

Regular List
Serial No. 01

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

HCP No. 146/2025
CM No. 6591/2025

Date of pronouncement : 02.04.2026
Uploaded on : 04.04.2026

Rahul Sharma

.....Petitioner

Through:- Mr. Rahul Sharma, Advocate &
Ms. Rupali Sharma, Advocate.

V/s

UT of J&K & Ors.

.....Respondents

Through:- Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
ORDER (ORAL)

01. The petitioner, through the medium of the present petition, has challenged order No. PITNDPS 31 of 2025 dated 09.06.2025 (hereinafter referred to as, **“the impugned order of detention”**) issued by respondent No. 2 - Divisional Commissioner, Jammu, whereby, while exercising power under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

(hereinafter referred to as, **“PITNDPS Act”**), the detaining authority has ordered preventive detention of the petitioner.

02. The petitioner has challenged the impugned order of detention on the grounds that the detaining authority has not recorded satisfaction that the conditions imposed upon the petitioner while granting bail to him in the three FIRs, which are the subject matter of the grounds of detention, are inadequate to prevent him from engaging in the activities relating to drug trafficking. It has been further contended that the petitioner has not been provided whole of the material that has formed the basis for formulating the grounds of detention against him, as such, he has been unable to make an effective and suitable representation against the impugned order of detention. It has also been contended that there has been non-application of mind on the part of the detaining authority while formulating the grounds of detention, inasmuch as the grounds of detention are the verbatim copy of the police dossier. It has been further contended that the allegations made in the grounds of detention, as regards the alleged activities of the petitioner, are vague and lacking in material particulars, on the basis of which, it was not possible for the petitioner to make an effective representation against the impugned order of detention.

03. It is pertinent to mention here that the petitioner has also challenged the vires of Sub-clause (5) of Clause (2) of the Jammu & Kashmir Reorganization (Removal of Difficulties) Order, 2019 issued vide S.O. 3912(E) of 2019 dated 30.10.2019 seeking a declaration that the PITNDPS Act, 1988 (Central) is not applicable to the Union Territory of J&K and Union Territory of Ladakh. However, during the course of arguments, learned counsel for the petitioner has submitted that the aforesaid ground of challenge is not being pressed by the petitioner in the present proceedings. He has further submitted that the right to urge the aforesaid ground in an appropriate case may be preserved.

04. The respondents have contested the writ petition by filing counter affidavit of respondent No. 2, the detaining authority. In the counter affidavit, it has been submitted that upon perusal of the dossier submitted by the Senior Superintendent of Police (SSP), Udhampur, vide his communication dated 28.08.2025, it was found imperative to detain the petitioner under the provisions of PITNDPS Act. According to the detaining authority, the petitioner, after getting bail, again involved himself in illicit traffic of narcotic drugs, which was posing a serious threat to public order as well as health of the people. It has been contended that ordinary law has failed to prevent the petitioner from

indulging in drug trafficking, which is clear from the dossier submitted by the Senior Superintendent of Police (SSP), Udhampur.

05. Regarding the supply of material to the petitioner, it has been submitted that the Executing Officer has provided the relevant documents along with the detention order and grounds of detention, (total 92 leaves) to the petitioner and he has been explained the same in the language, namely, Hindi/Dogri which the petitioner is able to understand. It has been submitted that the petitioner was also informed about his right to make a representation to the Government as well as before the detaining authority. It has further been submitted that the impugned order of detention has been confirmed by the Home Department, vide its order dated 30.06.2025 on the basis of the opinion rendered by the Advisory Board on 23.06.2025. The respondents have also rebutted the contention of the petitioner with regard to constitutional validity of Jammu & Kashmir Reorganization (Removal of Difficulties) Order, 2019 issued vide S.O. 3912(E) of 2019 dated 30.10.2019. However, having regard to the fact that learned counsel for the petitioner has not pressed this ground, the contentions of the respondents in this regard are not being narrated

herein. To lend support to their contentions, learned counsel for the respondents has produced the detention record.

06. I have heard learned counsel for the parties and perused record of the case including the detention record.

07. The main grounds on which learned counsel for the petitioner has laid much emphasis for assailing the impugned order of detention are as under:-

I. That in the present case, the detenue was enlarged on bail by the competent court in all the three cases, subject to the conditions laid down in the bail orders, but the detaining authority, while passing the impugned order of detention, has not recorded its satisfaction that the conditions of bail were not sufficient to restrain the detenue from indulging in activities relating to drug trafficking.

II. That the grounds of detention, as regards the alleged activities of petitioner post his release on bail, are vague and lacking in material particulars, therefore, it was not possible for the petitioner to make an effective representation against the order of detention.

