

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 222/2025

Reserved on: 20.11.2025

Pronounced on: 27.11.2025

Uploaded on: 01.12.2025

*Whether the operative part or full
judgment is pronounced-**Full Judgment***

Tariq Ahmad Ganaie

...Petitioner(s)

Through: Mr. Zahid Hussain Dar, Advocate
Mr. Naveed Bukhtiyar, Advocate.

Vs.

Union Territory of J&K& Anr.

...Respondent(s)

Through: Mr. Noman Idrees, GA vice
Mr. Mohsin Qadri, Sr.AAG.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. Detenue in the instant petition has been taken into preventive custody under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'the Act') in terms of the order of detention bearing No.DIVCOM-"K"/89/2025 dated 23.05.2025 (for short 'the impugned order).
2. The order of detention is challenged by the detenue through the medium of this petition on the following grounds:-

a. That the respondent No 2 has relied upon the information submitted by senior Superintendent of Police, Pulwama, and has passed the impugned order without application of mind as the events narrated in the impugned Grounds of detention are imaginary and to the large extent are based on assumptions, presumptions and conjectures. And, on

this count the detention order deserves to be quashed.

- b. That the detaining authority has not attributed any specific allegation against the detainee and only vague allegations have been made against the detainee. The grounds are without specific details which renders the order of detention vague and non-existent in the eyes of law. The detenu has not been given exact details with regard to the alleged activities of the detenu.*
- c. That no other documents but only copies of detention order, grounds of detention and dossier were supplied to the detenue during him being in solitary confinement where otherwise also he had no access to any legal aid or his relatives, or to the detaining authority or the board, thus, debarred the detenu from making effective and purposeful representation to the detaining authority or to the Government against the order of detention. The omissions on the part of the detaining authority have vitiated the process of detention and thus rendered the order of detention illegal and violative of fundamental rights guaranteed to the detainee. On this ground alone the order of detention deserves to be quashed.*
- d. That the subjective satisfaction has not been derived by the detaining authority itself which is sine quo non for passing the order of detention. The grounds of detention given by the Divisional Commissioner Kashmir are prima facie a ditto copy of the contents of the dossier formulated by the Senior Superintendent of Police Pulwama. It is submitted that the detaining authority has acted as a mouth piece of Senior Superintendent of Police Pulwama and has reproduced the contents of the dossier in the grounds of detention without applying his mind to the allegations leveled against the detainee and as such the respondent No. 2 has acted in a mechanical manner. On this count also the order of detention deserves to be quashed.*
- e. That the detaining authority has not assigned any compelling and cogent reason for passing the order of detention. The order of detention is not based on any cogent material which could necessitate the passing of the order of detention. The Petitioner was on bail and the police agency has not chosen to seek cancellation of bail of the petitioner, in that context, the order and grounds of detention do not disclose and mention as to why the ordinary law of the land is not sufficient to deal with the detainee and as to why recourse to the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 was necessitated. Under such*

circumstances the impugned order of detention is totally unwarranted.

- f. That the order of detention is neither approved within the statutory period nor has any reference been made to the advisory board. The detainee has neither been heard by the advisory board in person nor through his counsel or friend. The detaining authority has breached the constitutional and statutory safeguards as provided under law.*
- g. That the grounds and order of detention have been couched in hyper-technical English language which disables a less educated person like the detenu who is working as a vegetable vendor and is read upto 9th class only, make an effective and purposeful representation against his detention. It was the legal duty of the detaining authority to provide to the detainee the impugned order of detention and other connected material and that too in the language which the detainee fully understands and make the detainee understand the contents of the same. Thus, the detaining authority has not observed the mandatory procedural requirement.*
- h. That the rights guaranteed to the detenu under Constitution of India have been grossly violated. The detaining authority has not explained the necessity of detaining the detenu under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The detenu has no involvement in any such activity falling within the meaning of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The detenu is earning his bread and butter by vegetable vendor for his family who are living in hardships and miseries due to the unwarranted detention of the petitioner. Under such circumstances the order of detention is prima facie illegal and unwarranted, and suffers from non-application of mind.*
- i. That the detention order has not been approved by the Government within the prescribed period of 12 days and has not been confirmed as required under law. The detaining authority neither in the order of the detention nor in the grounds of detention has mentioned the time period the detenu is to be detained. It is respectfully submitted that there has to be a clear and specific mention of period for which the order of detention is made, and in the present case same has not been done by the detaining authority. Therefore, there is total non-application of mind on part of the detaining authority. On this ground the impugned detention order is bad in law and deserves to be quashed.*

j. That the order of detention is bad in Law as there cannot be an order of detention merely on the apprehended ground that the detenu is likely to commit such acts like those stated in the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, unless and until in the past the said detenu has committed any such acts giving rise to such apprehension. The order has been passed in hot haste and in a mechanical manner without application of mind and without fulfilling the criteria for subjective satisfaction to pass an order of detention. Hence on this ground also the detention order is an outcome of abuse of authority and warrants quashment.

3. The grounds of detention formulated by the detaining authority *inter alia* would show that the detainee was a member of an organized drug trafficking gang working in district Pulwama, which was involved in procuring, transporting and sale of psychotropic substances. According to the detaining authority the detainee has spoiled the youth of the area by supplying them narcotic drugs leading to law and order problem. Accordingly, he was apprehended on 03.06.2024. The detaining authority was, thus, of the opinion that it has become imperative to detain the detainee in preventive detention with a view to prevent him from further committing any offence under the provisions of the NDPS Act.
4. Respondents, pursuant to notice, have filed their reply affidavit, wherein it is stated that the order of detention is based on a reasonable prediction of future behavior, considering the detainee's past conduct in light of the surrounding circumstances and that the detainee has transformed into a notorious illicit drug peddler. The detainee was apprehended by the police along-with his other associates in case FIR No.108/2024 under Section NDPS Act registered by Police Station, Pulwama on 03.06.2024 and at the time of his arrest 79.94 grams of heroin was recovered from

his possession. The detainee's activities have posed a serious threat to the health and welfare of the people of his area.

