

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.W.P. No. 60 of 2026

Date of Decision : 14.08.2026

Kuldeep

..... 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

Yes.

For the Petitioner : Mr. Prajwal Sharma, Advocate.

For the Respondents : Mr. Pranay Pratap Singh, Additional
Advocate General.

G.S. Sandhawalia, Chief Justice

By way of the 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 he had been detained for a period of three months on account of the fact that he was stated to be a

¹ **Whether reporters of Local Papers may be allowed to see the judgment?**

habitual and recidivist offender actively involved in the illegal trade of narcotic drugs and psychotropic substances. It has been mentioned that he had well-established reputation as a drug dealer in the local community and his conduct demonstrated a lack of reform and remorse on account of his repeated re-engagement in such illegal activities even after being released on bail.

2. Reference was made to two FIRs , i.e. FIR No. 10 of 2019, registered at Police Station Bhuntar and FIR No. 73 of 2025, dated 25.04.2025, in this regard. The detention order however had referred to three other FIRs, on the basis of which it was found that he had been arrested thrice. The details of the said FIRs read as under:-

- "i. In First Information Report No. 73/2025 dated 25.04.2025 Station Bhuntar, District Kullu, HP, under Sections 21, 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 03 grams of Heroin/Chitta was recovered from him:*
- ii. In First Information Report No. 124/2025 dated 15.07.2025 registered at Police Station Bhuntar, District Kullu, HP under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 09 grams of Heroin/Chitta was recovered from him;*

iii. In First Information Report No. 200/2025, dated 08.12.2025 at Police Station Bhuntar, District Kullu, HP, under sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 20 grams of Heroin/Chitta was recovered from him;"

3. It is a matter of record that another order as such was passed on 03.08.2026 by the State, wherein the detention of the petitioner was extended for a further period of two months on the basis of the opinion given by the State Advisory Board, dated 18.07.2026.

4. The opinion of the State Advisory Board dated 18.07.2026 is taken on record as Annexure-A alongwith the order passed by the State on 03.08.2026, extending the period of detention of the petitioner, as Annexure-B, alongwith the order granting bail on 16.03.2026 as Annexure-C.

5. Learned Counsel for the petitioner has raised two arguments on the issue in question. The first and foremost argument is that when the detention order was passed on 04.05.2026 (Annexure P-1), the petitioner was allegedly in custody at that point of time, as he had not been released on bail in FIR No. 200 of 2025, dated 08.12.2025, which would be clear from the letter dated 05.05.2026 (Annexure P-2),

addressed to the Superintendent of Jail, District Jail Kullu, by the Chief Judicial Magistrate, Kullu, stating that the petitioner had been ordered to be released on bail for 30 days in pursuance of the order passed 02.05.2026, on his furnishing personal bond in the sum of Rs. 10,000/-, so that he could arrange for his surety in terms of the order dated 16.03.2026 passed in the aforesaid FIR No. 200/2025. It is thus the pleaded case as such that the detention order was actually served upon the petitioner before he could avail the benefit as such of the bail order. The detention order did not take into consideration this aspect of his ongoing custody, and would be a fatal error as such, as the authority was under an obligation as such to examine whether he had been released on bail and whether the petitioner would again indulge in such type of activities, if granted bail

6. Secondly, it is argued that detention order unnecessarily refers to FIRs No. 10 of 2019 and 73 of 2025, as he was never involved in the said FIRs. It is pointed out that even the opinion given by the Advisory Board, dated 18.07.2026, would go on to show that there is a reference made to another two FIRs, i.e. FIR No. 188 of 2021, dated 05.11.2021

and FIR No. 52 of 2022, dated 19.03.2022, both registered at Police Station Bhuntar, District Kullu, which were not the aforesaid two FIRs mentioned in the detention order. It is submitted that in the opinion of the Advisory Board, there was a mention of the three cases, registered one after the other, whereas it would go on to show that as per the order of the Advisory Board itself, the third case was registered after a period of more than 3 ½ years, i.e. on 08.12.2025. It is further submitted that there has been no proper consideration as such at any level and therefore, the orders are liable to be quashed on this ground.

