2026:AHC:129462-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 1070 of 2025

Narendra Sharma …..Petitioner(s)

Versus

State of U.P. and others …..Respondent(s)

Counsel for Petitioner(s)	:	Mr. Ajay Kumar Pandey, Advocate
Counsel for Respondent(s)	:	Mr. Anoop Trivedi, Additional Advocate General along with Mr. Shashi Shekhar Tiwari, Additional Government Advocate for respondents nos. 1, 3, 4, 5, 6 and 7 Mr. Shiv Kumar Pal, Deputy Solicitor General of India for respondent no. 2

RESERVED

Court No. - 64

HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(DELIVERED BY : J.J. MUNIR, J.)

This petition for a writ of habeas corpus has been instituted by the petitioner Narendra Sharma, praying that a *rule nisi* be granted, ordering him to be produced before the Court and set at liberty, after declaring the detention order dated 01.08.2025 passed by the Secretary, Department of

Home, Government of Uttar Pradesh, Lucknow under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988[1] illegal. It is in these terms that the petitioner prays that the rule be made absolute.

2. The case of the petitioner is that he was arrested on 08.07.2023 in Case Crime No. 348 of 2023, under Sections 8/21/22/25/27A/29/60 of the Narcotic Drugs and Psychotropic Substances Act, 1985[2], read with Sections 149/420/467/468/471 of the Indian Penal Code, 1860 and Sections 17(B), 27(C), 18(C) and 27 of The Drugs and Cosmetics Act, 1940[3], Police Station Jagdishpura, District Agra. Next, on 09.07.2023, the petitioner was arrested in Case Crime No. 494 of 2023, under Sections 8/21/22/25/27A/29/60 NDPS Act, read with Sections 149/420/467/468/471 IPC and Sections 17(B), 27(C), 18(C) and 27 of the Act of 1940, Police Station Sikandra, District Agra. This implication came on the basis of the statement of a co-accused in this crime, while the petitioner was in jail. The next implication that the petitioner faced in quick succession was on 29.07.2023 in Case Crime No. 393 of 2023, under 8/21/22/25/27A/29/60 NDPS Act, Police Station Jagdishpura, Agra. The petitioner's implication in Case Crime No. 393 of 2023 aforesaid was, again, one while he was still in custody of the respondents, after the arrest of co-accused Raj Kumar in the crime, without any valid or cogent reason. The petitioner was granted bail by this Court in Case Crime No. 393 of

1 'PIT-NDPS Act' for short
2 'NDPS Act' for short
3 'Act of 1940' for short

2023 *(supra)* on 04.10.2023; in Case Crime No. 494 of 2023 *(supra)* on 01.11.2023; and, in Case Crime No. 348 of 2023 on 24.01.2024. It is emphasised that until 29.07.2023, the petitioner was in the custody of the respondents and implicated in two other cases, while in their custody, without there being any event, apparently on the basis of the statements of the co-accused.

3. After release on bail, on 21.10.2024 at around 05:45 p.m., the petitioner was driving in his car, when officers of the Anti-Narcotics Task Force[4], Operational Unit Agra, Zone Agra, District Agra forcibly stopped his car and apprehended him. The petitioner asserts that he was kept in illegal custody by the ANTF aforeaid for two days. He was then arrested in connection with Case Crime No. 691 of 2024, under Sections 8/21/22/25/27A/29/60 NDPS Act, read with Section 319(2)/318(4)/338/ 336(3)/340(2)/111/276/277 of the Bharatiya Nyaya Sanhita, 2023[5] and Sections 17(B), 27(C), 18(C) and 27 of the Act of 1940, Police Station Sikandra, District Agra. This arrest was shown as if the petitioner had been apprehended on the spot, while involved in the crime. There is an assertion that there exists CCTV footage, clearly showing that the entire act of the officers of the ANTF was one of illegally apprehending the petitioner and forcibly taking him away in their vehicle.

