

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 29.01.2026
Pronounced on: 25.03.2026

HCP No. 192/2025

Mohd Saleem Khan
S/o Gh. Ahmad Khan
R/o Handoora Tral, District Pulwama
Aged 48 years
Through his daughter
Suhana Saleem
R/o Handoora Tral,
District Pulwama, Kashmir
Aged 19 years

..... Petitioner (s)

Through: Mr. M Rafeeq, Advocate
V/s

1. UT of Jammu and Kashmir,
Through Commissioner Secretary, Home Department,
J&K Government, Civil Secretariat, Srinagar/Jammu
2. Divisional Commissioner, Kashmir, Srinagar
3. Senior Superintendent of Police, Awantipora, Pulwama
4. Superintendent Central Jail Kotbalwal, Jammu

..... Respondent(s)

Through: Ms. Maha Majid, Assisting Counsel.

Coram:

Hon'ble Mr. Justice Rahul Bharti, Judge.

JUDGMENT

1. Heard learned counsel for the petitioner as well as the respondents. Perused the pleadings and the documents therewith.
2. The petitioner-Mohd Saleem Khan, acting through his daughter Mst. Suhana Saleem, has filed the writ petition on

04.06.2025, through the medium of which the petitioner is seeking restoration of his personal liberty which has come to be curtailed on account of the respondent No.2- Divisional Commissioner, Kashmir's **Order No. DIVCOM "K"/77/2025 dated 26.04.2025** passed in exercise of power under **Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT NDPS) Act 1988**, which has brought the petitioner to be in a state of custody with effect from **29.04.2025** meant to last for a period of one year and by that count the petitioner is left with only last 2 / 3 months of preventive detention custody to serve.

3. The respondent No.2-Divisional Commissioner, Kashmir, was approached by the Senior Superintendent of Police (SSP), Awantipora, with **letter No. Conf/PSA/2025/28-31 dated 03.04.2025** bearing a dossier against the petitioner through which the petitioner's alleged activities were reported to be prejudicial to the mandate and intent of **PIT NDPS Act, 1988** thereby warranting his preventive detention.
4. On the basis of said dossier, the respondent No. 2-Divisional Commissioner, Kashmir came to formulate purported grounds

of detention on the basis whereof preventive detention of the petitioner was ordered by aforesaid detention **Order No. DIVCOM “K”/77/2025 dated 26.04.2025.**

5. In the grounds of detention, the adverse antecedent of the petitioner came to be highlighted by reference to **FIR No. 132/2022** registered by the Police Station Tral for alleged commission of offences under Section 8/15, 29 of Narcotics Drugs and Psychotropic Substances Act, 1985

6. The petitioner has come to challenge his detention on the basis of the grounds as set out in paras 4 to 15 of the writ petition. The petitioner has referred to the judgments of Hon'ble Supreme Court of India bearing the following citations:-

a) Syed Abdul Ala Vs. Union of India and Others AIR 2007 SCW 6974;

b) Icchu Devi Choraria Vs. Union of India and Others (1980) 4 SCC 531; and

c) Lallubhai Jogibhai Patel Vs. Union of India and Others (1981) 2 SCC 427

7. Counter affidavit to the writ petition came to be filed on **09.10.2025** wherein it has come to be stated as a fact that

pursuant to impugned detention order, the petitioner came to be taken into custody on **29.04.2025** from which date onwards the petitioner stands subjected to suffer preventive detention custody to last for a period of one year on the basis of **Government Order No. Home/PB-V/1090 of 2025 dated 02.06.2025** with place of confinement to be in the Central Jail, Kotbhalwal, Jammu

8. When this Court examines the grounds of detention in light of challenge mounted by petitioner to his preventive detention, this Court is convinced that the resort to preventive detention custody has been made by Senior Superintendent of Police (SSP) Awantipora, supplemented by the respondent No.2-Divisional Commissioner Kashmir, with a mindset to serve as punitive punishment upon the petitioner without waiting for the final outcome of the criminal case by reference to **FIR No. 132/2022**.
9. The very fact that mention of **FIR No. 132/2022** is there in the impugned order in its very first para is an exhibit of the fact that what actually was weighing with respondent No. 2-Divisional Commissioner Kashmir in ordering preventive

detention of the petitioner is the petitioner's implication in **FIR No. 132/2022**. That being so, this Court is at loss to figure out as to why then the Senior Superintendent of Police (SSP) Awantipora waited for more than two and a half years to come forward with a dossier against the petitioner for seeking his preventive detention custody. Otherwise, if case of the preventive detention of the petitioner was being pressingly conceived, then same should have been an independent of reference to **FIR No. 132 of 2022** based upon fresh live instance/ indulgence on the part of the petitioner in an activity/activities falling within the scope of mischief of PIT NDPS Act, 19

10. The petitioner has pleaded in his writ petition that he came to be enlarged on bail by court of the Principal Sessions Judge, Pulwama in terms of order dated 11-05-2023 bearing terms and conditions on which the petitioner was to remain on bail and at no point of time the petitioner ever breached any of the terms and conditions so imposed upon him to enjoy his enlargement on bail but on the contrary what came to be granted by the criminal court was meant to be curtailed and

curved by Senior Superintendent of Police (SSP) Awantipora by seeking preventive detention custody of the petitioner.

11. Thus, this Court finds that it is a clear-cut case of overreaching by Divisional Magistracy of Kashmir and District Police, Awantipora of the ordinary criminal course of law which is in effect against the petitioner so as to inflict a punitive punishment upon the petitioner under the disguise of preventive detention.

12. Accordingly, this Court finds the preventive detention of the petitioner illegal. The preventive **Detention Order No. DIVCOM-“K”/77/2025 dated 26.04.2025** passed by the respondent No. 2-Divisional Commissioner, Kashmir is held to be illegal and is, accordingly, quashed. The petitioner is directed to be released to his personal liberty by his release from the concerned Jail.

13. Disposed of.

(Rahul Bharti)
Judge

SRINAGAR
25.03.2026
Aasif

Whether the judgment is reported Yes/No

Whether the judgment is speaking Yes/No