

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.WP No.13 of 2026

Date of Decision : 13.08.2026

Prem Raj

..... Petitioner

Versus

State of Himachal Pradesh through

..... Respondents

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the petitioner : Mr. Parth Sagar, Advocate.

For the respondents : Mr. Gobind Korla, Additional Advocate General.

G.S. Sandhawalia, Chief Justice (oral)

The petitioner has challenged the detention order dated 23.01.2026, whereby he has been detained for a period of three months while invoking Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, "the PIT NDPS Act"), by the respondent-State. The same has been done on account of the fact that the petitioner has been involved in four cases, the details of which are given as under:

"I. FIR No. 202/2012 dated 20.11.2012, under Section 20 ND&PS Act, Police Station Rampur, District Shimla, wherein approximately 300 grams of charas was recovered and the Petitioner stands convicted vide judgment dated 05.01.2018 passed by the Ld. Special Judge-II, Rampur, District Shimla.

II. FIR No. 42/2018 dated 03.08.2018, under Section 20 ND&PS Act Police Station Nankhari, District Shimla, wherein approximately 107 grams of charas was recovered and the Petitioner stands convicted Registrar vide judgment dated 11.04.2022 passed by the Ld. Special Judge-II, Kinnaur at Rampur, District Shimla.

III. FIR No. 47/2023 dated 14.12.2023, under Section 20 ND&PS Act, Police Station Nankhari, District Shimla, wherein approximately 9.93 grams of charas was recovered. The case is pending before the Court of Ld. ACJM Rampur, District Shimla.

IV. FIR No. 38/2024 dated 29.08.2024, Police Station Nankhari, District Shimla under Sections 21 and 29 ND&PS Act, wherein approximately 18.59 grams of heroin/chitta was recovered. The case is pending before the District and Sessions Judge, Kinnaur at Rampur, District Shimla, HP."

2. Learned counsel for the petitioner submits that the last FIR in question was lodged on 29.08.2024, and for one and half years thereafter, no incident/case took place in the intervening period. Thereafter, the detention order was passed on 23.01.2026. Therefore, the issue of live link would come into play, in the present case.

3. Learned counsel for the petitioner has further submitted that this Court had directed the respondents, vide order dated 23.03.2026, to decide the representation (Annexure P-3), filed by the wife of the petitioner. The representation was filed by the wife of the petitioner on account of his poor medical condition and on the ground that he was

suffering from kidney-related issues, hypertension, diabetes and had been operated upon.

4. Learned counsel points out that the said order was not complied with till 17.04.2026 and only on the said date, the representation was rejected. Keeping in view the fact that the petitioner is a patient of diabetes, and the State was not in a position to supply insulin as required in his case and it had also come on record that the Medical Officer advised 24 units of insulin in the morning and 20 units in the evening, and he was also undergoing treatment at IGMCH Shimla, under such circumstances, this Court had granted interim bail vide order dated 25.03.2026 subject to certain conditions.

5. Learned Additional Advocate General has submitted that the petitioner has been continuous and persistent in his conduct with respect to supplying contraband, and there is a latest source report received regarding his involvement in drug trafficking. In such circumstances, the detention order is defended.

6. It has also been mentioned that keeping in view the medical condition of the petitioner, the wife had moved representation on behalf of the petitioner, which was rejected by passing rejection order dated 17.04.2026 (Annexure R-3/2).

7. Learned counsel appearing on behalf of the petitioner, on the issue of live and proximate link, in support of his submission, has relied upon a judgment of the Apex Court in **Sama Aruna vs. State of**

Telangana, (2018) 12 SCC 150, wherein it has been held that a preventive detention order passed without examining the existence of a live and proximate link between the alleged events and the order of detention, would amount to punishment without trial, and that the exceptional powers of preventive detention cannot be permitted to devolve into a draconian and arbitrary exercise of State authority. It has also been held that the two FIRs registered against the detainee were capable of being dealt with in the ordinary course of criminal law.

8. The detention order in this case is vitiated by taking into account incidents far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject matter of the inquiry must be treated as extraneous to the scope and purpose of the statute.

9. Another aspect which would also necessitate the quashing of the detention order is the delay in responding to the representation. The representation was submitted on 04.03.2026, but only came to be decided on 17.04.2026 and the decision was taken after a considerable delay. While admitting that the petitioner required medical treatment including insulin, it was submitted that the same was being provided. The delay in deciding the representation, which was disposed of without a proper explanation, violates Article 22 of the Constitution of India, which contains mandatory constitutional safeguards. The delay as such in the decision

would also be sufficient to quash the detention order as held by the Hon'ble Apex Court, in **SLP (Crl.) No.8439 of 2026**, titled **Alfiya.A vs. State of Kerala & Ors.**, decided on 28.07.2026. The relevant paragraphs read as follows:-

"20) There is also an unexplained delay in dealing with the representation. Even if the order of confirmation dated 19.03.2026 is treated as the first decision upon the representation dated 13.02.2026, a period of 34 days had elapsed before such consideration. A further period of eight days elapsed before the rejection was communicated to the detenu on 27.03.2026. No separate order deciding the representation has been placed before us. Nor has any satisfactory or day-to-day explanation been furnished for the time taken either to consider the representation or to communicate the decision. The general statement that the representation was examined together with the opinion of the Advisory Board does not explain the delay. It instead reinforces the conclusion that the representation was not treated as an independent constitutional process requiring immediate attention.

21) We accordingly hold that the safeguards attaching to the right of the detenu to make a representation against his detention were not observed. The detenu was not informed of his right to represent to the Detaining Authority who had made the order. The record does not disclose any independent decision upon the representation by the Detaining Authority in exercise of his own statutory power. The consideration disclosed by the respondents was undertaken only as part of even that the subsequent confirmation exercise, and consideration was attended by an unexplained delay. These infirmities

violate Article 22(5) of the Constitution and are sufficient to render the continued detention of the detenu illegal.

CONCLUSION

22) The infirmities noted above are not mere technical or procedural irregularities capable of being cured by substantial compliance. They concern the enforcement of the constitutional right guaranteed by Article 22(5) to a person detained without trial. Once a mandatory constitutional safeguard governing preventive detention is found to have been violated, the continued detention cannot be sustained. The High Court did not examine whether the representation submitted by the detenu received the independent and expeditious consideration required by Article 22(5) of the Constitution. Since that issue bears directly upon the legality of the continued detention, the judgment of the High Court cannot be sustained."

10. In view of the above legal position, the detention order dated 23.01.2026, and the subsequent rejection order dated 17.04.2026, are set aside and quashed. The petitioner be set free forthwith, if not required in any other case.

11. The petition stands disposed of accordingly. Pending application(s), if any, shall also stand disposed of.

**(G.S. Sandhawalia)
Chief Justice**

**(Bipin Chander Negi)
Judge**

August 13, 2026 (KS)