

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

Reserved on : 05.06.2025.

Pronounced on : 30.06.2025.

HCP No. 22/2025

**Neelam Devi (Age 40 years)
W/o Lt. Tarsem Lal
R/o Dinday Khurd, Bishnah,
District Jammu
Through her son Sunil Kumar (Age 24 years).**

.....Petitioner

Through: Mr. Tanveer Ahmad Khan, Advocate

Vs

- 1. Union Territory of J&K through Principal Secretary to Govt., Home Department, Civil Secretariat, Jammu.**
- 2. Divisional Commissioner, Jammu.**
- 3. Senior Superintendent of Police, Jammu.**
- 4. Superintendent District Jail, Udhampur, Jammu.**

..... Respondents

Through: Mrs. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

01. Heard learned counsel for the petitioner as well as for the respondents.

02. Perused the writ pleadings and the documents therewith. Also perused the detention record produced from the end of the respondents.

03. The petitioner-Neelam Devi, who is a 40 years old woman, has preferred this writ petition through her son-Sunil Kumar, thereby seeking quashment of a preventive detention order passed by the respondent No. 2 – Divisional Commissioner, Jammu under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (**“PIT-NDPS Act, 1988”** in short) as a result whereof the petitioner is suffering preventive detention custody being lodged in the District Jail, Udhampur meant to last for full period of one year.

04. The petitioner was reckoned to be a person allegedly involved in the activities falling within the mischief of PIT-NDPS Act, 1988 and, therefore, the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu by virtue of letter No.CRB/Dossier/2024/64/DPOJ dated 11.12.2024 submitted a dossier and other connected documents before the respondent No. 2 – Divisional Commissioner, Jammu thereby seeking the preventive detention of the petitioner.

05. In his said dossier, the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu came to provide the social background of the petitioner to be a widow aged 40 years being unable to carry out her ordinary pursuits and so

getting involved and engaged in illegal drug activities with a view to earn money easily and with a passage of time turning into a notorious drug peddler running illegal trade of narcotics starting from Ganja and Chitta by procuring it at cheap prices and then selling the same at expensive prices by luring the young generation towards drug menace.

06. In this regard, the petitioner's implication in FIR No. 190/2022 registered by the Police Station Bishnah for alleged commission of offences under section 8/21/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**"NDPS Act, 1985"** in short) came to be highlighted. The petitioner's involvement in FIR No. 149/2024 again registered by the Police Station Bishnah for alleged commission of offence under section 8/20/27(A) of NDPS Act, 1985 was also cited. By reference to aforesaid two FIRs, the petitioner was said to have been booked and challaned before courts of law.

07. In addition to the implication and involvement of the petitioner in aforesaid criminal cases related to two FIRs, by reference to the purported inputs from the concerned Beat Incharge and Incharge DSB the petitioner was referred to be clandestinely carrying out activities of illicit trade of narcotic

drugs in Bishnah and its adjoining areas. The petitioner is said to have been bailed out in aforesaid two criminal cases.

08. Proceeding at his end upon the said dossier, the respondent No. 2 – Divisional Commissioner, Jammu came to formulate the grounds of detention by literally borrowing the text of the dossier highlighting the petitioner's implication and involvement in a criminal cases related to FIR No. 190/2022 & FIR No. 149/2024 of the Police Station Bishnah and held that the petitioner's reported alleged activities are falling within the mischief of PIT-NDPS Act, 1988 and, therefore, in order to prevent her from further committing any offence under the PIT-NDPS Act, 1988 and to secure the health and welfare of the public at large, the petitioner deserves to be subjected to preventive detention custody.

09. On the basis of the subjective satisfaction so drawn, the respondent No. 2 – Divisional Commissioner, Jammu came to pass an Order No. PITNDPS 51 of 2024 dated 17.12.2024 thereby ordering the preventive detention of the petitioner and upon her detention to be lodged in the District Jail, Udhampur for a period to be specified by the Government.

