

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.WP No.67 of 2026

Date of Decision : 27.08.2026

Abhay Kagra alias Babu

..... 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. Kamlesh Kumar, Advocate.

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

G.S. Sandhawalia, Chief Justice (oral)

By way of the present petition, the petitioner has laid challenge to the detention order dated 07.07.2026 (Annexure P-2), passed under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act) by the respondent-State, whereby the petitioner has been ordered to be detained for a period of three months.

2. The ground for assailing the impugned detention order is the unexplained and inordinate delay in passing the detention order with respect to his alleged involvement in two FIRs. registered against him, wherein the contraband (Heroin) was allegedly recovered from the

petitioner. The details of the FIRs lodged against the petitioner are as follows:-

"i. In First Information Report No. 104/2024 dated 12.06.2024 registered at Police Station Nahan, District Sirmaur, HP under Section 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 10.07 grams of Heroin/Chitta and Rs. 31,770/- were recovered from him;

ii. In First Information Report No. 51/2025 dated 09.05.2025 registered at Police Station Nahan, District Sirmaur, HP, under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, approximately 08.3 grams of Heroin/Chitta was recovered from him."

3. A perusal of the detention order would go on to show that apparently the last FIR against the petitioner was lodged on 09.05.2025, and the detention order was passed after a lapse of more than one year on 07.07.2026. The issue of proximate live link and delay to detain the petitioner was strongly stressed upon by the learned counsel for the petitioner.

4. Learned Additional Advocate General, on the other hand, has fallen back on the recommendation/proposal dated 21.05.2026 (Annexure P-1) submitted by the Superintendent of Police, District Sirmaur at Nahan, pointing out the involvement of the petitioner in three other FIRs under the Indian Penal Code apart from ones under the NDPS Act. The details of the said FIRs are there to point out that the petitioner is a habitual offender having criminal background and history as such. It

has been further contented that the recommendation would go on to show that there are repeated visits of the petitioner to Haryana to procure Chitta. He is, thus, involved in the trade as such of the purchase and sale of the Narcotic Drugs and Psychotropic Substances and there is information that his friend circle is involved in drug addiction and even his parents are also co-accused in FIR No.104 of 2024 dated 12.06.2024.

5. However, we are not in a position to accept the argument, as such, as there is nothing in the said proposal which would go on to show from the current status of the earlier FIRs, which are of the years, 2016, 2018 and 2021, whether any conviction was ever recorded against the petitioner therein. In the absence of cogent material, mere registration of previous cases without any conviction/live link, would also not demonstrate that the petitioner is a character who is beyond reform, as such, for which draconian measure of preventive detention has to be taken. Apparently, the recommendation is at a belated stage, i.e., 21.05.2026 and the last FIR was lodged on 09.05.2025, which would go on to show that there is non application of mind by the detaining authority as there is no fresh involvement of the petitioner in the said trade.

6. It has been contended that in the last FIR registered against the petitioner, he was enlarged on bail on 26.08.2025. The recommendation for preventive detention was initiated by the Superintendent of Police only on 21.05.2026, nearly one year after the registration of the last FIR dated 09.05.2025.

7. It has been, time and again, held by the Apex Court that the protection guaranteed under Article 21 & 22 of the Constitution of India has to be strictly adhered to.

8. In ***Cr.WP No. 13 of 2025***, titled ***Pankaj Kumar vs. State of H.P. and others***, decided on 06.08.2025 (Law Finder Doc ID # 2760407), we had elaborated the issue of live link as such. Similarly, the Apex Court in ***Sama Aruna vs. State of Telangana, (2018) 12 SCC 150*** has held that the exceptional powers of preventive detention cannot be permitted to devolve into a draconian and arbitrary exercise of State Authority and the two FIRs. registered against the detainee were capable of being dealt with in the ordinary course of criminal law. Similar view was taken by the Hon'ble Apex Court in ***Mallada K. Sri Ram vs. State of Telangana and Others, (2023) 13 SCC 537***, wherein it has been held that there was a delay of 05 months in passing the detention order after the registration of the second FIR and it amounted to non-application of mind on the part of the detaining authority.

9. The said view has been followed in ***Ameena Begum vs. The State of Telangana (2023) 9 SCC 587***, wherein also while relying upon the judgment in ***Rekha vs. State of Tamil Nadu (2011) 5 SCC 244***, it has been held that to unchain the shackles of preventive detention, it is important that the safeguards enshrine in our Constitution, particularly under the "golden triangle" formed by Articles 14, 19 & 21, are diligently enforced.

10. The Apex Court in the aforesaid decisions has authoritatively held that unexplained delay between the prejudicial activity/grant of bail and the passing of the detention order is fatal to the detention, as it snaps the proximate nexus between the grounds of detention and the purpose of detention.

11. In the case at hand, the recommendation was made by the Superintendent of Police, as such, at a belated stage of almost one year after the registration of the last FIR and ten months after release of the petitioner on bail, there was no fresh material before the detaining authority to show that the petitioner had indulged in any further activity, as such, during the intervening period and, therefore, this would not entitle the State to invoke the draconian powers. Thus, the live and proximate link between the alleged grounds and the purpose of detention stands completely snapped.

12. Keeping in view the above, we quash the impugned detention order dated 07.07.2026. The petitioner be set free forthwith, if not required in any other case.

13. The writ petition stands allowed in the aforesaid terms. Pending miscellaneous application(s), if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

August 27, 2026 (KS)