4. While the petitioner was in jail in connection with Crime No. 691 of 2024 *(supra)*, the respondents opened a gang chart, and on its basis,

4 'ANTF' for short
5 'BNS' for short

registered Case Crime No. 156 of 2026, under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986[6], Police Station Jagdishpura, District Agra. The gang chart included Crime Nos. 393 of 2023, 348 of 2023 and 494 of 2023. The petitioner was granted bail by the order dated 11.07.2025 passed by this Court in Crime No. 691 of 2024. He asserts that seven out of the ten co-accused in Case Crime No. 156 of 2025, under Section 2/3 of the UP Gangsters Act were granted bail by this Court, while the petitioner's bail application in Crime No. 156 of 2025 was pending before this Court.

5. The Secretary (Home), Government of Uttar Pradesh, Agra, acting as the Detaining Authority, passed the impugned order of detention under Section 3(1) PIT-NDPS Act. The petitioner was informed about the detention order on 03.08.2025, while lodged in the District Jail, Agra. The petitioner submitted his reply against the detention order to the Jail Superintendent, District Jail, Agra on 24.08.2025. The Detaining Authority rejected the petitioner's representation on 14.10.2025. On 17.10.2025, the Advisory Board upheld the detention order and approved it for the period of one year.

6. Aggrieved by the detention order dated 01.08.2025, this habeas corpus writ petition has been instituted.

7. This petition was admitted to hearing on 26.11.2025 and a *rule nisi* issued. A counter affidavit bearing number 2 of 2025 has been filed on

6 'UP Gangsters Act' for short

behalf of the State Government; another, on behalf of the District Magistrate, Agra; and still another, on behalf of the Commissioner of Police, Agra. The last two affidavits bear numbers 4 of 2025 and 3 of 2025, respectively. A counter affidavit was filed on behalf of the Jail Superintendent, District Jail, Agra, bearing number 7 of 25, and another one, on behalf of the Drug Inspector, Department of Food Safety and Drug Administration, Agra. This affidavit bears number 5 of 2025. A counter affidavit was filed on behalf of the Union of India, and another, on behalf of the Anti-Narcotics Task Force, Operational Unit, Agra Zone Agra by the Deputy Superintendent of Police, Anti-National Task Force, Agra. These affidavits bear numbers 14 of 2026 and 15 of 2026, respectively. To the eight counter affidavits thus filed on behalf of the respondents, the petitioner has filed an equal number of rejoinders. A supplementary affidavit dated 31.01.2026 has been filed on behalf of the petitioner.

8. Heard Mr. Ajay Kumar Pandey, learned Counsel for the petitioner, Mr. Anoop Trivedi, learned Additional Advocate General assisted by Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate on behalf of respondents nos. 1, 3, 4, 5 and 6 and Mr. Shiv Kumar Pal, learned Deputy Solicitor General of India appearing on behalf of respondent no. 2.

9. It is argued by Mr. Ajay Kumar Pandey, learned Counsel for the petitioner, that it is a case of non-application of mind on the part of the

Detaining Authority, while ordering the petitioner's detention under the PIT-NDPS Act. He submits that the petitioner was already on bail granted by this Court on 11.07.2025 in Crime No. 691 of 2024, but, in the grounds of detention, the petitioner is shown to be in jail in the aforesaid crime. This fact, according to learned Counsel for the petitioner, clearly discloses non-application of mind to relevant facts. The impugned order was made on 01.08.2025, leaving approximately a clear period of 20 days for the Detaining Authority to know the current status of the petitioner as regards his bail in Crime No. 691 of 2024, but the Detaining Authority wrongly, and without knowing the status of the petitioner's bail, passed the order impugned, mentioning an incorrect fact that the petitioner was in jail in connection with Crime No. 691 of 2024. Learned counsel argued that the order of detention was made primarily on two ill-founded assumptions; firstly, that if the petitioner were enlarged on bail, he would abscond and prejudice the trial; and, secondly, he would again indulge in the same crime for monetary benefit. Both the assumptions are urged to be ill-founded, because there was no fact, circumstance or document to substantiate the aforesaid ill-founded apprehension of the detaining authority.

