDO VERO,

Advocate for the Respondent : CGSC,

BEFORE:

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates:

For the Petitioner : N.J. Dutta, Sr. Adv.
For the Respondents : A. Ayemi, Govt. Adv. (R- 2-4)
: Z.N. Ngullie, CGSC (R-1)

Date on which Judgment was reserved : **07.10.2026**
Date of pronouncement of Judgment : **09.10.2026**

Whether the pronouncement is of the operative part of the Judgment? : --
Whether the full Judgment has been pronounced? : Yes

:JUDGMENT & ORDER (CAV):

(Y. Longkumer, J.)

1. The present petition under Article 226 of the Constitution of India has been preferred by the Petitioner, who is the cousin brother of the Detenue, Shri Saiful Islam, praying for quashing and setting aside the impugned order of detention No. CON/PITNDPS/01/2026/20 dated 09.04.2026.

2. Heard learned Senior Counsel for the Petitioner, Mr. N.J. Dutta, assisted by learned counsel, Mr. Medo Vero. Also heard Ms. A. Ayemi, learned Government Advocate for the State Respondent Nos. 2 to 4 and Mr. Z.N. Ngullie, learned CGC for the Respondent No. 1.

3. The facts leading to the filing of the instant petition is that the Detenu was arrested in connection with East P.S. Case No. 015/2026 under Section 21(b) of the NDPS Act on 08.02.2026 and forwarded to judicial custody on 09.02.2026.

4. While the Detenu was still in judicial custody the Special Secretary to the Government of Nagaland, Home Department issued the impugned detention order dated 09.04.2026 in exercise of power under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS, for short).

5. It is the submission of the learned Senior Counsel for the Petitioner that the order of detention was dated 09.04.2026 and the detention order was communicated to the Detenu and received by him on 14.04.2026

when he was still in judicial custody.

6. It is also submitted that the Detenu was advised to make a representation against the order of detention through jail authorities before the Respondents and accordingly, the Detenu filed his representations dated 25.04.2026 to (i) the Special Secretary to the Government of Nagaland, Home Department; (ii) the Chief Secretary to the Government of Nagaland; (iii) the Deputy Secretary (PITNDPS), Department of Revenue, Ministry of Finance, New Delhi; and (iv) the Chairman, PITNDPS Advisory Board, Nagaland. The aforesaid representations were submitted by the Detenu through Speed Post on 27.04.2026.

7. It is the case of the Petitioner that although the Detenu had submitted the representations against the order of detention, no communication in this regard has been received till date except from the Special Secretary to the Government of Nagaland, Home Department, rejecting his representation by order dated 05.05.2026.

8. Thereafter, the Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue, PITNDPS Division vide Memorandum dated 15.06.2026 also rejected the representation of the Detenu on the ground that no merit was found in the representation.

9. It is contended that under Section 9(c) of the PITNDPS Act, the opinion of the Advisory Board is to be rendered within 11 [eleven] weeks from the date of the detention order. But the Detenu was in the dark in the instant case and he had no knowledge whether the Advisory Board

had rendered its opinion within 11 weeks. Subsequently, the Detenu received the confirmation order dated 09.07.2026 from where it can be seen that his detention was extended for another period of 3 [three] months w.e.f. 11.07.2026 to 10.10.2026 on the basis of the opinion of the Advisory Board. But the confirmation order dated 09.07.2026 did not mention as to when the opinion of the Advisory Board was obtained.

10. It is further contended by the learned Senior Counsel for the Petitioner that from the order of confirmation dated 09.07.2026 it appears that the detention of the Detenu was for an initial period of 3 [three] months and the said three months expired on 07.07.2026. However, the Respondent authorities had extended the same only on 09.07.2026 and, therefore, the Detenu ought to have been released on 07.07.2026. It is also stated that the confirmation order dated 09.07.2026 was also served upon the Detenu only on 10.07.2026.

11. Another ground taken by the Petitioner is that the representation of the Detenu dated 25.04.2026 was received by the Respondent No. 1 on 29.04.2026. Thereafter, on 25.05.2026, the State Advisory Board, Nagaland considered the case of the Detenu and gave its opinion that there was sufficient cause for the detention of the Detenu. On 01.06.2026, the State Government forwarded the opinion of the State Advisory Board dated 25.05.2026 to the PITNDPS Division of the Ministry of Finance, Department of Revenue, through email. Thereafter, it was only on 15.06.2026 the Ministry of Finance, Department of Revenue disposed of the representation of the Detenu by rejecting the same. It is the submission of the learned Senior Counsel that the representation of the

Detenu dated 25.04.2026 and received on 29.04.2026 had been kept on hold by the Respondent No. 1 which was against the provisions of law and specifically in violation of the principle laid down by the Supreme Court in the case of ***Ankit Ashok Jalan v. Union of India & Ors.***, reported in **(2020) 16 SCC 127**. On this ground alone the impugned detention order dated 09.04.2026 deserves to be quashed and set aside.

