

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.290/2025

Reserved on: **12.05.2026**

Pronounced on: **18.05.2026**

Uploaded on: **19.05.2026**

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

Shameem Ahmad Wani
S/O Abdul Majid Wani
R/O Wahipora Astanpora Litter,
District Pulwama.

...Petitioner(s)

Through: Sr.Adv. A.H.Naik with.
Adv. Seerat Ishfaq.

Vs.

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

2. Divisional Commissioner.
Kashmir, Srinagar.

3. Sr. Superintendent of Police,
District Pulwama.

4. Superintendent Central Jail,
Jammu.

...Respondent(s)

Through: Sr.AAG Mohsin Qadri.

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

JUDGMENT

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks quashment of Detention

Order No. **DIVCOM-“K”/88/2025** dated **23.05.2025** passed by respondent No.2- Divisional Commissioner Kashmir, in exercise of powers conferred under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, “PITNDPS Act”), whereby he has been placed under preventive detention with a view to prevent him from engaging in illicit trafficking in narcotic drugs and psychotropic substances.

2. The grounds urged by the petitioner for assailing the impugned detention order are, *inter alia*, that the detenue having already been granted bail in connection with the criminal cases registered against him vide FIR No. 65/2019 under sections 8/20, 22 NDPS Act; and FIR No. 87/2024 under section 8/22 NDPS Act of Police Station, Litter, therefore, the impugned order of detention could not have been passed; that the detaining authority had failed to bring any material to prove the allegations leveled in said two FIRs; that the material submitted to the detenue had not been given to him in the language which he understands nor has he been made to understand the allegations and the grounds of detention which has deprived him from making an effective representation; that the detaining authority failed to record proper satisfaction regarding the likelihood of the detenue being released on bail and indulging in prejudicial activities; that the detention order suffers from non-application of mind and deserves to be quashed.
3. The respondents have resisted the petition by filing reply/counter affidavit, wherein it is stated that the detenue was involved in activities relating to illicit trafficking of narcotic drugs and

psychotropic substances and that the competent authority, after considering the entire material placed before it, arrived at a subjective satisfaction that the preventive detention of the detainee was necessary in order to prevent him from continuing with such activities; that the detainee had applied for bail before the learned trial Court and the same had been granted in his favour, which fact was duly noticed and referred to by the detaining authority while passing the order of detention.

4. Heard learned counsel for the parties, perused the record produced by the respondents and considered the matter.
5. A perusal of the grounds of detention clearly reveals that the detaining authority has specifically referred to the order whereby the detainee had been admitted to bail. Thus, it cannot be said that the detaining authority was unaware of the said fact or that the detention order has been passed mechanically without application of mind.
6. The argument put-forth by learned counsel for the petitioner that the detaining authority ignored the custody status of the detainee, is factually incorrect. The detention order itself demonstrates due awareness on the part of the detaining authority regarding grant of the bail in favour of the detainee. The fact that the detainee had been granted bail by the competent criminal Court was a relevant circumstance which weighed with the detaining authority while arriving at its subjective satisfaction that there existed a real possibility of the detainee indulging in illicit trafficking activities upon his release, thereby necessitating recourse to preventive detention under the PIT NDPS Act.

7. Preventive detention and prosecution operate in different fields.

The prosecution is punitive in nature and intended to punish a person for an offence already committed, whereas preventive detention is precautionary and intended to prevent a person from indulging in future activities detrimental to the larger public interest. The object of the PIT NDPS Act is to curb illicit trafficking in narcotic drugs and psychotropic substances, which has serious ramifications on Society and poses grave danger to public health and welfare.