10. The next ground on which Mr. Pandey assails the impugned order is what is called “snapping of the live and proximate link”. He submits that there are three situations under which the principle of live and proximate link, developed through judicial precedent can be applied to

judge the validity of a detention order. The first is where there is a substantial gap between the arrest of the person (in the crime) and the detention order; secondly, where there is a significant gap between the last alleged offence and the date of the detention order; and, thirdly, where there is a considerable gap between the report of the Sponsoring Authority and the passing of the detention order. The submission is that in the petitioner's case, it is the second principle that is violated, inasmuch as the last First Information Report against the petitioner was lodged on 23.10.2024, whereas the detention order was passed on 01.08.2025, resulting in an unexplained time gap of nine months and nine days, snapping the live and proximate link between the alleged prejudicial activity and the order of detention.

11. It is next submitted that the Sponsoring Authority has relied upon a report prepared on 20.05.2025 by the ANTF, Meerut i.e. after a lapse of 32 days from the completion of investigation in Crime No. 691 of 2024 on 18.04.2025. It is pointed out that the ANTF, Meerut, was assigned investigation of Crime No. 691 of 2024 alone due to allegations of corruption against the ANTF, Agra surfacing in the media. It is urged that on 18.04.2025, the ANTF, Meerut ceased to be the competent authority to act as the Sponsoring Authority to propose preventive detention. Consequently, the delay involved and the lack of jurisdiction of the Sponsoring Authority render the detention arbitrary. There is clearly a

breach of the principle of live and proximate link, which stands snapped in this case.

12. The next ground of attack to the detention that the learned Counsel for the petitioner comes up with is that the Detaining Authority's subjective satisfaction about the necessity of making the order of detention is not based on objective material and merely based on apprehension. It is submitted by Mr. Pandey that the petitioner was on bail in all four cases, upon which, the detention order is founded and was duly participating in all the ongoing trials. This fact does not find mention in the grounds of detention. The detention order and the grounds only show that the petitioner is bailed out in all cases except Crime No. 691 of 2024. At the time of the making of the detention order, the petitioner had been granted bail in this case as well. The Detaining Authority, without application of mind, recorded its subjective satisfaction that is based upon the report of the Sponsoring Authority, accepting it as gospel.

13. The other contention is that the detention order classifies the petitioner as a habitual offender, which is certainly not the case, according to the learned Counsel. Mr. Pandey submits that the petitioner has not been convicted in any of the four cases. He further submits that no person can be classified as a habitual offender until and unless he has at least been convicted in any one of the cases registered against him. Here, the petitioner was arrested in one of the cases and his involvement in the three others is based on statements of co-accused. This kind of implication in

four criminal cases cannot serve as basis to classify the petitioner a habitual offender.

14. In support of these submissions, Mr. Pandey has placed reliance upon **Jahanara Bibi @ Jahanara Begam @ Jahanara Mondal @ Janu v. Union of India and others**[7]. It is emphasised that assuming for argument's sake that the ANTF, Meerut is the competent Sponsoring Authority, the Screening Committee report and the detention order, read together, demonstrate a complete absence of subjective satisfaction. Both documents are *verbatim* reproductions of each other, reflecting a mechanical exercise of power, with no independent application of mind or effort to collect and consider latest and relevant material concerning the cases against the petitioner.

15. Learned counsel for petitioner next questions the detention order on the ground of violation of his fundamental right, particularly that under Article 22 of the Constitution. The PIT-NDPS Act, when compared with other statutes that provide for preventive detention, like the National Security Act, 1980[8] is completely silent on various aspects central to a citizen's liberty. Mr. Pandey enumerates these wanting provisions in the NDPS Act as follows :

> i. The Act doesn't provide the "opportunity of representation"

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8 'NSA' for short

ii. There is no provision that governs the making of the sponsoring authority report or the screening committee report.

iii. Proper procedural information regarding the preparation of reports is absent from the Act, and even the procedural information regarding who can be a sponsoring authority or who are members of the screening committee is not found in the Act.

iv. The procedures regarding detention are completely working on the whims and fancies of the police, the prime example being that there are no criteria that provide for a minimum conviction to impose the PIT-NDPS Act, even if any person is allegedly accused of an offence under the NDPS Act, the police can take steps and invoke the PIT-NDPS Act.

