IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Cril. Petn. No. 17 of 2026
(*Ref*:- NCB Crime No. 10/NCB/IMP/2025
u/s 8(c), 22(c), 25 and 29 NDPS Act)

Tinneihing Khongsai, aged about 40 years, W/o Letminthang Khongsai a permanent R/O Sugnu Utangpokpi, P.O. & P.S. Sugnu, Chandel District, Manipur, presently residing at Fabricated Relief Camp Sangaikot P.O., P.S. & District Churachandpur, Manipur.

… Petitioner

-Versus-

Narcotics Control Bureau (NCB) represented by Superintendent of Police Zonal Unit, Imphal, Airport Road, Uchekon Changangei, Imphal West-795140.

… Respondent/ Complainant

B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Mr. Serto T. Kom, Advocate
For the respondent	::	Mr. W. Darakishwor, Sr. PCCG
Date of judgment & order	::	**17-11-2026**

JUDGMENT & ORDER

[1] The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (**'BNSS'** for short) with a prayer for quashing the order dated 26-09-2025 passed by the Special Judge (ND & PS), Chandel in connection with NCB Crime No. 10/NCB/IMP/2025 dated 25-09-2025 u/s 8(c), 22(c), 25 & 29 NDPS

Act, 1985, remanding two accused persons to judicial custody and also praying for releasing one of the accused person, viz., Letminthang Khongsai, aged about 42 years, S/o Jamsei Khongsai, resident of Sugnu, Utangpokpi, Chandel District, Manipur.

[2.1] The brief factual matrix of the present case as disclosed by the respondent in its affidavit-in-opposition is that acting on a specific information received from a reliable source about the trafficking and transportation of suspected illegal drugs of undisclosed quantity of **'**Methamphetamine/ WY tablets**'** by two persons namely, (i) Mr. Seimang Kipgen (45 years), S/o Lenkhopao Kipgen, resident of House No. 08, New Leikot Village, Moreh (ST), Tengnoupal District and (ii) Mr. Letminthang Khongsai (42 years) (hereafter referred to as **"Accused No. 2")**, S/o Jamsei Khongsai, resident of Sugnu, Utangpokpi, Chandel, Manipur, in a Maruti Gypsy vehicle bearing Registration No. NL01H3374 and escorted by a black Kenbo bike coming from a General area Monlghat towards General area Hengsi, the same was taken down in writing and submitted to immediate superior officer Sh. Aram Anth, Superintendent, NCB, Imphal by Sh. Prashant Kumar Yadav, Sub-Inspector at around 1700 hrs. of 24-09-2025.

[2.2] Thereafter, in pursuance of an office order No. 10/NCB/ IMPH/2025 dated 24-09-2025 and on the direction of the

Superintendent, NCB, Imphal, a team of NCB, Imphal, comprising of Sh. Prashant Kumar Yadav, S.I. detailed as Seizing Officer, Sh. Aquib Ahmad, S.I., Sh. Ankur, Sepoy and Sh. Sanchit Kumar Sahu, Sepoy leaved Imphal on 24-09-2025 at around 1830 hrs. and proceeded towards 01st Assam Rifles, which is around 118 Km. from NCB, Imphal office and reached the 01st Assam Rifles at around 1245 hrs. of 25-09-2025.

[2.3] A requisition letter to provide necessary assistance for security purpose and providing 02 witnesses to witness search-sum-seizure process was submitted to the 01st Assam Rifles, Chandel, at around 0100 hrs. Thereafter, the said NCB team along with a team of 01st Assam Rifles, Chandel, led by Sh. RNG Shungwar, Assistant Commandant of 01st Assam Rifles, Chandel, proceeded towards General Bala point along with two independent witnesses. The said NCB team along with the said 01st Assam Rifles team reached General Bala Point at around 0230 hrs. of 25-09-2025.

[2.4] Thereafter, the said team conducted a reconnaissance of the area and set up Naka and mounted surveillances at General Bala point Aibol Joupi, Sehlon, Chandel. At around 0300 hrs., one black colour bike Kenbo without a number plate followed by a white colour Maruti Gypsy vehicle bearing Registration No. NL01H3374 were seen coming

from the General area Molngat and moving towards General area Hengsi side. The NCB team signalled the said vehicle to stop, on which both the vehicles stopped at general Bala point for verification.

