

IN THE HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

(through virtual mode)

HCP No. 74/2025

Rajan Singh @ Rahul Jamwal Age:35 years,
S/o Sh. Ramesh Singh Jamwal
R/o Channi Rama, Tehsil Bahu District Jammu
through his wife
ShagunChandel, Age 23 years
W/o Sh. Rajan Singh @ Rahul Jamwal
R/o Channi Rama, Tehsil Bahu District Jamrnu.....Petitioner(s)

Through:- Mr. SuyashSingh Chandel, Advocate

Vs.

1. Union Territory of Jammu and Kashmir
through its Principal Secretary (Home),
Civil Secretariat, Jammu.

2. The Divisional Commissioner
Jammu

3. The Senior Superintendent Of Police,
Jammu.

4. The Superintendent District Jail,
Udhampur

.....Respondent(s)

Through: - Mrs. Monika Kohli, Sr. AAG

CORAM:

Hon'ble Mr. Justice Mohd Yousuf wani.

JUDGMENT

1. Impugned in the instant petition, having been filed in terms of Article 226 of the Constitution of India is the order of detention bearing No. **PITNDPS 20 of 2025 dated 16.04.2025**, passed by respondent No.2i.e.the Divisional Commissioner, Jammu, (hereinafter referred to as the Detaining Authority for short) while invoking his powers U/s (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as PITNDPS Act for short) r/w SRO-247 dated 27.07.1988, whereby the petitioner/detenu was directed to be detained and lodged in District Jail

Udhampur, for a period to be specified by the Government with a view to prevent him from engaging in Illicit Trafficking in Narcotic Drugs and Psychotropic Substances.

2. The petitioner–detenu, through his wife Shagun Chandel, aged about 23 years, has sought the quashment of the impugned detention order dated 16.04.2025 by issuance of a writ of **habeas corpus**, inter alia, on the grounds that same is violative of his guarantees under Articles 21 and 22 of the Constitution of India. That firstly, there was no legal justification for his detention on the mere allegations of his involvement in certain FIRs in which petitioner-detenu stands already enlarged on bail and secondly, the copies of the documents forming the basis of the impugned detention order were neither furnished nor explained to him in a language understandable by him, thereby depriving him of his right to make an effective and timely representation against his detention. That he was not informed by the detaining authority regarding his constitutional right to make a representation against his detention order. That actually the copies of order impugned and grounds of detention without the supporting documents came to be handed over to the petitioner-detenu by jail authorities after some days of his arrest and detention. That the impugned detention order was not confirmed by the Government as required under law within the prescribed period. That even his case was not referred to the Statutory Board competent to advise the Government regarding any *prima facie* ground being made out or not, for detention of the detenu. That the grounds of detention of the petitioner are stale and have no proximity with the object sought to be achieved by the impugned detention order. That

the detaining authority has while merely acting upon the dossier of respondent No.3 hurried to pass the impugned order without application of mind and without appreciating the fact that the petitioner/detenu had already been proceeded under ordinary criminal law in respect of his alleged accusation. That the detention of the petitioner on the basis of criminal cases which are already the subject matter of a pending trials amounts to subjecting him to double jeopardy. That the respondent No.2 i.e the detaining authority has not chosen to produce the petitioner before the learned advisory board, as is envisaged under law. That the grounds of detention are the replica of the police dossier without any application of mind on the part of the detaining authority. That the petitioner being an illiterate person cannot be supposed to read and understand the contents of the impugned detention order as well as the grounds of detention being in English language that came to be furnished to him after some days of his detention and lodgement in the jail. That the petitioner was not furnished the whole material so that he would be able to file a representation to the Government.

3. The petition has been resisted by the respondents through the memo of objections on the grounds that same is not maintainable in view of the fact that detention of the petitioner stands ordered in terms of a valid and legal order issued by the learned detaining authority in exercise of his powers vested in it u/s 3 (1) of PITNDPS Act.

That the detention order has been passed by the competent authority upon due application of mind and compliance with the procedure prescribed under the statute.

That the petitioner has alternate remedy available under the PITNDPS Act and as such could not have directly invoked extra writ jurisdiction of this court without proof of violation of any of his fundamental rights.

That the order of detention being a preventive measure for safeguarding the public interest cannot be challenged in the manner chosen by the petitioner.

