

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

HCP 2/2026

**Rayees Ahmad Hajam, Aged 40
S/O Ghulam Mohammad Hajam
R/O Hajam Mohalla Sharshali Khrew
District Pulwama
Through his brother
John Mohammad Hajam, Aged 36 years
S/O Ghulam Mohammad Hajam
R/O Hajam Mohalla Sharshali Khrew
District Pulwama**

...Appellant(s)/Petitioners(s)

Through: Mr. Mohammad Ibrahim Wani, Advocate

Vs.

- 1. Union Territory of Jammu & Kashmir through
Principal/Secretary, Home Dept.
J&K, Civil Secretariat Srinagar**
- 2. Divisional Commissioner, Kashmir,
Srinagar**
- 3. Sr. Superintendent of Police,
Pulwama**

...Respondent(s)

Through: Mr. Haris Khan, Assisting Counsel vice
Mr. Mohsin Qadri, Sr. AAG

CORAM:

HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT

17.09.2026

ORAL:

- Petitioner has invoked writ jurisdiction of this Court, under Article 226 of the Constitution of India, for quashment of order of detention bearing No. "DIVCOM-"K"/161/2025 dated 19.12.2025, passed by respondent No. 2- Divisional Commissioner, Srinagar [hereinafter referred to as "the detaining authority"].
- As the grounds of detention would unfurl, Senior Superintendent of Police Awantipora [for short "the recommending authority"], submitted a dossier to the detaining authority alleging *inter alia* that petitioner had

transformed into a notorious drug peddler. He had become a principal dealer of Narcotic Drugs and Psychotropic substances and developed contacts with the drug peddlers operative in his area. It was also alleged that the petitioner being a member of a large drug mafia, was relentlessly involved in drug trafficking, not only in the local area of his residence, but also in the surrounding areas and his activities were directly affecting the health and welfare of the people of that area.

3. Pertinently, the recommending authority by reference to FIR No. 67/2025 under Sections 8/21 NDPS Act of Police Station Khrew, in which petitioner was admitted to bail by the competent court, has stated that petitioner by violating one of the bail conditions that he will not indulge in similar activities is found clandestinely and discretely involved in similar activities. According to the recommending authority, violation of the said bail condition could not be agitated before the trial court for cancellation of bail, which has necessitated his preventive detention.
4. On the basis of this dossier, the detaining authority has come to conclude that petitioner is a part and active member of a large drug mafia. His involvement in the FIR under Sections 8/21 NDPS Act is manifestation of the fact that he has no remorse or realization of ill effects of his activities. He is supplying drugs against hefty amounts to the gullible youth, which exposed them to different kinds of immoral and illegal criminal tendencies and he had adopted the drug trafficking a regular source of his earning. The detaining authority is of the view that to prevent the petitioner from further committing the related offences, it was imperative to detain him under Section 3 of PITNDPS Act.

5. Petitioner is aggrieved of the impugned detention order as also the grounds of detention *inter alia* on the following grounds:

A. For that the impugned Order of Detention bearing No. DIVCOM-"K"/161/2025 dated 19.12.2025, whereby the Detenue has been detained under Section 08/21 of NDPS Act, does not reflect or show that while passing the impugned order of detention dated 19.12.2025, the Detaining Authority was aware of the material relevant facts that:-

- i. Detenue was in connection with Case FIR No.67/2025 arrested by the Police Personnel of Police Station Khrew Pulwama on 10.09.2025;
- ii. And was kept in the Police Custody till such time bail was granted by the Trial Court and accordingly was released on bail by the Trial Court vide Order dated 27.09.2025 and made absolute by the Trial Court vide Order dated 10.10.2025.
- iii. Right from date of arrest the Detenue, remained in Police Custody till 27.09.2025 when the Detenue was admitted to Bail by the Court of law;
- iv. And resultantly mandatory in law though, have not been taken in regard while passing the impugned order of detention dated 19.12.2025 vitiating thereby the subjective satisfaction required to be entered by the Detaining Authority before passing the impugned order of detention dated 19.12.2025;

The impugned Order of Detention bearing No. DIVCOM-"K"/161/2025 dated 19.12.2025, for the reason of having been passed in a most mechanical and perfunctory manner depicting total non-application of the mind on the part of the Detaining Authority to the relevant material facts, required in law to be taken into consideration while passing the order of detention, is thus vitiated in law and rendered illegal to the extent of being non-est in law and liable to be quashed/interdicted.