III. That there has been non-application of mind on the part of the detaining authority while formulating

the grounds of detention, inasmuch as the detaining authority has recorded that the impugned order of detention is being passed with a view to prevent the petitioner from committing any offence under the PITNDPS Act when the said legislation does not define any offence at all.

08. In the context of the first ground projected by learned counsel for the petitioner, if we have a look at the grounds of detention, the petitioner is shown to be involved in three FIRs **1) FIR No. 31/2023** of Police Station, Udhampur for offences under Sections 8/21/22 NDPS Act, **2) FIR No. 544/2023** of Police Station, Udhampur for offences under Sections 8/21/22 NDPS Act and **3) FIR No. 35/2025** of Police Station, Rehambal for offences under Sections 8/21/22 NDPS Act. It is recorded in the grounds of detention that in all these three FIRs, the petitioner has been granted bail by the competent court. Learned counsel for the petitioner, while referring to the judgment delivered by the Supreme Court in **“Joyi Kitty Joseph vs Union of India & Ors.” 2025 (4) SCC 476** , has contended that it was mandatory for the detaining authority to record subjective satisfaction that the bail conditions in the case of petitioner were not adequate to prevent him from indulging in similar activities. In this regard, learned counsel for the

petitioner has referred to the following observations of the Supreme Court made in paras 32 and 35, which are reproduced as under:-

"32. Likewise, in the present case, we are not concerned as to whether the conditions imposed by the Magistrate would have taken care of the apprehension expressed by the detaining authority; of the detenu indulging in further smuggling activities. We are more concerned with the aspect that the detaining authority did not consider the efficacy of the conditions and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities.

35. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities of smuggling."

09. From the forgoing analysis of the legal position, it becomes clear that, it is mandatory for the detaining authority to record satisfaction that the conditions of bail granted in favour of a detenu are not sufficient to restrain him from indulging in such activities. In the present case, no such satisfaction has been recorded by the detaining authority while passing the impugned order of detention. Therefore, the subjective satisfaction recorded by the detaining authority has become a causality, rendering the impugned order of detention unsustainable in law.

10. In the context of second ground that has been urged by learned counsel for the petitioner, a perusal of the grounds of detention would reveal that the detaining authority has, after recording the nature of activities in which the petitioner was indulging, which led to the registration of three FIRs against him, proceeded to record that despite taking several legal actions against the petitioner, he has continued to take part in illegal drug trafficking without any sign of remorse. The grounds of detention, however, are silent as to when, where, and in what manner the petitioner has indulged in similar activities. No details or particulars with regard to the activities alleged to have been undertaken by the petitioner after his release on bail in the aforesaid FIRs have been mentioned in the grounds of detention. Even in the detention record, which has been produced by the learned counsel for the respondents, there is no report from any agency indicating the details of the activities in which the petitioner is stated to have indulged after his release on bail. In the absence of any such material, even in the record of detention, and in the absence of details relating to the alleged activities of the petitioner post his release on bail in the grounds of detention, it can safely be stated the allegations levelled against the petitioner are vague and

lacking in material particulars. Without there being any particulars with regard to alleged activities of the petitioner post his release on bail, it was not possible for him to make an effective and suitable representation against the impugned order of detention, thereby violating his valuable constitutional right guaranteed under Article 22(5) of the Constitution of India. On this ground also, the impugned order of detention becomes unsustainable in law.

11. The third and last ground that has been urged by learned counsel for the petitioner while challenging the impugned order of detention is that there has been non-application of mind on the part of the detaining authority while formulating the grounds of detention. In this regard, the learned counsel has drawn attention of this Court to the last paragraph of the grounds of detention, in which the detaining authority has recorded that the detention of the petitioner is necessary in order to prevent him from committing any offence under the PITNDPS Act. It is to be noted that provisions of the PITNDPS Act do not define any offence. The said legislation has been designed only to prevent individuals from engaging in illicit traffic in narcotic drugs and psychotropic substances through preventive detention. The fact that the detaining authority is not aware about this legal position shows total non-application of mind

on his part. The impugned order of detention, therefore, becomes unsustainable in law on this ground as well.

12. For what has been discussed hereinbefore, the present petition is **allowed** and the impugned order of detention is **quashed**. The respondents are directed to set the petitioner at liberty, if not involved in any other offence. The record is returned to the learned counsel for the respondents in open Court.

13. So far as the question regarding the constitutional validity of the Jammu & Kashmir Reorganization (Removal of Difficulties) Order, 2019 issued vide S.O. 3912(E) of 2019 dated 30.10.2019 is concerned, the same is left open to be decided in an appropriate case.

(SANJAY DHAR)
JUDGE

JAMMU
02.04.2026

Bunty

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No

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