That the petitioner is a habitual offender and is involved in series of criminal cases registered under NDPS Act.

That despite being granted bail in earlier cases he continued to indulge in Illicit Traffic in Narcotic Drugs and Psychotropic Substances especially 'heroin'.

That the *detenu* is involved in the case FIR Nos. 65/2020 U/s 8/21/22 NDPS Act; & FIR No. 62/2022 U/s 8/21/22 NDPS Act both of Police Station Bahu Fort and FIR No.171/2024 u/s 8/21/22 P/S Channi Himat, registered against him in the aforesaid Police Stations & in all of these case FIRs, he already stands bailed out.

That the registration of the said criminal case reveals a constant pattern of conduct and establishes that petitioner is actively engaged in narcotic trade.

That the detention order dated 16.04.2025 has been passed by a competent authority on the basis of cogent credible and relevant material.

That the dossier vide No. CRB/2025/Dossier/08/DPOJ dated 04.04.2025 submitted by the SSP, Jammu alongwith the other connected documents, surveillance in-puts and forensic reports reveals the

petitioner's involvement in the illicit trade of narcotic drugs.

That the detaining authority applied its independent mind to the material on record and was fully satisfied that the activities of the petitioner were prejudicial to the interests of society and the State.

That despite invocation of regular criminal law, the petitioner/*detenu* after being granted bail in the cases against him continued to indulge in the activities of trafficking in narcotic substances.

That the normal criminal law could not deter the petitioner/*detenu* from continuing his activities of illicit trade in narcotic substances.

That the grounds of detention and all the relied upon documents were duly communicated to him in the language understandable by him within the stipulated time.

That the *detenu* was already informed of his right to make a representation to the Government and the Advisory Board.

That the procedural requirements under Article 22(5) of the constitution have been strictly followed and the petitioner has not pleaded any specific procedural lapse or violation of his rights.

That in view of the petitioner's continuous and repeated involvement in Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, he was recommended for being detained by the Screening Committee constituted for the purpose to deter him from continuing his illegal activities of drug trafficking .

That the petitioner was carrying out his illegal activities in a manner deliberately designed to evade detection, by employing various methods to maintain secrecy, and did not afford any opportunity to the law and

order enforcement agencies to apprehend him red-handed.

That there are well founded reasons and apprehensions that if the *detenu* will remain at large, he will continue to indulge in expansion of his drug peddling net work by involving more youths of the area.

That the petitioner needs to be kept under detention so that young generation of the area could be saved from the evil consequences of his activities.

4. I have heard the learned counsel for the parties who reiterated their respective stands already taken in the main petition and the memo of objections.
5. The learned counsel for the petitioner in support of the grounds of challenge made in the main petition, placed reliance on the judgments cited as "***T.A. Abdul Rahman vs. State of Kerala and Or,; 1990 AIR 225 decided on 23.08.1989; MuyeedShafiGanie vs. UT of J&K and An, WP(Crl) No. 202/2022 decided on 31.01.2024;Mohd. Arief @ Kaka Vs. UT of J&K and Ors HCP No. 40/2024 decided on 06.12.2024; Asif Sultan Saida Vs. UT of J&K and Anr. WP(Crl) No. 234/2022 decided on 07.12.2023;Nek Ram @ Satnamvs. UT of J&K and Ors.HCP No. 11/2025 decided on 24.07.2025;Mudassir Hussain vs. UT of J&K and Ors.WP(Crl) No. 26/2023 decided on 30.12.2023;***"
6. The learned counsel for the respondents Ms. Monika Kohli, Sr. AAG also made reliance on the authoritative judgments cited as "***HaradhanSaha vs. State of W.B (1975) 3 SCC; Anil Sharma vs. UT of J&K and ors LPA***

55/2023 decided on 16.08.2023 & Jahangir Ahmad Dar vs. UT of J&K and ors LPA No. 12/2023 decided on 12.02.2023”.

7. I have perused the instant petition, the counter filed by the respondents and have also gone through the detention record furnished for perusal by the respondents.
8. Keeping in view the aforementioned perusal and the consideration of the rival arguments advanced on both the sides, this Court is of the opinion that the impugned detention order dated 16.04.2025 suffers from illegality. The, “application of mind” of the Ld detaining authority and the “inevitability of the detention” which are *sine qua non* for passing of a detention order appear to have been compromised in the instant case. Besides the communication of the order of detention to the petitioner so as to enable him to make an effective representation to the concerned authorities at an earliest also does not seem to have been made effectively in the case.

