

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.WP No.55 of 2026Date of Decision : 28.07.2026

Sunny Kumar

..... 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. Aakash Thakur, Advocate, Legal Aid
Counsel.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 04.05.2026 (**Annexure P/1**), passed by the Special 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. 188/2021 dated 05.11.2021 registered
at Police Station Bhunter, District Kullu,

Himachal Pradesh, under Sections 27 and 32 of the NDPS Act, wherein approximately 0.487 grams of yellow liquid substance (Heroin/chitta) contained in a syringe was recovered from his possession;

(ii). FIR No. 52/2022 dated 19.03.2022 registered at Police Station Bhunter, District Kullu, Himachal Pradesh, under Sections 21 and 25 of the NDPS Act, wherein approximately 62 grams of Heroin (Chitta) was recovered from his possession;

(iii). FIR No. 200/2025 dated 08.12.2025, registered at Police Station Bhunter, District Kullu, Himachal Pradesh, under Sections 21, 25 and 29 of the NDPS Act, wherein approximately 20 grams of Heroin (Chitta) was recovered from his possession."

2. Perusal of the said detention order would go on to show that the Superintendent of Police, Kullu has submitted a proposal for issuance of the preventive detention order against the petitioner and resultantly, the Director General of Police vide letter dated 25.04.2026, had recommended his preventive detention on various grounds apart from the involvement of the petitioner in three FIRs that he was actively involved in illicit trafficking of narcotic drugs and he was also a habitual offender and he adopted the modus operandi of trafficking in intermediate quantities of narcotic drugs to avoid the rigours of Section 37 of the NDPS Act and to obtain bail with relative ease. Source report

received from the State CID, H.P. read in conjunction with reliable intelligence gathered by Police Station, Bhunter had been relied upon that the proposed detneue is actively engaged in the illicit trafficking of narcotic drugs.

3. The petitioner had made a representation on 08.06.2026 (Annexure P-2) accordingly against the said detention order under Article 22(5) of the Constitution of India to the Chief Secretary (Home) to the Government of Himachal Pradesh and had specifically taken up a plea that all the documents, reports, source information, intelligence inputs and other materials relied upon by the Detaining Authority have not been supplied to him and in the absence of such documents, he was unable to effectively rebut the allegations leveled against him.

4. It is not disputed that vide order dated 17.07.2026 (Annexure R-3/3), the stand of the State while rejecting the said representation was that as per report of the sponsoring authority, the grounds of detention along with all the documents relied upon by the detaining authority have been duly supplied to the detainee at the time of execution of the detention order, which were duly acknowledged in accordance with law and no prejudice has been caused to the detainee in making his representation to the authority.

5. Counsel for the State has brought to our notice that detention order served upon him specifically contains an endorsement that he had been supplied documents containing three pages. The

said three pages are thus apparently the forwarding letter dated 05.05.2026 alongwith detention order in vernacular.

6. In such circumstances, we are of the considered opinion that once the detention order itself talks about various materials including source report received from the State CID and the same having not been supplied to him, his right to make effective representation would be curtailed. Specifically the representation has been made under Article 22(5) of the Constitution of India but the same has been, in a cursory manner, rejected by passing the order dated 17.07.2026. There is no reasoning given regarding what were the other documents given and neither there is any proper receipt on record showing the supply of the same. In such circumstances, specific case of the petitioner is that only the first three pages of the detention order were supplied to him and the complete set of relied upon documents was never furnished, thereby seriously prejudicing his constitutional right guaranteed under Article 22(5) of the Constitution of India.

7. In ***Icchu Devi Choraria Versus Union of India & others, (1980) 4 SCC 531***, the issue was regarding non-supply of several documents and statements referred to in the detention order including two tape-recorded conversations. The Apex Court thus came to the conclusion that the power to detain without trial is an extraordinary power constituting encroachment on personal liberty and the court

should always lean in favour of upholding personal liberty, as it is one of the most cherished values of mankind. Resultantly, on account of delay as such in supplying the documents, the writ petition was allowed and the release of the detenu was ordered.

8. In ***Shri Lallubhai Jogibhai Patel Versus Vs. Union of India & others, (1981) 2 SCC 427***, a similar issue arose regarding non-supply of documents relied upon by the detaining authority. Relying upon the provisions of Article 22(5) of the Constitution of India, it was held that the detenu's detention was illegal and the constitutional mandate had not been honoured.

9. In ***Ameena Begum Vs. State of Telangana & others, (2023) 9 SCC 587***, the Apex Court following the law laid down in ***Ichhu Devi's*** case (*supra*), while dilating of the golden triangle formed by Articles 14, 19 and 21 of the Constitution of India, has held that the diligence and observance of the same requires that the burden of showing that detenu is in accordance with the procedure established by law, is to be placed on the detaining authority.

10. In such circumstances, we are of the considered opinion that the activities of trafficking of drug and live link in such trade and that he remains continuously engaged in narcotic drugs cannot be sustained in the absence of any recovery of commercial quantity and preventive detention would not be the recourse as such to violate Article 21 of the Constitution of India.

11. Similar view has also been taken by us in ***Cr.WP No.13 of 2025*** titled as ***Pankaj Kumar Vs State of Himachal Pradesh*** decided on 06.08.2025.

12. Accordingly we are of the considered opinion that keeping in view the settled position of law, that detention as such is a draconian provision and the State has to follow the procedure as such prescribed and cannot withhold the important documents, as prejudice will be caused to the detainee on account of his inability to properly explain, which is as noticed on account of preventive aspect.

13. Keeping in view the above, we allow the petition and quash the detention order dated 04.05.2026, passed by the Special 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.

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

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

(**Bipin Chander Negi**)
Judge

July 28, 2026
(hemlata)

**HEMLATA
JISHTU**

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