16. Mr. Pandey advances a novel argument on the basis of these features in the NDPS Act, which he says violate the mandate of Article 22 of the Constitution. He submits that in circumstances where such major discrepancies are discernible in the Act aforesaid, the benefit of doubt must go to the petitioner. Elucidating further on his submissions under this limb of challenge, learned Counsel for the petitioner says that the petitioner was taken before the Advisory Board during the hearing, but not allowed legal representation, much in violation of Article 22. The petitioner was not informed about various orders of rejection passed by the State Government. It is again emphasised that the PIT-NDPS Act is completely silent regarding the opportunity of representation. The NSA, though enacted earlier, talks about the opportunity of representation by Section 8 thereof, but the PIT-NDPS Act is silent regarding representation, contrary to the mandate under Article 22 of the Constitution. Mr. Pandey submits that it is a case of curtailment of the

petitioner's liberty without trial. It is also urged that a cryptic order of detention is more punitive in nature than preventive.

17. Mr. Anoop Trivedi, learned Additional Advocate General has resisted the challenge laid by the petitioner and urged that the detention order has been passed after taking into consideration relevant and objective material. Subjective satisfaction, therefore, is well-founded. The order of detention neither suffers from non-application of mind nor is this a case of snapping of the live and proximate link. The petitioner was consistently involved in three cases under the NDPS Act and was apprehended in a fourth, after he was released on bail in three cases in the year 2024. The submission is that the petitioner is persistent and relentless in his deviant behavior and involved in illegal manufacture of spurious narcotic drugs, that have a serious impact on the society at large. The order of detention has been passed taking into consideration the entire dossier forwarded to the Sponsoring Authority recommending detention. The petitioner's representation against the detention order has been considered by the Detaining Authority, which was made on 24.08.2025 through the Jail Superintendent, District Jail, Agra. It was forwarded to the Home Department on the said date itself by the jail authorities.

18. Upon the said representation, comments were called from the Office of the District Magistrate, Agra. These were received from the District Magistrate on 18.02.2025. The matter was then sent for approval to the Chief Secretary and subsequently, the petitioner’s representation

rejected *vide* order dated 14.10.2025. It is further submitted that the petitioner was facilitated in appearing before the Advisory Board, Preventive Detention, Uttar Pradesh, Lucknow on 25.09.2025, and thereafter, upon receiving the report of the Advisory Board, the detention order dated 01.08.2025 was confirmed for a period of one year on 17.10.2025, under section 9(f) PIT-NDPS Act.

19. A perusal of the grounds of detention reveals that the petitioner, Narendra Sharma, along with a number of other persons, which includes Rohit Kushwaha son of Vijay Singh, Diwan Singh son of Radhe Shyam, Vijay Goyal son of Rajesh Goyal, Rekha Goyal wife of Vijay Goyal, Shani Raj son of Harish Chand, Amit Pathak son of late Jagannath Prasad, Ashok Kumar Kushwaha, Bhola Kushwaha son of Ashok Kumar Kushwaha, Shiv Kumar Kushwaha son of Raghuveer Singh Kushwaha, Jitendra Kushwaha son of Bachchu Singh, Lokendra Kushwaha son of Kamal Singh, Alok Kushwaha son of Purushottam, Ravi Kant son of Murari Lal, Vishal Agrawal son of Shankar, Bhudeo, Mukesh Kumar son of Sahab Singh and Suraj Gaur son of Mangal, is involved, according to the grounds, in a racket of manufacture of spurious drugs, which involves possession of narcotic drugs and psychotropic substances. The petitioner is the leader of this gang and they have factories in residential areas manufacturing spurious drugs, where machinery for the manufacture of these drugs, raw materials, packaging machines and material have all been recovered by the officers of the ANTF, Agra.

