

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
HCP No. 47/2025**

Reserved on: 21.08.2025
Pronounced on: 25.09.2025

**Jugal Kishore @ Lucky
S/o Inder Dev Sharma
R/o Village Hathal Saleri, Tehsil Sunderbani,
District Raiourir presently
lodged at Central Jail, Kotbhalwal, Jammu.
Through his father namely Inder Dev Sharma**

.....Petitioner(s)

Through: Mr. Jagpaul Singh, Advocate

Versus

**1. Union Territory of Jammu and Kashmir through commissioner-cum-secretary to the
Government Home Department
Civil Secretariat, Jammu.**

2. Divisional Commissioner, Jammu

3. Senior Superintendent of Police, Rajouri.

4. Superintendent, Central Jail, Kotbhalwal, Jammu.

.....Respondent(s)

Through: Ms. Sagira Jaffer, Advocate vice
Mrs. Monika Kohli, Sr. AAG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Order no. PITNDPS 42 of 2024, Dated 12.11.2024 issued by Divisional Commissioner, Jammu (respondent no. 2) under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 vide which detenu, namely, Jugal Kishore S/o Inder Dev Sharma R/o Village Hathal Saleri, Tehsil Sunderbani, District Rajouri has been detained at

Central Jail Kotbhalwal, Jammu, is sought to be quashed and a direction is also sought for production of detenu before this Court and payment of compensation to the tune of Rs. 50,00,000 is also prayed for.

2. The impugned order of detention is being challenged, precisely, on the following grounds:-

- (i) Detaining authority is bound to record its subjective satisfaction that the petitioner is engaged in repeated Illicit Traffic in Narcotic Drugs and Psychotropic Substances cases which pose a serious threat to the health and welfare of people.
- (ii) Neither petitioner nor his family members were informed about the detention of the petitioner under PITNDPS Act.
- (iii) Neither order of detention nor grounds of detention along with the relevant material was provided to petitioner by concerned jail authorities within stipulated time period. Most of the documents provided to him were illegible.
- (iv) Order of detention has been passed mechanically and the same is just verbatim account of dossier prepared by concerned police authorities and Divisional Commissioner, Jammu and failed to record independent subjective satisfaction to the extent of the activities the petitioner poses a serious threat to the health and the welfare of people which makes his detention necessary.
- (v) Detention order has resulted in the infringement of the Right of Personal Liberty.
- (vi) Grounds of detention are based on four criminal cases registered against the petitioner under the NDPS Act. There is nothing on record to suggest that petitioner is engaged in illicit trafficking of Narcotic Drugs and Psychotropic Substances which pose threat to health and welfare of people. The grounds also contain one complaint under section 126/129/136 of BNSS.
- (vii) FIR No. 295/2023 u/s 8/21/22/25/29 of NDPS Act of P/S Gandhinagar, Jammu was registered against the petitioner on 09-12-2023 i.e., more than one year before the order of detention of

the petitioner by the Divisional Commissioner, Jammu. An act committed more than one year back cannot be said to be threat to the health and welfare of the people in the year 2025. Mere registration of a criminal case under NDPS Act is not sufficient to book a person under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. After aforementioned criminal case no other criminal case was registered against the petitioner under the NDPA Act. There must be a proximity of time with the commission of the alleged offence under NDPS Act, and issuance of order of detention. However, the said live link is missing. Petitioner was granted bail in the said criminal case on 23-01-2024, and, thereafter, no criminal case was registered against him under NDPS Act.

(viii) FIR No. 58/2022 U/s 8/21/22/29 of NDPS Act of P/s Sunderbani was registered against the petitioner on 26-08-2022 i.e., two years back. A criminal case registered against the petitioner more than two years back cannot be a ground of his detention. The bare perusal of the contents of the said criminal case, makes it manifestly clear that no such inference can be drawn that petitioner is engaged in the illicit trafficking in narcotic drugs and psychotropic substances, and, the same poses a serious threat to the health and welfare of the people. Mere registration of a criminal case under NDPS Act, 1985, is not sufficient to book a person under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. Thus, there is no live and proximate link between the date of commission of the alleged act and the date of the issuance of the order of detention of the petitioner under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

(ix) FIR No. 6/2022 u/s 8/21/22/25/27/29 NDPS Act of P/s Janipur. The said criminal case was registered against the petitioner more than two years back, and therefore cannot be a ground of detention and the live and proximate link between the date of the commission of the alleged offence and the date of issuance of the

order of detention is missing. Thus, the order of detention of the petitioner issued by the Divisional Commissioner Jammu, haste manner, and deserves to be set aside.

