

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No. HCP No. 102/2025

Reserved on : 09.10.2025
Pronounced on : 17.10.2025
Uploaded on : 17.10.2025
Whether the operative part or full judgment
is pronounced

Pardeep Dubey, S/o Sh. Subhash Chander Dubey
R/o Village Kanyari, Janglote, Tehsil & District Kathua,
A/P Detenu lodged in District Jail Udhampur

...Petitioner(s)/Appellant(s)

Through:-Mr.V.Bhushan Gupta, Advocate
Mr. Rahul Aggarwal, Advocate

V/s

- 1.Union Territory of Jammu & Kashmir, through Principal Secretary to Government of Jammu & Kashmir Home Department, Civil Secretariat, Jammu.**
- 2. Divisional Commissioner, Jammu.**
- 3. Senior Superintendent of Police, District Kathua.**
- 4. Station House Officer, Police Station Kathua.**

....Respondent(s)

Through:- Ms. Sagira Jaffar, assisting counsel to
Mrs. Monika Kohli, Sr. AAG

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
JUDGMENT

1. The Order No. PITNDPS No. 04 of 2025 dated 19.02.2025, issued by respondent No.2-Divisional Commissioner Jammu, under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988, vide which detenu, namely, Pardeep Dubey, S/o Sh. Subhash Chander Dubey, R/o Village Kanyari, Janglote, Tehsil &

District Kathua, has been detained at District Jail Udhampur, has been challenged in this writ petition.

2. Learned counsel for the petitioner submits that petitioner is under illegal detention pursuant to an order impugned based on two FIRs No. 408/2022 & 29/2024, both of which resulted in bail due to procedural lapses. The detenu was picked up by police on 19.02.2025 without any formal arrest, and his whereabouts remained unknown until April 2025, when he was located in District Jail Udhampur under preventive detention. It is stated that the grounds of detention are based solely on pending cases and a DDR No. 17 dated 29.01.2025. No fresh or compelling material justifying preventive detention was presented. The detenu was supplied illegible, photocopied documents in English and Urdu, which he could not understand, thereby violating Article 22(5) of the Constitution and rendering his right to make an effective representation illusory. A representation was filed by the petitioner on 23.06.2025, but neither was it decided nor was the matter referred to the Advisory Board within the stipulated time, violating mandatory procedural safeguards under the Constitution and the PITNDPS Act.

3. The impugned order of detention has been challenged precisely on the following grounds:

- (i) That the petitioner has been detained based on two FIRs being FIR No. 408/2022 dated 22.10.2022 under the NDPS Act, with challan filed on 20.12.2022, pending trial and FIR No. 29/2024, with challan filed and trial pending. In both cases, bail has been granted due to procedural lapses. No other case is pending investigation or trial against the petitioner;
- (ii) That there is no record under Sections 109 or 110 Cr.P.C., nor is there any history of surveillance or proceedings indicating that the petitioner poses a threat to public peace or law and order;

- (iii) That the detention is based solely on an unspecified and unsubstantiated General Diary (GD) entry, without any supporting material or credible evidence, violating the petitioner's fundamental rights;
- (iv) That the petitioner's representation seeking reference to the Advisory Board under Article 22(5) of the Constitution has not been considered, denying him the constitutional safeguard of an impartial review;
- (v) That the alleged dossier consisting of 80 pages was not formally served to the petitioner. It was handed over informally by a jail staff member without being read out or explained in a language understood by the petitioner, who is poorly educated and unable to comprehend the contents;
- (vi) That except for pages 1–14, the remaining documents are illegible photocopies of challans and annexures already part of court proceedings, thereby prejudicing the petitioner's ability to make an effective representation;
- (vii) That the detention order is worded in a mechanical, ritualistic manner, reflecting a lack of independent application of mind by the detaining authority;
- (viii) That there is no recorded satisfaction by Respondent No. 2 that ordinary law has failed or is insufficient to prevent the petitioner's alleged activities, which is a precondition for invoking preventive detention;

4. Respondents have filed affidavit stating herein that the petitioner has raised questions of fact which are not adjudicable by way of this writ petition. The petitioner filed a representation to the Government, Home Department, J&K for revocation of the detention order, a copy of which was endorsed to Respondent No.2. Respondent No.2 forwarded the representation to the Home Department for consideration, which was examined by Respondent No. 1 and found devoid of merit.

5. It is also stated by respondents that dossier concerning petitioner/detenu (No. Pros/PITNDPS/6086-92/DPO dated 31.01.2025), submitted by SSP, Kathua, to Respondent No. 2, was carefully examined along with relevant records. It was deemed necessary to detain the detenu under the provisions of the PITNDPS Act. At the time of executing the detention order, the detaining officer provided the petitioner the detention

order, grounds of detention (total 88 pages), and explained the contents in Dogri/Hindi, the language understood by the petitioner. The petitioner was informed of his right to make a representation before the Government (Home Department) and the detaining authority.

6. It is stated that the petitioner submitted a representation to Respondent No.1, with a copy endorsed to Respondent No. 2. The same was forwarded to Respondent No.1 for appropriate action and was rejected on merits.

7. The respondents further contend that after being granted bail, the petitioner was again involved in illicit trafficking of narcotic drugs, posing a serious threat to public order and public health. The detention order issued by Respondent No.2 was confirmed by the Home Department vide Order No. Home/PB-V/458 of 2025 dated 17.03.2025, following the opinion of the Advisory Board dated 06.03.2025.

8. Heard learned counsel for the parties, perused the material on record, including the detention record made available by the learned counsel for the respondents.

9. First and foremost, perusal of detention record produced by counsel for respondents would reveal that the procedural safeguards as guaranteed under Article 22(5) of the Constitution of India have 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.

10. 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.

11. This Court in LPA No. 55/2023 titled **Anil Shurma v/s UT of I&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 facing 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."

12. Further this Court in LPA No. 1212023 titled **Jahangir Ahmad Darv/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 be looked into having its wide ramifications 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.”

13. Perusal of detention record particularly grounds of detention reveal that detenu is involved in drug trafficking which poses 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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*.

19. Section 2 (e) of the Act of 1988 provides 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.

20. 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.

21. The Constitution framers had visualized 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 spillover 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.

22. 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.

23. 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.

24. 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.

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

26. Detention record to be returned back to Mrs. Monik Kohli, learned Sr. AAG by the Registrar Judicial of this Court.

(VINOD CHATTERJI KOUL)
Judge

JAMMU
17.10.2025
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