20. In case of the first crime i.e. Crime No. 348 of 2023, the grounds of detention show that on 08.07.2023, the ANTF, Agra, along with some police force from Police Station Jagdishpura, Agra, and a Drug Inspector, acting on the information of a police informer, apprehended a Grand Vitara Car bearing registration number UP 80 GN 3989 at the Bichhpuri-Pithauli Canal, near the Bicchpuri cut, laden with medicines such as Ocirex C Syrup 230 units, Alprasafe 0.5 mg. 1200 units, Phensedyl Syrup 200 units and cash in the sum of ₹1,20,000, apparently, money earned of the business in illicit dealing in drugs. The occupants of the car, to wit, Rohit Kushwaha and Diwan Singh, were arrested. Rohit Kushwaha and Diwan Singh, on their pointing, led the ANTF to a house in Krishna Vihar, Bichhpuri, located near the Patahuli Canal, under the construction bridge. In the said *pucca* house, an illegal factory of drugs was found, wherefrom the petitioner, Narendra Sharma, besides Mukesh Kumar, were arrested. The factory had a unit of compressor machine of 27 stations, another unit of compressor machine of 23 stations, one blister pack machine, a multi mill, a mass mixer, a dryer, one unit sickter, a stove of steel for the purpose of making pastes, a furnace together with cylinder, a printer machine, another unit of air compressor, a generator with an output of 30 kilowatts, beside a number of small tools necessary in the manufacture of drugs. In addition, a scale and one unit of electronic scale were found. The ANTF also found on this premises a unit of aluminum packing roll for Alprasafe tablets, 800 unprinted cartons, 179 tablets of Alfinex Plus, 7680

Alprasafe tablets, 600 tablets of Alprasafe without print, 120 units of Onerex Syrup, 834 grams of Alprazolam Powder, 22.480 kgs. of Orange-coloured powder, 162 kgs. of Dibasic Calcium Powder, 38.460 kgs. of Pharmaceutical Excipient IP, 200 kgs. of micro crystalline cellulose, 32.460 kgs. of Alprasafe tablets, 52 kgs. of aluminum foil, 22.420 kgs. of powder without label, 100 kgs. of corn flour, 8.22 kgs. of Pyrazonic Silica, 60.22 kgs. of Talcum Powder, 17.22 kgs. of Sodium Starch Glyco, 72.80 kgs. of micro-crystalline cellulose, 25.420 kgs. of Croscarmellose Sodium, 50.16 kgs. of Paracetamol IP, 5 kgs. of Dicyclomine Hydrochloride.

21. The grounds mention that the aforesaid illegal drug factory was owned by Narendra Sharma, resident 58, Shankarpuri, Kedarnath, Police Station Shahganj, Agra and Vijay Goyal son of Rajesh Goyal, resident of Plot No. 8, Icon City, Magtai, Police Station Jagdishpura, Agra, who are running it in partnership. They would raise forged bills in the name of reputed companies, label, seal and package drugs in their name and launch these in the national and international markets. The vehicle, that was apprehended with Rohit Kushwaha and Diwan Singh on board, carrying some of these spurious narcotic drugs, bearing Registration No. UP 80 GN 3989, also stand in the petitioner's name.

22. The grounds further show that in relation to the other Crime No. 494 of 2023, the ANTF, at the pointing out of Rohit Kushwaha, discovered another illegal drug factory situate in House No. 5381, Avas

Vikas Colony, Bodhla, Police Station Jagdishpura, Commissionerate Agra. Elaborate stock of spurious medicines and equipment was found there, including NDPS drugs. From the said premises, one Ajit Parashar son of Kishan Swarup and another Shani Raj, son of Harish Chand were arrested. They revealed that this factory is run in partnership with Narendra Sharma, the petitioner and also Vijay Goyal.