[2.5] There were 01 occupant in the Maruti Gypsy and 01 occupant on the Kenbo bike. The NCB team then introduced themselves as officials of the NCB, Imphal, to the persons seating in the Maruti Gypsy vehicle and Kenbo bike and requested them to get off from the vehicles. Thereafter, both the persons came down from their respective vehicles and introduced themselves as Mr. Seimang Kipgen (45 years), S/o Lenkhopao Kipgen, resident of House No. 08 New Leikot Village, Moreh (ST), Tengnoupal District (driving Maruti Gypsy) and Mr. Letminthang Khongsai (42 years) (Accused No. 2), S/o Jamsei Khongsai, resident of Sugnu Utangpokpi, Chandel, Manipur (driving Kenbo bike).

[2.6] The team of NCB, Imphal, thereafter disclosed the secret information received by them and expressed the intention to conduct search of the bike and Maruti Gypsy and both the said two persons were willing to cooperate in the search proceeding. On searching the said vehicles, 03 sacks of white colour were found on the back seat of the Maruti Gypsy and on cutting them opened 29 packets of black colour packets wrapped in transparent plastic were found. Thereafter,

each black packets was cut opened using a box cutter and a yellow packet was found and inside the said yellow packet, a blue packet was found, which contained pink colour tablets and one tablet from each packet was taken out and crushed and mixed homogenously and tested with the Drug Detection Kid available with the NCB team, which gave positive result for presence of **'**Methamphetamine**'**.

The total weight of all the 29 packets was found to be 67.19 Kg. and both the abovenamed two persons admitted that they were carrying consignment of illegal Methamphetamine to deliver it in the illegal market.

[2.7] On having reasonable believe that an offence has been committed under Section 8(c), 22(c), 25 and 29 of the NDPS Act, 1985 (as amended), the recovered contraband, OPPO Mobile Phones, Redmi Mobile Phone, Maruti Gypsy vehicle of white colour bearing Registration No. NLO1H3374, back Kenbo bike without registration number and other recovered documents were seized by the Seizing Officer.

[2.8] The search-cum-seizure list was prepared on the spot by typing on a laptop by the Seizing Officer and completed at about 0630 hrs. of 25-09-2025 without causing any damage to any person or property and in the presence of two independent witnesses. The

content of search-cum-seizure list was read over and explained to the two accused persons and the two independent witnesses and thereafter, the signatures of both the accused persons, two independent witnesses and the Seizing Officer were obtained and the impression of brass seal NCB IMPHAL 01 was affixed on the last page of the search-cum-seizure list.

[2.9] Thereafter, notice under Section 67(c) of the NDPS Act, 1985 was given to both the two accused persons and asked them to appear at 01st Assam Rifles, Chandel, Manipur, at 1400 hrs. Accordingly, both the two accused persons appeared before the NCB officer for recording their voluntary statement under Section 67(c) of the NDPS Act, 1985. In their voluntary statement, both the two accused persons confessed their involvement in trafficking of the seized Methamphetamine/ WY Tablets. On the basis of recovery of contraband, the confessional statements made by the said two accused persons and on the reasonable believe that an offence had been committed in violation of the provisions of Section 8(c), which attracts penal provisions under Section 22(c), 25 and 29 of NDPS Act, 1985, both the said two accused persons were arrested on 25-09-2025 at 1300 hrs. and 1330 hrs.

[2.10] Thereafter, both the accused persons were taken to the District Hospital, Chandel, for medical examination and after

completion of the legal formalities, the arrested accused persons and the seized contraband were produced before the Court of Special Judge (ND & PS) Court, Chandel on 26-09-2025. Thereafter, the Special Judge (ND & PS), Chandel, passed the impugned order dated 26-09-2025 remanding both the arrested accused persons to judicial custody.

[3] The present petition had been filed by the wife of Mr. Letminthang Khongsai (Accused No. 2) raising many points in assailing the impugned remand order. Even though many grounds have been raised in the present petition, Mr. Serto T. Kom, learned counsel appearing for the petitioner pressed only one point in assailing the impugned remand order and praying for releasing the Accused No. 2 from judicial custody. It has been submitted by the learned counsel appearing for the petitioner that the NCB, Imphal, failed to produce the arrested two accused persons to the nearest Magistrate within 24 hours of their arrest thereby resulting in violation of the Accused No. 2's fundamental right guaranteed by Article 22(2) of the Constitution of India and as such, the impugned order dated 26-09-2025 passed by the Special Judge (ND & PS), Chandel, remanding the said accused persons in judicial custody as well as his detention in judicial custody are illegal.