- (x) FIR No.199/2017 U/s 8/21/22 NDPS Act of P/s Kathua, the said criminal case was registered against the petitioner on 08-07-2017, i.e. more than seven years back. It is pertinent to mention here that a criminal case which was registered against the petitioner more than seven years back cannot be a ground of his detention as live and proximate link between the date of the commission of the alleged offence and the date of the issuance of the order of detention is missing.
- (xi) Complaint u/s 126/129/136 BNSS, of P/s Sunderbani before the Executive Magistrate, 1st Class Sunderbani:- In the grounds of detention, it is alleged that a complaint under section 126/129/136 of BNSS, was preferred against the petitioner. However, there is nothing on record, or, no material was supplied to the petitioner, which prima facie shows that said complaint was preferred. Mere placing on records a copy of the complaint does not evident that the same was preferred before the Executive Magistrate, 1st Class, Sunderbani, by Station House Officer, Police Station, Sunderbani. No such show cause notice as envisaged by Section 126 of BNSS, was ever issued to the petitioner. The complaint alleges that the petitioner is a threat to peace and order, and there is a fear of disturbing Peace and order. However, there is nothing on record to infer the same.
- (xii) Respondent no.2, miserably failed to record its subjective satisfaction before passing the order of detention of the petitioner under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.
- (xiii) Grounds of detention were not communicated to the petitioner within the stipulated period as provided under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, and the same was neither read over nor explained to the petitioner

in the language which the petitioner understand. Material relied upon by the detaining authority was not provided to the petitioner.

3. Respondents have filed affidavit stating therein that the petitioner has raised disputed questions of fact which cannot be adjudicated through the medium of this petition. The detenu after getting bail was again involved in the illicit trafficking of narcotic drugs and was posing serious threat to public order as well as to the health and welfare of the people. It is also submitted that detenu was continuously involved in illicit trafficking of narcotics drugs after getting bail from the Court. The detention order issued by respondent no.2 was confirmed by the Home Department vide order no. Home/PB-V/08 of 2025 after seeking opinion of the advisory board dated 26-12-2024. At the time of execution of detention order, the Executing officer has provided the relevant documents along with detention order, grounds of detention (Total 123 leaves) and explained the detenu in the language i.e. Hindi/Dogri which he understands and accordingly informed the detenu about his right to make representation before the Government. The detenu has alleged in his petition that there are two FIRs registered against him but as per dossier submitted by the SSP, Rajouri, there are four FIRs registered under NDPS Act against the detenu along with one complaint under BNSS at P/S Sunderbani. The detention order has been issued by respondent No,2 on the dossier submitted by SSP, Rajouri after carefully examining the same.

4. First and foremost, perusal of detention record produced by counsel for respondents would reveal that the procedural safeguard as guaranteed under Article 22(5) of the Constitution of India has been followed and complied with by respondents inasmuch as they have furnished all the

material to detenu to enable him to make an effective representation against his detention. In such circumstances, impugned order of detention does not call for any interference.

5. Grounds of detention give details of FIRs which had been registered against him and which reflect habituality of detenu in indulging in activities which have direct impact on the youth of our Nation.

6. This Court in LPA No. 55/2023 titled **Anil Sharma v/s UT of J&K & Ors, decided on 16.08.2023**, while upholding the detention order issued by the detaining authority observed as under:

“The instant case relates to illicit trafficking of narcotic drugs and psychotropic substances. The drug problem is a serious threat to public health, economy and growth of humanity. Our global community is lacing serious consequences of drug abuse and it undermines the socio-economic and political stability and sustainable development. Besides, it also distorts the health and fabric of the society and it is considered to be the originator for petty offences as well as heinous crimes like smuggling & arms & ammunition and money laundering. The involvement of various terrorist groups and syndicates in drug trafficking leads to threat to the national security and sovereignty of States by the way of Narco-terrorism. The drug trafficking and abuse has continued its significant toll on valuable human lives and productive years of many persons around the globe. With the growth and development of world economy, drug traffickers are also seamlessly trafficking various type of drugs from one corner to other ensuring the availability of the contrabands for vulnerable segment of the society who fall into the trap of drug peddlers and traffickers. Due to India's close proximity with major opium growing areas of the region, India is facing serious menace of drug trafficking and as a spill-over effect, drug abuse especially among the youth is a matter of concern for us.