7. Learned Counsel for the State, on the other hand, submitted that on account of such constant involvement, subjective satisfaction had been arrived at by the Detaining Authority on the proposal of the Superintendent of Police, Kullu, which was further recommended by the Joint Director of Police. As there was a constant involvement of the petitioner in illegal drug trafficking and there were reliable and confirmed intelligence inputs regarding his active involvement in drug trafficking and the ineffectiveness of the orders of the criminal proceedings, the detention order as such was justified, which

had been served upon the petitioner on 05.05.2026. It is pointed out that the reference was sent to the Advisory Board on 12.05.2026 within the statutory period and the Advisory Board had convened a video conferencing, thereby confirming that the preventive detention as such stands justified in the fact and circumstances of the case, and further opining that the detention be enhanced by two months.

8. The detention order thus, took into consideration two FIRs, which were not even the subject matter of involvement of the petitioner, as is clear from paragraph 4 of the detention order, which reads as under:-

“4. Repeat offenders and lack of repentance:-

The proposed detainee, Kuldeep Singh, is a habitual and recidivist offender actively involved in the illegal trade of narcotic drugs and psychotropic substances. He has a well-established reputation as a drug dealer in the local community. His conduct demonstrates a lack of reform and remorse, as evidenced by his repeated-re-engagement in such illegal activities even after being released on bail. Specifically, FIR No. 10/2019 of Police Station Bhuntar. Despite being on notice/bail in FIR No. 73/25 dated 25.04.2025, he again engaged in drug trafficking and courted arrest in FIR Nos. 124/25 and 200/2025, in which 29 grams of heroin was recovered from his possession. This

clearly establishes his pattern of recidivism and his blatant disregard for the rule of law."

9. The FIRs in which the petitioner had allegedly been involved, have already been mentioned in the preceding Paragraph No. 2. Therefore, apparently, in the detention order, application of mind by the Authorities was to other FIRs as such, in which the petitioner was not involved. Rather, there is a specific mention that he had re-engaged in such activities even after being released on bail. It is pertinent to note that the last FIR in question was bearing FIR No 200/2025 and the bail was granted on 16.03.2026 under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, by the Special Judge-II Kullu, while taking into consideration the fact that the petitioner was also involved in the two earlier FIRs, i.e. FIRs No. 73 of 2025 and 124 of 2025, both registered at Police Station Bhuntar.

10. A perusal of the order (Annexure P-3) would go on to show apparently the petitioner was not able to procure the benefit of bail and another order was passed on 02.05.2026, directing that he be released on bail for 30 days, so that he could arrange his surety in terms of the order passed on

16.03.2026, upon furnishing a personal bond in the sum of Rs. 1,00,000/-. It is thus apparent that the said communication was dated 05.05.2026 and he was very much in the custody as such, however, there is no mention in the detention order regarding the bail granted on 16.03.2026, or the fact that he still remained in custody due to non-furnishing of bail bonds.

11. In ***Kamarunnissa Vs. Union of India, (1991) 1 SCC 128***, it was held that the detaining authority has to have reason to believe on the basis of reliable material placed before it that there is real possibility of being released on bail and that he would indulge in prejudicial activity.

12. Non-examination of the said aspect has been commented upon by the Apex Court in ***Union of India Vs. Paul Manickam, (2003) 8 SCC 342***, regarding the procedure where the detenu is already in custody and the authority has to be aware of the fact whether he was actually in custody or not and to show awareness in the detention order of the chances of release of such person.

13. The principle was reiterated by the Apex Court in the judgment rendered in ***Rekha Vs State of Tamil Nadu and another, (2011) 5 SCC 244*** and thereafter followed in ***Huidrom***

Konungjao Singh Vs. State of Manipur, (2012) 7 SCC 181 and ***Union of India Vs. Dimple Happy Dhakad, (2019) 20 SCC 609***, that the needful not having been done, we are of the considered opinion that the benefit thus necessarily has to flow to the petitioner on this account.

