

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.W.P No. 73 of 2026
Decided on : 28.09.2026

Namveer Singh alias Badal

...Petitioner

Versus

State of Himachal Pradesh and another

...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 : M/s Vijender Katoch and Kapil Sharma, Advocates.

For the respondents : Mr. Sidharth Jalta, Deputy Advocate General.

G.S. Sandhawalia, Chief Justice (Oral)

Challenge in the present petition is to the detention order dated 18.07.2026 (Annexure P-1), whereby the petitioner was detained for a period of three months under 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**').

2. The reason as such for the detention was that there were two FIRs registered against the petitioner under the NDPS Act. The details of the said FIRs are as under:-

- i. *In FIR No. 161/2024, dated 19.10.2024, at Police Station Indora, Police District Nurgpur, H.P., under Section 21 of*

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

the Narcotic Drugs and Psychotropic Substances Act, 1985, wherein approximately 7.23 grams of heroin/chitta were recovered from him;

- ii. *In FIR No. 188/2025, dated 14.11.2025, at Police Station Indora, Police District Nurpur, H.P., under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, wherein approximately 9.42 grams of heroin/chitta were recovered from him.*

3. Counsel for the petitioner has pointed out that the last FIR No. 188/2025 in question was dated 14.11.2025. Even as per the reply of the State, the proposal against the detenue was only made on 06.05.2026. Admittedly, he had been released on bail vide order dated 20.12.2025 (Annexure P-4), in the said FIR. It is thus submitted that the issue of proximate and live link as such, would come into play and the benefit of the quashing of the said order would have to be given effect.

4. Similarly, it is pointed out that a specific averment was made that a representation was made against his detention on 20.08.2026 (Annexure P-2), whereby various pleas as such, were raised including the fact of live link and the source report dated 04.05.2026 on the basis of which the proposal was given. The said source report is bereft of any particulars whatsoever, as it disclosed no dates, no names of alleged purchasers, no quantifies, no transactions and no seizures and was not backed by any FIR or recovery and merely pendency of two FIRs as

such, would not make it a fit case for detention.

5. It is submitted that in spite of the directions issued by this Court while issuing notice on 09.09.2026, the representation of the petitioner still has not been decided. Reference is also made to the reply filed by the State regarding the contents of Para-4, whereby the stand taken is that the detention would still be sustainable and there is mention that the non-decision as such, does not invalidates the detention.

6. On the other hand, counsel for the State has laid a lot of emphasis on the background of the petitioner and his family to contend that his brother and mother were also involved in 5 cases of ND&PS Act. The father of the petitioner was involved in 12 cases and recently has been convicted in FIR No. 28/2023, dated 21.02.2023 and the appeal against the said conviction is still pending in the Court and was also convicted in two other FIRs. He further pointed out that the mother of the petitioner was also placed under preventive detention for a period of three months vide detention order dated 03.05.2025. He thus submitted that the petitioner and his family members are involved in drug peddling and the detention order dated 18.07.2026 was rightly passed and is not liable to be quashed.

7. In similar circumstances, regarding the issue of non-decision of the representation in **Cr.W.P. No. 68 of 2026**, titled

Vicky Kumar Vs. State of Himachal Pradesh and another, decided on 31.08.2026, we had quashed the detention order since in spite of the directions issued by this Court while issuing notice, a month had gone by and the representation had not been decided. The reasons given in the said judgment reads as under:-

“6. We are of the considered opinion that there is a gross violation of Article 22 (5) of the Constitution of India in the present case. The mandate provided under the Constitution does not seem to be taken very seriously and very casually, regarding the personal liberty of an individual. Article 22(5) provides that from the moment a person is detained, an opportunity has to be given to him to make a representation against the order and he has to be communicated the grounds on which the order has been made. The law is clear on this aspect that the person, who passes the order as such, has to firstly examine whether his order is justified and whether the representation makes out a case to revoke the order of detention and set the person at liberty.

7. Reliance can be placed upon the five-Judge Bench, judgment passed by the Hon'ble Apex Court in **Kamlesh Kumar Ishwardas Patel versus Union of India and others, (1995) 4 SCC 51**. The purpose of making the representation has been highlighted time and again, keeping in mind the golden principle, as such enshrined in Articles 14, 21 and 22 of the Constitution of India which are stated to be the golden triangle, on which the rights of the citizens of this Country as such rest. The State is under legal obligation to decide the said representation more so, keeping in view the fact that earlier two FIRs, as noticed above, were of the year 2019 and 2020, after a period of six years and under the third FIR, which has been lodged only 118 grams of charas has been recovered and bail was

granted in the said FIR on 19.03.2026. The detention order as such does not depict whether the bail had been granted and only talks out earlier two FIRs, in which the petitioner was involved.