In view of the foregoing discussion, It is clearly disclosed that it is not the number of acts that are to be determined for detention of an individual, but it is impact of the act which is material and determinative. In the instant case the act of detenu relates to drug trafficking, which has posed serious threat apart from health and welfare of the people, to youth and most particularly unemployed youth, to indulge in such acts, ramifications thereof would be irreversible and unimaginable. Appellant/writ petitioner has not been able to convincingly point out the violation of any statutory or constitutional provisions.”

7. Further this Court in LPA No. 12/2023 titled **Jahangir Ahmad Dar v/s UT of J&K and ors** decided on 12.02.2024 (Srinagar Bench) in Para 17 held as under:

“17. Having regard to the geopolitical location of the UT of Jammu and Kashmir bordering hostile neighbouring countries which have been pushing drugs to this part of the country not only for illegal trade but also use the proceeds thereof in the subsistence of cross border terrorism, so the menace of drugs in this part of the country has to seriously looked into having its wide ramification as smuggling and trade of narcotics will not only destabilize the economy of the area but shall also be detrimental to the national interest if the proceeds of the illegal trade are used to sustain terrorism.”

8. Perusal of detention record particularly grounds of detention reveal that detenu is involved in drug trafficking which pose a serious threat to the youth of this part of the country and the proceeds being used to sustain the terrorism prevalent in this part of the country.

9. Perusal of the record reveals that detenu has been informed to make representation before the Government as well as detaining authority. In examining the question whether the ordinary laws of the land would have sufficed, and whether recourse to preventive detention was unnecessary, it must be borne in mind that the compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens, would lose their meaning, provide the justification for the laws of preventive detention. These Laws suggest that an individual's conduct, prejudicial to maintenance of public order, security of State, preservation of forest wealth, preventing a person from engaging in illicit traffic in narcotic drugs and psychotropic substances, provides grounds for satisfaction for a reasonable assessment of possible future manifestations of similar propensities on the part of the offender. The object of the law of preventive detention is not punitive, but is only preventive. In preventive detention no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability.

10. The essential concept of preventive detention is that detention of a person is not to punish him for something he has done, but to prevent him from doing it. Its basis is the satisfaction of the Executive of a reasonable probability of detenu acting in a manner similar to his past acts, and preventing him by detention from so doing. Preventive detention, an anticipatory measure, is resorted to when the executive is convinced that such detention is necessary to prevent a person detained from acting in a manner prejudicial to certain objects which are specified by the law. In preventive detention no offence is proved, and justification of such detention is suspicion or reasonable probability. The order of detention is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of surrounding circumstances. The power of preventive detention is exercised in reasonable anticipation. It may or may not relate to an offence. It does not overlap with the prosecution even if it relies on certain facts for which prosecution may be, or may have been, launched. An order of preventive detention may be made before or during prosecution. It may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

11. A six Judge Constitution Bench of the Supreme Court way back in the year 1951, in the case of ***The State of Bombay v. Atma Ram Shridhar Vaidya***, ***AIR 1951 SC 157***, while looking into the scope subjective satisfaction arrived at by the detaining authority has held that the same is extremely limited and that the Court, while examining the material, which is made basis of subjective satisfaction of detaining authority, would not act as a court of appeal and find fault with satisfaction on the ground that on the basis of the material before detaining authority, another view was possible. Such being the scope of enquiry

in this field, and the contention of counsel for petitioner, therefore, cannot be accepted. While going through the grounds of detention and dossier, I do not find that grounds of detention are ditto copy of dossier supplied by sponsoring authority. As is evident from the detention record, the material has been supplied to detenu. and all this material was before detaining authority when it arrived at subjective satisfaction that the activities of the detenu are such, which would entail the preventive detention under the Act.

12. It may be mentioned here that the powers of preventive detention under the Act of 1988, are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing commission of an offence or preventing detained person from achieving a certain end. The authority, making the order, therefore, cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of impending commission of a prejudicial act. The Act of 1988, therefore, requires that the Central Government or a State Government must be satisfied with respect to any person 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.

13. The acts, indulged in by persons, who act in concert with other persons and quite often such activities have far-reaching ramifications on our younger generation. These acts are preceded by a good amount of planning and organisation by the set of people. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed, but it cannot be stated as a principle that one single act cannot constitute the basis for detention.