14. Recently, the Apex Court in ***SLP (Cr.) No. 8439 of 2026***, titled as ***Alfiya. A versus State of Kerala & others***, decided on 28.07.2026, has laid down the principle that the detenu must be given an opportunity to effectively resist his detention at the earliest point of time and that any failure which renders such an opportunity illusory strikes at the root of the detention order. Although the scope of judicial review is narrow, keeping in mind the provisions of Article 22(5) of the Constitution of India and also examining a detention under the PIT NDPS Act shows that constitutional safeguards are available to a person who is detained without the benefit of a trial and these safeguards are to be enforced with corresponding strictness. Preventive detention permits the deprivation of liberty of a person on the basis of what, he may do and not on the basis of what he has been found to have done. A power of that description was held to be a serious

inroad into the personal liberty guaranteed by Article 21 of the Constitution of India and that for the minutest of error the benefit would go to the detenu.

15. The reference to the wrong FIRs is also a matter which would come under the same aspect that the State while passing the order as such would suffer from the vice of the stamp of non-application of mind.

16. The argument of the State that since there was an opinion of the Advisory Board and further detention has been recommended for another two months and acted upon by the State, also suffers from infirmities since the opinion of the Advisory Board would go on to show that reference was made to two FIRs, i.e. FIR No. 188 of 2021 and FIR No. 52 of 2022, which were not the basis of the detention. In such circumstances, the approval of the detention order as such would also suffer from an infirmity, which cannot be cured and has led the State to further extend the detention for a period of two months, vide order dated 03.08.2026 during the pendency of the present proceedings.

17. The role of Advisory Board has also been noticed by the Apex Court in ***Pesala Nookaraju Versus Government***

of Andhra Pradesh & others, (2023) 14 SCC 641, wherein it has been held that once a confirmatory order has been received from the Advisory Board, then only further orders as such can be issued by the State which can be extended up to a maximum period of twelve months from the date of detention.

The relevant paragraphs read as under:-

“44. Hence, Article 22(4) (a) in substance deals with the order of detention and has nothing to do with the delegation of the power of detention by the State Government to an Officer as stipulated under Section 3(2) of the Act. In fact, under Section 9 of the Act, the State Government has to refer the matter to the Advisory Board within three weeks from the date of detention, irrespective of whether the detention order is passed under Section 3(1) or Section 3(2) of the Act and the Advisory Board has to give its opinion within seven weeks from the date of detention. That would totally make it ten weeks. As stipulated in Article 22(4)(a) of the Constitution, if in a given case, once the Advisory Board gives its opinion within the stipulated period of three months, then in our view, 22(4) (a) would no longer be applicable. Thus, 22(4)(a) applies at the initial stage of passing of the order of detention by the State Government or by an officer who has been delegated by the State Government and whose order has been approved by the State Government within a period of twelve days from the date of detention and not

at the stage subsequent to the report of the Advisory Board. Depending upon the opinion of the Advisory Board, under Section 12 of the Act, the State Government can revoke the order of detention and release the detenu forthwith or may confirm the detention order and continue the detention of the person concerned for any period not exceeding the maximum period of twelve months, which is stipulated in Section 13 of the Act. Therefore, when the State Government passes a confirmatory order under Section 12 of the Act after receipt of the report from the Advisory Board then, such a confirmatory order need not be restricted to a period of three months only. It can be beyond a period of three months from the date of initial order of detention, but up to a maximum period of twelve months from the date of detention.

45. We reiterate that the period of three months stipulated in Article 22(4) (a) of the Constitution is relatable to the initial period of detention up to the stage of receipt of report of the Advisory Board and does not have any bearing on the period of detention, which is continued subsequent to the confirmatory order being passed by the State Government on receipt of the report of the Advisory Board. The continuation of the detention pursuant to the confirmatory order passed by the State Government need not also specify the period of detention; neither is it restricted to a period of three months only. If any period is specified in the confirmatory order, then the period of

detention would be upto such period, if no period is specified, then it would be for a maximum period of twelve months from the date of detention. The State Government, in our view, need not review the orders of detention every three months after it has passed the confirmatory order.

