

HIGH COURT OF UTTARAKHAND AT NAINITAL

Habeas Corpus Petition No. 8 of 2026

Raees

.....Petitioner

Versus

State of Uttarakhand and others

.....Respondents

Present:-

Mr. Gaurav Singh, Advocate for the petitioner.

Mr. J.S. Virk, D.A.G. with Mr. Deepak Bhardwaj, Brief Holder for the State.

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the order passed under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Act, 1988 ("the PITNDPS Act"). By it, the respondent no.1/State has recorded a satisfaction that with a view to prevent the petitioner from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary to detain him.

2. Heard learned counsel for the parties and perused the record.

3. It is the case of the petitioner that the impugned order has been passed basically on the premise that four criminal cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act"), were pending against the petitioner. But, it is the case of the petitioner that in two cases though recovery was allegedly made from the petitioner, but in other two cases, there has been no recovery from the possession of the petitioner and those cases pertain to period between 2021 and 2024. It is the case of the petitioner that there is no proximate link between the alleged

activities and order of detention. The petitioner has already been granted bail in all the four cases. They were pending trial. The impugned order is illegal and is liable to be set aside. The satisfaction, as required under law, for detaining the petitioner has not been validly recorded. Hence, the petition for quashing the impugned order and setting the petitioner free.

4. On behalf of the respondent no.4, counter affidavit has been filed. It records that, in fact, the villagers of Ladpur Khurd gave an application to Police on 20.12.2025, against the petitioner with the allegations that the petitioner is habitual offender of committing offences under the NDPS Act and he is currently selling drugs in the village. Thereafter, an inquiry was conducted; the petitioner has a history of five cases and he was previously also sent to jail. The Board has also opined that there are sufficient grounds for keeping the petitioner in custody.

5. Learned counsel for the petitioner submits that the petitioner has been detained under preventive detention laws, which itself is a harsh provision with regard to curtailing the personal liberty of a person. He would submit that the satisfaction should be reflected from the order itself. He submits that the detention order is bad in the eye of law.

6. Before proceeding further, it should be noted that the petitioner has impugned, in fact, the satisfaction that was recorded by the State for detaining the petitioner and subsequently, the detention order has been passed, which is enclosed by the petitioner himself by way of a supplementary affidavit, Annexure 3, which is also dated 09.02.2026.

7. On behalf of the petitioner, it is submitted that the petitioner was on bail, in all the cases, based on which, the detention order has been passed in the case. But, this fact was not considered by the competent authority. It is argued that it vitiates the detention order. In support of his contention, learned counsel has placed reliance on the principles of law, as laid down by the Hon'ble Supreme Court in the case of Sushanta Kumar Banik Vs. State of Tripura and Others, 2022 SCC OnLine SC 1333, wherein in para 23, the Hon'ble Supreme Court observed as follows:-

“23. As noted above, in the case on hand, in both the cases relied upon by the detaining authority for the purpose of preventively detaining the appellant herein, **the appellant was already ordered to be released on bail by the concerned Special Court. Indisputably, we do not find any reference of this fact in the proposal forwarded by the Superintendent of Police, West Tripura District while requesting to process the order of detention.** The reason for laying much stress on this aspect of the matter is the fact that the appellant though **arrested in connection with the offence under the NDPS Act, 1985, the Special Court, Tripura thought fit to release the appellant on bail despite the rigours of Section 37 of the NDPS Act, 1985. Section 37 of the NDPS Act, 1985 reads thus:**

“Section 37. Offences to be cognizable and nonbailable.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations

under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

(emphasis supplied)

8. Learned counsel for the petitioner also raised the following points in his submission:-

- (i) There should be live and proximate link between activities and the detention order, which it is argued is lacking in the instant case.
- (ii) He submits that the SSP, Haridwar has recommended to the detention of the petitioner on 24.11.2025, which was forwarded by DIG Police (“the DIG”) of the Range on 09.12.2025 and thereafter, detention order was passed on 06.02.2026.
- (ii) From the date of recommendation from the SSP, Haridwar, it is about three months that detention order has been passed. This delay vitiates the detention order. He would refer to the principles of law, as laid down in the case of Sushanta Kumar Banik (*supra*), wherein in para 12, this aspect has been dealt with by the Hon’ble Supreme Court as follows:-

“**12.** We may recapitulate the necessary facts which have a bearing so far as the issue of delay is concerned. The proposal to take steps to preventively detain the appellant at the end of the Superintendent of Police addressed to the Superintendent of Police (C/S) West Tripura, Agartala is dated 28th of June 2021. The proposal in turn forwarded by the Assistant Inspector General of Police (Crime) on behalf of the Director General to the Secretary, Home Department is dated 14.07.2021. The order of detention is dated 12th of November, 2021. **There is no**

explanation worth the name why it took almost five months for the detaining authority to pass the order of preventive detention.”

