

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 29.01.2026
Pronounced on: 25.03.2026

HCP No. 299/2025

Farooq Ahmad Koka, Aged 60 years

S/o Late Ab Karim Koka

R/o Melhura, Zainpora, Shopian

District Shopian

Through his brother

Mohammad Khalil Koka, Aged 66 years

S/o Late Ab Karim Koka

R/o Melhura, Zainipora, Shopian

District Shopian

..... Petitioner (s)

Through: Mr. Wajid Mohammad Haseeb,
Advocate

V/s

- 1. UT of Jammu and Kashmir,
Through Principal Secretary, Home Department,
J&K Government, Civil Secretariat, Srinagar/Jammu**
- 2. Divisional Commissioner, Kashmir, Srinagar**
- 3. Senior Superintendent of Police, Shopian**
- 4. Superintendent Central Jail Kotbalwal, Jammu .. Respondent(s)**

Through: Mr. Furqaan Sofi, GA

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. Being aggrieved of preventive detention custody inflicted upon him, the petitioner, acting through his brother, has come to

petition this Court bearing a prayer for quashment of preventive detention order and his consequent release from preventive detention custody.

3. The institution of writ petition took place on **17.09.2025**.
4. The Senior Superintendent of Police (SSP), Shopian, by virtue of **Communication No. PSA-CELL/SPN/20-2025/34058 dated 24.07.2025**, submitted a dossier to the respondent No. 2-Divisional Commissioner, Kashmir thereby soliciting preventive detention of the petitioner on account of alleged activities of the petitioner falling within scope of mischief of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, (PITNDPS), 1988.
5. On the basis of dossier so submitted, the respondent No. 2-Divisional Commissioner, Kashmir formulated grounds of detention therefrom drawing a purported subjective satisfaction to pass **Order No. DIVCOM "K"/144/2025 dated 07.08.2025** thereby directing the preventive detention of the petitioner in order to prevent him from committing any of the acts within the meaning of **Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988** as is stated in

the said Order. The petitioner was directed to be detained and kept in the Central Jail Kotbhalwal, Jammu.

6. Pursuant to aforesaid detention order, the petitioner came to be arrested and detained on **23.08.2025** from which date onwards the petitioner is serving his preventive detention custody locked up in the Central Jail, Kotbhalwal Jammu.
7. The petitioner has assailed preventive detention so imposed upon him by stating in writ petition that his preventive detention is patent act of overreaching ordinary criminal law of the land by reference to which the petitioner is undergoing trial to the extent of even being on bail granted on the merits of the case.
8. The petitioner submits that there is no live link with respect to the alleged activities of the petitioner as well as the preventive detention jurisdiction exercised against him.
9. Counter affidavit to this writ petition came to be filed on **27.12.2025** through the respondent No. 2-Divisional Commissioner, Kashmir wherein it has been stated that the arrest and detention of the petitioner came to be carried out on **20.08.2025** from which date onwards the petitioner is

bound to spend one year of detention period in order to deter him from indulging in mischief, meant to be checked under **PIT- NDPS Act, 1988.**

10. It is pleaded in the counter affidavit that the original detention order against the petitioner came to be confirmed in terms of **Government order No. Home/PB-V/1771of 2025 dated 25.09.2025.** It is also pleaded that there is no procedural infirmity or lacuna whatsoever attending the exercise of jurisdiction at the end of the respondent No. 2-Divisional Commissioner, Kashmir as well as the Government in ordering and subjecting the petitioner to be in preventive detention custody.

11. When this Court examines the grounds of detention on the purported basis of which subjective satisfaction came to be purportedly drawn by the respondent No. 2-Divisional Commissioner, Kashmir what comes is that the criminal antecedent of the petitioner is the only highlight reference factual aspect of the grounds of detention. There is no denial to the fact that the petitioner is an accused in ongoing criminal cases against him which is relatable to culpable violation of

Narcotic Drugs and Psychotropic Substances Act, 1985. It is also an inescapable fact that after having suffered investigation and trial stage custody in connection with the two criminal cases by reference to **FIR No. 131/2020 and FIR No. 93/2023 of Police Station Zainapora**, the petitioner came to be admitted to bail. The grant of bail in favour of the petitioner has taken place in backdrop of the rigour attending grant of bail as prescribed under the **Narcotic Drugs and Psychotropic Substances Act, 1985.**

12. Now, if the premise for subjecting the petitioner to preventive detention custody is proceeding and resting on the development of grant of bail in favour of the petitioner, then the very mindset operating in subjecting the petitioner to preventive detention turns out to be a mindset to inflict punitive custody upon the petitioner.
13. There is no hiding from the fact that the Senior Superintendent of Police (SSP) Shopian as well as the respondent No. 2-Divisional Commissioner, Kashmir did not bother at their respective end to at least have access to the copies of orders of the criminal court granting bail in favor of the petitioner by

reference to the two criminal cases so as to evaluate as to whether the petitioner, despite being charged for alleged commission of offences under the **Narcotic Drugs and Psychotropic Substances Act, 1985**, earned bail on prima facie satisfaction of the criminal court that the evidence led in the respective cases is not heading towards formation of a judgment of conviction.

14. The grounds of detention do not bear respective reference to the bail granting orders of the criminal courts and that affirms the observation of this court that the Senior Superintendent of Polic (SSP) Shopian as well as the respondent No. 2-Divisional Commissioner, Kashmir did not avail of any occasion to call for full text of bail granting orders of the criminal court so as to evaluate same as to whether upon grant of bail in favour of the petitioner has he relapsed into alleged activities falling within scope of mischief of **PIT NDPS Act, 1988** to the extent of avoiding approaching the concerned criminal court seized of trial of criminal cases against the petitioner for the purpose of seeking cancellation of bail earned by the petitioner.

15. Thus, it is a clear-cut case of preventive detention jurisdiction overreaching ordinary criminal course of law under which only a punitive detention can come and visit an accused so as to curtail his personal liberty.

16. On the basis of the aforesaid facts and circumstances of the case, this court holds the preventive detention order read with confirmation order operating against the petitioner to be illegal and consequently impugned **Detention Order No. DIVCOM-“K”/144/2025 dated 07.08.2025** passed by the respondent No. 2- Divisional Commissioner, Kashmir, is set aside. The petitioner is ordered to be released to his personal liberty forthwith for which Superintendent of the concerned Jail is directed to release the petitioner.

17. The release of the petitioner from preventive detention custody will not in any manner prejudice the course of law otherwise operating in connection with two pending criminal cases against the petitioner and consequently the right of the UT of J&K to seek cancellation of the bail of the petitioner shall be available if on the merits of situation the cancellation of the bail of the petitioner can be solicited.

18. Disposed of.

(Rahul Bharti)
Judge

SRINAGAR
25.03.2026
Aasif

Whether the judgment is reported Yes/No
Whether the judgment is speaking Yes/No