12. Learned Senior Counsel submits that the confirmation order dated 09.07.2026 also needs to be quashed and set aside as the same was not issued before the expiry of 3 [three] months from the date of the detention order. He submits that non-confirmation of the initial detention order by the appropriate government before the expiry of the period of three months detention shall automatically result in revocation or termination of the legal authority for its continuance. He submits that the law is settled that if the initial order of detention is not confirmed by the appropriate government within the period of three months from the date of detention the detention after the expiry of that period *ipso facto* becomes unauthorized and illegal.

13. In view of the above submissions and the authorities relied upon the learned Senior Counsel prays that the instant writ petition may be allowed and the impugned detention order dated 09.04.2026 and the confirmation order dated 09.07.2026 may be quashed and set aside.

14. Resisting the submissions of the learned Senior Counsel for the Petitioner, the learned Government Advocate, Ms. A. Ayemi appearing on behalf of the Respondent Nos. 2 to 4 submits that the instant petition has

been filed on the wrong premise of law. It is submitted that the Detenu had been procuring contraband drugs and the statements of the other co-accused persons in East P.S. Case no. 015/2026 were found to contain incriminating details with regard to the bank transaction statements of the Detenu. Having found sufficient grounds from the records for detention of the Detenu, the impugned detention order dated 09.04.2026 was passed. Learned Government Advocate submits that the opinion of the Advisory Board was submitted to the State Government on 25.05.2026 which was well within the stipulated time period and based on the report of the Advisory Board, the confirmation order dated 09.07.2026 was issued extending the detention period of the Detenu w.e.f. 11.07.2026 to 10.10.2026.

15. It is the categorical statement made by the learned Government Advocate that the detention order dated 09.04.2026 was served on the Detenu only on 11.04.2026. Therefore, 11.04.2026 is to be taken as the actual date of detention of the Detenu. As such, 10.07.2026 will be the date of expiry of the first three months and therefore no provision of law has been violated since the confirmation order was issued on 09.07.2026, i.e., one day before the expiry of the detention period. In respect of this submission, the learned Government Advocate has relied on the judgment and order dated 17.09.2026 passed by a Coordinate Bench of this Court in **W.P.(Crl.)/22/2026** wherein it was held that the period of three months has to be counted from the date of execution of the order and not from the date of passing the order. The Coordinate Bench had arrived at this finding by relying on:-

(i) ***State of Gujarat v. Adam Kasam Bhaya***, reported in **(1981) 4 SCC 216**, at paragraph Nos. 4 and 5; and

(ii) ***Sunil Fulchand Shah v. Union of India & Ors.***, reported in **(2000) 3 SCC 409**, at paragraph No. 9.

Learned Government Advocate submits that the instant petition is, therefore, misconceived and prays that it may be dismissed.

16. The learned CGSC, Mr. Z.N. Ngullie, appearing for Respondent No. 1 has submitted that the Respondent No. 1 has complied with all the mandatory timelines and procedures and that there is no violation of any provision of the PITNDPS.

17. We have given due consideration to the submissions made by the learned counsel for the parties and perused the authorities relied upon as well as the records.

18. The basic constitutional mandate under Article 22(4) of the Constitution is that the detention beyond 3 [three] months requires an advisory board before the expiry of three months, opining that there is sufficient cause for detention. In the present case, the State Government had received the opinion of the Advisory Board on 25.05.2026 and basing on the report of the Advisory Board, the confirmation order dated 09.07.2026 was issued extending the detention period of the Detenu, w.e.f. 11.07.2026 to 10.10.2026. A perusal of the records produced by the learned Government Advocate shows that the detention order dated 09.04.2026 was served on the Detenu on 11.04.2026. In view of the

principle laid down in the case of *Adam Kasam Bhaya (Supra)* and *Sunil Fulchand Shah (Supra)* and relied upon by the Coordinate Bench of this Court in W.P.(Crl.)/22/2026, in judgment dated 17.09.2026, it is now well settled that the period of three months from the date of the detention will be the day on which the order of detention was executed and not the date of passing the order.

19. In the instant case, it is also seen from the records that the first detention order in respect of the Detenu was issued on 09.04.2026. Though at the relevant point of time the Detenu was in judicial custody, yet the order dated 09.04.2026 was served on him on 11.04.2026 by obtaining his signature/thumb impression on the acknowledgement certificate, in the presence of witnesses. The same is clear from the file produced before the Court by Ms. Ayemi, learned Government Advocate.

20. Accordingly, if the period of three months is counted from the aforementioned date, i.e. 11.04.2026, then the period of three months would lapse on 10.07.2026. Therefore, the confirmation order extending the detention of the Detenu was issued on 09.07.2026, which was before the date of expiry of three months, i.e. 10.07.2026. That being so we find that the submission of the learned Senior Counsel is devoid of substance and accordingly, the same is rejected.

