

(2017) 03 GAU CK 0012
GAUHATI HIGH COURT
Case No: W. P. (Cri.) No. 18 of 2016

Mesuvile

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision: March 7, 2017

Acts Referred:

- National Security Act, 1980 - Section 3(2)

Citation: (2017) CriLJ 2787

Hon'ble Judges: S. Serto, J.

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Serto, J.—This is an application under Article 226 of the Constitution of India filed by the detenu praying for his release from detention under section 3(2) of National Security Act, 1980 which was carried out as per the order No. DCK/CON/NSA/01/2016/16, dated 22/7/2016 of the District Magistrate, Kohima and approved by the State Government, vide order No. CON/NSA/36/2016/260, dated 29/7/2016, issued by the Special Secretary to the Government of Nagaland and also confirmed on the advice of the Advisory Board by the State Government, vide order No. CON/NSA/36/2016/390, dated 29/8/2016, issued by the same Special Secretary to the Government of Nagaland.

2. The facts leading to the detention of the detenu are as follows:- On 15-7-2016, at about 18.30 hrs., the detenu was arrested near BOC Kohima, by the personnel of 9th AR, following information received by them that extortion/tax collection was being carried out by the cadres of NSCN-IM around that area. At the time of his arrest, cash amounting to Rs.2775/-, one Nokia mobile phone (Model No.201) with Aircel sim card, driving licence (No.0120130030028) and one Pan Card (No.BSAPD 2503 E) were seized from his possession. Thereafter, he was taken to the camp of the 9th

AR. On the same day, the AR filed an FIR at Kohima South P.S stating that the detenu during his interrogation has revealed that he is an active member of NSCN-IM Military wing since 2008 and he has been collecting illegal tax on the instruction of his higher ups and at the time of his arrest, he was on his way to collect tax from BOC area Kohima, and on that day he had collected tax from 6 shops by giving receipt for the same. It is also stated in the FIR that the detenu disclosed that he was the body guard of Finance Kilonser of NSCN-IM, and his Army No. is 40943, and his rank is SS Sergeant Major. It was requested in the FIR that a case be registered against the detenu, and he be booked under UAPA, 1967, NSR Act and NSA Act, 1980. Further, it was also requested in the FIR that to facilitate further interrogation, at least 3 days judicial remand in police custody may be taken. Following the FIR, a Case No.0043/206 was registered by the South Police Station.

3. While the detenu was in jail under judicial custody, the District Magistrate, Kohima, after examining the facts and evidence of the case based on police report was satisfied that with a view to prevent the detenu from acting in any manner pre judicial to the security of the State and in the maintenance of public safety and order, it was necessary to detain him under Section 3(2) of the NSA 1980, therefore, passed the order dated 22/7/2016 so that the detenu be detained and kept in Central Jail Dimapur. Thereafter, the detenu was informed of the detention order, the grounds given for the same and his right to make representation to the detaining authority, Central Government and the State Government through the concerned jail authorities. He was also informed that he has a right to claim personal hearing, before the Advisory Board, constituted by the State Government under the Act. On 29-7-2016, the Special Secretary to the Government of Nagaland, issued an order No.CON/NSA/36/2016/273, dated 29/7/2016, wherein the order of detention issued by the District Magistrate, Kohima was confirmed. On the same day, the detenu made a representation to the Central Government through the Secretary, Government of India, Ministry of Home Affairs, and to the State Government through the Chief Secretary, the Special Secretary, Home Department (Political Branch), the Secretary National Security Advisory Board, Director General of Prisons and the District Magistrate, Kohima. The representation submitted to the State Government was rejected by the State Government vide order No. CON/NSA/36/2016/273, dated 8-8-2016 issued by the Special Secretary to the Government of Nagaland. The Advisory Board, considered the detention of the detenu and they were of the opinion that there was sufficient cause for detaining the detenu under the NSA Act, 1980. Accordingly, they advised the State Government. The State Government after receiving the advice and, in exercise of the powers conferred by clause (1) of Section 12 of the NSA Act, 1980 confirmed the detention order of the detenu vide order No. CON/NSA/36/2016, dated 29-8-2016.

4. Aggrieved, the detenu has come to this Court, challenging the detention order, the order of approval and confirmation order on the following grounds:-

(i) that the District Magistrate, Kohima without forming subjective opinion, merely basing on the report of the letter dated 22-7-2016 of the S.P. Kohima had passed the detention order therefore, the same deserves to be set aside and quashed.