8. *The Apex Court in a recent case, i.e. **SLP (Cr.) No.8439 of 2026 titled as Alfiya. A versus State of Kerala and others**, decided on 28.07.2026, has set aside the detention order on the ground of the right of representation and consideration and the fact that there was a delay and also took into account the fact that representation had been placed before the Advisory Board. It was noticed that if the representation is pending before the Advisory Board and that the opinion of the Advisory Board can not substitute the independent consideration required by the authority to revoke the detention. Apart from the fact that there was delay of 34 days, to the consideration made and the Hon'ble Apex Court came into the conclusion that there was violation of Article 22(5) of the Constitution of India. Relevant paragraphs 18 to 22, are read, as under:-*

“18. In the present case, the order of detention was made by the Detaining Authority in exercise of the power conferred upon an officer specially empowered under Section 3(1) of the PITNDPS Act. The detenu was informed that he could make representations to the State Government, the Advisory Board and the Central Government. He was not separately informed that he was entitled to make a representation to the officer who had made the order of detention in exercise of the specially conferred statutory power. The omission is evident from the detention order itself. The fact that the detenu nevertheless addressed one of his representations to the Detaining Authority cannot cure the failure to inform him of that constitutional right. The obligation was upon the authority to

communicate the right and could not depend upon whether the detenu independently became aware of it.

19. *The matter does not rest with the failure to inform the detenu his right. The representation addressed to the Detaining Authority was submitted on 13.02.2026. The case was thereafter referred to the Advisory Board on 16.02.2026. The Advisory Board submitted its report only on 13.03.2026. Neither the order of confirmation not the counter affidavit filed before this Court discloses any separate consideration or decision upon the representation by the Detaining Authority in exercise of its statutory power. On the contrary, the case of the respondents is that the representation was examined together with the opinion of the Advisory Board and the other connected documents. This sequence indicates that the representation was kept pending until the Advisory Board had rendered its opinion and was thereafter dealt with as part of the governmental exercise of confirmation. The consideration of a representation under Article 22(5) and the examination undertaken by the Advisory Board are distinct constitutional processes. The opinion of the Advisory Board cannot substitute the independent consideration required from an authority competent to revoke the detention. This principle stands recognized by this Court in *Gracy versus State of Kerala* and *K.M. Abdulla Kunhi versus Union of India*. The record in the present case does not disclose the distinct and independent decision which the constitutional guarantee required.*

20. *There is also an unexplained delay in dealing with the representation. Even if the order of confirmation dated 19.03.2026 is treated as the first*

decision upon the representation dated 13.02.2026, a period of 34 days had elapsed before such consideration. A further period of eight days elapsed before the rejection was communicated to the detenu on 27.03.2026. No separate order deciding the representation has been placed before us. Nor has any satisfactory or day-to-day explanation been furnished for the time taken either to consider the representation or to communicate the decision. The general statement that the representation was examined together with the opinion of the Advisory Board does not explain the delay. It instead reinforces the conclusion that the representation was not treated as an independent constitutional process requiring immediate attention.

21. We accordingly hold that the safeguards attaching to the right of the detenu to make a representation against his detention were not observed. The detenu was not informed of his right to represent to the Detaining Authority who had made the order. The record does not disclose any independent decision upon the representation by the Detaining Authority in exercise of his own statutory power. The consideration disclosed by the respondents was undertaken only as part of the subsequent confirmation exercise, and even that consideration was attended by an unexplained delay. These infirmities violate Article 22 (5) of the Constitution and are sufficient to render the continued detention of the detenue illegal. 22. The infirmities noted above are not mere technical or procedural irregularities capable of being cured by substantial compliance. They concern the enforcement of the constitutional right guaranteed by Article 22(5) to a person detained without trial. Once a mandatory constitutional safeguard

governing preventive detention is found to have been violated, the continued detention cannot be sustained. The High Court did not examine whether the representation submitted by the detenu received the independent and expeditious consideration required by Article 22(5) of the Constitution. Since that issue bears directly upon the legality of the continued detention, the judgment of the High Court cannot be sustained."