8. The material placed before the detaining authority, as reflected from the record, indicates the involvement of the detainee in illicit trafficking activities. The detaining authority has elaborately referred to the activities of the detainee and has recorded its satisfaction that ordinary law was insufficient to prevent him from indulging in such activities in future. Perusal of the record would reveal that on 21.10.2019, the detainee alongwith other associates was apprehended and from their possession 03 grams of brown sugar, 18.500 kgs of cannabis leaves and 6 kgs of poppy straw was recovered and a case FIR No.65/2019 under section 8/20, 22 NDPS Act was registered, however, detainee was bailed out in the said case. Then again on 26.11.2024 the detainee was apprehended and 15.5 grams of brown sugar was recovered from his possession, and in this regard a case FIR No. 87/2024 under section 8/22 NDPS Act was registered against the detainee, but was bailed out by the competent court of law.

9. The satisfaction recorded by the detaining authority is based upon relevant material and cannot be said to be arbitrary or

without application of mind. It is settled law that the Court, while exercising jurisdiction in a habeas corpus petition challenging an order of preventive detention, does not sit in appeal over the subjective satisfaction recorded by the detaining authority. Judicial review is limited to examining whether procedural safeguards have been complied with and whether the detention order suffers from illegality, *mala fides* or non-application of mind.

10. In the instant case, the record produced by the respondents demonstrates that whole of the relevant material relied upon by the detaining authority was furnished to the detainee, enabling him to make an effective representation against the detention order. The execution report further reveals that the grounds of detention and supporting material were read over and explained to the detainee in a language understood by him i.e., Urdu/Kashmiri language.
11. Reliance can be placed upon the judgments of the Hon'ble Supreme Court in **Kamarunnissa v. Union of India** reported in **(1991) 1 SCC 128**; and **Union of India v. Paul Manickam** reported in **(2003) 8 SCC 342**, wherein it has been held that preventive detention of a person already in custody or granted bail, is permissible if the detaining authority is aware of such fact and records satisfaction regarding the necessity of detention. In **Kamarunnissa v. Union of India**, the Hon'ble Supreme Court held that merely because a detainee is in custody or has been granted bail does not preclude the competent authority from passing an order of preventive detention, provided the authority is aware of such fact and there exists compelling reasons

justifying detention. Similarly, in **Union of India v. Paul Manickam**, the Supreme Court held that if the detaining authority is conscious of the custody status of the detainee and there is likelihood of his indulging in prejudicial activities upon release, preventive detention can validly be ordered.

12. In the present case, the detention order clearly reflects that the detaining authority was conscious of the fact that the detainee had already been granted bail by the learned trial Court. The said fact has been specifically referred to in the grounds of detention and duly considered while recording subjective satisfaction. Thus, the argument of non-application of mind raised by the petitioner is unsustainable.
13. The scope of judicial review in matters of preventive detention is narrow. The Court cannot substitute its own opinion for the subjective satisfaction of the detaining authority so long as the satisfaction is based on relevant material and the constitutional and statutory safeguards have been adhered to.
14. The menace of illicit trafficking in narcotic drugs and psychotropic substances has assumed alarming proportions and poses a serious threat to Society, particularly to the younger generation. The legislature, taking note of the gravity of the situation, enacted the PITNDPS Act to provide for preventive detention of persons engaged in such activities. The satisfaction recorded by the detaining authority in the present case cannot be said to be irrational or unsupported by material.
15. Having regard to the aforesaid discussion, this Court is of the considered opinion that the impugned order of detention has

been passed after due application of mind and in conformity with the provisions of the PIT NDPS Act, 1988. The factum of grant of bail in favour of the detinue by the learned trial Court was specifically noticed by the detaining authority while passing the order of detention. No procedural infirmity or constitutional violation has been demonstrated by the petitioner warranting interference by this Court.

16. Accordingly, the petition is found to be without any merit and is, therefore, **dismissed**. The impugned detention order No. **DIVCOM-“K”/88/2025** dated **23.05.2025** passed under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, is upheld.
17. Scanned detention record, as produced by learned counsel for the respondents, is directed to be sent back through him.

(M. A. CHOWDHARY)
JUDGE

Srinagar
18.05.2026
Muzammil. Q

Whether the order is reportable: Yes / No