

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**HCP No.127/2025
CM No.5633/2025**

*Date of pronouncement: 07.05.2026
Date of uploading: 07.05.2026*

**Darshan Singh @ Deepu
Age 35 years S/o Baldev Singh
R/o Galak (Tardal) Tehsil Billawar
District Kathua.**

...Petitioner(s)

Through: Mr. M. K. Bhardwaj, Sr. Advocate with
Mr. Gagan Kohli, Advocate.

Vs

- 01. UT of Jammu and Kashmir,
through Commissioner/Secretary to Govt.,
Home department Civil Secretariat
Jammu/Srinagar.**
- 02. Divisional Commissioner, Jammu**
- 03. Senior Superintendent of Police, Kathua.
Incharge/Superintendent Central Jail
Kot Bhalwal, Jammu.**

...Respondent(s)

Through: Mrs. Monika Kohli, Sr.AAG with
Ms. Nisha Kangotra, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

**JUDGMENT
07.05.2026 (ORAL)**

- 01.** Challenge in this petition has been thrown to detention order No. PITNDPS No.53/2025 dated 13.08.2025, issued by respondent No.2, vide which, petitioner came to be detained under Prevention of Illicit Traffic and Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS) and lodged in Central Jail, Kot Bhalwal, Jammu.

02. Background facts of the case are that Senior Superintendent of Police, Kathua vide his communication dated 06.08.2025 submitted a dossier and connected documents in respect of the petitioner stating *inter alia* that district screening committee had examined case of the petitioner on the basis of various parameters and found his continuous illegal activities of drug peddling. The recommending authority elaborated following criminal cases against the petitioner:

S.No.	FIR No. & Offences	Police Station	Quantity Seized from subject	Status of the case
01.	04/2025 u/s 8/21/22 NDPS Act	Billawar	1.70 gram of heroin	Under Investigation
02.	106/2025 u/s 8/21/22 NDPS Act	Billawar	4.63 gram of heroin	Under Investigation

03. On the basis of aforesaid recommendation, the detaining authority has come to conclude that petitioner poses a serious threat to the health and welfare of the people and therefore, with a view to prevent him from reoffending, it was necessary to detain him.

04. Petitioner is aggrieved of the impugned order of detention *inter alia* on the following grounds:

A. That the Preventive detention, as has been held in the cases of A.K. Gopalan V. State of Madras (1950) SCR 88 and Rekha Vs. State of Tamil Nade (AIR 2011 SCW 2262), is, by nature, repugnant to democratic ideas and an anathema to the rule of law. The Supreme Court in Rekha's case (supra) emphasized that article 22(3) (b) of the Constitution of India is to be read as an exception to article 21 of the Constitution of India and not allowed to nullify the right to personal liberty guaranteed under article 21. The Supreme Court further observed that since article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow

limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It has, therefore, to be understood that if the ordinary law of the land (Indian Penal Code and other Penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal. The Supreme Court added that it must be remembered that if, in the case of preventive detention, no offence is proved and there is no conviction, which can only be sanctioned by legal evidence, preventive detention is often described as “jurisdiction of suspicion.” To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital. The Supreme Court, after putting reliance on the law laid down in Kamleshwar Ishwar Prasad Patel vs. Union of India and others (1995) 2 SCC 51 (para 49) observed that the history of liberty is the history of procedural safeguards. These procedural safeguards are required to be zealously watched and enforced by the Court and their rigor cannot be allowed to be diluted on the basis of the nature of alleged activities of the detenu. The Supreme Court quotes with approval the observation made in Ratan Singh Vs. State of Punjab and others 1981 (4) SCC, emphasizing the need to ensure that the constitutional and statutory safeguards available to a detenu are followed in letter and spirit. It observed, but the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenues. In the present case the detention of the petitioner under PITNDPS Act is illegal, arbitrary, unconstitutional and is violative of article 14 and 16 of the Constitution of India as the petitioner has already been enlarged on bail by the Hon’ble Court in the aforesaid FIRs which has been made the basis to detain under preventive detention.

B. That the order of detention has been passed by the respondent NO.2 in a haste without even considering the material before him properly and without applying his mind to the facts of the case. As per section 3(3) of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, when a person is detained in pursuance of detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made. It is to be in language which is understandable by him

and he shall also be afforded the earliest opportunity to make representation against the order to the Govt. As already submitted hereinabove, the petitioner was not conversant with the language of the detention order and the authority also did not translate the grounds of the detention order due to which the petitioner could not make an effective representation against the order of detention. By putting the petitioner in preventive detention, respondents have illegally infringed the right of personal liberty of the petitioner and that too in violation of the statutory and constitutional provisions and therefore, the order impugned deserves to be quashed and set aside on this count.

C. That it is an imperative that the detaining authority has to record sufficient reasons regarding his satisfaction in the detention order or in the grounds of detention while detaining a person but in the present case, the reason recorded by the detaining authority cannot be held to be a sufficient one. The petitioner has been detained only on the basis of the FIR's filed against him and he has no continuous or repeated involvement in any illegal narcotic activities in the past except the aforesaid two FIRs.

D. That the impugned order of detention is otherwise bad, the petitioner has not been supplied all the documents, translated copy of statements annexed with the detention order in Urdu. Since the respondent No.2 has passed the order which is based on FIRs and statements, he was under obligation to supply all the material including statements of witnesses and other related documents in translated version which the petitioner understand. The Hon'ble Apex Court in case titled Abdul Latif Abdul Wahab Sheikh V/s BK Jha and Ors. held that the procedural requirements are the only safeguards available to the detenu since the Court cannot go behind the subjective satisfaction authority. The procedural requirements are therefore required to be strictly complied with, if any value is to be attached to the liberty of the subject and constitutional rights guaranteed to him in that record. On this count also the order impugned unsustainable in the eyes of law.

