

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

HCP 69/2025

FAYAZ AHMAD KHAN

... **Petitioner(s)**

Through: Ms. Mudasser Yousuf, Advocate

Vs.

UNION TERRITORY OF J AND K AND
ORS.

...**Respondent(s)**

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majid, AC

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

26.02.2026

1. Petitioner in the instant petition filed under Article 226 of the Constitution has sought quashing of detention order No. DIVCOM-K/23/2025 dated 24.02.2025 (for short “the impugned order”) passed by respondent No. 2- Divisional Commissioner, Kashmir (for short “the Detaining Authority”) under and in terms of Section 3 of the Prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substances Act, 1988.
2. The petitioner has challenged the impugned order on multiple grounds urged in the petition.
3. Reply affidavit to the petition has been filed opposing the petition, *inter alia*, on the premise that the petitioner is a notorious drug peddler of the area having developed contacts with drug operatives and has been dealing and selling drugs among the youth of the area

and since the said drug trafficking activities of the petitioner were found to be serious threat to the physical as well as mental health of the people of the area, besides endangering the national economy and social stability, the preventive detention of the petitioner was ordered by the Detaining Authority, after receiving dossier and other related material from the sponsoring agency.

It is further stated that the petitioner has been previously as well involved in drug related activities and booked in FIR No. 59/2023 registered with Police Station Devsar under section 8, 15 and 29 of the NDPS Act and though the petitioner obtained bail therein in the said FIR, yet thereafter the petitioner continued to indulge in drug related activities discretely in order to avoid rigor of law, necessitating the preventive detention of the petitioner.

It is further stated that upon ordering the preventive detention of the petitioner by the Detaining Authority based upon the assessment of his activities, reports received from the field agencies, inasmuch as, sufficiency and efficacy of bail conditions, subject to which the petitioner was admitted to bail by the competent court, the Detaining Authority ordered preventive detention of the petitioner and in the process completed all statutory formalities and safeguarded constitutional guarantees.

It is further stated that the contents of the order and the grounds of detention were read over and explained to the petitioner in the language he fully understood and was also informed about his right of making a representation against his detention and that the entire material based upon which his detention was ordered came to

be supplied to the petitioner by the Executing Officer and the representation submitted by the petitioner before the Government against his detention was rejected on 09.04.2025.

It is lastly stated that the grant of bail to the petitioner in the FIR in question could not preclude the Detaining Authority from detaining the petitioner under the preventive law as the petitioner was found to be involved continuously in drug related activities.

Heard counsel for the parties and perused the record.

4. The counsel for the petitioner while making her submission in line with the case setup in the petition would confine the challenge thrown to the impugned order to the ground that the petitioner has been detained by the Detaining Authority illegally on account of his alleged involvement in FIR No. 59/2023, in which FIR the petitioner stands already bailed out as the respondents did not undertake any exercise to seek cancellation of the said bail, in the event the petitioner was found continuously involved in drug related activities after obtaining said bail.

Learned counsel would further submit that the respondents have placed on record with the reply affidavit the detention papers pertaining to a different person namely Ghulam Nabi Lone signifying the non-application of mind on the part of the respondents.

Learned counsel would further submit that the respondents delayed the consideration of the representation submitted by the petitioner which vitiates the impugned order and would lastly contend that the lodgment of the petitioner under the preventive

detention has been ordered prior to the passing of the order of detention, subsisting abuse of power and non-application of mind.

5. On the contrary the counsel for the respondents would submit that the Detaining Authority while referring to the involvement of the petitioner in FIR in question has only shown its awareness about the involvement of the petitioner and his release on bail therein the said FIR and that the petitioner came to be detained post grant of bail owing to his continuous involvement in drug related activities in order to prevent him from engaging drugs related activities.

Learned counsel would further submit that the grant of bail to the petitioner in the criminal case *per se* would not in law operate as a bar for preventive detention of the petitioner.

Learned counsel would further submit that the lodgment order referred in the petition and also the material annexed with the reply affidavit filed to the petition of a different detenu has been done under *bona fide* mistake as otherwise the entire material referred to and relied upon in the grounds of detention for detaining the petitioner stands furnished to the petitioner, having been acknowledged by the petitioner.

6. Having regard to the aforesaid rival submissions of the learned appearing counsel for the parties, it is deemed appropriate to refer to the principle of law laid down by the Apex Court in case titled as **“Haradan Saha Vs. State of W.B reported in 1975 (3) SCC198** wherein at para 32 following has been laid down:-

“The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a

precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding . It does not overlap with prosecution even it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.”

In view of the aforesaid position of law and having regard to the aforesaid plea raised by the counsel for the petitioner, it can safely be concluded, that the involvement of the petitioner in the FIR in question wherein the petitioner has been admitted to bail cannot be said to have operate as a bar for detaining the petitioner under preventive detention. Besides Detaining Authority seemingly has referred to the FIR in question as also the admission of the petitioner to bail therein the said FIR in order to reveal its awareness about the same.

7. Furthermore closer examination of the grounds of the detention tends to show that the Detaining Authority has based its subjective satisfaction for detaining the petitioner on the basis of the dossier and the reports of discreet inquiry held qua the activities of the petitioner relating to drugs and has based upon the same, ordered preventive detention of the petitioner in terms of the order under challenge. The plea of the petitioner that the Detaining Authority could not have detained the petitioner under preventive law and instead the respondents could have sought cancellation of bail obtained by the petitioner in the FIR in question also pales into

significance in view of the position of law laid down by the Apex Court in the judgment of Hardan Saha *supra*, wherein risking repetition, it has been held that an order of preventive detention may be made with or without prosecution or in anticipation or after discharge or even acquittal.

8. Insofar as the annexing of the detention record of a different person with the reply affidavit filed by the respondents to the petitioner is concerned, the same admittedly is pertaining to one Ghulam Nabi Lone, however, it cannot be said that the petitioner has been got prejudiced by annexing of such material with the reply affidavit filed by the respondents, because the perusal of the detention record reveals that the petitioner has been furnished the detention material upon its execution in lieu whereof the petitioner has affixed his signature on the execution report as well thereby has rendered the petitioner capable of making a representation which admittedly has been made and considered by the respondents, as per the record available and although, the delayed consideration of the said representation is alleged yet no pleading in this regard has been filed to show that the delay has been deliberate or intentional on the part of the respondents in disposal of the said representation.
9. Insofar as the plea of the counsel for the petitioner qua the lodgment of the petitioner prior to the passing of the detention order is concerned, same appears to have a substance yet that *per se* would not vitiate the impugned order and be fatal to the validity of the impugned order.

10. Viewed thus for what has been observed, considered and analysed hereinabove, no merit is found in the instant petition, which accordingly is *dismissed*.
11. The detention record produced by the counsel for the respondents in the open court is returned back.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR:
26.02.2026
"S.Nuzhat"

Whether the order is speaking	Yes/No
Whether the order is reporting	Yes/No

