

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

HCP No. 99/2025

Sakeena Bano

.....Petitioners

Through: Mr. Owais Ashraf Shah, Advocate.

Vs.

Union Territory of J&K and Others

.....Respondents

Through: Mr. Mohsin Qadri, Sr.AAG with
Ms. Maha Majeed, Assisting
counsel.

Coram : HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT
05.03.2026

1. Heard learned counsel for the petitioner as well as for the respondents. Perused the respective side's pleadings and the documents accompanying therewith. Also perused the detention record produced from the end of the respondents.
2. The petitioner-Sakeena Bano acting through her husband-Siraj-u-din Khan

came forward with the institution of the present writ petition on **14.05.2025** while being in the state of preventive detention custody slapped upon her by the respondent No.2-Divisional Commissioner, Kashmir by reference to the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance (PITNDPS) Act, 1988.

3. The Senior Superintendent of Police (SSP), Budgam, by virtue of a letter **No. PSA-Cell/Dossier/2025/276-79** dated **08.03.2025**, had submitted a dossier to the respondent No.2- Divisional Commissioner, Kashmir by reporting alleged activities of the petitioner reckoned to fall within scope of mischief of PITNDPS Act, 1988 warranting her preventive detention which consequently resulted in issuance of the detention order No.

DIVCOM“K”/62/2025 dated
03.04.2025 ordering preventive
 detention of the petitioner and her
 confinement in the Central Jail,
 Srinagar.

4. In the grounds of detention so
 formulated, the respondent No.2-
 Divisional Commissioner, Kashmir
 refers the petitioner to be a notorious
 illicit drug peddler of the area, running
 an illegal trade of narcotics since long
 time and in the process becoming
 principal dealer of narcotic drugs and
 psychotropic substances by developing
 contacts with drug peddlers operative in
 the area.

5. The arrest of the petitioner by reference
 to **FIR No.46/2023** under sections
 8/20, 29 of the Narcotic Drugs and
 Psychotropic Substance (PITNDPS) Act,
 1985 by the Police Station Chadoora,

has been referred to portray the petitioner's antecedents warranting her detention.

6. Pursuant to the preventive detention order above referred, the petitioner had come to be taken into custody on **05.04.2025** to be confined in the Central Jail, Srinagar wherein the petitioner is on verge of completing her one year detention period which came to be served upon her by virtue of Government Order No. **Home/PB-V/743/2025** dated **03.05.2025** passed by the Home Department, UT of Jammu & Kashmir.

7. The period of detention fastened upon the petitioner was from **05.04.2025** till **04.04.2026**.

8. The preventive detention of the petitioner has been assailed on the grounds as set out in the writ petition.

9. The counter affidavit to the writ petition came to be filed on **07.10.2025**.

10. When this Court examines the grounds of detention, this Court finds that the respondent No.2-Divisional Commissioner, Kashmir is at a loss to figure out that if the alleged reported act of commission of offence had resulted in booking of the petitioner in **FIR No.46/2023**, then how come the alleged state of activities of the petitioner on the basis whereof she was being subjected to preventive detention have gone begging for registration of a criminal case/s against her.

11. The State cannot be heard to condone culpable and criminal state of activities of a subject warranting punitive punishment and switch over to preventive detention remedy as that

would amount to judicial function to be taken over by the Executive.

12. This Court is convinced that resort to PITNDPS Act, 1988 has been made only to short circuit the criminal trial outcome of the petitioner by subjecting her to suffer punitive punishment before the verdict of the criminal court.

13. In the light of the aforesaid scenario, the preventive detention of the petitioner is held to be illegal, as such, Detention Order No. **DIVCOM“K”/62/2025** dated **03.04.2025** passed by the respondent No.2-Divisional Commissioner, Kashmir, is hereby quashed with immediate effect. The petitioner is ordered to be restored to her personal liberty by her release from the concerned Jail for which the

Superintendent concerned to carry out the compliance.

14. Disposed of, as indicated above.

**(RAHUL BHARTI)
JUDGE**

Srinagar
05.03.2026
Muzammil Q

Whether the judgment is speaking : Yes / No

Whether the judgment is reportable : Yes / No