23. Likewise, in Crime No. 393 of 2023, on 29.07.2023, the ANTF, Agra, along with the Police of Police Commissionerate, Agra and the Drug Inspector, on the information of an informer, apprehended a Loader bearing number UP 80 DT 2506 near the Chahar Academy. It was loaded with drugs such as Welcyrex Syrup 240 units, Alprasafe 0.5 mg. 60000 tablets and Alzocel 0.5 mg. 18000 tablets, which were in custody of Raj Kumar *alias* Bantu son of Rakesh, who was arrested. He disclosed that the consignment belonged to Vijay Goyal and Narendra Sharma, the petitioner, and that the said medicines had been loaded at the godown and were meant for delivery to a companion of Vijay Goyal, Deepak. Spurious narcotic drugs recovered were stored away for some time in a shop, and on Raj Kumar's pointing, the ANTF crossed the Bichhpuri Gate and went to Rama Vihar Colony. In front of the colony, they were led to the Baba Natthi Gayasi Market, where a godown of drugs was located. There, they found, in large quantity, narcotic drugs detailed in the grounds of detention. The last of the two cases surfaced while the petitioner was in

jail in connection with the first crime mentioned in the grounds. Thereafter, he was granted bail.

24. On 23.10.2024, Sub-Inspector Gaurav Sharma of the ANTF, Agra, was led to a godown in the basement of one Udaiveer Singh's house, where, illegally manufactured spurious psychotropic drug, Montair FX tablets, were found in the quantity 4006 110x15 tablets, Proxywel Spas capsule bearing Batch No. P06CA29 were found in the quantity of 82200x8 capsules, Alzocel tablets in the quantity of 61320x10 tablets and a number of other medicines in large quantities. Machines to manufacture these drugs were also recovered from the petitioner, along with Vijay Goyal and a number of other co-accused. Another thirteen were found to be the owners of the factory and the godown as well. It is this material, on the foot of which, the Detaining Authority has proceeded to pass the impugned order.

25. We first proceed to test the petitioner's submission regarding the detention being bad on account of non-application of mind in permitting the grounds of detention. Two points that have been raised to bring home the case of non-application of mind have already been noted. So far as the case of the petitioner being granted bail in Crime No. 691 of 2024 is concerned, whereas it is mentioned in the grounds that he was in jail in relation to the said crime, in fact, he had already been granted bail there. We are of opinion that the fact that the Detaining Authority was not aware in relation to what crime the petitioner was in jail would vitiate his

subjective satisfaction, in any event. The reason is that for the detenue who is already in jail in connection with a crime, the power of preventive detention can be exercised by the Detaining Authority if he is aware that the detenue is in jail and there is likelihood of his being released on bail.

26. The next concomitant of the exercise of this power is that the Detaining Authority should also be satisfied that once released on bail, he would re-indulge in crime, in this case, under the NDPS Act. The object of an order of preventive detention is to prevent the detenue from again indulging in the same crime and it has nothing to do with the prosecution. Nevertheless, the most fundamental postulate to a valid exercise of the power of preventive detention in regard to a person already in judicial custody in connection with a crime is, firstly, awareness about the fact that the person is in jail; and, secondly, about the crime, in connection with which, he is in jail. The second condition is necessary, because, it is essential for the exercise of the power of preventive detention by the Detaining Authority in the case of a person already in jail that he should be subjectively satisfied, again, on the basis of some object material, that there is real likelihood of the person being released on bail in the crime.