[4] To buttress his argument, it has been submitted by the learned counsel that even though in the Arrest Memo dated 25-09-2025 issued in respect of accused No. 2, the NCB recorded the place of arrest as at 01st Assam Rifles, Shelon, Chandel, Manipur, and the time of arrest as 1330 hrs. (01:30 PM) of 25-09-2025, the actual time of arrest is at 0300 hrs. of 25-09-2025, when the said accused person was stopped and restrained by the official of the NCB. According to the learned counsel, the statutory period of 24 hrs. as provided under Article 22(2) of the Constitution will commence from 0300 hrs. of 25-09-2025 and will expire at 0300 hrs. of 26-09-2025. The learned counsel submitted that as 0300 hrs. is in the early morning, the Special Judge (ND & PS), Chandel, would not be on duty at such hour and that it can reasonably be inferred that the accused was produced after 0300 hrs. of 26-09-2025 thereby resulting in a clear violation of the fundamental right guaranteed by Article 22(2) of the Constitution of India.

It has also been submitted by the learned counsel that according to the NCB, the search-cum-seizure process was said to be completed at 06:30 AM of 25-09-2025 and the accused persons could have been produced on 25-09-2025, however, they were produced only on 26-09-2025 after the statutory period of 24 hours. Therefore, the impugned remand order dated 26-09-2025 and the detention of the

Accused No. 2 in judicial custody is ultra vires the mandate of Article 22(2) of the Constitution of India and accordingly, the same are rendered illegal. The learned counsel, accordingly, prays for quashing the impugned remand order dated 26-09-2025 and to direct the respondent to release the Accused No. 2 from judicial custody forthwith.

[5] The learned counsel pressed into service the following case laws in support of his contentions:-

(a) (1980) 2 SCC 559 "Niranjan Singh & anr. Vs. Prabhakar Rajaram Kharote & ors." wherein it has been held by the Hon'ble Apex Court as under:-

"7. When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on

this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose."

(b) 1990 SCC OnLine Bom 3 "Ashak Hussain Allah Detha @ Siddique & anr. Vs. The Assistant Collector of Customs (P) Bombay & anr." wherein a learned Single Judge of Bombay High Court held as under:-

"10. It is thus clear that arrest being a restraint on the personal liberty, it is complete when such restraint by an authority, commences. Whether a person is arrested or not does not depend on the legality of the act. It is enough if an authority clothed with the power to arrest, actually imposes the restraint by physical act or words. Whether a person is arrested depends on whether he has been deprived of his personal liberty to go where he pleases.[4] It stands to reason, therefore, that what label the Investigating Officer affixes to his act of restraint is irrelevent. For the same reason, the record of the time of arrest is not an index to the actual time of arrest, The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers."

(c) (1994) 3 SCC 440 "Directorate of Enforcement Vs. Deepak Mahajan & anr." wherein the Hon'ble Apex Court held as under:-

"46. The word 'arrest' is derived from the French word 'Arreter' meaning "to stop or stay" and signifies a restraint of the person. Lexicologically, the meaning of the word 'arrest' is given in various dictionaries depending upon the circumstances in which the said expression is used. One of us, (S. Ratnavel Pandian, J. as he then was being the Judge of the High Court of Madras) in Roshan Beevi v. Joint Secretary,

Government of T.N. had an occasion to go into the gamut of the meaning of the word 'arrest' with reference to various textbooks and dictionaries, the New Encyclopaedia Britannica, Halsbury's Laws of England, A Dictionary of Law by L.B. Curzon, Black's Law Dictionary and Words and Phrases. On the basis of the meaning given in those textbooks and lexicons, it has been held that:

> *"[T]he word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested."*

"48. Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. Needless to emphasize that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial

custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words 'custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, vide Roshan Beevi."

"49. While interpreting the expression 'in custody' within the meaning of Section 439 CrPC, Krishna Iyer, J. speaking for the Bench in Niranjan Singh v. Prabhakar Rajaram Kharote observed that: (SCC p. 563, para 9)

> ***"He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions."***

(d) 2025 SCC OnLine SC 240 "Directorate of Enforcement Vs. Subhash Sharma" wherein the Hon'ble Apex Court held as under:-

"6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant-Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He

was produced before the Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order(Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated."

"8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution."

(e) 2025 SCC OnLine Ker 6017 "Biswajit Mandal Vs. Inspector, Narcotic Control Bureau" wherein a learned Single Judge of the Hon'ble High Court of Kerala held as under:-

"20. Hence the period of twenty-four hours to produce an accused before the Magistrate commences not when the actual time of arrest is recorded by the police, but runs

from the time when the accused was effectively detained or his liberty was curtailed."

