

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 300/2025

CM No.6170/2025

Reserved on: 18.05.2026

Pronounced on: 21.05.2026

Uploaded on: _____

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

**Jaffer Hussain Sheikh
S/O Ghulam Mohammad Sheikh
R/O Trehgam Kupwara.**

...Petitioner(s)

Through: Adv. Zamir Abdullah.
Adv. Zahir Abdullah.

Vs.

**1. UT of J&K through
Secretary Home Department,
Civil Secretariat Srinagar/Jammu.**

2. Divisional Commissioner, Kashmir.

**3. Sr. Superintendent of Police,
Kupwara.**

...Respondent(s)

Through: Sr.AAG Mohsin S.Qadri, with
Adv. Haris Khan

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

JUDGMENT

1. Through the instant petition filed under Article 226 of the Constitution of India, the petitioner seeks quashment of Detention Order No. **DIVCOM "K"/204/2023** dated **27.12.2023** (for short 'impugned order') passed by respondent No.2-Divisional Commissioner Kashmir, under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act,

1988 (for short, "PITNDPS Act"), whereby the detainee has been placed under preventive detention.

2. The impugned detention order has been assailed and sought to be quashed on the grounds that; the grounds of detention are riddled with absolute imprecision, ambiguity and vagueness and that the allegations mentioned therein have no nexus with the detainee and have been fabricated by the Police in order to justify its illegal action of detaining the detainee; that no reasonable and prudent person can effectively make a representation against the allegations or the detention order which is both unjustified and egregiously unreasonable; that besides the fact that a certain quantity of narcotics were seized from the possession of the vehicle the detainee was travelling, which falls well below the established commercial quantity, there is nothing else on record that would point out that the detainee has any affiliation with narcotics and drugs; that the respondents have failed to take into consideration the fact that the detainee was already been lawfully released on bail granted by the court of competent jurisdiction in a case registered vide FIR No.32/2023 under sections 8, 20 and 29 of NDPS Act; that the detainee was released on bail on 03.05.2023 and the respondents have issued detention order on 27.12.2023 i.e., after seven months, and thus, the fundamental concept of preventive detention is that it must be done urgently without any unnecessary delay, which delay shall hold the entire process as void and illegal.
3. The detaining authority-Divisional Commissioner Kashmir, in his counter affidavit, has controverted that grounds of challenge put

up on behalf of the petitioner, on the grounds that, the preventive detention is designed to protect society and the fundamental concept of preventive detention is that it is not intended to punish someone for actions he had already taken, but rather to prevent him from taking such actions in future; that the detention order is based on a reasonable prediction of future behavior, considering the detainee's past conduct in light of the surrounding circumstances; that the detainee has transformed into a notorious illicit drug peddler, becoming the principal dealer of narcotic drugs and psychotropic substances in the Kupwara area; that the detainee is a hardcore drug peddler and is an active member of a larger drug mafia that is relentlessly involved in drug trafficking, not only in Kupwara but also in the surrounding areas; that the contraband seized in FIR No.32/2023 was sent to the FSL for verification, and the FSL confirmed that the same was 'charas'; that the detainee was granted bail in the said case but the bail order stipulated that the detainee shall not indulge in such activities while on bail; that the detainee continued to clandestinely engage in the drug trade; that the continuous activities of the detainee in peddling drugs and evading normal law have made it imperative to detain the detainee under the provisions of PITNDPS Act.

4. Learned counsel for the petitioner, while reiterating the grounds urged in the petition, argued that despite the detention order having been passed on 27.12.2023, was executed on 02.09.2025, i.e., after an unexplained and inordinate delay of more than one year and eight months; that such abnormal delay

has snapped the live and proximate link between the alleged prejudicial activities of the detainee and the purpose sought to be achieved by preventive detention; that once the petitioner had already been enlarged on bail in the substantive criminal case, the respondents could not resort to preventive detention, in a routine manner, without demonstrating compelling necessity.

5. Learned Counsel appearing for the respondents, *ex adverso*, submits that the detention order has been validly passed in accordance with law with a view to prevent the petitioner from indulging in illicit trafficking in narcotic drugs and psychotropic substances; that the activities of the detainee were prejudicial to public order and health of Society and, therefore, warranted preventive detention; that the fundamental concept of preventive detention is that it is not intended to punish someone for his/her previous activities rather to prevent him from taking such actions in future; that the basis for detention rests on the Executive's satisfaction with a reasonable probability or likelihood of the petitioner from committing any of the acts within the meaning of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.
6. Heard learned counsel for the parties, perused the detention record and considered the same.
7. The facts, as projected in the petition, are that a case was registered vide FIR No. 32/2023 against the petitioner/detainee for the commission of offence under Sections 8/20 of the NDPS Act on the allegations of recovery of 300 grams of charas-like substance from his possession; that the petitioner was arrested

in connection with the aforesaid FIR and subsequently came to be released on bail by the competent court; that thereafter the impugned detention order dated 27.12.2023 came to be passed against the petitioner; that the same, however, was not executed upon the petitioner for a considerable length of time; that during the interregnum, the petitioner filed HCP No. 09/2024 before this Court, wherein this Court vide order dated 12.01.2024 directed the respondents not to detain the petitioner pursuant to the impugned order; that the said petition was later dismissed as withdrawn, inasmuch as the detention order had not been executed till then. The petitioner was detained finally on 02.09.2025, in execution of the detention order.