27. In order to assess whether there is likelihood of a person being released on bail in the crime, the Detaining Authority must know what the crime is, the facts, the evidence appearing against the detenue, and, may be, the orders of bail or refusal passed in relation to similarly circumstanced co-accused by the Court. If, therefore, the Detaining

Authority, while being rightly aware that the detenue is already in jail, does not know in connection with what case he is in jail or wrongly knows the case that is keeping him behind bars, he can never exercise his subjective satisfaction to form an opinion that there is likelihood of the detenue being released on bail in the near future. This part of the satisfaction is a *sine qua non* for the exercise of power of preventive detention by the Detaining Authority in case of a person already in jail. The facts here are very unusual, because it seldom happens that the Detaining Authority, while being aware that the detenue is in jail, considers his detention as one made in relation to a case different than the one he is actually incarcerated in. There have been cases where the detenue, though already released on bail, is considered by the Detaining Authority to be in jail, while passing the order of detention. In that case, the detention order would be vitiated. Reference in this connection may be made to a very recent decision of the Supreme Court in **Mortuza Hussain Choudhary v. State of Nagaland and others**[9]. In that authority of their Lordships, recapitulating the law regarding preventive detention of persons already in judicial custody, it was observed :

> **8.** We may now note precedential law on the subject. In *Kamarunnissa* v. *Union of India*, the detenus were already in judicial custody at the time the orders of preventive detention were passed against them. This Court affirmed that detention orders could be validly passed against detenus who were in jail, provided the officers passing the orders were alive to the factum of the detenus being in custody and there was material on record to justify the conclusion that they would indulge in similar activities, if set at liberty. Reference was made to the earlier decision of this Court in *Binod Singh* v. *District Magistrate, Dhanbad, Bihar*, wherein it was held that there

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must be cogent material before the officer passing the detention order to infer that the detenu was likely to be released on bail and such an inference must be drawn from the material on record and must not be the *ipse dixit* of the officer passing such order. This Court, therefore, emphasized that before passing the detention order in respect of a person who is in jail, the concerned authority must satisfy himself and such satisfaction must be reached on the basis of cogent material that there is a real possibility of the detenu being released on bail and, further, if released on bail, the material on record must reveal that he/she would indulge in prejudicial activity again, if not detained.

9. On similar lines, in *Rekha* v. *State of Tamil Nadu*, a 3-Judge Bench of this Court affirmed that, where a detention order is passed against a person already in jail, there should be a real possibility of the release of that person on bail, that is, he must have moved a bail application which is pending. It was observed that if no bail application is pending it logically followed that there is no likelihood of the person in jail being released on bail. The Bench, however, pointed out that the exception to this Rule would be where a co-accused, whose case stood on the same footing, was granted bail. The Bench cautioned that details in this regard have to be recorded, otherwise the statement would be mere *ipse dixit* and cannot be relied upon. The law laid down in *Rekha* (supra) was reiterated and followed in *Huidrom Konungjao Singh* v. *State of Manipur*.

10. Earlier, in *Union of India* v. *Paul Manickam*, this Court observed that, where detention orders are passed against persons who are already in jail, the detaining authority should apply its mind and show awareness in the grounds of detention of the chances of release of such persons on bail. It was observed that the detaining authority must be reasonably satisfied, on the basis of cogent material, that there is a likelihood of the detenu's release and in view of his/her antecedent activities, which are proximate in point of time, he/she must be detained in order to prevent him/her from indulging in such prejudicial activities. It was held that an order of detention would be valid in such circumstances only if the authority passing the order is aware of the fact that the detenu is actually in custody; the authority has a reason to believe, on the basis of reliable material, that there is a real possibility of the detenu being released on bail; and that, upon such release, he/she would, in all probability, indulge in prejudicial activities; and it is felt essential to detain him/her to prevent him/her from so doing. This principle was again reiterated and applied in *Union of India* v. *Dimple Happy Dhakad*.

28. Further, in **Mortuza Hussain Choudhary** *(supra)*, it was held :

12. Given the settled legal position, as set out *supra*, we are of the opinion that the orders of detention passed against Ashraf Hussain Choudhary and Adaliu Chawang cannot be sustained. The authorities concerned paid mere lip service to the mandatory requirements and mechanically went through the motions while dealing with the cases of these two individuals. The proposals submitted by the Investigating Officer noted the fact that both the detenus were arrested on 12.04.2024 and that they had not been released on bail. Reference was also made to their involvement in earlier

