

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

HCP 5/2026

MUSHTAQ AHMAD WANI, AGE 32
S/O LATE FAROOQ AHMAD WANI
R/O CHEWDARA BEERWAH BUDGAM
DISTRICT BUDGAM THROUGH WIFE NAMELY
ROHEENA AKHTER AGED 27

..... Appellant/petitioner(s)

Through: -

Mr. Hussain Rashid, Advocate

V/s

UT OF J&K THROUGH DIVISIONAL COMMISSIONER KASHMIR
AT SRINGAR

..... Respondent(s)

Through: -

Mr. Haris Khan, AC vice Mr. Mohsin Qadri, Sr. AAG

CORAM:

HON'BLE MR JUSTICE RAJESH SEKHRI, JUDGE

(JUDGMENT)

10.09.2026

(ORAL)

01. Petitioner has invoked writ jurisdiction of this Court, under Article 226 of the Constitution of India, for quashment of detention order bearing No. Divcom-“K”/01/2026 dated 06.01.2026 and his consequent release from the detention.
02. Background facts of the case are that on 10.12.2025, Senior Superintendent of Police, Budgam—the Sponsoring Agency, submitted a dossier and connected documents to the Divisional Commissioner, Kashmir—the detaining authority, alleging *inter alia*

that petitioner a school dropout, transformed into a notorious drug peddler of his area and was running an illegal trade of narcotics since long time. He became the principal dealer of Narcotic Drugs and Psychotropic substances of his area, developed contacts with drug peddlers operative in the area and started selling/dealing in drugs among the youth, which has adverse impact on the younger generation.

03. It is also allegation of the sponsoring agency that petitioner along with his associates were apprehended by the Police in case FIR No. 29/2023, under Section 8/20 NDPS Act at Police Station, Beerwah and at the time of arrest 909 Grams of Charas Powder and 04 sticks of Charas weighing 79-Grams came to be recovered from his vehicle (Load Carrier). He was bailed out by the competent Court. However, violating the bail condition that he will not indulge in similar activities, he clandestinely and discretely remained involved in such activities, which according to the sponsoring agency could not be agitated before the trial Court for cancellation of bail and it necessitated his preventive detention.
04. According to the sponsoring agency, persistent involvement of the petitioner in drug trafficking and his deliberate attempts to evade the operation of normal criminal law, has made it imperative to detain him under the PIT NDPS Act.
05. On receipt of the aforesaid dossier and connected documents, the detaining authority has come to conclude that in order to prevent the petitioner from committing any of the offences within the meaning of PIT NDPS, it was necessary to detain him.

06. Petitioner is aggrieved of the impugned order of detention as also the grounds of detention *inter alia* on the grounds that there is absence of live link between the past incidents attributed to him and the present detention order. According to the petitioner, a mere apprehension of breach of law and order is not sufficient to meet the standards of adversely affecting the maintenance of public order. It is contention of the petitioner that apprehension of an adverse impact to public order is a mere surmise of the detaining authority especially when there have been no reports of unrest.
07. It is further contention of the petitioner that there are no specific allegations attributed to him and impugned order has been passed on vague and generalized allegations, which is not permissible in law.
08. Another ground urged by the petitioner is that it was incumbent upon the detaining authority to inform him of his independent right of representation before the detaining authority besides having right of representation before the Government and since it has not been done, impugned order vitiates on this ground alone.
09. The plea has been opposed by the respondents primarily on the ground that collective assessment of grounds of detention has led the detaining authority to reach a subjective satisfaction for placing the petitioner under preventive detention.
10. According to the respondents the order of detention came to be executed by the concerned Police on 09.01.2026 and contents of grounds of detention were read over and explained to the petitioner in the language which he understood and he was also informed about his right to file representation to the Government against the detention.

The Advisory Board after being satisfied that there were sufficient grounds for the detention of the petitioner, confirmed the detention order in exercise of powers conferred under Clause (f) of Section 9 read with Section 11 of PIT NDPS Act. According to the respondents, the impugned order is perfectly issued by the respondents in accordance with the provisions of PIT NDPS. Respondents have prayed for dismissal of the petition.

11. Having heard learned counsel for the parties, I have gone through the detention record.
12. Petitioner is aggrieved of the impugned order, primarily on the ground of vagueness and absence of “live and proximate link” between the sole criminal activity attributed to him and the impugned order of detention. According to the petitioner, since the grounds of detention are vague in nature, it prevented him from making an effective representation, as a result whereof his fundamental rights guaranteed under Article 22 (5) of Constitution of India came to be infringed.
13. The expressions “Public Order” and “Law and Order” operate in different fields and have different connotations. If an activity attributed to the detainee has the potentiality to disturb and affect the public at large, it amounts to disturbance of “public order”, however, if the criminal activity attributed to a person is prejudicial to a particular individual or a member or members of the society, it falls within the purview of “law and order” problem. In other words, breach of law by an individual by indulging in a criminal activity or in contravention of the provisions of a particular statute, may tantamount to “law and order” problem, but it cannot be termed as disturbance of

the “public order”, and it is trite in law that if ordinary law of the land is competent to deal with criminal activities of an offender, resort to the provisions of preventive detention laws are illegal.

14. It is allegation of the detaining authority that persistent involvement of the petitioner in drug trafficking and his deliberate attempts to evade the operation of normal criminal law, have made it imperative to detain him under the PIT NDPS Act. It is also alleged that petitioner is an integral and active member of a well-organized drug mafia that is relentlessly engaged in Narcotics trafficking. His activities are not confined to the vicinity of his residence but extend across the district and beyond the wide operational reach of the syndicate of which he is a part.
15. On first blush, a plain reading of the grounds of detention would suggest that petitioner being a member of drug mafia is a hard-core criminal, involved in large-scale drug peddling and drug trafficking. The impugned detention order and the grounds of detention however, are conspicuously silent about the details as to the drug mafia of which the petitioner is a member, who is running the drug mafia, whom the petitioner has been selling the drugs, who has been influenced by the petitioner and for how long the mafia has been operating. Interestingly, the detaining authority has proceeded to detain the petitioner on the basis of a solitary FIR, i.e., FIR No. 29/2023 under Section 8/20 NDPS Act in which he has already been admitted to bail by the competent Court and is undergoing trial. One fails to understand as to what prevents the prosecution or the detaining authority to agitate before the trial Court for cancellation of bail or the higher Court to assail the bail extended in favour of the petitioner on the ground that he has violated the bail condition that he will not indulge in similar activities.

16. Liberty of an individual cannot be curtailed on mere *ipse dixit* of the detaining authority. It appears that the grounds of detention furnished to the petitioner in the present case are mere conclusions drawn by the detaining authority based on some material received from the field agency but without independent application of mind on his part. Apprehension of law and order on mere surmises of the detaining authority and omnibus allegations is not countenanced in law because it is not sufficient to meet the standards of adversely affecting the maintenance of public order.
17. Viewed from any angle, the impugned order of detention does not sustain in the eyes of law. Hence present petition is allowed and impugned order is quashed. Petitioner is directed to be immediately released from the detention, provided he is not involved or required in any other offence.
18. Detention record after perusal has been returned to learned counsel for the respondents in the open Court.
19. Disposed of.

(RAJESH SEKHRI)
JUDGE

SRINAGAR
10.09.2026
"Mohammad Yasin Dar"

Whether the Judgment is reportable: Yes
Whether the Judgment is speaking: Yes