

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 16.12.2025

Pronounced on: 29.12.2025

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*Whether the operative part
or full judgment is
pronounced: **Full***

HCP No.23/2025

FAYAZ AHMAD LONE

...PETITIONER(S)/APPELLANT

Through: - Mr. Wajid Haseeb, Advocate.

Vs.

U T OF J&K & ORS.

...RESPONDENT(S)

Through: - Ms. Maha Majeed, Assisting Counsel.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The Divisional Commissioner, Kashmir, in exercise of powers conferred under Section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred as to "the Act of 1988"), has, vide order No.DIVCOM-"K"/05/2025 dated 21.01.2025, ordered preventive detention of **Fayaz Ahmad Lone** (the detenu), in order to prevent him from committing any of the acts within the meaning of the Act of 1988.

2) By the instant petition, veracity and legality of the impugned detention order has been challenged by the

petitioner contending that the allegations levelled in the grounds of detention have no nexus with the detainee and the same have been fabricated by the police in order to justify its illegal action of detaining the detainee. It has been contended that the impugned detention order has been passed without application of mind as the grounds of detention are vague, non-existent and stale on the basis of which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been complied with in the instant case, inasmuch as whole of the material has not been provided to the petitioner. It has been further urged that there has been non-application of mind on the part of detaining authority while passing the impugned detention order.

3) The respondents have resisted the petition by filing their reply affidavit, wherein they have contended that the impugned order of detention is based on a reasonable prediction of future behaviour, considering the detainee's past conduct. It has been contended that the detainee developed contacts with drug peddlers operative in Tehsil Zainapora District Shopian and started selling/dealing in drugs among the youth of the area which have adverse impact on the younger generation. It has also been

contended that the detainee was exposing the young and gullible minds including school going children to the heinous world of drugs and making them habitual drug addicts. It has been contended that the detainee is an active member of drug mafia, who is relentlessly involved in the drug trafficking in his area and outside State. It has been contended that the detainee was involved in case FIR No.09/2023 for offences under Section 8/22 of NDPS Act registered with Police Station Behigam and FIR No.62/2023 for offence under Section 8/21 of Police Station, Zainapora. It has been further contended that with a view to prevent the detainee from committing any offence under the provisions of the Act of 1988, his detention was ordered in terms of the impugned order. It is pleaded that whole of the material that formed basis of the grounds of detention has been furnished to the detainee and the same was read over and explained to him. It has been averred that the impugned detention order has been passed after adhering to all legal, statutory requirements and constitutional guarantees.

4) I have heard learned counsel for parties and perused record of the case.

5) Although a number of grounds have been urged by the petitioner in his petition for assailing the impugned order of

detention, yet, during the course of arguments, learned counsel appearing for the petitioner laid much emphasis on the following grounds

- (I) That the detenue was not furnished the whole of the material to enable him to make an effective representation against his detention.
- (II) That the allegations made in the grounds of detention against the petitioner are vague which are not supported by any material and that there has been non-application of mind on the part of the detaining authority while passing the impugned detention order.

6) So far as the first ground of challenge is concerned, a perusal of the material on record would show that the petitioner has received total seven leaves which includes copy of warrant (01 leaf), notice of detention (01 leaf), grounds of detention (04 leaves) and letter of detention to the Government (01 leaf), in token whereof, his signatures have been obtained on the document under the style 'Execution Report', which forms part of detention record. If we have a look at the grounds of detention, it bears reference to FIR No.09/2023 of Police Station Behigam and FIR No.62/2023 registered with Police Station Zainapora. It was incumbent upon the respondents to furnish not only the copies of the FIRs but also the statements of witnesses recorded during investigation of the said FIRs and other material on the basis of which petitioner's involvement

therein is shown, which has not been done. Even copy of the dossier has not been supplied to the petitioner.

7) Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention, has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making an effective representation before the Advisory Board. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

8) It needs no emphasis that the detenue cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detenue. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable in law. While holding so, I am fortified by the judgments rendered in **Sophia Ghulam Mohd. Bham V. State of Maharashtra and others (AIR 1999 SC 3051)** **Ram Krishan Bhardwaj v. State of Delhi,**

AIR 1953 SC 318, Shalini Soni v. Union of India, (1980) 4 SC 544, Nazeer Ahmad Sheikh vs. Additional Chief Secretary Home, 1999 SLJ 241, and, Thahira Haris Etc. Etc. V. Government of Karnataka & Ors. (AIR 2009 SC 2184).

9) So far as the next ground is concerned, in this context, if we have a look at the grounds of detention, it refers to involvement of the petitioner in FIR No.62/2023 for offence under Section 8/21 of NDPS Act registered with Police Station, Zainapora, in which 07 grams of Heroin are stated to have been recovered. Reference is also made to FIR No.09/2023 of P/S Behibagh, in which 10 grams of Heroin are stated to have been recovered from the possession of the petitioner. It is also recorded in the grounds of detention that the petitioner has been released on bail in the aforesaid FIRs. The grounds of detention further proceed to record that after the petitioner was bailed out by the Court in the aforesaid FIRs, but he continued to indulge in the said activities discreetly which poses a serious threat to the health and welfare of the people of the area. This assertion of the respondent detaining authority is stated to be based upon continuous field reports received by the sponsoring agency.

10) The detention record produced by the respondents reveals that the petitioner has been detained on the basis of the report of the Screening Committee. A copy of the said report is available in the detention record. A perusal of the said report reveals that the Screening Committee has, while recommending detention of the petitioner, relied upon the report of the District Special Branch. A copy of the report of the District Special Branch, which is dated 29.11.2024, is also available in the detention record. The report is in respect of as many as seven individuals including the petitioner. Regarding the petitioner, it is recorded that as per the information, he has turned down his illegal works and presently, he is busy with his livelihood and for his family. Thus, the report of District Special Branch of the police has given the petitioner a clean chit so far as his activities post his release on bail are concerned. The Screening Committee and the detaining authority without carefully analyzing the report of the District Special Branch as regards the present status of the petitioner have proceeded to order his preventive detention. This clearly reflects total non-application of mind and mechanical functioning of detaining authority. On this ground also, the impugned order of detention is liable to be quashed.

11) For the foregoing reasons, the petition is allowed and the impugned order of detention is quashed. The detenue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

12) The detention record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

SRINAGAR

29.12.2025

"Bhat Altaf-Szeg"

Whether the order is reportable:

Yes/No