On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention. The said views and principles have been reiterated by the Supreme Court in ***Gautam Jain v. Union of India another AIR 2017 SC 230***.

14. Section 2 (e) of the Act of 1988 envisions that “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means: (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances; (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those provided in sub-clauses (i) to (iii); or (v) handling or letting any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv), other than those permitted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder and includes: (1) financing, directly or indirectly, any of the aforementioned activities; (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and (3) harbouring persons engaged in any of the aforementioned activities.

15. The present case relates to illicit trafficking of narcotic drugs. The drug problem is a serious threat to public health, safety and well-being of humanity. Our global society is facing serious consequences of drug abuse and it undermines the socio-economic and political stability and sustainable development. Besides, it also distorts health and fabric of society and it is considered to be originator for petty offences as well as heinous crimes, like

smuggling of arms and ammunition and money laundering. Involvement of various terrorist groups and syndicates in drug trafficking leads to threat to the national security and sovereignty of States by way of Narco-terrorism. Drug trafficking and abuse has continued its significant toll on valuable human lives and productive years of many persons around the globe. With the growth and development of world economy, drug traffickers are also seamlessly trafficking various type of drugs from one corner to other ensuring availability of contrabands for vulnerable segment of society who fall into trap of drug peddlers and traffickers. Due to India's close proximity with major opium growing areas of the region, India is facing serious menace of drug trafficking and as a spill-over effect, drug abuse especially among the youth is a matter of concern for us.

16. The Constitution framers had visualised danger of misuse of such type of substances and, thus, made it part of directives issued to the State. The Directive Principles, which are part of our Constitution, lay down that the State shall make endeavours to bring about the prohibition of substances injurious for health except for medicinal and scientific purposes. In recent years, India has been facing a problem of transit traffic in illicit drugs. The spill over from such traffic has caused tribulations of abuse and addiction. This trend has created an illicit demand for drugs within the country. The illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and activities of persons engaged in such illicit traffic have a deleterious effect on the national economy as well. Having regard to the persons by whom and the manner in which such activities are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to the illicit traffic in narcotic drugs, such activities of a considerable magnitude are clandestinely organised and carried on, it is

necessary for the effective prevention of such activities to provide for detention of persons concerned in any manner therewith.

17. The consequences of drug use usually are not limited to user and often extend to the user's family and the greater community. The consequences of illicit drug use impact the entire criminal justice system, taxing resources at each stage of the arrest, adjudication, incarceration and post-release supervision process. It impacts productivity. It causes premature mortality, illness, injury leading to incapacitation and imprisonment all serve to directly reduce national productivity. Public financial resources expended in the areas of health care and criminal justice as a result of illegal drug trafficking and use are resources which could otherwise be available for other policy initiatives.

18. The global drug problem presents a multifaceted challenge that touches the lives of millions worldwide. From individuals struggling with substance use disorders to communities grappling with the consequences of drug trafficking and organized crime, the impact of drugs is far-reaching and complex. There is a great loss of productivity associated with drug-related premature mortality. Although it is difficult to place a dollar value on a human life, a rough calculation of lost productivity can be made based on the present discounted value of a person's lifetime earnings. There are also health-related productivity losses. An individual who enters a residential drug treatment program or is admitted to a hospital for drug treatment becomes incapacitated and is removed from the labour force. Productivity losses in this area alone are enormous. Health-related productivity losses are higher still when lost productivity associated with drug-related hospital admissions, including victims of drug-related crimes, is included. These imperative aspects concerned with illicit traffic in narcotic drugs and psychotropic substances cannot be overlooked or ignored.

19. To sum up, it is relevant to refer to the observations of the Supreme Court that while dealing with the question of preventive detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, in the case of ***Prakash Chandra Mohan v. Commissioner, 1986 Cr.L.J. 786***. The Supreme Court observed that it must be remembered that observance of written law about the procedural safeguards for protection of individual is normally the high duty of public official but in all circumstances not the highest. The law of self-preservation and protection of the country and national security may claim in certain circumstances higher priority.

20. For the reasons discussed above, instant petition is without any merit and is accordingly **dismissed**.

Jammu
25.09.2025
Bir

(Vinod Chatterji Koul)
Judge

Whether approved for reporting? Yes/No