10. By virtue of a communication No.601/RA/Detention/251/CC-7618468 dated 17.12.2024, the respondent No. 2 – Divisional Commissioner, Jammu meant to apprise the petitioner about passing of the preventive detention order against her and upon her detention taking place her right to make a representation to the Govt. (Home Department, UT of J&K) as well as to the respondent No. 2 – Divisional Commissioner, Jammu. A compilation of 42 leaves was forwarded to be handed over to the petitioner upon her detention which comprised of three (3) leaves of detention order, three (3) leaves of grounds of detention and thirty six (36) leaves of the dossier.

11. The detention warrant came to be executed when ASI Gurdeep Singh of the Police Station Bishnah came to detain the petitioner on 19.12.2024 and handed over the petitioner to the Superintendent District Jail, Udhampur on the very said date. The petitioner is said to have been handed over the entire compilation of 42 pages and also explained about the order and the grounds of detention in the language understood by her and also apprising her about her right to make a representation to the Government.

12. The preventive detention case of the petitioner was referred to the Advisory Board for its opinion which came to be tendered on file No.Home/PB-V/645/2024 dated 26.12.2024 thereby holding that the preventive detention of the petitioner is based upon sufficient cause and all the procedural compliances have been carried out.

13. The petitioner, acting through her son, came to submit a written representation to the respondent No. 2 – Divisional Commissioner, Jammu, sent by registered post dated 27.12.2024 thereby seeking revocation of the detention so effected upon the petitioner.

14. On the basis of the confirmation so extended by the Advisory Board, the Home Department, Govt. of UT of J&K came to confirm the preventive detention of the petitioner by issuance of Govt. Order No. Home/PB-V/01 of 2025 dated 03.01.2025 thereby directing the petitioner's detention for a period of one year with effect from 19.12.2024 to 18.12.2025 with place of confinement in the District Jail, Udhampur.

15. It is in the backdrop of the aforesaid facts and circumstances of the case that the institution of the present writ petition came to take place on 21.01.2025.

16. In her writ petition, the petitioner has assailed her preventive detention on the basis of the grounds as set out in para 8 (a) to (p). It is highlighted in the grounds of challenge that the detention has been effected upon vague allegations without any compelling and cogent reason for subjecting the petitioner to suffer preventive detention. It is asserted in one of the grounds of challenge that the representation submitted by the petitioner through her son to the respondent No. 2 – Divisional Commissioner, Jammu on 27.12.2024 sent through registered post, has remained un-considered and un-answered. It has also been pleaded that the passing of the detention order against the petitioner is an act of non-application of mind on the part of the respondent No. 2 – Divisional Commissioner, Jammu as the same is replica of the dossier.

17. The respondent No. 2 – Divisional Commissioner, Jammu came to submit a counter affidavit dated 07.03.2025 to meet the allegations and the challenge posed from the end of the petitioner with respect to her preventive detention. While controverting all the grounds of challenge registered by the petitioner in para 8 of her writ petition, the respondent

No. 2 – Divisional Commissioner, Jammu has come forward denying all the grounds of challenge.

18. It has been stated in the counter affidavit preliminary objections (D) and para-wise reply (para 7) that the representation submitted by the petitioner was considered and found to be devoid of merits. However, there is no recital of fact in the counter affidavit from the end of the respondent No. 2 – Divisional Commissioner, Jammu as to whether the petitioner was ever apprised of the fact that the respondent No. 2 – Divisional Commissioner, Jammu had considered the petitioner's representation and rejected the same by a speaking order.