(ii) That the approval order and confirmation order were issued by Special Secretary who is not empowered to issue such order under the Rule of business of the Government of Nagaland, therefore, they are illegal and deserves to be set aside and quashed.

5. The above grounds taken by the petitioner are being taken up one after the other as follows:-

In support of his contention raised by the petitioner, the learned counsel representing him submitted that when the detenu was arrested, no incriminating documents were seized from his possession, which would, at least, prima facie, show that he was extorting money or carrying out extortion from the shopkeepers as alleged. The demand note/extortion slip, allegedly handed over by the detenu and purportedly seized from one Giasuddin is not shown in the record. Therefore, the charge against the detenu was concocted and without any basis. At this, Mr. K. Wotsa, learned senior Government Advocate, submitted that the detention under NSA is preventive measure and not criminal trial, therefore, the detaining authority need not go into the details of evidence. The fact that the detenu admitted during interrogation that he was given charge of collecting money by his higher ups in NSCN-IM is sufficient to keep him under detention, in order to prevent him from disturbing peace and tranquility of the people of the State. The learned Government Advocate also further submitted that at the time when the detenu was arrested, there was hue and cry from the public that all those extortion by the underground elements should be stopped. It was in response to the public demand that security personnel had acted and arrested the detenu and, in order to prevent him from carrying out such act which is pre-judicial to the security of the State and maintenance of public order that he was detained. Therefore, there is nothing wrong in the detention order.

6. There is no dispute that when the detenu was arrested, the only articles seized were a sum of Rs.2775/-, one Nokia mobile phone (Model No.201) with Aircel sim card, driving licence (No.0120130030028) and one Pan Card (No.BSAPD 2503 E). No mention of seizure of the demand note/demand slip is made in the seizure list. Though it is mentioned in the letter of Sr. S.P. Kohima that during the course of investigation, the demand/extortion slip purportedly handed over by the accused was seized from one Giasuddin with proper seizure memo, the same has not been filed or shown by the respondents. It is true that detention under NSA is a preventive measure, and there is no requirement for producing or showing evidence from the side of the respondents, however, one must not forget that power under NSA has to be exercised circumspectly taking into consideration the materials available against the prospective detenu since detention under the Act

would mean depriving a person's liberty which is dearly held in the heart of our Constitution. Therefore, the executive, in whose hand lies the responsibility to exercise the powers under the Act must take into consideration all cogent materials, and form subjective satisfaction and only thereafter, pass such order of detention. At the cost of repetition, it may again be stated that since personal liberty of a person has to be curbed in the larger interest of public, without trial it must be made sure that such order of detention is passed only when sufficient materials are available against the detenu, which necessitates his detention under the Act. The concern of the Hon^{ble} Supreme Court on the subject as expressed at paragraph-16 of the case of Union of India v. Paul Manickam and another, reported in (2003) 8 SCC 342 : (AIR 2003 SC 4622) is instructive and relevant. Therefore, the same is given here below:-

" 16. In a case of preventive detention no offence is proved, nor is any charge formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. But at the same time, a person's greatest of human freedoms i.e. personal liberty is deprived, and therefore, the laws of preventive detention is strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justification for the laws of preventive detention. This jurisdiction has been described as a " jurisdiction of suspicion" ?, and the compulsions to preserve the value of freedoms of a democratic society and social order sometimes merit the curtailment of the individual liberty. To lose our country by a scrupulous adherence to the written law, said Thomas Jefferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end to itself and the curtailment of liberty for reasons of the State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters." ?

7. In this case, no material or materials have been produced to show that demand/extortion note, purportedly handed over by the detenu was actually seized from one Giasuddin as stated by the S.P, Kohima. There is also no other material to show prima facie that the detenu is a member of NSCN-IM and, he was involved in extortion of money from the public. Therefore, there is no any reasonable basis in the record on which the District Magistrate could have formed his subjective opinion that the detenu is a threat to peace and tranquility of the people in the State and, as such, his detention is necessary under the NSA. In fact, on bare perusal of the detention order dated 22-7-2016 nothing can be found from there as to how or on what basis the District Magistrate had arrived at the conclusion that the detenu is such a person who could disturb public order or whose acts or activities were

prejudicial to the security of the State. When such material or the very basis for detaining the detenu are not reflected in the detention order the same cannot be upheld, as such, it has to be quashed. The detention order dated 22-7-2016 passed by the District Magistrate, Kohima is given here below:-