46. Thus, in our view, the period of three months specified in Article 22 (4) (a) of Constitution of India is relatable to the period of detention prior to the report of the Advisory Board and not to the period of detention subsequent thereto. Further, the period of detention in terms of Article 22 (4) (a) cannot be in force for a period beyond three months, if by then, the Advisory Board has not given its opinion holding that there is sufficient cause for such detention. Therefore, under Article 22 (4) (a), the Advisory Board would have to give its opinion within a period of three months from the date of detention and depending upon the opinion expressed by the Advisory Board, the State Government can under Section 12 of the Act, either confirm the order of detention or continue the detention of the person concerned for a maximum period of twelve months as specified in Section 13 of the Act or release the detenu forthwith, as the case may be. If the order of detention is confirmed, then the period of detention can be extended up to the maximum period of twelve months from the date of detention.

47. With respect, we observe that it is not necessary that before the expiration of three months, it is necessary for the State Government to review the order of detention as has been expressed by this Court in Cherukuri Mani (supra). The Act does not contemplate a review of the detention order once the Advisory Board has opined that there is sufficient cause for detention of the person concerned and on that basis, a confirmatory order is passed by the State Government to detain a person for the maximum period of twelve months from the date of detention. On the other hand, when under Section 3(2) of the Act, the State Government delegates its power to the District Magistrate or a Commissioner of Police to exercise its power and pass an order of detention, the delegation in the first instance cannot exceed three months and the extension of the period of delegation cannot also be for a period exceeding three months at any one time."

18. In ***Nenavath Bujji & others Vs. State of Telangana & others, (2024) 17 SCC 294***, the Apex Court again had an opportunity as such to examine the role of the Advisory Board and came to the conclusion that detention orders having been passed by the State in a routine and mechanical manner, are contrary to the role and duty of the Advisory Board which as such is to ensure orders conform to the law and must be struck down at the first available threshold.

As such, the Advisory Board must take into consideration all aspects, not merely the subjective satisfaction of the detaining authorities. The relevant part of the same read as under:-

“51. At this stage, it is also apposite to mention that in such scenarios as discussed above, where orders of preventive detention are being passed by the Detaining Authority in a routine and mechanical manner, the role and duty of the Advisory Board(s) becomes all the more imperative to put a check on such capricious exercise of powers and ensure that a bright-line is drawn whereby such illegal detentions are nipped in the bud and the detenu released forthwith.

52. Advisory Board(s) under preventive detention legislations, are not a superficial creation but one of the primary constitutional safeguards available to the detenu against an order of detention. Article 22 (4) mandates that, any law pertaining to preventive detention must provide for constitution of an Advisory Board consisting of persons who have been or qualified to be appointed as judges of the High Court. It further vests the Advisory Board with the pivotal role of reviewing an order of detention within three-months by forming an opinion as to whether there is a sufficient cause for such detention or not, after consideration of all the material on record including representation if any, of the detenu.”

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55. *Section 11 of the Act, 1986 delineates the function to be discharged and the procedure to be adopted by the Advisory Board. It inter-alia states that the Advisory Board must form an opinion and specify as to whether there is sufficient cause warranting the detention of the detenu. The Advisory Board has to form this opinion by considering all the materials placed before it in terms of Section 10 of the Act, 1986. Section 11 further empowers the Advisory Board to call for any other information or to hear the detenu, wherever necessary so as to ascertain the sufficiency of cause for preventive detention.*

56. *x x x x x x x x x x*

57. *What can be discerned from a bare perusal of the above mentioned provisions is that the Advisory Board performs the most vital duty of independently reviewing the detention order, after considering all the materials placed before it, or any other material which it deems necessary. When reviewing the detention order along with the relevant materials, the Advisory Board must form an opinion as to the sufficiency of the cause for warranting detention. An order of detention passed under the Act, 1986 can only be confirmed if the Advisory Board is of the opinion that there exists sufficient cause for the detention of the detenu.*

58. *The framers of the Constitution being in seisin of the draconian nature of an order of preventive detention and its adverse impact on individual liberty, have specifically put in place safeguards within Article 22 through the creation of an Advisory Board, to ensure that any order of preventive detention is only confirmed upon the evaluation and scrutiny of an independent authority which determines and finds that such an order for detention is necessary.*