9. *Learned counsel has also supplied the order passed in **Criminal Appeal No.2189 of 2026, titled as Sunil Kumar Gupta alias Sunil Chain versus Union of India & others**, decided 27.04.2026, wherein, it was held that it is a duty imposed on the government to consider the representation of the detenu at the earliest point of time and not though forwarded by Government. The competent authority to the State Relevant part of the judgment, is reads, as under:-*

"The facts referred to above would clearly show that the detenu's representation was not sent to the State Government immediately, and that it was rejected belatedly. A duty is imposed on the concerned Government to consider the representation of the detenu at the earliest point of time. In the present case, the detaining authority did not forward the representation to the State Government immediately, though it had actually been sent to the detaining authority by the prison authority at the earliest point of time. The State Government on its part has approved the detention order and only thereafter, considered the detenu's representation. The representation of the detenu made to the State Government has nothing do do with either the detaining authority or even the Advisory Board. Unfortunately, the aforesaid action of considering the representation was not

forthcoming at the earliest point of time. This would vitiate both the detention order and its subsequent approval. In such view of the matter, both the detention order and its subsequent approval shall stand quashed. Accordingly, the impugned order passed by the High Court is set aside. The appellant shall be released forthwith. The appeal stands allowed, accordingly, pending application(s) if any, shall stand disposed of."

10. *Keeping in view of the above, we are of the considered opinion that on account of aforesaid reasons, detention order, dated 08.06.2026 (Annexure P-1), and all consequential orders are not liable to be sustained and the same are quashed and set-aside. "*

8. Counsel for the petitioner has placed reliance upon another judgment of the Apex Court in passed in ***Criminal Appeal No. 2189/2026***, titled ***Sunil Kumar Gupta alias Sunil Chain Vs. Union of India and others***, decided on 27.04.2026, wherein also, on account of the non-decision as such, by the State, it is held that it is the duty of the concerned Government to consider the representation of the detenue at the earliest point of time and the inaction on the part of the Government would vitiate both the detention order and its subsequent approval. In such circumstances, the detention order and the subsequent approval dated 27.04.2026 had been quashed in the said case. The said aspect would squarely cover the case of the present petitioner.

9. Similarly, the issue of live link factor would have also to be taken into consideration considering that period of more

than 7 months had gone by, since the release of petitioner on bail in an earlier FIR. The Hon'ble Apex Court in ***Sama Aruna vs. State of Telangana, (2018) 12 SCC 150***, has held that a preventive detention order passed was without examining the existence of a live and proximate link between the alleged events and the order of detention would amount to punishment of a crime, passed without a trial, and that the exceptional powers of preventive detention cannot be permitted to devolve into a draconian and arbitrary exercise of the State authority. It has also been held that the two FIRs registered against the detenu were capable of being dealt with in the ordinary course of criminal law. The relevant portion reads as under:-

"17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to

punish him for something he has done but to prevent him from doing it. See G. Reddeiah v. Government of Andhra Pradesh and Anr.2 , and P.U. Iqbal v. Union of India.

18 to 21 x-----x-----x-----x-----x

22. *We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute.*

23. *In this case, we find the authority has come to a conclusion so unreasonable that no reasonable authority could ever reach. A detaining authority must be taken to know both, the purpose and the procedure of law. It is no answer to say that the authority was satisfied. In T.A. Abdul Rahman v. State of Kerela and Ors., this Court observed, where the authority takes into account stale incidents which have gone by to seed it would be safe to infer that the satisfaction of the authority is not a genuine one.*

24 & 25 x-----x-----x-----x-----x

26. *The influence of the stale incidents in the detention order is too pernicious to be ignored, and the order must therefore go; both on account of being vitiated due to malice in law and for taking into account matters which ought not to have been taken into account."*

10. Reliance can also be placed upon the judgments of the Apex Court in ***Mallada K. Sri Ram Vs. State of Telangana and***

Others, (2023) 13 SCC 537, Ameena Begum Vs. The State of Telangana (2023) 9 SCC 587 and Rekha Vs. State of Tamil Nadu (2011) 5 SCC 244.

11. Resultantly, the present petition is allowed and the detention order dated 18.07.2026 (Annexure P-1) is quashed. 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 28, 2026
(Shivank Thakur)

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