" Government of Nagaland

Office of the Deputy Commissioner

Kohima Nagaland

Order

Dated Kohima, the 22nd July, 2016

NO.DCK/CON/NSA/01/2016/16 Whereas, Shri Kevilezo Dzuma SS Sergeant Major Army No.40943 of NSCN (IM) S/o Dieneikholie Dzuma alias Kholie Dzuma; V/o Tseipama; P.O-Piphema; PS Ghaspani; Dist- Dimapur; P/Add- Tsiepama was arrested by Police in connection with Kohima Southy PS Case/No.0043/2016, U/S-384 IPC R/W 7 NSR- 62.

And whereas I Shri Rovilatuo Mor, IAS, District Magistrate Kohima after examination and studying the facts, evidence and police report of the case, I am satisfied that with a view to prevent the above person from acting in any manner prejudicial in maintenance of public safety and order, it is necessary to detain him under Section 3, sub-section (2) of the National Security Act, 1980.

Now, therefore, in exercise of powers conferred by Section 3(3) of the said Act, I, Shri. Rovilatuo Mor, IAS District Magistrate, Kohima Nagaland hereby orders that the above mentioned accused person be detained and kept in Central Jail, Dimapur.

(Rovilatuo Mor) Ias

District Magistrate

Kohima: Nagaland.

NO. DCK/CON/NSA/01/2016/16/

Dated Kohima, the 22nd July, 2016

Copy to:-

1. The Commissioner, Nagaland, Kohima.
2. The Home Commissioner, Nagaland, Kohima.
3. The Superintendent of Police, Kohima, Nagaland.
4. The Superintendent of Jail, Central Jail, Dimapur, for information and necessary action.

5. The Superintendent of Jail, District Jail, Kohima, for information and necessary action.
6. The Chief Judicial Magistrate Kohima for information.
7. The Public Prosecutor Kohima for information.
8. The P.I. Kohima for information and necessary actions.
9. The OC, South PS Kohima for information.
10. Shri. Kevilezo Dzuma, c/o Superintendent of Jail, Kohima.
11. Office copy.

(ROVILATUO MOR) IAS

District Magistrate

Kohima: Nagaland.

8. The second ground taken by the learned counsel for the petitioner is that the approval order approving the detention order dated 29-7-2016 and the confirmation order dated 29-8-2016 were issued by a person not empowered to do so. The learned counsel submitted that it is only the Chief Secretary who is empowered to issue such orders under the Rule of business of the State Government but the two orders were issued by the Special Secretary, Home Department, Government of Nagaland. Therefore, the same are illegal and deserves to be set aside and quashed. The two orders referred to by the learned counsel for the petitioner are given here below;

For ready reference:-

" Government of Nagaland

Home Department : Political Branch

ORDER

Dated : Kohima, the 29th July, 2016

NO.CON/NSA/36/2016 :: Whereas, Shri Kevilezo Dzuma, SS Sgt. Major, NSCN(IM), s/o Dieneikholie Dzuma alias Kholie Dzuma: village Tsiepama; P.O. Piphema; PS Ghaspani; District Dimapur; State Nagaland; P.Add: Tsiepama was arrested by Police in connection with Kohima South P.SC/No.0043/2016 u/S. 348 IPC R/W 7 NSR- 62.

And whereas, the District Magistrate Kohima in exercise of powers conferred by the State Government under sub-section (3) of Section 3 of NSA, 1980 ordered that Shri Kevilezo Dzuma SS Sgt. Major, NSCN(IM), s/o Dieneikholie Dzuma alias Kholie Dzuma be detained under the National Security Act, 1980 with a view to prevent him from acting in any manner prejudicial to the security of the State of Nagaland and

maintenance of public order w.e.f.22-7-2016.

