

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 136/2025

Reserved on: 26.02.2026
Pronounced on : 06.03.2026
Uploaded on : 06.03.2026
Whether the operative part or full
judgment is pronounced: Full

Mohd. Arif

....Petitioners

Through:- Mr. Ajay Gandotra, Advocate.

V/s

UT of J&K & Ors

.....Respondents

Through:- Mrs. Monika Kohli, Sr. AAG with
Ms. Chetna Manhas, Assisting Counsel.

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

(JUDGMENT)

01. The petitioner, through the medium of the present petition, has challenged Order No. PITNDPS 41 of 2025 dated 04.07.2025 (hereinafter to be referred to as **“impugned order of detention”**) issued by respondent No. 2-Divisional Commissioner, Jammu whereby while exercising powers under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter to be referred to as **“PITNDPS”**), the detaining authority has ordered preventive detention of the petitioner.

02. The petitioner has challenged the impugned order of detention on the grounds that the same has been passed

without application of mind. It has been contended that the impugned order of detention has been passed with an objective, which is alien to the object contemplated by Section 3 of the PITNDPS Act. It has been further contended that there is no proximate and live link between the alleged incidents forming basis of the grounds of detention with the order of detention as a result of which the same becomes unsustainable in law. It has also been contended the grounds of detention have not been explained to the petitioner in a language which he understands. It has further been contended that whole of the material, forming basis of the grounds of detention, has not been provided to the petitioner as a result of which he was unable to make an effective representation against the impugned order of detention.

03. The petition has been contested by the respondents by filing counter affidavit of respondent No. 2-the detaining authority. In the counter affidavit, it has been contended that the petitioner, after getting bail in the cases in which he was booked, again involved himself in illicit trafficking of narcotic drugs, which was posing threat to the public order as well as to the health and welfare of the people. Accordingly, the detaining authority, after examining the dossier submitted by SSP, Rajouri has drawn subjective satisfaction about the imperative need to pass the detention order against the petitioner. Consequently, the impugned order of detention was passed.

04. It has been submitted that while executing the warrant of detention, entire material along with grounds of detention etc (total 114 leaves) was furnished to the petitioner and the contents thereof were explained to him in Hindi and urdu language. It has been contended that the petitioner was informed about his right to make representation before the Government as well as before the detaining authority against the detention order. In order to lend support to the aforesaid contentions, the respondents have produced the detention record.

05. I have heard learned counsel for the parties and perused record of the case including the detention record.

06. Although learned counsel for the petitioner has raised numerous grounds for assailing the impugned order of detention, yet during the course of arguments, he has laid much emphasis on the ground that there has been non-application of mind on the part of the detaining authority while passing the impugned order of detention inasmuch as the said order has been passed for an objective, which is alien to the purpose mentioned in Section 3 of the PITNDPS Act.

07. In the context of the above ground, if we have a look at the grounds of detention, the detaining authority has, after narrating the factual aspects, forming basis of lodging of FIR Nos. 414/2023 and 327/2024 registered with Police Station, Rajouri, four General Diary entries and one confidential report of incharge DSB Rajouri dated 23.06.2025, proceeded to refer

to the dossier of the SSP, Rajouri, who according to the detaining authority, had recommended detention of the petitioner under PITNDPS Act to maintain public order, peace and tranquility as substantive law had failed to deter the petitioner from indulging in illicit trafficking of drugs. In the concluding para of the grounds of the detention, the detaining authority has drawn the satisfaction that with a view to prevent the petitioner from committing any offence under PITNDPS Act and to secure health and welfare of the public at large, it is necessary to detain the petitioner in terms of Section 3(1) of the PITNDPS Act.

08. From a perusal of the aforesaid contents of the grounds of detention, it appears that the detaining authority and the sponsoring agency intended to place the petitioner under preventive detention *inter alia* with a view to maintain public order, peace and tranquility. The other objective for detaining the petitioner may have been to prevent him from indulging in illicit traffic of the drugs.

09. A detaining authority while formulating the grounds of detention and while drawing subjective satisfaction has to be certain about the nature of activities in which the detainee is alleged to be indulging. The detaining authority has to make up its mind whether the activities of the detainee are threat to the public order or whether such activities relate to illicit trafficking of drugs.

10. The mention of words “**maintenance of public order**” in the grounds of detention would suggest that the detaining authority is not certain whether the activities of the petitioner fall within the definition of illicit trafficking as contained in Section 3 of PITNDPS Act or whether the same fall within the purview of breach of public order. A person cannot be detained for the acts prejudicial to the maintenance of public order in exercise of powers under Section 3 of the PITNDPS Act. It is only if the acts of a detainee fall within the definition of Clause (c) of Section 2 of PITNDPS Act that he can be taken into preventive custody. The tentativeness on the part of the detaining authority in drawing the conclusion regarding the nature of activities of the petitioner vitiates the subjective satisfaction drawn by it.

11. Not only this, the detaining authority while drawing conclusion from the grounds of detention has recorded that the detention order is necessary with a view to prevent the petitioner from committing any offence under PITNDPS. It is to be noted that provisions of PITNDPS Act do not define any offence and the said legislation has been designed only to prevent individuals from engaging in illicit traffic in narcotic drugs and psychotropic substances through preventive detention.

12. The fact that detaining authority has recorded that the petitioner is being detained with a view to prevent him from committing any offence under PITNDPS Act when there is

no offence defined under the said Act, shows total non-application on the part of the detaining authority. The impugned detention order, therefore, becomes unsustainable in law. On this ground alone, the impugned order of detention is liable to be set aside.

13. For what has been discussed hereinbefore, the petition is allowed and the impugned order of detention is quashed. The respondents are directed to set the petitioner at liberty if not involved in any other case.

17. The record be returned to learned counsel for the respondents.

JAMMU
06.03.2026
Naresh/Secy.



(SANJAY DHAR)
JUDGE

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **No**