Section (3) of the PITNDPS Act which confers the power on the competent authority to make orders for detaining certain persons is reproduced as hereunder for ready reference:-

“3. Powers to make orders detaining certain persons. — (1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of Secretary to that Government, specifically empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained. (2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order. (3) For the purpose of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be

recorded in writing, not later than fifteen days, from the date of detention.”

9. It is an admitted position, as reflected in the grounds of detention, that the petitioner-*detenu* had been enlarged on bail by the competent trial courts in all aforesaid FIR's. It was incumbent upon the learned detaining authority to address itself as to how the normal criminal law was inadequate to deal with the petitioner, who had already been granted bail in the criminal cases registered against him. It is not the case of the respondents that the petitioner/*detenu* had violated any bail conditions nor is it their stand that they assailed bail orders but did not succeed and therefore have *bonafidely* invoked the provisions of the Act to detain the petitioner with a view to prevent him from repeating his alleged illegal activities of illicit trafficking in Narcotic drugs. The order impugned as such is not sustainable in the eyes of law.

“In *Rekha vs. State of Tamil Nadu*, 2011 (5) SCC 244, the Hon'ble Supreme Court has held as under :-

“No doubt it has been held in the Constitution Bench decision in *Haradhan Saha's* case (*supra*) that even if a person is liable to be tried in a criminal court for commission of a criminal offence, or is actually being so tried, that does not debar the authorities from passing a detention order under a preventive detention law. This observation, to be understood correctly, must, however, be construed in the background of the constitutional scheme in :16:Articles 21 and 22 of the Constitution (which we have already explained). Article 22(3)(b) is only an exception to Article 21 and it is not itself a fundamental right. It is Article 21 which is central to the whole chapter on fundamental rights in our Constitution. The right to liberty means that before sending a person to prison a trial must ordinarily be held giving him opportunity of placing his defence through his lawyer. It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law (Indian Penal Code or other penal statutes) will not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.

Hence, the observation in para 34 in HaradhanSaha's case (supra) cannot be regarded as an unqualified statement that in every case where a person is liable to be tried, or is actually being tried, for a crime in a criminal court a detention order can also be passed under a preventive detention law.”

10. The impugned detention order has been based mainly on the ground that the petitioner-*detenu*, despite being involved in a number of criminal cases and having been enlarged on bail by the competent trial courts therein, has been allegedly continuing the acts of illicit trafficking in narcotic drugs and psychotropic substances. As per the case of the learned competent authority, the last criminal act allegedly committed by the petitioner-*detenu* pertains to the date 14.12.24. A period of about four months appears to have elapsed between the said last occurrence and the passing of the detention order dated 16.04.2025. As such, there does not appear to be any live and proximate link between the alleged act and the purpose of detention. It is settled legal position that an in-ordinate delay in passing the detention order from the date of the alleged criminal act of the *detenu* snaps live link between the two and renders the detention order bad in law.

11. This court in its opinion feels fortified with the authoritative judgment of the Hon'ble Supreme Court of India reported in “Rajinder Arora vs. Union of India and others” AIR 2006 (4) SCC 796, decided on 10.03.2006.

The relevant para of the judgment is reproduced as under:-

“The conspectus of the above decisions can be summarized thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial

activities and the passing of detention order, the court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.”

- 12.The opinion of this Court is also supplemented by another authoritative Judgment of the Hon’ble Apex Court cited as “*Sushanta Kumar Banile vs. State of Tripura &Ors*”. *AIR, 2022 SC 4175*, in which, it has been held that undue and unreasonable gap between the alleged accusation and the passing of the detention order snaps the live-link between the two. On the basis of the afore referred authoritative Judgments, this Court is of the opinion that the Ld detaining Authority has not applied its mind before passing the impugned detention order.
- 13.It is the case of the petitioner/*detenu* that he was not furnished with the copies of the detention order, grounds of detention and of the other record basing the same at the time of his arrest and detention, thereby preventing him to make an effective in time representation against his detention order. It is also his case that he was not informed that he has right to make a representation to the detaining authority as well as to the Government. A perusal of the detention record reveals that the police officer, who was entrusted the execution of the detention warrant did not furnish copy of the detention record in its entirety to the petitioner/*detenu*.
- 14.The petitioner/*detenu* has also averred in his petition, that the contents of

the detention warrant and the grounds of detention were not explained to him in his vernacular language and he was not also informed that he has a right to make representation to the detaining authority or to the Govt.