[6] Mr. W. Darakishwor, learned Sr. PCCG appearing on behalf of the respondent submitted that acting on a specific information received from a reliable source about the trafficking and transportation of illegal drugs of undisclosed quantity and after following due procedure established by law, a team of Narcotics Control Bureau, Imphal, with the assistance of a team of 01st Assam Rifles, Chandel, along with two independent witnesses conducted a reconnaissance of the area and set up Naka and mounted surveillances at General Bala point Aibol Joupi, Shelon, Chandel at around 0300 hrs. of 25-09-2025. At around 0300 hrs. of 25-09-2025, the said NCB team stopped the two accused persons – one riding a white colour Maruti Gypsy vehicle bearing Registration No. NL01H 3374 and one black colour bike Kenbo without registration number and conducted search of the bike and the gypsy vehicle and on searching the said vehicles, a commercial quantity of contraband drugs, Methamphetamine/ WY Tables having a total weight of 67.19 Kg. was recovered.

[7] The learned Sr. PCCG submitted that the search and seizure of the contraband drugs were strictly after following all the procedures established by law and the Seizing Officer completed the seizure of the contraband drugs and other articles at about 0630 hrs. of 25-09-2025.

It has also been submitted by the learned counsel that notice under Section 67(c) of the ND & PS Act, 1985 was given to both the two accused persons asking them to appear at the 01st Assam Rifles, Chandel, Manipur, at 1400 hrs. In compliance with the said notice, both the two accused persons appeared before the NCB officials for recording their voluntary statement under Section 67(c) of the NDPS Act, 1985 and that the said two accused persons confessed their involvement in trafficking of the seized Methamphetamine/ WY Tablets. Thereafter, on the basis of recovery of the said contraband drugs, the confessional statements and on a reasonable believe that an offence has been committed in violation of the provisions of Section 8(c) of the NDPS Act, 1985, both the said two accused persons were formally arrested on 25-09-2025 at 1300 hrs. and 1330 hrs. It has also been submitted that after completing the medical examination of the said two accused persons and the legal formalities, both the accused persons were produced before the Special Judge (ND & PS), Chandel, on 26-09-2025 within a stipulated period of 24 hrs. as provided under Article 22(2) of the Constitution of India.

[8] The learned Sr. PCCG also submitted that the date, time and place of arrest of the accused No. 2 is clearly reflected in the Arrest Memo. as 25-09-2025 at 1330 hrs. from 01st Assam Rifles, Shelon, Chandel, Manipur. It has also been submitted by the learned counsel

for the respondent that the commencement of the stipulated period of 24 hrs. as provided under Article 22(2) of the Constitution of India should be counted only from the time and date of formal arrest of the accused persons as recorded in the Arrest Memo and that the period taken in effecting search and seizure and completing of the necessary formalities as provided under the NDPS Act and the rules made thereunder should be excluded while counting the stipulated period of 24 hrs. The learned Sr. PCCG submitted that as the Accused No. 2 was produced before the Special Judge (ND & PS), Chandel, within the 24 hrs. period, the present petition is liable to be rejected as being devoid of merit.

[9] In support of his contentions, the learned Sr. PCCG cited the following case laws:-

(a) 2026 SCC OnLine Mad 6652 "Kannan Vs. State of Tamil Nadu, represented by the Inspector of Police, Othakadai Police Station" wherein a learned Single Judge of the Hon'ble High Court of Madras held as under:-

"28. The Supreme Court has categorically held that the procedure contemplated under Sections 42 and 50 of NDPS Act are imperative in nature and non-compliance of the same would render the conviction and sentence unsustainable. Section 42(d) of NDPS Act points out that a Law Enforcing Agency is empowered to detain and search and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence

punishable under this Act. Section 50 lays down an elaborate procedure for conducting personal search. The accused persons should be given two options that either they may get searched before a gazetted officer or before the Magistrate."

"29. Section 50(2) points out that if the accused persons request to search themselves through a gazetted officer or the Magistrate, the accused persons have to be detained till such officer arrives. Therefore, it is clear that the detention prior to search or at the time of search cannot be considered to be arrest under NDPS Act. Unless search is completed and the officer of the Law Enforcing Agency finds that the accused persons are in possession of contraband, he cannot arrest them."

"30. Section 50(3) of NDPS Act points out that in case if the accused persons choose to get themselves searched before the gazetted officer or the Magistrate, the concerned officer, if they see that there is no reasonable ground for search, the accused persons have to be forthwith discharged. On the other hand, if the concerned officer finds that there are reasonable ground for search, he can direct that search be made."

"31. For a search to be conducted as per Section 50, unless a person is detained, personal search cannot be conducted. Only after completion of the personal search, in case, if the contraband is found in possession of any person, the Law Enforcing Officer can proceed to arrest him. In fact, Section 50(2) clearly points out that till the arrival of gazetted officer or Magistrate, the person who is believed to be in possession of contraband, has to be detained."