Whereas, the State Government of Nagaland is satisfied with the view taken by the District Magistrate, Kohima to prevent Shri Kevilezo Dzuma, SS Sgt. Major, NSCN(IM), s/o Dieneikholie Dzuma alias Kholie Dzuma; Village Tsiepama; P.O. Piphema; PS Ghaspani; District Dimapur; State Nagaland; P/Addr: Tsiepama from acting in any manner prejudicial to the security of the State of Nagaland and maintenance of public order, it has approved the detention order of the District Magistrate, Kohima to detain Shri Kevilezo Dzuma, SS Sgt Major, NSCN(IM) in Central Jail, Dimapur.

Now, therefore in exercise of powers conferred by Section 3(2) of the said Act, the State Government of Nagaland hereby orders that Shri Kevilezo Dzuma, SS Sgt. Major, NSCN(IM) be detained and kept in Central Jail, Dimapur for a period of 1(one) year w.e.f.22-7-2016 subject to confirmation by the NSA Advisory Board.

By order and in the name of the Governor of Nagaland.

Sd/- Pankaj Kumar

Chief Secretary the Government of Nagaland.

NO.CON/NSA/36/2016/260

Dated : Kohima, the 29th July, 2016

Copy to:-

1. The Secretary, Ministry of Home affairs, Govt. of India, C/O Deputy Secretary (Security), Security Division, 9th Floor, " C- Wing, Lok Nayak Bhavan, Khan Market, New Delhi.
2. The Principal Secretary & Commissioner, Nagaland, Kohima.
3. The Director General of Police, Nagaland, Kohima.
4. The Director General of Prison, Nagaland, Kohima.
5. The Inspector General of Police (INT), Nagaland, Kohima.
6. The Inspector General of Police (Crime), Nagaland, Kohima.
7. The District Magistrate, Kohima, Nagaland.
8. The Superintendent of Police, Kohima, Nagaland.
9. The Sr. Superintendent of Jail, Central Jail, Dimapur, Nagaland.
10. Shri. Kevilezo Dzuma, SS Sgt. Major, NSCN(IM), c/o Sr. Superintendent of Jail, Central Jail, Dimapur.
11. Office copy.

(L. SINGSIT)

Special Secretary to the Govt. of Nagaland" ?

" GOVERNMENT OF NAGALAND

Home Department :: Political Branch

Confirmation Order

Dated : Kohima, the 29th August, 2016

NO.CON/NSA/36/2016::

Whereas, Shri Kevilezo Dzuma SS Sergeant Major Army No.40943 of NSCN (IM) S/o Dieneikholie Dzuma alias Kholie Dzuma; V/o Tsiepama; P.O-Piphema; PS Ghaspani; Dist- Dimapur; State ; Nagaland; P/Add- Tsiepama was detained under the National Security Act, 1980 by the District Magistrate, Kohima vide order No. DCK/CON/NSA/01/2016/16/ dated 22-7-2016 and the same has been approved by the State Government vide order No. CON/NSA/36/2016/260 dated 29-7-2016 issued under the National Security Act, 1980.

Whereas the detention of the said Kevilezo Dzuma, SS Sgt. Major, NSCN (IM) was referred to the NSA Advisory Board constituted by the Government of Nagaland under Section 9 of the National Security Act, 1980.

And whereas, the Advisory Board is of the opinion that there is sufficient cause for detention of the detenu under the National Security Act, 1980 and that the continued detention of the detenue Shri Kevilezo Dzuma, SS, Sgt. Major, NSCN (IM) will be necessary in order to prevent him from further indulging in activities highly prejudicial to the security of the State of Nagaland and maintenance of public order warranting his detention under the preventive law.

And whereas, the State Government considered it necessary that the detention of the said Shri Kevilezo Dzuma, SS Sgt. Major, NSCN(IM) be continued for a period upto 21-7-2017.

Now, therefore, the State Government in exercise of powers conferred by sub-section (1) of Section 12 of the National Security Act, 1980, hereby confirm the detention order issued in respect of the said Shri Kevilezo Dzuma, SS, Sgt. Major, NSCN (IM) and further order that he shall be detained for a period upto 21-7-2017.

Sd/- Pankaj Kumar

Chief Secretary to the Govt. of Nagaland." ?

