

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**Cr.W.P No. 65 of 2026
Decided on : 09.09.2026**

Kalu Ram

...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 C. Negi, Judge.**

Whether approved for reporting?¹

For the petitioner : Mr. Ashish Jamalta, Advocate.

For the respondents : Ms. Priyanka Chauhan, Deputy
Advocate General.

G.S. Sandhawalia, Chief Justice (Oral)

The petitioner challenges the detention order dated 04.05.2026 (Annexure P-2), whereby under the provisions of Section 3(1) read with Section 5 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'the **PIT NDPS Act**'), he was directed to be detained for a period of 3 months by the State, on account of the fact that he had already been involved in 5 cases under the NDPS Act. The

¹ Whether reporters of the local papers may be allowed to see the judgment?

details of the cases read as under:-

- i) In FIR No. 282/2018 dated 11.11.2018 registered at Police Station Manali, District Kullu, H.P., under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 5.89 grams of Heroin/Chitta was recovered from him;
- ii) In FIR No. 130/2021 dated 05.08.2021 registered at Police Station Bhuntar, District Kullu, H.P., under Sections 21, 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 52 grams of Heroin/Chitta was recovered from him;
- iii) In FIR No. 67/2023 dated 07.06.2023 registered at Police Station Patlikuhal, District Kullu, H.P., under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 18 grams of Heroin/Chitta was recovered from him;
- iv) In FIR No. 33/2024 dated 14.02.2024 registered at Police Station Kullu, District Kullu, H.P., under Sections 21, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 27 grams of Heroin/Chitta was recovered from him;
- v) In FIR No. 80/2025 dated 05.05.2025 registered at Police Station Bhuntar, District Kullu, H.P., under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 06 grams of Heroin/Chitta was recovered from him.

2. It is not disputed that another order dated 04.08.2026 had also been passed by the State extending his

detention by a period of 3 months on account of decision taken by the State Advisory Board dated 20.07.2026, during the pendency of the present petition.

3. Counsel for the petitioner submitted that the State had not applied its mind separately and independently and only on the basis of the opinion of the State Advisory Board, the extension had been granted by just adding the words 'that after independent consideration the detention was to be extended'. It is accordingly submitted that it was the bounden duty of the State to apply its mind independently and the limited jurisdiction of the State Advisory Board was only regarding the issue that whether the initial detention order was in consonance with the provisions of the NDPS Act and the necessary compliance had been done of Article 22 of the Constitution of India, or not?

4. Reliance is accordingly placed upon the judgments of the Apex Court passed in ***Pesala Nookaraju Vs. Government of Andhra Pradesh and others, (2023) 14 Supreme Court Cases 641*** and ***Nenavath Bujji and others Vs. State of Telangana and others, (2024) 17***

Supreme Court Cases 294, wherein it has been held that the role of the Advisory Board and independent scrutiny by the State, is mandatory and there has to be no mechanical extension and the subjective satisfaction of the detaining authority to point out that the extension order suffered from the various infirmities, which had been compounded by the State.

5. On the other hand, counsel for the State, has fallen back on the aspect that the petitioner and his family members as such, had been proceeded against, on the basis of source report received from the CID and the Police Station Patlikuhal. This report was placed on record as Annexure R-3/2 in the sealed envelop, which we have opened and perused, placed on record.

6. It is apparent to notice that out of the second FIR, which was registered on 05.08.2021, orders as such, had been passed, which have been relied upon by the State to show that the various properties, including a vehicle in the name of the son of the petitioner, namely, Maruti SX4 as well as various bank accounts, not only of the petitioner but also of his daughter, were also seized. It is, therefore, submitted

that on account of the repeated involvements in the FIRs, the order of detention was justified. It is further submitted that the source report shows that the petitioner is repeatedly involved and the general public was aggrieved against him.

7. Perusal of the paper book would also go on to show that after the 4th FIR was lodged as such, the petitioner was granted bail and thereafter, the 5th FIR was lodged. There was a period of over one year as such, between the two FIRs. The last FIR was registered on 05.05.2025 and the detention order had been passed after a year and the proposal was that of 25.04.2026, by the Director General of Police. The proposal by the Superintendent of Police, dated 23.04.2026, was also a belated proposal.

8. It is not disputed that the bail was granted on 03.11.2025 in the last FIR, while noting the pendency of the other cases and also the fact that no conviction had been recorded and, therefore, he carries presumption of innocence till his guilt is proved in trial.

9. No effort was made to get the bail cancelled in either of the earlier FIRs on account of his repeated involvement and the draconian powers were thus invoked

after a period of one year from his involvement in the last FIR and more than 6 months after he had been released on bail on 03.11.2025.

10. The issue of live link as such, is also violated as the mechanism of preventive detention would have to be put into force immediately after his release on bail and apparently, the Superintendent of Police took more than 5 months to start processing the case. It was eventually put into force by passing the detention order on 04.05.2026.

11. Though the period of detention of three months has now long expired, the fact remains that the independent consideration by the State is apparently missing. An order of extension dated 04.08.2026, has now been placed on record, whereby he was again detained for a further period of three months, which was solely in accordance with the opinion of the State Advisory Board dated 20.07.2026.

12. From the said order, it cannot be discerned in any manner that the Secretary (Home) to the Government of Himachal Pradesh, had applied his independent mind and now it is sought to be argued that even the property of the other family members of the petitioner had been confiscated.

Merely, on account of a source reports, which are primarily based on oral versions that the people had demanded the strict action, the draconian principles as such, cannot be applied.

13. Reliance can be placed upon the judgments referred to above, which we had also followed in the judgment passed in ***Criminal Writ Petition No. 60 of 2026***, titled ***Kuldeep Vs. State of Himachal Pradesh and others***, dated 14.08.2026, wherein it has been held that the orders of preventive detention were being passed in a routine and mechanical manner and the subjective satisfaction of the detaining authority has to be there. The initial order of detention also, as noticed, does not refer to any facts of confiscation of the property on an earlier occasion and is silent about the said fact. The observations in Para 14 read as under:-

*“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."

14. It is settled principle that the State cannot improve its stand in the written statement once the basic order as such suffers from the infirmity. The copies of source report which were received from the CID, are not even appended alongwith the detention order, would also be violative of the fact that the material which weighed with the detaining authority, was not supplied to the petitioner and, therefore, he could not even put forth his case in a proper manner before the State Advisory Board.

15. It is also a settled principle that under preventive detention, the petitioner need not to challenge specifically the subsequent detention extended and can without any express averment also, bring to the notice of this Court that

there was a violation of the provisions of Article 22 of the Constitution of India and his personal liberty is being affected and the Court can entertain the same.

16. In such circumstances, we are of the considered opinion that in the peculiar facts and circumstances of this case, the order of the extension of the detention for a further period of 3 months, is not likely to be sustained.

17. Resultantly, we allow the writ petition to that extent and quash the extension order dated 04.08.2026, whereby the period of detention has been extended for a further period of three months. The petitioner be set free forthwith, if not required in any other case. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(G.S. Sandhawalia)
Chief Justice

(Bipin C. Negi)
Judge

September 09, 2026
(Shivank Thakur)

Digitally
signed by
SHIVANK
THAKUR

Date:
2026.09.10
11:03:21
+0530

SHIVANK
THAKUR