"32. Even Section 43(b) (relating to power of search and arrest in the public place) points out that the detention and search have to precede the arrest and the arrest can be made only if any person was found to be in possession of contraband and such possession appears to unlawful. Therefore, it is clear that under Section 42(d) and 43(b), the

word detention and search are used in contradistinction with the word arrest."

"33. The word arrest has not been defined either in BNSS or in any other statute. Section 43(1) of BNSS only explains how an arrest can be made. Though detention and arrest involve placing restriction on the movement of any person, they are conceptually distinct. While detention is investigatory in nature based on reasonable suspicion, arrest is accusatory in nature after confirmation of commission of offence. Since the provisions under NDPS Act are imperative in nature, the officers of Law Enforcing Agency are expected to strictly follow the same before effecting search, seizure or recovery. Otherwise that may result in vitiating the conviction and sentence. Therefore, the said procedure as contemplated under Sections 42, 43 and 50 have to be strictly complied with by the authorities concerned. Without complying the same, any arrest made by them, would not be of any help to the prosecution and the same is likely to result in acquittal."

"34. These precautionary procedures have been mandated under the Act only to safeguard the accused persons from any false cases being foisted as against them. Therefore, the time taken by the authorities concerned, to fulfil the statutory mandate, prior to arrest, cannot be included for calculation of 24 hours custody as contemplated under Section 58 of BNSS. When the other statutes do not provide for a distinction between the detention and the arrest, the judgment cited by the learned counsel for the petitioner would not be applicable for detention and arrest under NDPS Act cases."

"35. In the present case, the Car was intercepted at 5.00 p.m., the consent letter was prepared between 5.10 p.m. to 5.40 p.m. and the search was conducted between 5.40 p.m. to 5.50 p.m. and thereafter, arrest memo was prepared between 5.50 p.m. to 6.20 p.m. The petitioners were arrested at 6.30 p.m. and there is no unreasonable detention of the accused persons than what is required for

conducting search by following the mandate of Section 42 and Section 50 of NDPS Act. When 24 hours is calculated from 6.30 p.m. on 9-10-2024, production of accused before Jurisdictional Magistrate at 5.30 p.m. on 10-10-2024 is well within 24 hours. Therefore, the impugned remand order of Jurisdictional Magistrate is perfectly in order and does not call for any interference."

(b) 2026 SCC OnLine Ker 13043 "Arun K. Thomas Vs. Narcotic Control Bureau, represented by the Sub-Inspector" wherein a learned Single Judge of the Hon'ble High Court of Kerala held as under:-

"20. Section 42 of the NDPS Act deals with the power of entry, search of any building, conveyance or place, seizure and arrest without warrant or authorisation. Of relevance in the present context is Section 42(d) which says "detain and search", and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under the Act. Section 43 deals with the power of seizure and arrest in a public place. Here also, the section uses the expression "detain and search any person"……under the Act, and if such person has any ….., arrest him and any other person in his company. Thus, both Sections 42 and 43 preserve a doctrinal distinction between investigative detention and custodial arrest. It is significant to note that "detention for the purpose of search" is distinct and different from the "arrest and detention in custody" that forms the underpinning of Art. 22(2) of the Constitution. Under the scheme of the NDPS Act, "detain and search" is only temporary restraint and does not involve infraction of personal liberty."

"20(a) The Supreme Court in Najmunisha v. State of Gujarat (2024 SCC OnLine SC 520) has held that the statutory provisions conferring authorities with the power to search and seize are a mere temporary interference with the right of the accused as they stand well regulated by reasonable

restrictions emanating from the statutory provisions themselves and such a power cannot be considered as a violation of any fundamental rights of the person concerned. Consistent with the jurisprudence that a search and seizure procedure does not violate any fundamental rights, the restraint on a person in the event of a search under the circumstances indicated in the Act is therefore not an infraction of any fundamental right."

"20(b) In the context of Section 42 of the NDPS Act, the arrest contemplated therein is triggered on the satisfaction or on the threshold of "reason to believe" and not on the mere finding of the contraband. In the context of Section 43(b) of the NDPS Act i.e. the search in a public place, it is triggered on the finding itself failing which the threshold does not reach. In either case, it is to be noticed that the detention for the purpose of search following the statutory procedure does not amount to detention in custody following an arrest or effective detention."

"20(c) Whether the search and seizure procedure has been deliberately or unduly delayed and whether such delay would have consequences is another matter. However, as a general proposition, the arrest and consequently the twenty-four hour rule for the purpose of Art. 22(2) commences only from the completion of the "search and seizure" that may lead to the arrest and detention in custody of the person. This is so because there is no element of detention in custody in the context of Art. 22(2) amid a search and seizure and it is only when the arrest and detention in custody occurs that the twenty-four hour rule gets attracted. The constitutional reckoning of time begins only from arrest, not from antecedent detention during search or enquiry."

