

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.16/2026

Reserved on: **02.06.2026**

Pronounced on: **04.06.2026**

Uploaded on: **04.06.2026**

Operative part or full judgment - **Full**

Mohd Ayoub Najar
S/O Late Ab. Khaliq Najar,
R/O Waniyar Rathpora
A/P Kounsar Colony
Palpora NoorBagh District Srinagar.

...Petitioner(s)

Through: Adv. Wajid Mohammad Haseeb.

Vs.

1. Union Territory of J&K through
Principal Secretary to Govt.,
Home Department,
Civil Sectt. Srinagar.

2. Divisional Commissioner Kashmir,
Srinagar.

3. Superintendent of Police,
Srinagar.

...Respondent(s)

Through: Sr.AAG Mohsin Qadri with
Adv. Haaris Khan, AC.

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

JUDGMENT

1. Challenge in this petition has been thrown to a Detention

Order No. **DIVCOM“K”/125/2025** dated **15.07.2025**

(‘impugned order’ for short) passed by the Divisional

Commissioner Kashmir-respondent No.2, vide which the petitioner namely Mohd Ayoub Najar ('the detenu' for short) has been ordered to be detained and lodged in Central Jail Jammu under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988.

1. It is pleaded by the petitioner in his petition that the impugned detention order is legally unsustainable being founded upon stale and irrelevant material; that the petitioner was allegedly involved in two cases registered vide FIR No. 02/2014 under section 8/22 NDPS Act and FIR No. 10/2015 under section 8/20 NDPS Act, both registered at Police Station Safakadal, whereas the detention order came to be passed in the year 2025 after a lapse of almost a decade; that there exists no live and proximate link between the alleged antecedents of the petitioner and the order of detention; that the detention was recommended on 05.06.2025 however, the detention order was passed on 15.07.2025 without any fresh intervening material or explanation for such delay; that the grounds of detention are vague, indefinite and reflective of non-application of mind; that the detention order is bad in law and deserves to be quashed.
2. Respondents, pursuant to the issuance of notice, have filed their reply/counter affidavit, wherein it is stated that the fundamental concept of preventive detention is not intended to punish someone for actions they have already taken but to prevent them from taking such actions in future; that the basis

for detention rests on the Executive's satisfaction with a reasonable probability or likelihood of the detainee from committing any of the acts within the meaning of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; that the detention order is based on a reasonable prediction of future behaviour considering the detainee's past conduct in light of the surrounding circumstances; that there is a direct and immediate link between the detainee's past conduct and current or imminent future activities; that the collective assessment of the grounds for detention has led the detaining authority to reach a subjective satisfaction for placing the petitioner under preventive detention; that the present petition is legally misconceived and is without any merit, therefore deserves to be rejected.

- 3.** Heard learned counsel for the parties, perused the detention record and considered the same.
- 4.** While reiterating the grounds urged in the petition, learned counsel for the petitioner argued that the petitioner is a law abiding and peace loving citizen and has never involved in any subversive activity which would cause prejudice to the social order of the UT of J&K; that the petitioner was arrested by the police some ten years back and was implicated in two cases registered vide FIR No.02/2024 and FIR No. 10/2015, however, the petitioner was admitted to bail in both the cases on 21.01.2014 and 23.02.2015 respectively by the court of competent jurisdiction and was released from custody; that since his release, the petitioner is living his life peacefully but

on 17.07.2025 the petitioner was again arrested by police personnel of Police Station Safakadal from his home and was kept in illegal custody in the said Police Station; that on same day the petitioner was shifted to the Central Jail Jammu to be detained in terms of the impugned order which is sought to be quashed through the medium of the present petition.

5. Learned counsel for the respondents, *ex-adversus*, submits that the preventive detention is designed to protect Society from the menace of illicit drugs; that the detention order is not based upon stale grounds but upon adverse reports furnished by the sponsoring agency; that the grounds of detention give complete picture of activities of the petitioner which on the face of them were highly prejudicial to the health and welfare of masses; that it is well settled law that the satisfaction of the detaining authority is subjective in nature and the Court cannot substitute its opinion for the subjective satisfaction of the detaining authority and interfere with the order of detention; that the entire relied upon material was furnished to the detainee and all procedural safeguards stood complied with.

