

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

...

HCP No. 27/2026

Reserved on: 22.07.2026

Pronounced on: 14.08.2026

Uploaded on: 14.08.2026

Whether the operative part or full
Judgment is pronounced: **Full**

Sajjad Hussain Shah, aged 39
years, S/o Sh. Sarfaraz Husain
Shah, R/o village Potha, Tehsil
Surankote and District Poonch
presently lodged in District Jail,
Udhampur
through his sister
Nazmeen Kouser Aged 35 years,
D/o Sh. Sarfaraz Hussain Shah,
R/o village Potha, Tehsil
Surankote, District Poonch.

.....Petitioner(s)

Through: Mr. A. M. Malik, Advocate

Vs.

1. The Union Territory of Jammu and Kashmir through Principal Secretary (Home), Civil Secretariat, Jammu.
2. The Divisional Commissioner, Jammu.
3. The Superintendent District Jail, Udhampur.

.....Respondent(s)

Through:

Ms. Sagira Jaffer, Advocate vice
Ms. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. Through the medium of the present petition filed through his sister, the petitioner has assailed Order No. PITNDPS 62 of 2025 dated 16.10.2025 (hereinafter referred to as "the detention order") passed by respondent No. 2, the Divisional Commissioner, Jammu (hereinafter referred to as "the

detaining authority"), whereby the petitioner has been detained under sub-section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, "the PITNDPS Act") read with SRO 247 dated 27.07.1988.

2. The petitioner has assailed the impugned detention order on the following grounds:

- (i) That the impugned detention order has been passed in a mechanical and perfunctory manner, solely on the basis of a dossier submitted by the Senior Superintendent of Police, Poonch, without any independent application of mind by the detaining authority.
- (ii) That the constitutional mandate embodied in Article 22(5) of the Constitution of India has been flagrantly violated. The detainee was neither furnished with the grounds of detention nor supplied with the material relied upon by the detaining authority, including copies of the FIRs, statements, seizure memos, and other documents forming the basis of the detention.
- (iii) That the FIRs referred to in the detention order, i.e. FIR Nos. 71/2020, 62/2020 and 11/2025, do not justify the invocation of the preventive detention law. The detaining authority has failed to demonstrate any compelling necessity or imminent threat warranting preventive detention, thereby rendering the impugned order arbitrary.
- (iv) That the detaining authority has failed to establish any 'live and proximate link' between the alleged past activities of the detainee and the necessity for passing the impugned order of detention.
- (v) That the detainee has not been informed of the precise role allegedly attributed to him, nor have the dates, time, place, or manner of the alleged activities been clearly specified.

3. Counter affidavit has been filed by respondent No. 2, wherein it is stated that, after carefully examining the dossier and the relevant records appended thereto, it was found imperative to detain the petitioner under the relevant provisions of the PITNDPS Act. It is further stated that the petitioner had the statutory remedy of submitting a representation to the detaining authority as well as to the Government for revocation of the detention order, but he failed to avail the same and instead directly challenged the detention order before this Court. It is also averred that the ordinary law had failed to deter the petitioner from indulging in illegal activities, as is evident from his conduct reflected in the dossier submitted by the Senior Superintendent of Police, Poonch. It is further stated that all the material relied upon by the detaining authority was duly furnished to the petitioner.
4. Learned counsel for the petitioner has submitted that the impugned detention order has been passed in a mechanical manner solely on the basis of the dossier submitted by the Senior Superintendent of Police, Poonch, without any independent application of mind by the detaining authority. He further contended that the constitutional safeguards guaranteed under Article 22(5) of the Constitution of India have been violated, as the petitioner was neither supplied with the grounds of detention nor with the material relied upon by the detaining authority, thereby depriving him of his right to make an effective representation. It is also argued that the FIRs relied upon in the detention order do not justify the invocation of the provisions of the PITNDPS Act and that the detaining authority has failed to establish any live and proximate link

between the alleged past activities of the petitioner and the necessity for his preventive detention. It was further contended that the allegations contained in the grounds of detention are vague and bereft of material particulars, rendering the impugned detention order unsustainable in law.

5. Per contra, Mrs. Monika Kohli, learned AAG, appearing for the respondents, vehemently argued that all the documents relied upon by the detaining authority while issuing the order of detention were duly supplied to the petitioner. She further submitted that the petitioner was informed of his right to submit a representation to the detaining authority as well as to the Government, but he failed to avail the said remedy and, instead, directly approached this Court by filing the present petition, which deserves to be dismissed.
6. Heard learned counsel for the parties and perused the record, including the detention record.
7. The record depicts that the dossier dated 10.0.2025 was submitted by the Sr. Superintendent of Police, Poonch, requesting respondent No. 2 to detain the petitioner under the provisions of the PITNDPS Act, 1988. In the dossier, it has been stated that the petitioner is a hardcore, desperate and notorious drug peddler, and is also a drug addict. It is further alleged that if he is allowed to roam free, he would definitely spoil the young generation through drug trafficking.
8. In FIR No. 71/2020, registered at Police Station, Surankote under Sections 8, 21, and 22 of the NDPS Act on 26.05.2020, the allegation is that a total of 03 grams of heroin-like substance, i.e., 01 gram each, was

recovered from the possession of three persons including the petitioner herein.