9. It is also submitted on behalf of the petitioner that, in fact, in a routine and mechanical manner, the satisfaction for detaining the petitioner has been recorded by the order dated 09.02.2026, which is Annexure 1 to the petition, which has been digitally signed by the authority on 06.02.2026 at 12:23:44. But he submits that the detention order has been passed prior to the recording satisfaction on 06.02.2026 at 12:21:32, which is Annexure 3 to the supplementary affidavit filed by the petitioner. He also submits that if these documents were signed by the competent authority on 06.02.2026, why they were released on 09.02.2026. It is further delay and it further adds the arguments with regard to the live and proximate link of the activities and the order of detention. It is argued that it further vitiates the detention order.

10. On the other hand, learned State counsel submits that the detention order has been validly passed. He submits that initially, the SSP, Haridwar had recommended for detention of the petitioner under PITNDPS Act on 24.11.2025, which was forwarded by the DIG on 09.12.2025. This forwarding letter of DIG dated 09.12.2025 is Annexure2 to the supplementary affidavit filed by the petitioner. On page 1 of it, it is argued that the details of all five cases pending against the petitioner were given, which records that the petitioner was on bail in all these cases. He refers to the table as below:-

Sl.	Police Station	Case Crime No.	Section	Recovery	Stage of investigation	Stage of Trial	Status of accused
1.	Laksar	693/2021	8/21/60 NDPS Act	26 gram smack	Charge sheet submitted	Under trial	On bail
2.	Kaliyar	08/2023	8/21/29 NDPS	103.35 gram	Charge sheet submitted	Under trial	On bail

			Act	smack			
3.	Jwalapur	803/2023	8/21/29 NDPS Act	102 gram smack	Charge sheet submitted	Under trial	On bail
4.	Jwalapur	203/2024	8/21C/27A/29 NDPS Act	258 gram smack	Charge sheet submitted	Under trial	On bail
5.	Jwalapur	305/2024	2/3 Gangsters Act	-	Charge sheet submitted	Under trial	On bail

11. Therefore, it is argued that it cannot be said that the factum of the petitioner having been released on bail in all the above cases were ever concealed or not placed before the competent authority passing the detention order. He would also submit that in the case of Sushanta Kumar Banik (*supra*), there was delay of five months from first recommendation to detention order, whereas, he would submit that in the instant case, the detention order was passed on 06.02.2026 and immediately thereafter, on 18.02.2026 the detention order was executed. Hence, there is no delay.

12. With regard to the timings of signing grounds of detention and actual detention order, which has been argued by learned counsel for the petitioner, it is submitted that, in fact, the grounds of arrest were signed by the competent authority on 06.02.2026 at 12:23:48, whereas, the consequential order was passed on 06.02.2026 at 12:21:32. It is argued that it makes hardly any difference.

13. Article 21 of the Constitution of India guarantees the life and personal liberty of an individual. Article 22 of the Constitution of India protects against arrest and detention in certain cases. It reads as follows:-

“22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may

be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
- (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).”

14. A bare perusal of Article 22, as quoted hereinabove, makes it abundantly clear that the safeguards as provided against arrest and detention under Clauses (1) and (2) of the Constitution of India is not applicable in the cases of preventive detention, like the instant one.

15. Under Section 3 of the PITNDPS Act, a satisfaction has to be recorded that detention is necessary with a view to preventing the detainee from engaging in illicit traffic in narcotic drugs and psychotropic substances.

16. This Court may not sit in appeal to scrutinize the sufficiency of satisfaction. But then, it has to be seen as to whether the relevant material has been considered, but the process is justifiable so as to order such preventive detention.

17. In fact, in the case of Aameena Begum Vs. State of Telangana and others (2023) 9SCC 587, the Hon’ble Supreme Court has referred to the judgment in the case of Rekha Vs. State of Tamil Nadu through Secretary of Government and another, (2011) 5 SCC 244, wherein the Hon’ble Supreme Court has touched upon the

guiding factors which should weigh in the mind of the Court, while entertaining challenge to the preventive detention order. According to the Hon'ble Supreme Court, in the case of Rekha (*supra*) **“If an ordinary law of land (penal code and other penal statutes) can deal with the situation, recourse to a preventive detention law will be illegal”**

18. On behalf of the petitioner, it is argued that one of the essential fact before passing an order under Section 3 (1) of the PITNDPS Act was that the petitioner was on bail. But, it is argued that the impugned order, by which satisfaction for detaining the petitioner has been recorded as well as the detention order, does not reveal that this fact was considered by the competent authority that the petitioner was on bail in all the five cases.