NO.CON/NSA/36/2016/309

Dated : Kohima, the 29th August, 2016

Copy to:-

1. The Secretary, Ministry of Home Affairs, Govt. of India, C/O Deputy Secretary (Security), Security Division, 9th Floor, " C- Wing, Lok Nayak Bhavan, Khan Market, New Delhi. A copy of the NSA Advisory Board report is enclosed herewith.
2. The Director, Ministry of Home Affairs, Govt. of India, NDCC II Building, New Delhi. A copy of the NSA Advisory Board report is enclosed herewith.
3. The Principal Secretary & Commissioner, Nagaland, Kohima.
4. The Director General of Police, Nagaland, Kohima.
5. The Director General of Prison, Nagaland, Kohima.
6. The Inspector General of Police (INT), Nagaland, Kohima.
7. The Inspector General of Police (Crime), Nagaland, Kohima.
8. The District Magistrate, Kohima, Nagaland.
9. The Superintendent of Police, Kohima, Nagaland.
10. The Sr. Superintendent of Jail, Central Jail, Dimapur, Nagaland.
11. Shri. Kevilezo Dzuma, SS Sgt. Major, NSCN(IM), c/o Sr. Superintendent of Jail, Central Jail, Dimapur.
12. Office copy.

(L. SINGSIT)

Special Secretary to the Govt. of Nagaland" ?

9. It is submitted by Mr. K. Wotsa, learned senior Government Advocate who appears on behalf of the State respondents that the two orders were signed by the Chief Secretary himself in the original but they were only issued by the Special Secretary, Home, therefore, there is no irregularity or illegality in them. On cursory perusal of the two orders one can see the alphabets Sd/- given near the name of the Chief Secretary which in common practise of the Government signifies that the orders have been signed by the Chief Secretary in the original copy but for the copies to be circulated to the persons whose designations are given below were issued by the Special Secretary, Home Department. As such, I agree with the learned Government Advocate that there is no irregularity or illegality in the two orders on that count or reason. The only question is, those orders were issued based on the detention order issued by the District Magistrate, which I have already stated cannot be upheld, therefore, deserved to be quashed. Placed in such circumstances, the two orders i.e., the approval order dated 29-7-2016 and the confirmation order dated 29-8-2016 given above naturally has to go with the detention order issued by the District Magistrate.

10. One principle of law which has not been agitated by the parties but which cannot be ignored is the principle of law enunciated by the Hon"ble Supreme Court in the case of Rameshwar Shaw v. District Magistrate, Burdwan (AIR 1964 SC 334) which has been followed in the case of N. Meera Rani v. State of Tamil Nadu and another, reported in (1989) 4 SCC 418 : (AIR 1989 SC 2027) and many other cases including in the case of Union of India v. Paul Manickam and another, reported in (2003) 8 SCC 342 : (AIR 2003 SC 4622). The principle of law is that when the detenu is already in judicial custody or jail, if a detention order under NSA is passed during that period that detention order to be valid, must mention that the person is in jail already but he is likely to be released on bail, and in that event, because of his illegal activities in the approximate past, he is likely to disturb or commit acts which are prejudicial to the security of the State or to the maintenance of public order. This is required because no detention order can be passed against a person who is already under detention. In the case of N. Meera Rani, the Hon"ble Supreme Court after taking into view the decision of the Constitutional Bench of the same Court in Rameshwar Shaw v. District Magistrate, Burdwan scanned through various judgments of the Court and examined if the principle of law enunciated in that case had been changed in course of time but came to the conclusion that the same has remained unchanged and has continuously been followed. Thereafter, the Hon"ble Supreme Court applied the same principle of law in that case and set aside the order of detention of the detenu wherein the requirement of the principle of law was not met. The relevant portions of the judgment are given here below:-

N. Meera Rani v. State of Tamil Nadu & Anr., reported in (1989) 4 SCC 418.

" 12. The real question, therefore, is: whether after the above satisfaction reached by the detaining authority and when the detenu was already in custody being arrested in connection with the Bank dacoity, could there be any reasonable basis for making the detention order and serving it on the detenu during his custody?

13. We may now refer to the decisions on the basis of which this point is to be decided. The starting point is the decision of a Constitution Bench in Rameshwar Shaw v. District Magistrate, Burdwan (1964) 4 SCR 921 : AIR 1964 SC 334 : (1964) 1 Cri LJ 1257. All subsequent decisions which are cited have to be read in the light of this Constitution Bench decision since they are decisions by Benches comprised of lesser number of Judges. It is obvious that none of these subsequent decisions could have intended taking a view contrary to that of the Constitution Bench in Rameshwar Shaw case (1964) 4 SCR 921 : AIR 1964 SC 334 : (1964) 1 Cri LJ 1257.