59. *The legislature in its wisdom has thought it fit, to entrust the Advisory Board and no one else, not even the Government, with the performance of this crucial and critical function which ultimately culminates into either the confirmation or revocation of a detention order. The Advisory Board setup under any preventive detention law in order to form its opinion is required to; (i) consider the material placed before it; (ii) to call for further information, if deemed necessary; (iii) to hear the detenu, if he desires to be heard and; (iv) to submit a report in writing as to whether there is sufficient cause for “such detention” or whether the detention is justified.*

60. *An Advisory Board is not a mere rubber-stamping authority for an order of preventive detention. Whenever any order of detention is placed before it for review, it must play an active role in ascertaining whether the detention is justified under the law or not. Where it finds that such order of detention is against the spirit of the Act or in contravention of the law as laid down by the courts, it can definitely opine that the order of detention is not sustainable and should not shy away from expressing the same in its report.*

61. As stated by us above, preventive detention being a draconian measure, any order of detention as a result of a capricious or routine exercise of powers must be nipped in the bud. It must be struck down at the first available threshold and as such, it should be the Advisory Board that must take into consideration all aspects not just the subjective satisfaction of the detaining authorities but whether such satisfaction justifies detention of the detenu. The Advisory Board must consider whether the detention is necessary not just in the eyes of the detaining authority but also in the eyes of law.

62. The requirement of having persons who have been or are qualified to be High Court judges in the Advisory Board is not an empty formality, it is there to ensure that, an order of detention is put to robust scrutiny and examined as it would have been by any ordinary court of law. Otherwise, the purpose of independent scrutiny could very well have been served by having any independent persons, and there would have been no need to have High Court judges or their equivalent. Thus, it is imperative that whenever an order of detention is placed before an Advisory Board, it duly considers each and every aspect, not just those confined to the satisfaction of the detaining authority but the overall legality as per the law that has been laid down by this Court.

63. An Advisory Board whilst dispensing its function of ascertaining the existence of a “sufficient cause” for detention, cannot keep itself unconcerned or oblivious to the developments that have taken place by a plethora of decisions of this Court delineating the criterion required to be fulfilled for passing an order of detention. The “independent scrutiny” as envisaged by Article 22 includes ascertaining whether the

detention order would withstand the scrutiny a court of law.

64. We fail to understand what other purpose the Advisory Board encompassing High Court judges or their equivalent as members would serve, if the extent of their scrutiny of the order of detention is confined just to the subjective satisfaction of the detaining authority. The entire purpose behind creation of an Advisory Board is to ensure that no person is mechanically or illegally sent to preventive detention. In such circumstances, the Advisory Boards are expected to play a proactive role. The Advisory Board is a constitutional safeguard and a statutory authority. It functions as a safety valve between the detaining authority and the State on one hand and the rights of the detenu on the other. The Advisory Board should not just mechanically proceed to approve detention orders but is required to keep in mind the mandate contained in Article 22(4) of the Constitution of India.

65. Thus, an Advisory Board setup under a preventive detention legislation is required to undertake a proper and thorough scrutiny of an order of detention placed before it, by appreciating all aspects and angles before expressing any definite opinion in its report.”

19. Thus, keeping in view the above, we are of the considered opinion that the petitioner has to be given the benefit of the fact that the subjective satisfaction of the detaining authority suffers from various infirmities which

are further compounded by the State not giving the effective assistance to the Advisory Board.

20. Resultantly, we are of the considered opinion that the detention order dated 04.05.2026 (Annexure P-1) and the subsequent extension order dated 03.08.2026 are not based on the complete material and suffers from bias and arbitrariness, as the factual matrix has got mixed up, while passing the detention order. Therefore, the benefit has to be given to the petitioner. Accordingly, the said orders are quashed. The petitioner has already been directed to be released, as per our separate order of the even date.

21. Pending application(s), if any, also stands disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

August 14, 2026
(hemlata)