19. Facts are not in dispute. The proposal forwarded by the DIG on 09.12.2025 records that in all five cases the petitioner was on bail. But, it is also admitted neither the order recording satisfaction to detain the petitioner nor the detention order reveal that this fact was considered that the petitioner was on bail. Two things are different. The proposal for detaining the petitioner as forwarded by the DIG of the Range reveals that the petitioner was on bail in all the five cases pending against him. But, the order by which the satisfaction to detain the petitioner was recorded does not reveal that the fact that the petitioner was on bail in all five cases has been considered by the competent authority.

20. In the case of Sushanta Kumar Banik (*supra*), though in para 23, the Hon'ble Supreme Court observed that the proposal should contain every details with regard to the detention of a person

including the factum of his being on bail or not in bail. But, in para 27, the Hon'ble Supreme Court has gone a step further. Not only revealing everything on the proposal, but its consideration as well is necessary. In para 27, the Hon'ble Supreme Court observed as follows:-

“**27.** From the above decisions, it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either **withheld** or **suppressed by the sponsoring authority** or **ignored and not considered by the detaining authority** before issuing the detention order.”
(emphasis supplied)

21. A bare reading of the observation of the Hon'ble Supreme Court makes it clear that the detention order gets vitiated if material facts are withheld or suppressed by the sponsoring authority or **ignored or not considered by the detaining authority.**

22. It means not only revelation of the facts by the sponsoring authority is essential, but equally important is consideration of those facts by the detaining authority. In case, those facts are ignored or not considered, in view of the law, laid down by the Hon'ble Supreme Court such detaining orders further gets vitiated.

23. In fact, the scope of grant of bail and its impact on such detaining order has been discussed by the Hon'ble Supreme Court in the case of Ameena (*supra*). In paras 59 and 60, the Hon'ble Supreme Court observed as follows:-

“**59.** We are of the opinion that the aforesaid excerpts from the detention order lay bare the Commissioner's attempt to transgress his jurisdiction and to pass an order of detention, which cannot be construed as an order validly made under the Act. The quoted observations are reflective of the intention to detain the detenu at any cost without resorting to due procedure. **It is neither**

the case of the respondents that the detenu had not complied with the terms of the notice issued under Section 41-ACrPC, nor has it been alleged that the conditions of bail had been violated by the detenu. It is pertinent to note that in the three criminal proceedings where the detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned detention order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.”

60. In *Vijay Narain Singh v. State of Bihar* [*Vijay Narain Singh v. State of Bihar*, (1984) 3 SCC 14 : 1984 SCC (Cri) 361] , Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed : (SCC pp. 35-36, para 32)

32. ... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. **It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When** a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.” (emphasis supplied)

24. In the instant case, admittedly, the petitioner was on bail. One of the cases pertains to recovery of smack in commercial quantity which is Case Crime No. 203 of 2024, Police Station Kotwali Jwalapur, which means despite rigors of Section 37 of the NDPS Act, the petitioner was granted bail. It has not been the case of the State that the petitioner has misused the bail. It has also not been the case of the petitioner that any application for cancellation of bail has been moved by the State in that case.

25. Since the detaining authority has not considered the factum of the petitioner having been released on bail in all the criminal cases, based on which the detention order has been passed, it *per se* vitiates the detention order.

26. It is argued that, in fact, a stale issue should not be revived by passing any detention order. Learned counsel for the petitioner submits that there should be proximate and live link between the activities conducted by the petitioner and its detention order. In fact, in the case of Aameena (*supra*), guidelines have been laid down by the Hon'ble Supreme Court in para 28, as to what should be considered while entertaining challenge to the detention order. This reads as follows:-

“28. In the circumstances of a given case, a constitutional court when called upon to test the legality of orders of preventive detention would be entitled to examine whether:

28.1. The order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

28.2. In reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

28.3. Power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

28.4. The detaining authority has acted independently or under the dictation of another body;

28.5. The detaining authority, by reason of self-created rules of policy or in any other manner not authorised by the governing statute, has disabled itself from applying its mind to the facts of each individual case.

28.6. The satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

28.7. The satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

28.8. The ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

28.9. The grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

28.10. The timelines, as provided under the law, have been strictly adhered to.”

27. In para 28.7 in the case of Aameena (*supra*), the Hon’ble Supreme Court is categorical that the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him.

28. In the case of Sushanta Kumar Banik (*supra*), in para 12 of the judgment, which has already been quoted hereinabove, there was a delay of about five months from the recommendation for detention as made by the SSP on 28.06.2021 and the order of detention which was finally passed on 12.11.2021. In the instant case, admittedly it is about two and a half months.

