

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.15/2026

Reserved on: 03.09.2026

Pronounced on: 11.09.2026

Uploaded on: 11.09.2026

Whether the operative part or full judgment is pronounced: Full

Irshad Ahmad Wani

S/O Habibullah Wani

R/O Ghat Mohalla,

Tehsil Hajin, District Bandipora.

...Petitioner(s)

Through: Adv. Abid Ahmad Pandit.

Vs.

1. Union Territory of J&K through

Principal Secretary to Govt.

Home Department,

Civil Sectt. Srinagar.

2. Divisional Commissioner,
Kashmir.

3. Sr. Superintendent of Police,
Bandipora.

4. Superintendent District Jail,
Bhaderwah.

...Respondent(s)

Through: Sr.AAG Mohsin Qadri with
AC Maha Majeed.

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

JUDGMENT

1. The instant Habeas Corpus Petition has been filed by the petitioner seeking quashing of preventive detention Order **No.DIVCOM-"K"/07/2026 dated 05.02.2026** passed by

respondent No.2-Divisional Commissioner, Kashmir, whereby the petitioner has been detained under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter, "the PIT-NDPS Act"), and seeking his release forthwith from preventive detention.

2. The case of the petitioner, in substance as set up, is that the impugned order of detention is illegal, arbitrary and unconstitutional; that the material relied upon by the Detaining Authority did not furnish sufficient basis for arriving at the requisite subjective satisfaction; that the petitioner was already facing prosecution in respect of the criminal cases referred to in the grounds of detention; that the ordinary criminal law was sufficient to deal with the alleged activities; that the constitutional safeguards guaranteed under Article 22(5) of the Constitution of India were not duly complied with.
3. The respondents, per contra, have opposed the petition. It is contended that the impugned order has been passed by the competent Detaining Authority after careful consideration of the material placed before it by the sponsoring authority; that the grounds of detention disclose the petitioner's repeated involvement in activities relating to illicit trafficking in narcotic drugs and psychotropic substances and demonstrate his propensity to indulge in such activities in future; that the grounds of

detention, together with the relied-upon documents, were furnished to the detenu, that he was duly informed of his right to make a representation.

4. Heard learned counsel for the parties, perused the detention record produced by the respondents and considered the same.

5. Before examining the individual grounds of challenge, it would be appropriate to notice the settled principles governing judicial review of an order of preventive detention.

6. Preventive detention is an exceptional measure and the power has to be exercised with care and circumspection. At the same time, the Indian Constitution itself recognises preventive detention under Article 22(3)(b). The object of such detention is not punitive but preventive, namely, to prevent a person from indulging in activities which are considered prejudicial to the objects specified in the preventive detention statute.

7. In ***Haradhan Saha v. State of West Bengal***, reported as **1975 (3) SCC 198**, the Constitution Bench of the Supreme Court of India explained the distinction between preventive detention and prosecution under the ordinary criminal law and held that the two operate in different fields. The mere fact that a person is liable to be prosecuted or is actually being prosecuted does not, by itself, preclude the competent authority from passing an order of preventive

detention, provided the statutory requirements are otherwise satisfied.

8. The scope of judicial review in matters of preventive detention has been explained by the Hon'ble Supreme Court in several decisions. The Court does not sit as an appellate authority over the subjective satisfaction of the Detaining Authority. What is required to be examined is whether the authority was competent, whether it applied its mind to relevant material, whether the satisfaction was reached in accordance with law, whether irrelevant or extraneous considerations have been taken into account, and whether the constitutional and statutory safeguards have been duly complied with.

9. In ***State of Maharashtra v. Bhaurao Punjabrao Gawande***, reported as **2008 (3) SCC 613**, the Supreme Court reiterated that the Court is not concerned with the sufficiency of the material which persuaded the Detaining Authority to arrive at its subjective satisfaction. Judicial review is directed principally against the decision-making process and not against the sufficiency of the material on which the satisfaction is founded.

10. Equally, the Supreme Court has repeatedly emphasised that the subjective satisfaction cannot be arbitrary or mechanical. In ***Shalini Soni v. Union of India***, reported as **1980 (4) SCC 544**, it was held that where the statute entrusts a decision-making function to a statutory

authority on the basis of subjective satisfaction, there is an obligation to apply the mind to pertinent and proximate matters and to eschew irrelevant and remote considerations. The grounds supplied to the detinue must contain the factual material which formed the basis of the satisfaction so as to enable him to make an effective representation.

11. The constitutional safeguard contained in Article 22(5) assumes particular significance in this context. The detinue has a fundamental right to be informed of the grounds of detention and to be afforded the earliest opportunity of making a representation against the order.

In ***Kamleshkumar Ishwardas Patel v. Union of India***, reported as **1995 (4) SCC 51**, which specifically dealt, *inter alia*, with preventive detention under the PIT-NDPS Act, the Supreme Court underscored the importance of consideration of the representation by the competent authority.

12. The law also requires that the material which formed the foundation of the subjective satisfaction must be made available to the detinue to the extent required for enabling an effective representation. The Supreme Court in ***Shalini Soni (supra)*** held that the "grounds" comprise not merely factual inferences but the factual material which led to such inferences. Thus, the constitutional guarantee is not satisfied by furnishing conclusions alone.

13. In the present case, on a careful examination of the detention record, this Court finds that the grounds of detention are sufficiently specific and disclose the material facts and circumstances which weighed with the Detaining Authority. The relevant documents relied upon in forming the subjective satisfaction was supplied to the detainee. The detainee was also informed of his right to make a representation against the order of detention. There is, therefore, no material before this Court to conclude that the petitioner-detainee was disabled from making an effective representation. No specific relied-upon document, the non-supply of which could have materially prejudiced the petitioner's right under Article 22(5), has been identified.