5. Learned counsel for the detainee has raised the plea of vagueness in the grounds of detention. It is being stated that the detainee is exploiting the young generation making them dependent on drugs and to make them habitual addicts, is not being explained, thereby incapacitating the detainee to make an effective representation in terms of Article 22(5) of the Constitution of India. It is also contended by the learned counsel for the petitioner that it is not mentioned in the impugned detention order that normal law was ever invoked before taking recourse to preventive detention law and that too was applied merely on the basis of surmises and conjectures.
6. Learned counsel for the respondents, on the other hand, has supported the detention order of the detainee. He contended that the detainee's continuous activities of peddling of drugs and avoiding clutches of normal law has made it imperative to detain the detainee under the provisions of the NDPS Act and there were sufficient grounds available for such detention. It is further contended that the live link is still sustaining, as the detainee is still involved in the drug peddling activities and the recent adverse reports lead the sponsoring agency to recommend the detainee for preventive detention under the provisions of the NDPS Act.
7. Heard, perused the record as made available by the learned counsel for the respondents and considered the same.
8. The allegations leveled against the detainee that he was involved in exploiting the young generation by making them drug addicts, is all

vague and in such situation the detenue would not be in a position to submit a meaningful representation before the detaining authority or the competent authority to have a fresh look into the matter. Vagueness does invalidate the detention order in the circumstance. In this regard reliance can be taken on the judgment of '**Chaju Ram Vs. State of J&K, AIR 1971 SC 263**', wherein it has been observed and enunciated that:-

“Even as to the grounds, we have something to say. The grounds charge him with having conspired with some leaders of Democratic Conference and having incited landless people of R.S Pura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm and to have persuaded them to resist violently any attempt to evict them. No details of the leaders of the Conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such conference took place, are mentioned. It would be impossible for anybody to make a representation against such grounds. These grounds, on the authorities of this Court, too numerous to be cited here, must be held to be vague. Therefore on both the twin grounds, namely, that he was deprived of his right to make a representation and also because the grounds in themselves were very vague, we must hold that there was no compliance with the law as laid down in the Jammu and Kashmir Preventive Detention Act. The result, therefore, is that the detention must be declared to be unlawful and Chaju must be declared to be entitled to his liberty. He is ordered to be released. The detenu was questioned by us and he expressed a desire that he may not be released in Delhi, because he has no means of going back. He asked to be released in Jammu. We direct therefore that he shall be taken back to the place where he was in detention in Jammu and released within the shortest possible time.”

9. It is the further argument of learned counsel for the petitioner that the grounds of impugned detention order is a verbatim copy of the dossier and no other material has been considered by the detaining authority which speaks volumes about the non-application of mind on the part of the detaining authority which does not justify the preventive detention and the detention order requires quashment.

10. In a case titled '**Jai Singh & Ors. v. State of Jammu & Kashmir**' reported as **AIR 1985 SC 764**, it has been observed that if the detention order is verbatim copy of the dossier, it speaks about non-application of mind by the detaining authority. Para-13 of the judgment is reproduced as under:-

"13. Applying the settled legal position to the facts of the present case, I find that the order impugned cannot stand as it is based on grounds of detention, which is only verbatim copy of police dossier. The order of detention, for the reasons, exhibit total non- application of mind on the part of detaining authority and therefore, the petition is allowed and the detention order No. PSA/104 dated 16.10.2020 passed by the District Magistrate, Kathua-respondent No. 2 directing the detention of Balbir Chand S/o Rana R/o Chack Drab Khan, Tehsil and District Kathua is quashed. Respondents are directed to release the detainee forthwith, provided he is not required in connection with any other case".

11. It is also notable that normal law in the instant case had to be assumed to be sufficient to disable the detainee to indulge in any such activity which may be in the estimation of the detaining authority to be treated prejudicial to the security of the UT of J&K.
12. The preventive detention is not a quick alternative to normal process, is the saying of the Hon'ble Apex Court in its three-Judge Bench judgment "**Rekha Vs. State of Tamil Nadu & Anr.**" reported as (2011) 5 SCC, wherein it has observed that:-

"29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention

within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: Was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.”

13. In view of the legal position, as stated hereinabove and in particular having regard to the fact that the detention order being a verbatim copy of the dossier, vitiates the same which is not sustainable; the impugned detention order passed on vague grounds and failure on the part of the detaining authority to record satisfaction that normal law proved insufficient to contain the petitioner. The impugned order is, therefore, liable to be quashed on these counts.
14. Resultantly, this petition is allowed. The impugned Detention Order bearing **DIVCOM-“K”/89/2025 dated 23.05.2025**, is quashed. The detenu namely Tariq Ahmad Ganie S/O Bashir Ahmad Ganie R/O

Chandgam, Tehsil and District Pulwama, is directed to be set free, if not required in any other case(s).

15. Disposed of, accordingly.

16. Detention record, as produced, be returned to the learned counsel for the respondents.

(M. A. CHOWDHARY)
JUDGE

Srinagar
27.11.2025
Muzammil. Q

Whether the judgment/order is reportable: Yes