B. For that regard being had of the fact that the Detenue remained lodged initially in the Police Station Khrew and thereafter was suffering incarceration in Police Station w.e.f. 10.09.2025 and thereafter the Detenue was released from custody vide Order of the Court of Competent Jurisdiction dated 27.09.2025 admitting the Detenue to interim Bail and thereafter made absolute vide Order dated 10.10.2025, nothing in the so-called grounds of detention disclose or mention any activity answering any of the features of an activity prejudicial to the security of the Union Territory within the

meaning and contemplation of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, warranting in law the detention of the Detenue.

The impugned detention order in this view of the matter has clearly been passed without any warrant or sanction of law and has in fact been passed in blatant abuse of the power and authority as by law vests in the Detaining Authority, rendering in sequel thereto the impugned detention illegal, unconstitutional and thus non-est in law, therefore, liable to be quashed/interdicted under the appropriate writ of this Hon'ble Court.

C. *For that the so-called grounds of detention are too vague to answer any of the imperatives of the grounds legally recognized proper and valid grounds, warranting in law detention under the provisions of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, totally illusory to the extent of being non-existent, as apart from the above titled FIR where the petitioner was alleged to have been involved in a small quantity of contraband item and apart from the above said FIR, the petitioner till date has neither been found involved in any subversive activity no any FIR is pending against the petitioner in any court of law, as such can be said for the sake of argument as a first time offender, rendering in sequel thereto the impugned Order of Detention fraud not only on the power and authority as by law vests in the Detaining Authority but also on the constitutionally guaranteed rights of the Detenue.*

D. *For that in the attendant facts and circumstances of the case detention of the Detenue is against law and the constitution, and above all the Detenue being the head of his family which includes wife and minor child and in case he will continue to remain in the illegal detention, it would adversely affect his family particularly wife and minor child and also social life, coupled with the fact that the said action of putting behind bars the Detenue is only to attain a collateral purpose wholly unauthorized by law and the Statute and in sequel thereto is tainted with the vice of malice in law.*

The impugned Order of Detention bearing No. DIVCOM-"K"/161/2025 dated 19.12.2025 on this count as well is rendered illegal to the extent of being non-est in law and therefore, liable to be quashed/interdicted under the appropriate writ of this Hon'ble Court.

E. *For that the impugned Order of Detention bearing No. DIVCOM "K"/161/2025 dated 19.12.2025 on the face of it suffers from the vice of having been passed ultra-vires the power and authority as by law vests in the Detaining Authority and in sequel thereto is rendered void ab-initio and non est in law and therefore, legally*

unsustainable and liable to be quashed/ interdicted under the appropriate writ of this Hon'ble Court.

F. For that the utter vagueness with which the so-called grounds of detention are riddled and thus unintelligible, rendering it almost impossible for the Detenue to make an effective representation against the impugned Order of Detention, violating thereby the constitutionally guaranteed right of effective representation against the impugned Order of Detention bearing No. DIVCOM-"K"/161/2025 dated 19.12.2025.

The impugned Order of Detention bearing No. DIVCOM-"K"/161/2025 dated 19.12.2025 on this count as well is rendered illegal and unconstitutional and thus non-est in law and liable to be quashed/interdicted under the appropriate writ of this Hon'ble Court.

G. For that the so-called material referred to and relied upon in the grounds of detention has not been supplied to the Detenue as is mandatorily required to be supplied as a matter of compliance with the constitutional mandate of the Constitution of India, thereby denuding and depriving the Detenue to make effective representation to the Advisory Board against the fraudulent detention violating thereby the fundamental right guaranteed to the Detenue by law and the Constitution.

The impugned order of detention dated 19.12.2025 on this count as well is rendered illegal and unconstitutional and thus non-est in law and liable to be quashed/interdicted under the appropriate writ of this Hon'ble Court.

6. The plea has been opposed on the other side by the respondents, primarily on the ground that no constitutional, legal or statutory right of the petitioner is found to have been infringed.
7. It is contention of the respondents that the detaining authority, on examination of the dossier, has passed the impugned order strictly in accordance with the procedure provided under PITNDPS Act. Since the petitioner, after getting bail from the concerned court was found involved in similar activities of illicit trafficking of Narcotic Drugs and ordinary law of the land failed to deter him, the detaining authority has come to conclude that it was imperative to detain him under the relevant

provisions of PITNDPS Act. All the relevant documents, including the grounds of detention were furnished to the detenu against a proper receipt and the grounds of detention were not only read over, but explained in the language he understood. Respondents have prayed dismissal of the petition.