14. It is true that in appropriate cases the failure to supply a foundational or relied-upon document can vitiate the detention. The Supreme Court has recently reiterated that the right to make an effective representation carries with it the corresponding obligation to furnish material which actually weighed with the Detaining Authority, however, every document merely referred to incidentally does not necessarily become a document required to be supplied.

15. Next contention of the petitioner is that the petitioner was already facing prosecution in cases registered under the NDPS Act and that, therefore, preventive detention was unwarranted.

16. This Court finds no merit in the contention. The fact that criminal proceedings are pending does not ipso facto render preventive detention illegal. As noticed hereinbefore, preventive detention and prosecution are conceptually distinct. Preventive detention is intended to prevent anticipated prejudicial conduct, whereas prosecution is concerned with determining criminal culpability for an offence already committed.

17. In ***Haradhan Saha (supra)***, the Constitution Bench recognized the co-existence of preventive detention and prosecution. The principle was also considered in ***Rekha v. State of Tamil Nadu***, reported as **2011 (5) SCC 244**. The latter decision, while emphasising the exceptional nature of preventive detention and the need for strict compliance with constitutional safeguards, does not lay down an absolute prohibition against preventive detention merely because ordinary criminal proceedings are pending.

18. The material placed on record shows that the Detaining Authority was conscious of the criminal cases pending against the petitioner and nevertheless arrived at the satisfaction that the petitioner's activities disclosed a propensity to continue indulging in illicit trafficking in narcotic drugs and psychotropic substances. The mere availability of the ordinary criminal law, therefore, cannot by itself furnish a ground for invalidating the detention order. The relevant consideration is whether the Detaining

Authority had material before it from which it could reasonably arrive at the satisfaction that preventive detention was necessary to prevent the petitioner from continuing his prejudicial activities. The detinue was found in possession of drugs within the jurisdiction of Police Station Sumbal regarding which a case was registered vide FIR No.10/2023 under Sections 8/22/29 NDPS Act, but was admitted to bail and again indulged in the case of similar nature when drugs were recovered from him within the jurisdiction of Police Station Bandipora vide FIR No.267/2024 under Sections 8/22/29 NDPS Act, he, however, again secured bail. Thus the argument that ordinary law was sufficient to deter the detinue, is grossly misconceived.

19. It is also required to examine whether there existed a live and proximate link between the antecedent activities of the petitioner and the necessity for passing the detention order.

20. It is well settled that the prejudicial activities relied upon for preventive detention cannot be so remote or stale as to have lost their relevance. A live and proximate link must exist between the past conduct and the apprehension of future prejudicial activity. Where that link is snapped by inordinate delay or intervening circumstances, the subjective satisfaction may stand vitiated. However, the question whether the link has been snapped must

necessarily depend upon the facts and circumstances of each case. The mere passage of some time between the prejudicial activity and the detention order cannot, in every case, mechanically invalidate the detention, particularly where the material demonstrates continuity of conduct or continuing propensity.

21. In the present case, the detention record discloses the incidents/cases relating to the petitioner's alleged involvement in illicit trafficking of narcotic drugs. The material considered by the Detaining Authority is not confined to an isolated or remote incident. The chronology and nature of the activities, taken cumulatively, furnished a rational basis for the satisfaction that there was a continuing propensity on the part of the petitioner to indulge in prejudicial activities.

22. The petitioner has also relied upon the fact that he was granted bail in the criminal cases. The grant of bail, by itself, does not create an absolute bar to preventive detention. What is material is whether the Detaining Authority was aware of the fact of bail and whether the circumstances relating to the petitioner's release on bail were considered while arriving at the requisite satisfaction.

23. On perusal of the record, this Court finds that the fact of the petitioner's release on bail was brought to the notice of the Detaining Authority and was duly considered. The satisfaction recorded by the Detaining Authority is that,

notwithstanding his release, there was a reasonable likelihood of the petitioner again indulging in activities prejudicial to the objects of the PIT-NDPS Act.

24. The principle is important because preventive detention cannot be sustained merely by mechanically reproducing the facts of criminal antecedents. There must be material enabling the Detaining Authority to arrive at the satisfaction that the person is likely to continue the prejudicial activity. In the present case, however, the satisfaction is supported by the antecedent material and the circumstances placed before the Detaining Authority.

25. In the present case, the Detaining Authority has considered the relevant material, applied its mind to the antecedents of the petitioner, taken into account the criminal cases and the circumstances surrounding the petitioner's release on bail, and thereafter recorded its satisfaction that preventive detention was necessary to prevent the petitioner from indulging in prejudicial activities in future. There is no material on record to demonstrate that the satisfaction is founded upon irrelevant or extraneous considerations. Nor can it be said that the detention order is based upon a mere ipse dixit of the Detaining Authority. The grounds disclose the factual basis and the nexus between the antecedent activities and the apprehension of their continuation.

26. Preventive detention may undoubtedly be resorted to only in accordance with law and upon scrupulous observance of the constitutional safeguards. But where, as in the present case, the Detaining Authority has acted within its jurisdiction, considered relevant material, recorded the requisite subjective satisfaction, furnished the grounds and relied-upon material to the detainee, and afforded him an effective opportunity of representation, this Court would not be justified in substituting its own assessment for that of the Detaining Authority.

27. For the foregoing reasons, this Court finds no ground warranting interference with the impugned order passed under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The Habeas Corpus Petition is, accordingly, **dismissed**. The impugned order of preventive detention is upheld.

28. Detention record is directed to be sent back.

(M. A. CHOWDHARY)
JUDGE

Srinagar
11.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No