"21. Rule 3 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (for short, NDPS Disposal Rules) prescribes the procedure for classification, weighing, packaging and numbering of seized narcotic drugs, psychotropic substances and

controlled substances. Sub-rule (4) mandates that these processes shall be carried out in the presence of the search witnesses and the person from whose possession the contraband was recovered, with a specific recital to that effect in the panchnama drawn at the place of seizure. Sub-rule (5) further requires that a detailed inventory of the packages, containers, conveyances and other seized articles be prepared and appended to the panchnama."

"21(a) The statutory scheme thus accords due sanctity to the disposal process, which was earlier regulated only by executive Standing Orders. The Rule integrates the acts of classification, weighing, packaging and numbering into the seizure procedure itself, thereby making them part of the continuum of search and seizure. In consequence, the time consumed in implementing these safeguards is statutorily absorbed into the investigative stage. Such restraint or detention during seizure does not ipso facto amount to arrest. Accordingly, the period taken for compliance with Rule 3— being incidental to seizure and essential for evidentiary integrity— stands outside the ambit of the twenty-four hour mandate under Article 22 of the Constitution. The constitutional reckoning of time commences only upon formal arrest, not during antecedent detention necessitated by statutory procedures of seizure and inventory."

"22. Section 50 of the NDPS Act deals with conditions under which a search of a person shall be conducted. It ordains that when an empowered officer proposes to search the person of a suspect, such individual must be apprised of the right to be searched before a gazetted officer or a Magistrate. In effectuating this statutory mandate, the officer may necessarily detain the suspect until the choice is exercised and the search duly conducted. Such detention, however, is investigative in character. It is a procedural restraint designed to secure compliance with the statutory safeguard, and does not ipso facto amount to arrest. Arrest occurs only when liberty is formally curtailed

after incriminating material is found and custody is imposed. It is only at that stage that the constitutional and statutory guarantees of production before a Magistrate within twenty-four hours under Article 22(2) of the Constitution and Section 58 of BNSS (57 of CrPC) are attracted."

"25. Taken together, these provisions delineate a graduated spectrum of interaction between enforcement authorities and individuals"ranging from mere enquiry or information gathering to examination upon summons and finally formal arrest followed by detention. Each stage is hedged by statutory procedure, constitutional safeguards, and the principle of proportionality, thereby ensuring that any restraint upon personal liberty is justified, documented, and effected strictly in accordance with the "procedure established by law" under Article 21. The distinction between investigative detention for purposes of enquiry and custodial arrest is critical: the former permits temporary restraint under statutory authority, while the latter alone attracts the full panoply of custodial safeguards, including the commencement of the twenty-four hour reckoning for production before a Magistrate. These statutory schemes underscore the legislature's careful balance between investigational necessity and the protection of fundamental rights. Compliance with prescribed procedure is the very essence of Article 21; any restraint imposed dehors statutory authority or without adherence to procedural safeguards degenerates into illegal detention."

Findings and Conclusions

"26. The upshot of the above discussion is that though the statutory and constitutional period of twenty-four hours to produce an accused before a Magistrate commences from the time the accused was effectively detained or his liberty was curtailed, without the sanction of law, as held in Biswajit Mandal (supra), it cannot be said to invariably

> ***begin from the moment a person is detained in all cases. Pre-arrest detention is permissible where explicitly authorised by statute-such as under Sections 179(1) and 35(3) of BNSS (160(1) and 41-A of CrPC), Sections 67, 42, 43 and 50 of the NDPS Act, Rule 3 of the NDPS Disposal Rules, Section 50 of the PMLA, or Sections 107 and 108 of the Customs Act-which provide a clear procedural framework for enquiry or limited restraint of liberty. In such cases, the reckoning of the twenty-four hours begins only upon formal arrest. In all other circumstances, any deprivation of liberty prior to arrest must be treated as part of the detention period, and the statutory timeline for judicial oversight is triggered at that point. This understanding, evolved through judicial precedents, ensures uniform compliance with procedural safeguards, prevents arbitrary delay, and upholds the constitutional protection of personal liberty, while permitting investigatory authorities to act within the bounds of law where specific statutory provisions allow pre-arrest detention for enquiry. It preserves the equilibrium between the necessity of effective investigation and the prohibition against arbitrary or wanton restraint of liberty. Whether a person has been subjected to illegal detention prior to the formal recording of arrest is a matter to be carefully assessed in the light of the circumstances disclosed in each case."***