E. That the detention order is otherwise based on non-application of mind. The respondent No.2 before passing the order of detention has not applied his mind and reproduced the same grounds of detention in virtue as given in the Police Dossier that the petitioner has been ordered to be detained at District Jail, Jammu which is against the Police decision of Government. The Government of Jammu and Kashmir time to time has taken decision that the petitioner should be lodged in Jail where he can easily meet their family members and which should be nearest. The petitioner has been detained at Central Jail, Kot Balwal where the family members cannot meet him easily because they are residents of Tardah Galak, Kathua and

are poor and illiterate, thus the order is bad and as such is liable to be quashed.

F. That the detention is based upon irrelevant and non-existent grounds and also the detention is based upon ulterior motives and the same is liable to be quashed.

G. That even otherwise also the impugned order is bad in the eyes of law because the person who had detain the petitioner must also filed an affidavit for an undertaking whereby he must disclose that he had explained the grounds of detention to the petitioner in the language which is known to the petitioner and in the present case there is no such affidavit or undertaking which is supporting the case.

- 05.** Countervailing the stand of the petitioner, respondents are affront with the contention that petitioner is a notorious drug peddler. His activities posed a serious threat to the health and welfare of the people. Therefore, impugned detention order came to be issued against the petitioner after due application of mind and careful examination of dossier submitted by the sponsoring authority.
- 06.** It is contention of the respondents that at the time of execution of the detention order, the entire relevant material containing 62 leaves along with grounds of detention were not only supplied to the petitioner but also explained to him in the language i.e. Hindi and Dogri which he understood. He was also informed about his right to make representation before the Government and the detaining authority. According to the respondents, since ordinary law of the land failed to deter the petitioner, it was found imperative to detain him. Respondents have prayed for dismissal of the petition.
- 07.** Having heard learned counsels for the parties, I have gone through the detention record.

- 08.** Mr. M.K. Bhardwaj, learned senior counsel appearing for the petitioner at the foremost has argued that since the material furnished to the petitioner was not explained to him in the language he understands, he was prevented from making an effective representation.
- 09.** A perusal of the detention record, however, would reveal that total 62 leaves including copies of Detention order (03 leaves), notice of detention (01 leave), grounds of detention (03 leaves), dossier (06 leaves) along with copies of FIR, statement of witnesses and related relevant material (49 leaves) came to be supplied to the petitioner against proper receipt. As per the record, those documents were explained to the petitioner in Hindi and Dogri language which he understood. Petitioner has put his signatures as an acknowledgment to the same. Since petitioner has not filed any rejoinder to this contention of the respondents, therefore, this ground is not available to him at this stage.
- 10.** Be that as it may, what is evident from a perusal of the grounds of detention is that impugned order traces its origin to two FIRs against the petitioner under NDPS Act. In FIR No. 04 of 2025, 01.70 grams of heroin is stated to have been recovered and in FIR No. 106 of 2025, 04.63 grams of heroin is stated to have been recovered from the possession of petitioner and status of both the cases is under investigation. On the basis of these two FIRs, it is allegation of the detaining authority that continuous illegal activities of the petitioner has posed a serious threat to the welfare of the people.

11. In the circumstances, the question which begs consideration of this Court is whether these allegations would constitute an act of disturbance of public order.
12. It is by far a crystallized position of law that if ordinary law of the land is competent to deal with criminal activities of an individual, recourse to the provisions of preventive detention laws, shall be illegal because expressions “public order” and “law and order” operate in different fields with different connotations. If an act has the potentiality to disturb public order, it is the public at large which is affected. On the contrary, breach of law by indulging in criminal activity or in contravention to the provisions of a particular statute may be termed as a law and order issue but certainly it does not amount to the disturbance of public order.
13. Reverting to the case on hand, the petitioner is found involved in two FIRs, whereby small quantity of contraband were allegedly recovered from his conscious possession and both the cases at the time of issuance of impugned order are stated to be under investigation. Since alleged crimes did not culminate in the presentation of final reports against the petitioner, it does not lie in the mouth of the detaining authority to say that petitioner is found in continuous illegal activities of drug peddling. There is nothing in the record to suggest that ordinary law of land was not found competent to deal with the situation. Allegations against the petitioner may tantamount to a law and order problem but they certainly do not fall within category of “public order”. Therefore, apprehension of the detaining authority or

the concern expressed by the sponsoring authority that petitioner poses a serious threat to the health and welfare of the people is unfounded and cannot form the basis for putting him under preventive detention.

14. In the context of what has been observed and discussed above, it is held that a person involved in a couple of criminal activities only cannot be put under preventive detention if ordinary law of land is competent to deal with such activities. If relevant provisions of penal code are sufficient to deal with the activities attributed to a criminal, recourse to PSA or preventive detention laws is not only illegal but unconstitutional.
15. Having regard to what has been discussed above, present petition is allowed and impugned order is quashed. Petitioner is directed to be released forthwith from preventive custody provided he is not involved in any other case.
16. Detention record after perusal is returned to learned Sr.AAG.
17. Disposed of along with connected CMs.

(Rajesh Sekhri)
Judge

Jammu
07.05.2026
Eva

Whether the judgment is speaking or not?	Yes
Whether the judgment is reportable or not?	Yes