8. Preventive detention, though constitutionally permissible, is an exception to the cherished right of personal liberty guaranteed under Article 21 of the Constitution of India. The law relating to preventive detention has to be strictly construed, for such detention is not punitive but preventive in nature. The Hon'ble Supreme Court in ***Ramesh Yadav v. District Magistrate, Etah***, reported as **(1985) 4 SCC 232**, observed that merely because an accused in a criminal case has secured or is likely to secure bail is no ground to pass an order of preventive detention so as to circumvent the same. The Court held as under:-

“Ordinarily, a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law.”

9. The object of preventive detention is not to punish a person for past conduct but to prevent him from indulging in activities prejudicial to the maintenance of public order or activities falling within the scope of the preventive detention statute. It is well settled that there must exist a live and proximate link between the prejudicial activities attributed to the detainee and the purpose of detention. If there is undue and unexplained delay either in passing or executing the detention order, such delay vitiates the detention as the nexus between the grounds of detention and the object sought to be achieved gets snapped. Reference in this regard may be made to ***T.A. Abdul Rahman v. State of Kerala*** reported as (1989) 4 SCC 741 and ***P.U. Iqbal v. Union of India*** reported as (1992) 1 SCC 434.

10. In ***T.A. Abdul Rahman*** case, the Hon'ble Supreme Court held:

“The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case.”

The Court further observed:

“If there is undue and long delay between the prejudicial activities and the passing of the detention order, the court has to scrutinize whether the subjective satisfaction of the detaining authority was genuinely arrived at.”

11. In the present case, the detention order came to be passed on 27.12.2023. Admittedly, the same was executed only on 02.09.2025. Thus, there is a delay of more than one year and eight months in execution of the detention order. The

respondents have failed to place on record any satisfactory explanation justifying such enormous delay, except that in view of restraint order passed by this Court, in earlier petition HCP No.09/2024 vide order dated 12.01.2024.

12. From the record, it clearly emerges that during the aforesaid period, the petitioner had approached this Court by filing HCP No. 09/2024 and this Court had directed the respondents not to detain the petitioner pursuant to the impugned order. However, the said petition was subsequently dismissed as withdrawn on 16.04.2025 owing to non-execution of the detention order. Even thereafter, the respondents took considerable time in executing the order on 02.09.2025, after a period of four and a half months.
13. The unexplained delay in execution of the detention order assumes significance because preventive detention is based upon the subjective satisfaction of the detaining authority that immediate detention of a person concerned is necessary to prevent him from acting in a prejudicial manner. If the respondents themselves sleep over the matter and fail to execute the detention order for such a long duration, the very basis of subjective satisfaction becomes doubtful. In ***Sk. Serajul v. State of West Bengal*** reported as **(1975) 2 SCC 78**, the Hon'ble Supreme Court held that undue and unreasonable delay in securing arrest of the detenue throws considerable doubt on the genuineness of the subjective satisfaction of the detaining authority. Further, the petitioner had already been enlarged on bail in FIR No. 32/2023 registered under Sections 8/20 of the NDPS Act. The ordinary criminal law was, thus, already set into

motion against him. In such circumstances, resort to preventive detention required strict adherence to constitutional safeguards and prompt execution of the detention order, which is conspicuously absent in the present case.

14. The Apex Court in ***Rekha v. State of Tamil Nadu*** reported as (2011) 5 SCC 244, cautioned that preventive detention is a serious encroachment on personal liberty and cannot be invoked when ordinary criminal law is sufficient to deal with the situation.

The Court held that:-

“Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law... No doubt Article 22(3)(b) permits preventive detention, but it is an exception to Article 21 and therefore must be construed strictly.”

The Court also held that:

“The liberty of a citizen is a most important right won by our forefathers after long, historical, arduous struggles.”

15. The Apex Court has consistently held that unexplained delay in execution of a detention order is fatal to the detention, as it destroys the live link between the alleged prejudicial activities and the necessity of detention. Reference may also be made to ***SMF Sultan Abdul Kader v. Joint Secretary to Government of India*** reported as (1998) 8 SCC 343.

16. It is trite that preventive detention laws, being exceptional in nature, have to be construed strictly and every procedural safeguard provided under law must be zealously enforced. The constitutional courts are duty-bound to ensure that personal liberty is not sacrificed at the altar of administrative convenience.

17. Having regard to the afore-stated reasons, the discussion made herein-above and the facts and circumstances of the case, this Court is of the considered opinion that the inordinate and unexplained delay in execution of the impugned detention order has vitiated the order of detention and rendered the continued detention of the petitioner unsustainable in law.
18. Accordingly, the petition is **allowed** and Detention Order No. **DIVCOM "K"/204/2023** dated **27.12.2023**, passed by respondent No.2-Divisional Commissioner Kashmir under the PITNDPS Act, is quashed. The respondents are directed to release the petitioner forthwith from preventive custody, provided he is not required in connection with any other case(s).
19. Disposed of along with pending application(s).
20. Scanned detention record, as produced by learned counsel for the respondents, is directed to be returned back to him.

(M. A. CHOWDHARY)
JUDGE

Srinagar
21.05.2026
Muzammil. Q

Whether the order is reportable: Yes / No