15. The procedural safeguards as mandated under Article 22 (5) of the Constitution as well as under Section 3 of the Act appear to have been observed in breach, and as such the impugned order cannot sustain.

This Court in its opinion is fortified with the authoritative Judgment of the Hon'ble Apex Court cited as "*Shalini Soni Vs. Union of India*" (1980) 4 SCC 544: 1981 SCC (Ori) 38, the relevant portion of which is reproduced as under:-

"The Article 22 (5) has two facets : (1) communication of the grounds on which the order of detention has been made; (2) opportunity of making a representation against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded. It is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu. From what we have said above, it follows that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The matter may also be looked at from the point of view of the second facet of Article 22(5). An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been

taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is dear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the 'grounds' must be supplied to the *detenu* as part of the 'grounds'."

16. It is also the case of the petitioner/*detenu* that he was not informed that he has a right to make a representation against his detention order to the learned Advisory Board.
17. As per the grounds of detention, the petitioner is alleged to be involved in three case FIR Nos. 65/2020 U/s 8/21/22 NDPS Act; & FIR No. 62/2022 U/s 8/21/22 NDPS Act both of Police station Bahu Fort and FIR No.171/2024 u/s 8/21/22 P/S Channi Himat.
18. As itself admitted by the Ld. detaining authority, the petitioner stood already bailed out in all case FIR(s) and there was no allegation of misuse of any bail condition by him. There is also nothing on record evidencing the fact that the Government through prosecution made any endeavor to seek the cancellation of the bail orders. The detention order appears to have been passed about 121 days after the registration of the last case FIR No.171/2024. So, again the delay in passing the impugned detention order snaps the required live link between the last incident of 14.12.2024 that led to the registration of the last FIR No. 171/24 against the detenu and the detention order dated 16.04.2025.
19. The detaining authority has not also in clear and pellucid manner mentioned in the grounds of detention as to how the normal criminal law

failed to prevent the petitioner/*detenu* from repeating the commission of crime. In all cases of detention which are based on the criminal cases registered against the *detenu*, it is incumbent upon the detaining authority to record in the grounds of detention as to whether ordinary criminal law had not prevented such person so as to draw satisfaction to order preventive detention. In none of the cases against the petitioner, as mentioned in the grounds of detention, a commercial quantity of narcotic drugs or psychotropic substances is alleged to have been recovered from the possession of the *detenu*. The same thing is borne out from the bail orders of the learned trial court. So, the non-application of mind and the lack of subjective satisfaction is discernable in the facts and circumstances of the case.

20. The preventive detentions need to be passed with great care and caution keeping in mind that a citizen's most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the basis of subjective satisfaction of the Ld. detaining authority without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution and the provisions of Section (3) of the PITNDPS Act requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper

communication of the grounds of detention and the information of liberty to make a representation against the detention order are the imperative and inevitable conditions rather requirements for passing of a detention order.

21. For the foregoing discussion the impugned detention order No. PIT NDPS Act 20 of 2025 dated 16.04.2025 appears to be outcome of non-application of mind. The petitioner/*detenu* appears to have been prevented from making a representation in respect of his detention order. There also appears to be no live link between the grounds of detention and the detention order. The procedural safeguards mandated under Article 22(5) of the Constitution and section 3(3) of the PIT NDPS Act appear to have been compromised.

22. Accordingly, the petition is allowed and the impugned detention order bearing No. PIT NDPS 20 of 2025 dated 16.04.2025 passed by respondent No.2 i.e., Ld. Divisional Commissioner Jammu is quashed with the direction to the respondents to release the petitioner/*detenu* from his preventive custody in the instant case, if not already released.

23. The record is ordered to be returned to the office of the learned Sr. AAG against proper acknowledgement.

24. Disposed of.

(Mohd Yousuf Wani)
Judge

Srinagar:
11.05.2026.

“ayaz”

i) *Whether approved for reporting.* **No**