

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.WP No.30 of 2026

Date of Decision : 28.07.2026

Hitender Thakur

..... Petitioner

Versus

State of Himachal Pradesh and Others

..... 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. Pranshul Sharma, Advocate.

For the Respondents : Mr. Varun Chandel, Additional Advocate General.

G.S. Sandhawalia, Chief Justice (Oral)

By way of present criminal writ petition, the petitioner has challenged the detention order dated 02.05.2026 (**Annexure P/1**), passed by the Additional Chief Secretary (Home) to the Government of Himachal Pradesh, under the provisions of Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (for short 'the PIT NDPS Act'), whereby the petitioner had been detained for a period of three months on account of his involvement in three FIRs, which are as under:-

*“(i). FIR No. 65/2022 dated 04.05.2022 under
Section 20 of the NDPS Act, 1985.*

Approximately 355 grams of charas/ganja was recovered from him;

(ii). Police Station Sadar Bilaspur, District Bilaspur, H.P FIR No. 163/2023 dated 17.07.2023 under Sections 21 and 29 of the NDPS Act, 1985. Approximately 6.82 grams of heroin/chitta was recovered from him;

(iii). Police Station Dharampur, District Solan, H.P FIR No. 36/2023 dated 03.04.2025 under Sections 21 and 29 of the NDPS Act, 1985. Approximately 9.09 grams of heroin/chitta was recovered from him”

2. Due to multiple involvements in the NDPS Act, the State was of the opinion that continuous involvement in illegal activities and through his network and contacts, petitioner supplies substances to the youth and, therefore, jurisdiction has been exercised and the detention order was passed.

3. The argument raised by the counsel for the petitioner is that in the last FIR dated 03.04.2025, petitioner was released on bail on 11.09.2025 by Special Judge-III, Solan, H.P., wherein it was noticed that he was in custody since 02.04.2025 and no attempt, as such, was made to get the bail cancelled.

4. It is submitted that live and proximate link is missing inasmuch as there is delay of approximate 8 months in passing the detention order and the detention order is liable to be dismissed. Reliance is placed upon the law laid down by the Apex Court in

Sushanta Kumar Banik Vs State of Tripura (2022) SCC OnLine SC 1333, wherein it is held that live and proximate link missing would be a valid ground, as such, to quash the detention order.

5. On the other hand, counsel for the State submits that it had various informations, as such, regarding his consistent involvement, on the basis of which detention order has been passed and, therefore, there is sufficient cause for the State to exercise its jurisdiction.

6. The issue of live link has been discussed by the Apex Court in ***Sama Aruna Vs. State of Telangana (2018) 12 SCC 150***, wherein it was held that person as such would be detained who is capable of being dealt with in ordinary course of criminal law on account of two FIRs and the draconian and arbitrary exercise of power could not be done as it would be a punishment without trial.

7. Thereafter, in ***Mallada K. Sri Ram v. State of Telangana (2023) 13 SC 537*** on account of delay of 5 months in passing detention order after lodging of the second FIR, relief had been granted. The underlying principle, as such, of the Apex Court is that right to liberty under Article 21 of the Constitution of India is to be diligently enforced by the High Courts.

8. In such circumstances, keeping in view the considerable delay and keeping in mind the principle laid down in ***Rekha vs. State of Tamil Nadu TR Sec. to Govt. & Another, (2011) 4 SCR 740***, we

are of the considered opinion that there was no activity, as such, under NDPS Act since 9 months and, therefore acting upon the recommendation of the State police to detain as such could be amounting to arbitrary action by the State at this belated stage.

9. Keeping in view the above, we allow the petition and quash the detention order dated 02.05.2026, passed by the Additional Chief Secretary (Home) to the Government of Himachal Pradesh and all consequential orders passed thereafter. The petitioner be set free, if not required in any other case.

10. Accordingly, the petition stands disposed of, so also, the pending miscellaneous application(s), if any.

(G.S. Sandhawalia)
Chief Justice

July 28, 2026(mamta)

(Bipin Chander Negi)
Judge