19. When this Court considers the preventive detention of the petitioner from the point of view of its legality and validity, the first illegality which comes rushing to be observed *ex-facie* is a lacuna in the very text of the grounds of detention supporting the impugned detention Order No. PITNDPS 51 of 2024 dated 17.12.2024. The respondent No. 2–Divisional Commissioner, Jammu has exercised powers under section 3 of the PIT-NDPS Act, 1988. Section 3 vests power in the detention order making authority to subject a person to preventive detention with a view to prevent

him/her from engaging in illicit trafficking in narcotic drugs and psychotropic substances. As against this statutory prescription in terms of section 3, the respondent No. 2 – Divisional Commissioner, Jammu instead has held the petitioner liable to suffer preventive detention in order to prevent her from committing any offence under PIT-NDPS Act, 1988, as found mentioned in the operative part of the grounds of detention which is the basis for passing of the impugned Order No. PITNDPS 51 of 2024 dated 17.12.2024.

20. The grounds of detention was served to the petitioner for her understanding meaning thereby from the bare reading of the grounds of detention what a lay person like the petitioner would understand is that PIT-NDPS Act, 1988 is a penal law which prohibits the commission of offences there under and, therefore, the petitioner has been booked to suffer detention in order to prevent her from committing offence under the said PIT-NDPS Act, 1988. This is where an anomaly came to attend the very basis of exercise of jurisdiction on the part of the respondent No. 2 – Divisional Commissioner, Jammu in subjecting the petitioner to suffer preventive detention by a misconception of bare provisions of PIT-NDPS Act, 1988.

21. Another vitiating factor relating to the preventive detention of the petitioner is that the respondent No. 2 – Divisional Commissioner, Jammu allowed himself to be misled by the dossier submitted by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu as well as the recommendation of the District Screening Committee forwarded vide communication No.SPHQJ/Rdr/PIT/24/12938 dated 09.12.2024.

22. In the dossier along with the documents therewith, there is no reference as to vide which order of the criminal court the petitioner came to be bailed out in the two cases related to FIR No. 190/2022 and FIR No. 149/2024. So much so, there is not even a copy of the bail order/s accompanying the dossier. What is gatherable from the detention record produced for the perusal of this Court is that the petitioner's alleged involvement and implication in the aforesaid two FIRs relates to alleged possession of small quantity of alleged narcotics i.e. Heroine and Ganja respectively.

23. The respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu without sharing the bail orders related to the petitioner came to say in his dossier that ordinary criminal law is not sufficient to deter the petitioner from indulging in

drug peddling and other illegal activities meaning thereby that the respondent No. 3 –Sr. Superintendent of Police (SSP), Jammu became a judge of the state of ordinary criminal law in operation in the UT of J&K so as to reckon it as a failure. Possession of a small quantity of narcotics by an accused is an offence which admits an accused to bail without suffering the rigor of section 37 of the NDPS Act, 1985 and if that is the position of law then grant of a bail by a criminal court of law in favour of the petitioner for alleged possession of small quantity of narcotics was always an act of judicial discretion exercised by the criminal court which could not have been conceived and commented upon by the respondent No. 3 –Sr. Superintendent of Police (SSP), Jammu as amounting to failure of ordinary criminal law or the deficiency of criminal law to check the petitioner and thus leaving preventive detention as only option. Nothing can be more sadistic a mindset in invoking PIT NDPS Act, 1988 as exhibited by the Sr. Superintendent of Police (SSP), Jammu.

24. Thus, it is apparent that the preventive detention custody was with a mood and mode intended to be punitive upon the petitioner from the very beginning and that is the reason that in the grounds of detention the respondent No. 2

– Divisional Commissioner, Jammu was also getting swayed by the same mindset of preventing the petitioner from committing an offence under PIT-NDPS Act, 1988 when infact the said PIT-NDPS Act, 1988 does not create any offence whatsoever for the respondent No. 2 – Divisional Commissioner, Jammu to say so in his grounds of detention.

25. While in the dossier, in relation to the antecedents of the petitioner relatable to the two criminal cases under FIR No. 190/2022 and FIR No. 149/2024, the inputs in terms of General Diary No. 22 dated 06.12.2024 and 016 dated 08.12.2024 of the Police Station Bishnah were referred, but the respondent No. 2 – Divisional Commissioner, Jammu in his grounds of detention did not deem the said inputs worth a mention and basis for drawing subjective satisfaction and, therefore, in the grounds of detention there is no such mention made about said two adverse General Diary entries relatable to the petitioner.