21. Further, it appears from the records that the State Respondents had referred the matter of detention to the State Advisory Board on 21.04.2026 and this date is well within the prescribed period of 5 [five] weeks from the date of detention of the Detenu, i.e.,09.04.2026 . Thus,

there is no violation of Section 9 (b) of the PITNDPS Act.

22. Be that as it may, we find merit in the submission of the learned Senior Counsel for the Petitioner that the principle laid down in the case of *Ankit Ashok Jalan (Supra)* has been violated by the Respondent No. 1. For the sake of convenience, the relevant paragraph Nos. 10, 17 and 18 of the said judgment is reproduced here below:

> *"10. The following questions therefore arise:*
>
> *10.1.(i) Whether the detaining authority was justified in deferring the consideration of the representation till the receipt of the opinion of the Central Advisory Board?*
>
> *10.2.(ii) Whether the detaining authority ought to have considered the representation independently and without waiting for the report of the Central Advisory Board?*
>
> *10.3.(iii) If the answer to the second question is yes, whether the time taken by the detaining authority from 27-11-2019 till 14-1-2020 could be characterized as undue and avoidable delay violating the constitutional rights of the Detenus?*
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> ******************
>
> *17. In terms of these principles, the matter of consideration of representation in the context of reference to the Advisory Board, can be put in the following four categories:*
>
> *17.1. If the representation is received well before the reference is made to the Advisory Board and can be considered by the appropriate Government, the representation must be considered with expedition. Thereafter the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the Advisory Board.*
>
> *17.2. If the representation is received just before the reference is made to the Advisory Board and there is not sufficient time to decide the representation, in terms of law laid down in Jayanarayan Sukul (Jayanarayan Sukul v. State of W.B., (1970) 1 SCC 219 1970 SCC (Cri) 92) and Haradhan Saha (Haradhan Saha v. State of W.B., (1975) 3 SCC 198: 1974 SCC (Cri) 816] the representation must be decided first and thereafter the representation and the decision must be sent to*

the Advisory Board. This is premised on the principle that the consideration by the appropriate Government is completely independent and also that there ought not to be any delay in consideration of the representation.

17.3. If the representation is received after the reference is made but before the matter is decided by the Advisory Board, according to the principles laid down in Haradhan Saha (Haradhan Saha v. State of W.B., (1975) 3 SCC 198: 1974 SCC (Cri) 816], the representation must be decided. The decision as well as the representation must thereafter be immediately sent to the Advisory Board.

17.4. If the representation is received after the decision of the Advisory Board, the decisions are clear that in such cases there is no requirement to send the representation to the Advisory Board. The representation in such cases must be considered with expedition.

18. There can be no difficulty with regard to the applicability of the principles in the 1st and the 4th stage of the aforesaid categories. The difficulty may arise as regards the application of principles at the 2nd and the 3rd stage. But that difficulty sufficient clarity in Jayanarayan Sukul (Jayanarayan Sukul v. State of W.B., (1970) 1 SCC 219 : 1970 SCC (Cri) 92) and Haradhan Saha (Haradhan Saha v. State of W.B., (1975) 3 SCC 198: 1974 SCC (Cri) 816) as stated hereinabove. If it is well accepted that the representation must be considered with utmost expedition; and the power of the Government is completely independent of the power of the Advisory Board; and the scope of consideration is also qualitatively different, there is no reason why the consideration by the Government must await the decision by the Advisory Board. None of the aforesaid cases even remotely suggested that the consideration must await till the report was received from the Advisory Board."

23. We are of the view that in this case, the procedure laid down by the law has not been followed by the Respondent No. 1. The Respondent No. 1, in their affidavit-in-opposition, has stated that the Detenu had submitted the representation dated 25.04.2026, which was received by the Respondents on 29.04.2026. It is seen from the affidavit as well as from the records that even though the Respondent No. 1 received the representation of the Detenu on 29.04.2026 which was after the reference was made to the Advisory Board but before the opinion of the Advisory

Board was given, the Respondent No. 1 did not make any efforts to decide the representation of the Detenu. The Supreme Court in the case of *Ankit Ashok Jalan (Supra)* at paragraph No. 17.3 has specifically stated that if the representation is received after the reference is made to the Advisory Board, but before the matter is decided by the Board, the representation must be decided and the decision as well as the representation must be immediately sent to the Advisory Board. However, in the instant case, the Respondent No. 1 waited for the report/opinion of the State Advisory Board and only on 15.06.2026, the representation of the Detenu was rejected. To this extent, we find that there has been a clear violation of the law laid down by the Hon'ble Apex Court in *Ankit Ashok Jalan (Supra)*.

24. In view of the discussions and reasons given above, we allow the writ petition and set aside the impugned detention order dated 09.04.2026 and also the confirmation order dated 09.07.2026. It is also directed that the Detenu be released from detention forthwith, if not in custody in any other case.

25. Registry to return the official records to learned Government Advocate, Ms. A. Ayemi.

JUDGE **JUDGE**

Comparing Assistant

MEININGLUN GLIU GONMEI

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