[10] The learned Sr. PCCG further submitted that the principle of law laid down by the Hon'ble Apex Court at para. 7 of **Niranjan Singh (*supra*)** has been considered and explained by a Full Bench of the Hon'ble High Court of Madras in the case of **"Roshan Beevi & ors. Vs. Joint Secretary to the Government of Tamil Nadu & ors."** reported in **1983 SCC OnLine Mad 163** and that the explanation given by the Full Bench is applicable in the present case. The relevant

paragraphs relied on by the learned Sr. PCCG of Roshan Beevi are reproduced hereunder:-

> ***"21. In support of his proposition, Mr. Rangavajjula would draw the attention of this Court to the decision of the Supreme Court in Niranjan Singh v. Prabhakar, AIR 1980 SC 785 : (1980 Cri LJ 426), wherein S. 439, Cr. P.C. came up for consideration. In that case, the Supreme Court posed a question for consideration and answered the same as follows:***
>
> > ***"When is a person in costody within the meaning of S. 439, Cr. P.C.? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the Court, having been remanded by judicial order or having offered himself to the Court's jurisdiction and submitted to its order by physical presence. No lexical dexerity or precedential profession is needed to come to the realistic conclusion that he who is under the control of the Court or in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics and its core meaning is that the law has taken control of the person. Equivocatory quibblings and the hide-and-seek niceties sometimes heard in Court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and the other like terminological dubieties (sic) are unfair evasions of the straight-forwardness of the law. We need not dilate on this shady facet here because we are satisfied, that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose. Custody in the context of S. 439 (we are not, be it noted, dealing with anticipatory bail under S. 438) is physical control or at least physical presence of the accused in Court with submission to the jurisdiction and order of the Court. He can be in custody not merely when the police arrests him,***

produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the Court and submits to its directions."

"22. In order to fully understand the above view expressed by the Supreme Court, let us have a cursory glance of Section 439, Cr. P.C. (which corresponds to S. 498 of the old Code). The unfettered discretionary power of the High Court and the Court of Session under Sec. 439 of the Code in granting bail can be exercised only on the satisfaction of two conditions: Firstly, the person who moves for bail must be a person accused of an offence, bailable or non-bailable, and secondly he must be in custody. The Supreme Court in Niranjan Singh's case (AIR 1980 SC 785) : (1980 Cri LJ 426), on being satisfied that the first condition has been fulfilled, gave the meaning of the term 'in custody' while considering the fulfilment of the second condition. Be it noted that in the said case their Lordships did not express the view that the mere taking of a person into custody by an authority empowered to arrest, or the mere presence of the accused is enough to constitute the arrest of the accused, but only emphasized that the physical control or at least physical appearance of the accused in Court should be coupled with the submission to the jurisdiction and orders of the Court. In other words, the person who is accused of an offence should submit himself to the jurisdiction or orders of the authority empowered to arrest."

"23. Coming to the Customs Act, a person who appears before any officer of Customs on being required for an enquiry in connection with the smuggling of any goods, under Section 107 of the Customs Act, or a person who attends before any gazetted officer of Customs on summons in connection with an enquiry relating to the smuggling of any goods, under S. 108 of the said Act, is not a person accused of an offence at that stage. Therefore, the submission of Mr. Rangavajjula that since the person so required or summoned under the above said provisions comes under the custody of the Customs

Officials, he must be deemed to have been arrested in the light of the interpretation by the Supreme Court of the term 'in custody' occurring in S. 439 of the Code in Niranjan's case (1980 Cr LJ 426), cannot be accepted. In fact, their Lordships themselves have pointed out in that judgment that there is a shady facet in the expression of the term in 'custody'. Hence, this decision cannot be availed of by the learned counsel in support of his contention that the mere taking of a person into custody would amount to arrest."

[11] After a careful examination of all the materials available on record and after a careful consideration of the rival submission made by the learned counsel appearing for the parties, this court is of the considered view that only one issue needs to be considered and decided in the present case. The issue is from which point of time, the period of 24 hours as stipulated under Article 22(2) of the Constitution will commence? In my humble opinion, this issue is no longer *res-integra*.

