

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

Reserved on: 01.06.2026

Pronounced on: 30.06.2026

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*Whether the operative part
or full judgment is
pronounced: **Full***

HCP No.264/2024

ISHAQ KHAN

...PETITIONER(S)/APPELLANT

*Through: - Mr. Shafqat Nazir, Advocate, with
Ms. Heena Baqal, Advocate.*

Vs.

U T OF J&K & ORS.

...RESPONDENT(S)

*Through: - Mr. Mohsin Qadiri, Sr. AAG, with
Mr. Haaris Khan, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged detention order bearing No.DIVCOM-"K"/133/2023 DATED 31.07.2023, passed by Divisional Commissioner, Kashmir, at its pre-execution stage. The impugned order has been passed by the Detaining Authority in exercise of its powers under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short "PIT NDPS Act").

2) The petitioner has challenged the impugned order of detention on the grounds that the same has been issued in

breach of mandate of law and without following constitutional and statutory procedural safeguards. It has been contended that there has been delay on the part of the respondents to execute the impugned order of detention, as a result of which the very purpose of passing the impugned order of detention has lost its significance. It has been contended that the petitioner was always available for being detained pursuant to the impugned order of detention, but the respondents have not taken any steps for execution of the warrant of detention. It has been contended that the impugned order of detention suffers from non-application of mind, inasmuch as the detaining authority has not shown awareness about the fact that the petitioner had been enlarged on bail in FIR No.28/2023 of Police Station, Sogam. It has been contended that the detention order has been issued for a wrongful purpose so as to defeat the ordinary law of the land. It has further been contended that while issuing the impugned order, the detaining authority has misused its power.

3) The respondents have contested the petition by filing counter affidavit of the detaining authority, the Divisional Commissioner, Kashmir. In the counter affidavit, it has been submitted that the petitioner has been involved in drug peddling for a long time and he has indulged in drug

trafficking, smuggling and other crimes in relation to psychotropic substances. It has been submitted that the petitioner was apprehended by police and contraband substance was recovered from his possession, which led to the registration of FIR No.28/2023. According to the respondents, the activities of the petitioner pose a serious threat to the health and welfare of the people as he is motivating the youth for consumption of drugs. It has been contended that the impugned order of detention is perfectly valid in accordance with the provisions of PIT NDPS Act and there is no error of law or procedure that could invalidate the impugned order. It has been submitted that the impugned order of detention has been passed after due application of mind and all procedural safeguards prescribed under PIT NDPS Act have been adhered to. It has been submitted that the petitioner cannot maintain the present petition at pre-execution stage as his case does not fall under the categories in which the Court can interfere in detention order at pre-execution stage.

4) I have heard learned counsel for the parties and perused record of the case.

5) The main ground urged that has been urged by the petitioner in assailing the impugned order of detention is that the respondents have not taken any steps towards

execution of the warrant upon him, as such, the delay in execution of the warrant throws a considerable doubt upon the genuineness of the subjective satisfaction of the detaining authority, which, in turn, renders the impugned order of detention unsustainable in law. According to the petitioner, he was all along available and because the respondents did not take steps for executing the warrant of detention upon him, as such, it can be inferred that there was no requirement of resorting to preventive detention of the petitioner.

6) Before we proceed to determine the merits of the contention raised by the petitioner, it would be apt to notice the legal position as regard the judicial review of a detention order prior to its execution . The legal position in this regard has been discussed by the Supreme Court in a number of judgments including the judgments delivered in the cases of **Additional Secretary to Government of India & Ors. v. Smt. Alka Subash Gadia & anr.** 1992 Suppl. (1) SCC 496, **Deepak Bajaj v. State of Maharashtra and anr.** AIR 2009 SC 628, and **Subash Popatlal Dave v. Union of India and anr.** (2014) 1 SCC 280. It has been held that the order of detention at pre-execution stage can be challenged on any ground except on the ground of sufficiency of material relied upon by the detaining authority in passing the order of

detention as the said ground cannot be gone into by the Court at pre-execution stage when the grounds of detention have not been served upon the detainee. This means that the detention order at pre-execution stage can also be challenged on the ground that the detaining authority has not taken any steps for executing the detention order for a considerable period of time and said approach of the executing authorities throws a doubt upon the genuineness of the subjective satisfaction of the detaining authority.

7) Adverting to the facts of the present case, the impugned order of detention came to be passed by the detaining authority on 31.07.2023 and the said order was stayed by this Court on 09.08.2024. Thus, for more than one year, it was open to the respondents to execute the impugned order of detention upon the petitioner. In their counter affidavit, the respondents have not given any justification for not executing the impugned order of detention upon the petitioner during this period. In the detention record produced by learned counsel for respondents, there is no material that would go on to show that any attempt was made by the respondents to execute the warrant of detention upon the petitioner.

8) The record shows that on 22.08.2024, the Divisional Commissioner, Kashmir, the detaining authority, has

addressed a communication to Senior Superintendent of Police, Kupwara, seeking information about the reasons for non-execution of detention warrant for more than one year. In pursuance of the said communication, the Senior Superintendent of Police vide his letter dated 22.08.2024, has informed the Divisional Commissioner that efforts were made by the police through Beat Incharge, Chowkidar, Numberdar, police sources and other sister agencies to trace the petitioner, but none of the channels could provide clue about his presence. However, in the detention record, there is no material in the shape of reports or inputs from the state agencies and it is not discernible from the record as to when these efforts were made by the police. Whether these efforts were made prior to the explanation sought by the Divisional Commissioner from the police agency or that the police got activated only when it received the communication from the detaining authority is not discernible from the record.

9) Section 8 of the PIT NDPS Act vests power with the Government to take certain steps in relation to absconding persons. It reads as under:

Section 8. Powers in relation to absconding persons.

(1) If the appropriate Government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government may--

- (a) *make a report in writing of the fact to a Metropolitan Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;*
- (b) *by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.*
- (2) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under clause (b) of sub-section (1) shall be cognizable.*

10) From a perusal of the aforesaid provision, it appears that when a person, against whom a detention order has been made, has absconded and the order cannot be executed, the Government has to make a report in writing of the fact to the Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides, whereafter the Magistrate has to take steps in accordance with the provisions contained in Sections 82, 83, 84 and 85 of the Code of Criminal Procedure, as if the order directing

the detention were a warrant issued by the Magistrate. It further provides that the detention order has to be notified in the Official Gazette directing the person concerned to appear before such officer and at such place and within such period as may be specified in the order and if the said person fails to comply with said notice, the person against whom the order of detention has been passed would become liable to punishment for a term which may extend to one year or with fine or with both.

11) In the present case, the record produced by the respondents suggests that no steps in terms of Section 8 of the PIT NDPS Act have been taken by the respondents in connection with execution of warrant of detention upon the petitioner.

12) In view of the aforesaid facts and circumstances, it can safely be stated that the respondents have shown slackness and remissness in executing the warrant of detention upon the petitioner. This throws considerable doubt about the subjective satisfaction of the detaining authority, thereby rendering the impugned order of detention unsustainable in law. In my aforesaid view, I am supported by the ratio laid down by the Supreme Court in the case of **Mohd. Farooq v. Joint Secretary to Govt. of India**, (2002) 2 SCC 360.

13) In view of the foregoing discussion, the petition is allowed and the impugned order of detention is quashed.

14) The detention record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

SRINAGAR

30.06.2026

"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**