26. Thus, it is only on the basis of said two FIRs and the criminal cases arising out of the same that the respondent No. 2 – Divisional Commissioner, Jammu felt persuaded to penalize the petitioner with preventive detention custody as if meaning to substitute the criminal court of law

seized of the trial of the petitioner in dealing with the petitioner and thereby fast forward punitive punishment upon the petitioner.

27. The representation submitted by the petitioner, no doubt, came to be considered by the respondent No. 2 – Divisional Commissioner, Jammu and rejected vide his Order No. 6011/RA/PITNDPS/REP/CC-7624123 dated 11.01.2025 but for the reasons best known to the respondent No. 2 – Divisional Commissioner, Jammu, the petitioner was never ever extended a courtesy of being provided with a copy of the said rejection order so as to apprise her not only about the fate of her representation but also the basis for which the same has been found to be without merit. This omission on the part of the respondent No. 2 – Divisional Commissioner, Jammu is too serious to be taken as casual by this constitutional court in considering the writ petition of the petitioner in adjudging the legality and validity of the preventive detention of the petitioner.

28. Cumulative effect of the aforesaid facts and circumstances of the case render the preventive detention of the petitioner illegal, and consequently the preventive detention Order No. PITNDPS 51 of 2024 dated 17.12.2024

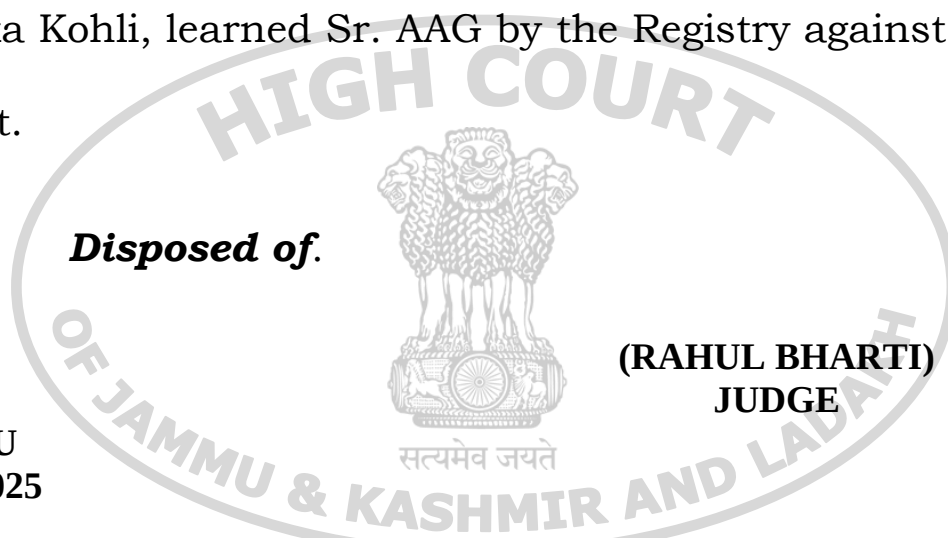
passed by the respondent No. 2 – Divisional Commissioner, Jammu read with Govt. Order No. Home/PB-V/01 of 2025 dated 03.01.2025 are hereby quashed. The petitioner is held entitled to be restored to her personal liberty forthwith and for that the Superintendent of the concerned Jail is directed to release the petitioner immediately from the preventive detention custody.

29. Detention record to be returned back to Mrs. Monika Kohli, learned Sr. AAG by the Registry against proper receipt.

30.

Disposed of.

JAMMU
30.06.2025
Muneesh



(RAHUL BHARTI)
JUDGE

Whether the judgment is speaking : **Yes**
Whether the judgment is reportable : **Yes**