29. In the instant case, admittedly, the SSP had made recommendation on 24.11.2025 and the detention order was released on 09.02.2026. It is also two and a half months also.

30. Learned counsel for the petitioner has also invited the attention of the Court to para 20 of the judgment in the case of Sushanta Kumar Banik (*supra*), wherein the Hon'ble Supreme Court referred the judgment in the case of Shafiq Ahmad Vs. District Magistrate, Meerut and others, (1989) 4 SCC 556, in which case there was a delay of two and a half months in detaining the petitioner. In fact, there are two aspects of delay; (i) the passing of detention order after recommendation of the sponsoring authority and; (ii) actual detention of the detenu after passing of the detention order. In the case of Shafiq (*supra*), actual detention was done after two and a half months of the order passed and it was held in that case that the delay was unreasonable. In para 20, the Hon'ble Supreme Court observed as follows:-

“20. Sabyasachi Mukharji, J. (as the learned Chief Justice then was) in Shafiq Ahmed v. District Magistrate, Meerut, (1989) 4 SCC 556, having regard to the fact that there was a delay of two and a half months in detaining the petitioner (detenu) therein, pursuant to the order of detention has concluded that “there was undue delay, delay not commensurate with the facts situation in that case and the conduct of the respondent authorities betrayed that there was no real and genuine apprehension that the detenu was likely to act in any manner prejudicial to public order. The order, therefore is bad and must go”. However, the learned Judge observed that “whether the delay was unreasonable depends on the facts and circumstances of each case.”

31. On behalf of the State, it is argued that after villagers submitted a representation on 12.12.2025, an inquiry was conducted and thereafter, detention order was passed. A short counter affidavit filed by the State is on record. In fact, it does not speak as to what steps were taken by the competent authority on the recommendation

of the SSP, Haridwar dated 24.11.2025, which was forwarded by the DIG, Haridwar Range on 09.12.2025 for detaining the petitioner. What the short counter affidavit of the State reveals is that, in fact, the action was initiated post a communication by the villagers dated 20.12.2025. In the instant case, there is a delay of two and a half months. It breaks and it has not been explained, as such. It breaks the live and proximity link itself. Therefore, we are of the view that on this aspect as well, the detention order cannot be upheld.

32. As stated, preventive detention is harsh step preventing a person's life and liberty. The reasons for detaining should be recorded. There should be material to record satisfaction. Such order of preventive detention cannot be passed merely on routine and mechanical manner.

33. In the instant case, the ground of the initial satisfaction under Section 3 (1) of the PITNDPS Act for the detaining the petitioner has been signed by the competent authority on 06.02.2026 at 20:23:44 and what is interesting is, in fact, post this order only, any detention order could have been passed. But strangely, in the instant matter, detention order was passed, a few minutes ago on 06.02.2026 at 12:21:32 which is Annexure 3 to the supplementary affidavit filed by the petitioner. How is it possible? First ground has to be signed, only thereafter, detention order could have been signed. Learned State counsel could not explain this situation and in fact, it is not explainable.

34. The live and proximity link aspect again gains confidence. Basically, the purpose is that a person should be immediately prevented, particularly in the cases like an instant one, with a view to

prevent him from engaging in illicit traffic in narcotic drugs and psychotropic substances. If the grounds of arrest were recorded on 06.02.2026, why the order was issued on 09.02.2026. There is delay on this aspect also.

35. In the instant case, the petitioner has only challenged the order dated 09.02.2026 passed by the respondent no.1, by which the satisfaction was recorded that the detention of the petitioner is necessary so as to prevent him from engaging in any illicit traffic in narcotic drugs and psychotropic substances. It is Annexure 1 to the petition. The detention order is Annexure 3 to the supplementary affidavit filed by the petitioner. It has not been impugned.

36. Learned counsel for the petitioner submits that, in fact, the detention order was not available to the petitioner. Since this Court has already opined that the detention order is not in accordance with law and it deserves to be quashed. Therefore, even if, as such detention order dated 09.02.2026 is not challenged, the Court may quash it, while quashing the satisfaction recorded under Section 3(1) of the PITNDPS Act by the respondent no.1 on 09.02.2026. Accordingly, the petitioner deserves to be allowed.

37. The petition is allowed.

38. The satisfaction to detain the petitioner recorded by the respondent no.1 under Section 3(1) of the PITNDPS Act dated 09.02.2023 as well as the detention order dated 09.02.2026 passed by the respondent no.1 is hereby quashed and set aside.

39. The petitioner shall be released forthwith from custody, if not required in any other case.

(Siddhartha Sah, J.)

(Ravindra Maithani, J.)

26.05.2026

Jitendra