14. The detention order in Rameshwar Shaw case¹ was made and also served on the detenu while he was in jail custody. The detenu was then in jail where he had been kept as a result of the remand order passed by the competent court which had taken cognizance of criminal complaint against him. The Constitution Bench considered the effect of the detenu's subsisting detention at the time making of the order of preventive detention and held that the effect thereof had to be decided on

the facts of the case; and that this was a material factor to be considered by the detaining authority while reaching the satisfaction that an order of preventive detention was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order after his release. It was indicated that the detenu's subsisting custody did not by itself invalidate the detention order but facts and circumstances justifying the order of preventive detention notwithstanding his custody were necessary to sustain such an order.

15. The position of law was summarised by Their Lordships as under: (SCR pp. 929-31) (pp. 338-339 of AIR)

" As an abstract proposition of law, there may not be any doubt that Section 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail. Take for instance, a case where a person has been sentenced to rigorous imprisonment for ten years. It cannot be seriously suggested that soon after the sentence of imprisonment is pronounced on the person, the detaining authority can make an order directing the detention of the said person after he is released from jail at the end of the period of the sentence imposed on him. In dealing with this question, again the considerations of proximity of time will not be irrelevant. On the other hand, if a person who is undergoing imprisonment, for a very short period, say for a month or two or so, and it is known that he would soon be released from jail, it may be possible for the authority to consider the antecedent history of the said person and decide whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released. The antecedent history and the past conduct on which the order of detention would be based would, in a such a case, be proximate in point of time and would have a rational connection with the conclusion drawn by the authority that the detention of the person after his release is necessary.... Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.

The question which still remains to be considered is: can a person in jail custody, like the petitioner, be served with an order of detention whilst he is in such custody?....

We have already seen the logical process which must be followed by the authority in taking action under Section 3(1)(a). The first stage in the process is to examine the material adduced against a person to show either from his conduct or his antecedent history that he has been acting in a prejudicial manner. If the said material appears satisfactory to the authority, then the authority has to consider whether it is likely that the said person would act in a prejudicial manner in future if

he is not prevented from doing so by an order of detention. If this question is answered against the petitioner, then the detention order can be properly made. It is obvious that before an authority can legitimately come to the conclusion that the detention of the person is necessary to prevent him from acting in a prejudicial manner, the authority has to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail custody, how can it rationally be postulated that if he is not detained, he would act in a prejudicial manner? At the point of time when an order of detention is going to be served on a person, it must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is thus the basis of the order under Section 3(1)(a), and this basis is clearly absent in the case of the petitioner. Therefore, we see no escape from the conclusion that the detention of the petitioner in the circumstances of this case, is not justified by Section 3(1)(a) and is outside its purview."

(Emphasis supplied)" ?

11. Again in the case of Union of India v. Paul Manickam, reported in (2003) 8 SCC 342 : (AIR 2003 SC 4622) (supra), the Hon"ble Supreme Court referred and followed the same principle of law. The relevant portion of the judgment is given here below:-

" 14. So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such person on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability etc. ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vatiated. The point was gone

into detail in *Kamarunnissa v. Union of India* : (AIR 1991 SC 1640). The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail.

15. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it " the great and efficacious writ in all manner of illegal confinement." ? The writ has been described as a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right." ?

12. From the above quoted judgments of the Hon"ble Supreme Court, it would be seen that the principle of law as enunciated in the case of *Rameshwar Shaw* (AIR 1964 SC 334) (supra) still holds good, therefore, the same has to be followed. Now coming to the present case, the District Magistrate, Kohima was aware that the accused was arrested and he was in jail but he did not reflect that in the detention order. The District Magistrate also did not is likely to be released on bail and, because of his illegal activities or acts in the approximate past, he is a potential threat to the peace and tranquility of the people and security of the State, therefore, his detention order under NSA is required. Since this has not been reflected in the impugned order and the orders that followed, the detention of the detenu cannot be held valid.

13. In view of what has been stated above, it is concluded that he detention order dated 22-7-2016, the approval order dated 29-7-2016 and the confirmation order dated 29-8-2016 has failed to meet the requirements of law. Therefore, they are set aside and quashed. Accordingly, the respondents are directed to release the detenu forthwith if he is not wanted in any other case or cases.