> cases. In the case of Adaliu Chawang, the Investigating Officer stated that she was arrested in Meghalaya in connection with FIR dated 21.04.2021 but noted that she was not treated as absconding after being granted bail. In the case of Ashraf Hussain Choudhary, the Investigating Officer stated that he was earlier arrested in connection with a case registered by Dimapur East PS in the year 2022, but noted that he was also not absconding in relation thereto after securing bail.
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> **13.** The Investigating Officer, however, did not state anything about either of the detenus seeking bail in relation to Narcotics PS Case No. 005/24, after being arrested on 12.04.2024. The covering letters dated 14.05.2024 and 17.05.2024 addressed by the Additional Director General of Police to the Special Secretary, Home Department, Government of Nagaland, reiterated the factum of both the detenus having been arrested on 12.04.2024 and their being in judicial custody on that date. He, however, went on to state that, if granted bail, there was a great chance of both of them continuing with illicit trafficking of narcotic drugs and psychotropic substances. There was no basis whatsoever for this *ipse dixit* statement, as it is an admitted fact that neither Ashraf Hussain Choudhary nor Adaliu Chawang had applied for bail at the time the detention orders were passed against them. As noted earlier, it was only on 28.11.2024 that they were granted default bail owing to the failure of the prosecution to do the needful within the prescribed time. Therefore, the edicts of this Court, referred to *supra*, would squarely apply as there was no material for the detaining authority to have formed an opinion that there was a likelihood of either Ashraf Hussain Choudhary or Adaliu Chawang being released on bail.

29. In **Mortuza Hussain Choudhary**, the subjective satisfaction of the Detaining Authority was regarded vitiated by the Supreme Court, because, no bail application had been moved by the two persons involved there in the crime, in connection with which, they were in jail on the date on which the detention order was passed. Therefore, there was no basis for the Detaining Authority to conclude that the detenues were likely to be released on bail. There is consistent authority about cases where no bail applications were made and yet the Detaining Authority inferred that there was likelihood of the detenue being released on bail, where, by preponderant opinion, it was held that the subjective satisfaction of the

Detaining Authority about the likelihood of the detenue being released on bail was vitiated.

30. Here, as already remarked, the subjective satisfaction is vitiated for a very different reason. If the Detaining Authority was unaware about the fact that the detenue had already been granted bail in Crime No. 691 of 2024 under the NDPS Act, and was actually in jail on account of his involvement in Crime No. 156 of 2025 under the UP Gangsters Act, there is no basis for the Detaining Authority to form an opinion, founded on objective material, that there was likelihood of the petitioner being released on bail. He could not form an opinion about the likelihood of bail being granted to the petitioner, in connection with a case he did not know about. The subjective satisfaction of the Detaining Authority in this case is, therefore, clearly vitiated due to non-application of mind.

31. Once we have reached this conclusion, there is no occasion to consider the other points raised by learned Counsel for parties and pronounce upon them, because, the detention stands vitiated on this short ground alone.

32. We are informed that the petitioner has been enlarged on bail in Crime No. 156 of 2025 by this Court *vide* order dated 14.01.2026 passed in Criminal Misc. Bail Application No. 25679 of 2025. A copy of the order, downloaded from the official website of the High Court, has been shown to us.

33. In the result, this petition **succeeds** and stands **allowed**. The *rule nisi* is made **absolute**. The continued detention of the petitioner, pursuant to the detention order dated 01.08.2025 passed by the Secretary, Department of Home, Government of U.P., Lucknow, under Section 3(1) PIT-NDPS Act, is declared illegal. The petitioner be set at liberty forthwith, unless wanted in connection with some other case.

34. The Registrar (Compliance) is directed to communicate this order to the Secretary, Department of Home, Government of U.P. Lucknow through the learned Chief Judicial Magistrate, Lucknow.

(J.J. MUNIR, J.)

(VINAI KUMAR DWIVEDI, J.)

Allahabad
June 29, 2026
I. Batabyal

Whether the order is speaking : Yes
Whether the order is reportable : Yes