In a recent judgment dated 05-11-2026 passed by the Hon'ble Supreme Court in the case of **"Sri Sujit Das & ors. Vs. Union of India, 2026 INSC 1195",** this issue has been considered elaborately and held as under:-`

"69. In the circumstances, we would like to summarize our conclusions as under:

(i) the 24 hours timeline as mandated under clause (2) of Article 22 of the Constitution of India would commence from the date and time of detention of the person detained when his liberty stands curtailed and not from the time of his formal arrest;

(ii) in the event, such detention continues beyond 24 hours before the person is produced before a magistrate, he shall be forthwith released from custody;

(iii) while computing the 24 hours deadline, no other time period is permitted to be excluded therefrom except the time necessary for the journey from the place of arrest to the court of the magistrate;

(iv) the decisions of the Orissa High Court in Aryaman Pattnayak, Madras High Court in Kannan and Kerala High Court in Arun K. Thomas do not lay down the correct law qua interpretation of clause (2) of Article 22 of the Constitution of India;

(v) the detaining authority should keep in mind not only the 24 hours deadline mandated by clause (2) of Article 22 of the Constitution but also ensure that such detention should not extend beyond a reasonable period within the 24 hours period considering the circumstances of the case in terms of Section 58 BNSS (Section 57 CrPC);

(vi) at the time of production, the magistrate is duty bound to record the actual date and time of detention of the person produced before him when his liberty stood curtailed and examine whether the 24 hours deadline has been complied with or not from the time of such detention. If there is breach of the 24 hours deadline, the concerned person shall be released forthwith from detention;

(vii) the magistrate shall also examine at the time of production whether the production of the person produced, though is within the time frame of 24 hours, has exceeded the period which can be construed to be reasonable in the circumstances of the case. If he is satisfied that detention in custody has been for a longer period that what is reasonable, he may decline remand;

(viii) in so far the present case is concerned, for the reasons cited in paragraphs 65, 66 and 67 above, the detention of the appellants was not only in breach of clause (2) of Article 22 of the Constitution of India but was for a period

beyond what can be construed to be a reasonable period considering all the circumstances of the case which was in contravention of Section 58 BNSS (Section 57 CrPC);

(ix) consequently, we set aside the impugned judgment and order of the High Court dated 24.04.2026 and direct that the appellants shall be produced before the jurisdictional Special Court within a maximum period of 7 days from today whereafter they shall be released on bail on such terms and conditions as may be deemed appropriate."

[12] At para 69(iv) of **Sri Sujit Das (*supra*),** the Hon'ble Apex Court has held that the decisions of the Orissa High Court in **Aryaman Pattanayak**, **Madras High Court in Kannan** and **Kerala High Court in Arun K. Thomas,** which have been relied on by the Sr. PCCG on behalf of the respondent, do not lay down the correct law *qua* interpretation of clause (2) of Article 22 of the Constitution of India.

[13] Keeping in view the ratio decidendi and in the light of the decisions rendered by the Hon'ble Supreme Court in the case of **Sri Sujit Das (supra)**, this court proceeded to consider the present case. In the present case, it is an admitted fact and on record that the two accused persons were stopped and detained by the team of NCB at 0300 hrs. of 25-09-2025 and the search-cum-seizure of the contraband drugs and other articles were completed at about 0630 hrs. of 25-09-2026. It is also an undisputed fact and on record that the two accused persons were produced before the Special Judge (ND & PS), Chandel, on 26-09-2025. In the present case, considering these

undisputed facts, this court has no hesitation to arrive at a conclusion that the 24 hrs. period as stipulated under Article 22(2) of the Constitution of India shall commence on and from 0300 hrs. of 25-09-2025, when the said two accused persons were stopped and detained by the NCB team.

[14] Even though neither the petitioner nor the respondent have stated the exact time of the production of the said accused persons before the Special Judge (ND & PS), Chandel, this court can reasonably arrived at a conclusion that the accused persons were produced before the said court only after 0300 hrs. of 26-09-2025 as it will be unreasonable to presume that the said Special Judge would be on duty at such an early hour. It will be also reasonable to arrive at a conclusion that the NCB team must have produced the said two accused persons after 10:00 AM of 26-09-2025, i.e., during court hours.

[15] In view of the above, the reasonable conclusion is that the said two accused persons were produced before the court beyond the period of 24 hours as mandated under Article 22 thereby resulting in violation of the fundamental rights of the said two accused persons as guaranteed by Article 22(2) of the Constitution of India. Therefore, this court is of the considered view that the impugned remand order dated

26-09-2025 and the detention of the Accused No. 2 in judicial custody is rendered illegal. Accordingly, the impugned order dated 26-09-2025 passed by the Special Judge (ND & PS), Chandel, is hereby quashed and set aside. Consequently, the respondent is hereby directed to produce the **Accused No. 2, viz., Letminthang Khongsai, aged about 42 years, S/o Jamsei Khongsai, resident of Sugnu, Utangpokpi, Chandel District, Manipur,** before the Special Judge (ND & PS), Chandel, within a maximum period of seven days from today whereafter he shall be released on bail on such terms and conditions as may be deemed appropriate.

With the aforesaid directions, the present petition is hereby disposed of.

JUDGE

FR/ NFR

Devananda