6. Preventive detention constitutes a serious encroachment upon the fundamental right of a citizen and personal liberty guaranteed under Article 21 of the Constitution of India and, therefore, constitutional and statutory safeguards governing such detention must receive strict construction. Though the satisfaction of the detaining authority is subjective, so it is not beyond judicial scrutiny. Where the detention order is based upon stale, irrelevant, non-existent or extraneous material, the

Court would be justified in interfering. In **Khudiram Das v. State of West Bengal, (1975) 2 SCC 81**, the Hon'ble Supreme Court held that the subjective satisfaction of the detaining authority is open to judicial review on the grounds of *mala fides*, non-application of mind, reliance on irrelevant material or exclusion of relevant material. Similarly, in **Ichhu Devi Choraria v. Union of India, (AIR 1980 SC 1983)**, the Supreme Court emphasized that preventive detention laws must be construed with utmost strictness since they directly impinge upon personal liberty. The Court observed that:-

“...The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred...”

7. Perusal of the grounds of detention reveals that the main material relied upon by the detaining authority pertains to FIR No. 02/2014 and FIR No. 10/2015. Admittedly, the detention order came to be passed on 15.07.2025. Except for general

references to adverse reports, no contemporary or fresh prejudicial activity attributable to the petitioner has been brought on record. The law is no longer *res integra* that there must exist a live and proximate nexus between the prejudicial activities relied upon and the necessity of preventive detention. In **T.A. Abdul Rahman v. State of Kerala, (1989) 4 SCC 741**, the Hon'ble Supreme Court held that undue delay or remoteness in passing a detention order may snap the live and proximate link between past conduct and the purpose of detention. The Court held as under:

“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.”

The Court further observed:-

“If there is undue and long delay between the prejudicial activities and the passing of the detention order, the court has to scrutinize whether the subjective satisfaction of the detaining authority was genuinely arrived at.”

- 8.** Applying the aforesaid principle to the facts of the present case, this Court finds that the FIRs relied upon are of the years 2014 and 2015, whereas the detention order has been passed in the year 2025 after a decade. The material relied

upon is, therefore, separated by nearly ten years from the impugned action. Such remote antecedents, in the absence of any fresh prejudicial conduct, cannot reasonably sustain the subjective satisfaction necessary for preventive detention. In **Sama Aruna v. State of Telangana, (2018) 12 SCC 150**, the Supreme Court held that stale criminal antecedents cannot furnish a valid foundation for preventive detention unless there exists proximate and compelling material connecting the detinue's conduct with the necessity for detention.

- 9.** In **Rekha v. State of Tamil Nadu, (2011) 5 SCC 244**, the Supreme Court cautioned that preventive detention cannot be employed as a substitute for ordinary criminal law and must rest upon cogent, relevant and proximate material. It would be advantageous to extract relevant portion from the said judgment:-

“29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the

ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: Was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detainee was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.”

10. In the present case, the respondents have asserted that the dossier was based upon adverse reports and that the whole material was supplied to the detainee. However, mere supply of material does not cure the substantive illegality arising from reliance upon stale grounds. The record does not disclose any fresh incident, recent intelligence input or proximate prejudicial conduct immediately preceding the issuance of the detention order.

11. The chronology of events also assumes significance. The detention recommendation is stated to have been made on 05.06.2025, whereas the detention order came to be passed

on 15.07.2025. No satisfactory explanation for this delay has been forthcoming from the respondents. In **Anant Sakharam Raut v. State of Maharashtra, (1987) 1 SCC 559**, the Supreme Court held that unexplained delay may vitiate an order of preventive detention where such delay erodes the nexus between the alleged activity and the necessity to detain. Equally relevant is the principle laid down in **Ramesh Yadav v. District Magistrate, Etah, (1985) 4 SCC 232**, wherein the Supreme Court held that preventive detention cannot be sustained on speculative apprehensions or in circumstances where ordinary criminal law remedies are adequate.

12. Viewed thus, the detention order in question appears to be founded upon old, stale and remote grounds without disclosure of any fresh or compelling material. The absence of recent prejudicial activity, coupled with the unexplained delay and reliance upon decade-old antecedents, renders the subjective satisfaction of the detaining authority legally vulnerable.

13. This Court is, therefore, of the considered opinion that the impugned detention order is founded upon stale and vague grounds, bereft of any live and proximate nexus with the object sought to be achieved through preventive detention. The subjective satisfaction recorded by the detaining authority stands vitiated on account of reliance upon remote material and absence of fresh grounds.

14. Consequently, the present petition is **allowed** and the Detention Order No. **DIVCOM“K”/125/2025** dated **15.07.2025**

is held unsustainable in law and is, accordingly, **quashed**. The petitioner/detenué shall be released forthwith provided he is not required in connection with any other case(s).

15. Detention record is directed to be returned back to the learned counsel for the respondents.

16. HCP No. 16/2026 is, thus, disposed of, in terms of the above, along-with pending application(s).

Srinagar
04.06.2026
Muzammil. Q

(M. A. CHOWDHARY)
JUDGE

Whether the order is reportable: Yes / No