9. In FIR No. 62/2023, registered at Police Station, Surankote under Sections 8(a), 21, and 22 of the NDPS Act on 09.04.2023, the allegations are that on the same day, a docket forwarded by PSI Suman Sharma was received at the Police Station, stating therein that while he, along with other police officials, was on checking duty, at about 1555 hours, he noticed two persons approaching from the Sanai side towards Dar Morh. Upon noticing the police party, both allegedly attempted to flee. The police party immediately chased and succeeded in apprehending one of the suspects, while the other managed to escape. During questioning, the apprehended person disclosed his identity as Altaf Hussain. Upon his personal search, a black-coloured polythene bag containing approximately 10-11 grams of a heroin-like substance was allegedly recovered from his possession. During the course of investigation, it was allegedly revealed that the contraband had been purchased from Sajad Hussain Shah.
10. In FIR No. 11/2025, dated 16.01.2025, registered at Police Station, Miran Sahib, Jammu under Sections 8, 21, 22, 29, and 60 of the NDPS Act, the allegations are that on 16.01.2025, a Police team led by ASI Fayaz Ahmad was on patrolling duty within the jurisdiction of Police Station, Miran Sahib. At around 2300 hours, while the Police party was stationed on the Ring Road near Balol Bridge, it noticed a Maruti IGNIS Car going from Samba towards Akhnoor. The vehicle was signaled to stop, however, the driver allegedly attempted to flee. The Police party, however, successfully intercepted the vehicle. Upon questioning, the

driver disclosed his identity as Irfan Hussain Shah, while the other occupant identified himself as Sajad Hussain Shah. During the search of the vehicle, approximately 10-12 grams of heroin ("Chitta") was allegedly recovered.

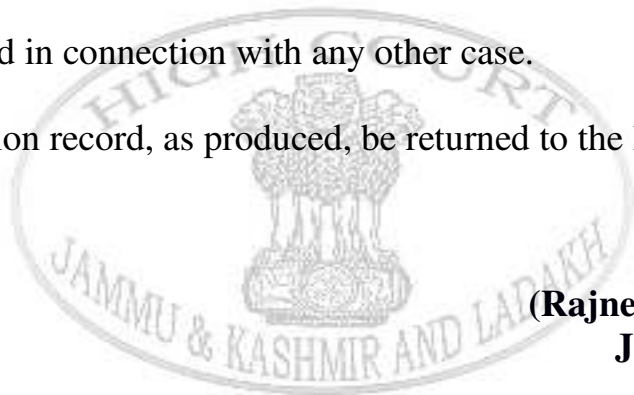
11. A perusal of the record reveals that the last FIR, i.e., FIR No. 11/2025, was registered against the petitioner on 16.01.2025, and he was released on bail in terms of the order dated 05.03.2025. However, the order of detention came to be passed only on 16.10.2025. Thus, there is an unexplained delay of nearly nine months between the last alleged prejudicial activity attributed to the petitioner and the issuance of the detention order. In the absence of any material indicating the petitioner's involvement in any identical illegal activity during the interregnum, the unexplained delay snaps the live and proximate link between the alleged prejudicial activities and the object sought to be achieved by the order of preventive detention. Consequently, the subjective satisfaction of the detaining authority stands vitiated.
12. It would be apt to take note of the judgment of the Apex Court in case titled, '**Saeed Zakir Hussain Malik vs. State of Maharashtra**' reported in **(2012) 8 SCC 233**. The relevant paragraph Nos. 27 and 28 read as under:-

“27) As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after 15 months vitiates the detention itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the

prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned.

28) It is also the duty of the court to investigate whether casual connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside. Since, we are in agreement with the contentions relating to delay in passing the Detention Order and serving the same on detainee, there is no need to go into the factual details.”

- 13. In view of the foregoing discussion, this Court is of the considered opinion that, on this ground alone, the impugned order of detention cannot be sustained and is, therefore, liable to be quashed.
- 14. Thus, the present petition is allowed and order No. PITNDPS 62 of 2025 dated 16.10.2025 passed by respondent No. 2-the Divisional Commissioner, Jammu, is hereby quashed. The respondents are directed to release the petitioner forthwith from preventive custody, provided he is not required in connection with any other case.
- 15. The detention record, as produced, be returned to the learned Sr. AAG.



(Rajnish Oswal)
Judge

Jammu
14.08.2026
Karam Chand

Whether the order is speaking:	Yes
Whether the order reportable:	No