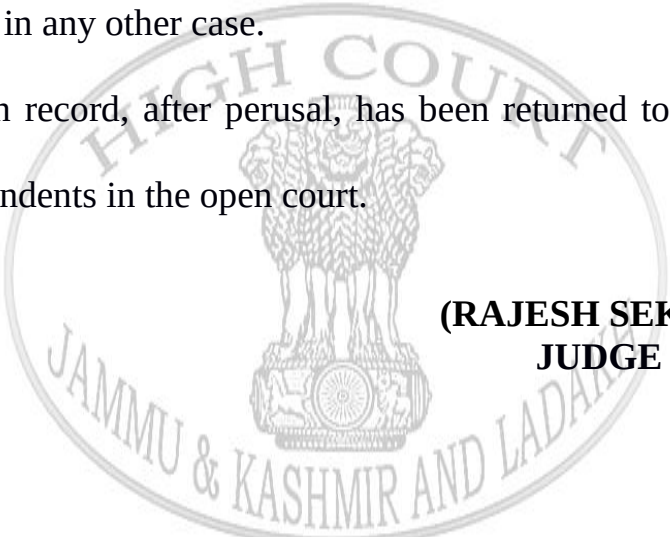
8. Having heard learned counsel for the parties, I have perused the detention record.
9. Learned counsel for the petitioner has reiterated the grounds urged in the memo of petition and learned counsel for the respondents, by referring to the grounds of detention and dossier, has reiterated the stand taken by the respondents therein.
10. The admitted position of fact emerging from the record is that petitioner came to be apprehended by the police in FIR No. 67/2025 under Section 8/21 of NDPS Act of Police Station Khrew on 10.09.2025 and at the time of arrest, 1.3 gm of Herion came to be recovered from his possession. He was admitted to bail by the competent court.
11. According to the detaining authority, the petitioner in violation of the bail condition that he will not indulge in similar activities has been clandestinely and discretely involved in similar activities, which according to the detaining authority, could not be agitated before the trial court for cancellation of bail. One fails to understand, as to what prevents the prosecution or the Union Territory to approach the trial court for cancellation of bail, or the higher court to assail the bail order, if petitioner was found involved in similar activities.
12. Be that as it may, allegations against the petitioner are that, he was an active member of a large drug mafia, involved in drug trafficking, not

only in his area, but at the district level and beyond the district. It is also alleged that petitioner is supplying drugs against hefty amounts to the gullible youth, who are exposed to immoral and illegal criminal tendencies. It is also allegation against the petitioner that he has adopted the drug trafficking as a regular source of his earning and has been motivating and influencing the youth into the drug consumption.

13. On first blush, the dossier and the grounds of detention would throw an impression that petitioner is a hardcore criminal involved in drug peddling on a large scale. However, if grounds of detention are carefully glanced over, it is clear that allegations are vague and cannot form the basis to take him under the preventive detention. The detaining authority has failed to consider the allegations against the petitioner in the correct perspective that neither the screening committee nor the recommending authority have furnished specific details, as to the drug mafia the petitioner is a member of, to whom the petitioner has been supplying the drugs against hefty amounts, how & in what manner is the drug trafficking a regular source of his earning and how he is motivating & influencing the young minds into drug consumption.
14. The allegations attributed to the petitioner, on the face of it, is an ordinary law and order problem, which should have been tackled under the relevant penal laws. Petitioner is found involved in an FIR registered in 2025 and if he was found involved in repeated activities, he should have been apprehended by the police agencies for such activities, allowing the ordinary law to take its course.
15. It is trite in law that where the ordinary law of land is adequate to deal with the criminal activities of an individual, resort to the Preventive

Detention is illegal and unconstitutional. Conduct of the detaining authority exercising such a vast jurisdiction, ought to be reasonable and in tune with the concept of justice and fairness. In other words, it is the rule of law, which should dictate the detaining authority to act in a manner, which is fair and reasonable, having regard to the concept of fundamental right to life and liberty, enshrined in Article 21 of the Constitution of India. Personal liberty of a citizen cannot be curtailed on vague and dogmatic assertions of the executive.

16. For the foregoing reasons, present petition is allowed and petitioner is directed to be immediately released from the detention, provided he is not involved in any other case.
17. Detention record, after perusal, has been returned to learned counsel for the respondents in the open court.



(RAJESH SEKHRI)
JUDGE

Srinagar:
17.09.2026
Adil Ismail

❖ Whether the Judgment is Reportable?	Yes
❖ Whether the Judgment is Speaking?	Yes