S. No. 15
Regular list

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

HCP 68/2026 CM(3906/2026)

MUSKAAN GULZAR TH.HER MOTHER …Petitioner(s)/Appellant(s)

Through: Mr. Abu Owais Pandit, Advocate.

Vs.

UNION TERRITORY OF J AND K AND OTHERS …Respondent(s)

Through: None.

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI JUDGE

ORDER
11.11.2026

1. Heard Mr. Abu Owais Pandit, learned counsel for the petitioner.

2. It appears that there is an abandonment of the cause from the end of the respondents before this Court, otherwise, the appearance of counsel from the respondents' end ought to have been there particularly bearing in mind the fact that this Court is seized of a matter which is a habeas corpus writ petition and is not a routine matter to suffer adjournment because of non-appearance of counsel for the respondents

3. A habeas corpus writ petition as a matter of right warrants immediate indulgence particularly when the counter affidavit from the respondents' end, upon being invited, has come to be filed.

4. The petitioner, who is a 23-years old woman, finds herself detained in preventive detention custody by virtue of Order **No. DIVCOM-"K"/45/2026** dated **21.05.2026,** passed by the respondent No. 2-Divisional Commissioner, Kashmir, purportedly acting in exercise of power and authority under the Prevention of **Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act,** 1988 (hereinafter referred to as the "**PIT NDPS**" Act).

5. The petitioner has been ordered to be detained and kept confined in the District Jail, Rajouri.

6. The detention warrant came to be executed with the arrest of the petitioner taking place on 23.05.2026, followed by confirmation of the preventive detention in terms of **Government Order No. Home/PB-V/738 of 2026** dated **18th June 2026,** thereby prescribing petitioner's detention period to last from **23.05.2026 to 22.05.2027,** in District Jail Rajouri**.**

7. The petitioner, acting through her mother, came forward with the present writ petition filed on 29.06.2026 and has served five months of detention custody and is now in sixth month of her detention custody out of total twelve months of detention custody.

8. The case for preventive detention of the petitioner was processed by the Senior Superintendent of Police, (SSP), Srinagar who, by virtue of his letter **No. LGL/Det-PIT/2026/10987 dated 09.05.2026** submitted a dossier with respect to the petitioner, thereby soliciting her preventive detention under PIT NDPS Act, 1988.

9. Acting upon the said dossier, the respondent No. 2-Divisional Commissioner, Kashmir purportedly formulated the grounds of detention stating therein the petitioner's criminal antecedents by reference to **FIR No**. **08/2026**, registered with the Police Station Khanyar under sections 8/21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) to serve as basis for her preventive detention.

10. The grounds of detention do not bear a recital to the fact as to whether the petitioner has been enlarged on bail in connection with her implication in **FIR No. 08/2026**, otherwise, there would have been an express reference & recital to the bail order and also to the Court passing the bail order in favour of the petitioner.

11. The registration of **FIR No. 08/2026** by the Police Station Khanyar is by reference to a purported incident dated 4th February 2026, when a Naka party is said to

have stopped a vehicle-Scorpio bearing registration **No. JK01AW8898**, but same attempted to evade the stoppage signal only to be intercepted in a chase, thereby leading to the alleged recovery of contraband.

12. In the dossier also, though there is a reference to the fact that bail has been granted to the petitioner, but there is no reference as to by which court has granted bail and on what terms and conditions.

13. Thus, both the dossier submitted by the Senior Superintendent of Police (SSP), Srinagar, and the grounds of detention framed by the respondent No. 2-Divisional Commissioner, Kashmir, Srinagar, are sightless to the fact about grant of bail to the petitioner in terms of a court order and the name of the court granting such bail.

14. This Court is at a loss to figure out as to what was constraining the Senior Superintendent of Police, Srinagar (SSP Srinagar), from fetching the requisite details related to the grant of bail in favour of the petitioner with respect to her arrest in **FIR No. 08/2026,** so as to be stated and served in the dossier for consumption of the respondent No. 2-Divisional Commissioner Kashmir, Srinagar.

15. This Court is also at a loss to figure out what kept respondent No. 2-the Divisional Commissioner, Kashmir, from seeking requisite bare minimum explanation from the Senior Superintendent of Police (SSP), Srinagar about the fact of grant of bail in terms of a court order and the court granting the petitioner bail, so as to earn full factual report with respect to the petitioner's involvement in **FIR No. 08/2026.**

16. But nevertheless, said FIR as being an isolated event came to be pressed into service for subjecting the petitioner to preventive detention custody, even by ignoring the fact that the petitioner happens to be a woman.

17. If the involvement of the petitioner in a criminal case, referred to in **FIR No. 08/2026** was of a serious nature then the petitioner getting bail from a Court of competent jurisdiction would not have occurred as a matter of routine or right and even if granted would not have gone unchallenged.

18. Surely, the petitioner earned bail on the merits of her case from the Court below, whereas the preventive detention jurisdiction exercised by the respondent No. 2-Divisional Commissioner, Kashmir at the asking of the

Senior Superintendent of Police (SSP), Srinagar, seems to be an attempt to overreach the criminal court of law having granted bail in favour of the petitioner.

19. The grant of bail in favour of the petitioner came to take place by virtue of an order dated 03.04.2026, passed by the learned Special Judge, NDPS Cases, Srinagar, a copy whereof has been annexed by the petitioner.

20. If the petitioner's mother-**Mst. Shazia** could fetch a copy of bail order dated 03.04.2026 for the purposes of annexing it with the writ petition for the sake of notice of and reference to this court, then surely said fact must put the respondent No. 3-Senior Superintendent of Police, Srinagar, and also respondent No. 2-Divisional Commissioner, Kashmir to embarrassment that despite being in a position of authority without any handicap in getting the requisite court order from the **Court of Special Judge, NDPS Cases, Srinagar**, still it did not bother said two officials to do the labour and make said Court order as part and parcel of the exercise related to preventive detention of the petitioner.

21. Thus, this Court finds the preventive detention jurisdiction exercised by both, from the end of respondent No. 3-Senior Superintendent of Police, (SSP) Srinagar and

the respondent No. 2-Divisional Commissioner, Kashmir, seriously compromised and vitiated by illegality and mala fides, warranting quashment of the detention order.

22. Accordingly, detention Order **No. DIVCOM-"K"/45/2026** dated **21st May 2026** read with confirmation **Government Order No. Home/PB-V/738 of 2026** dated **18th June 2026,** are hereby quashed. The petitioner is directed to be released to her personal liberty forthwith from the concerned jail.

23. Disposed of.

(RAHUL BHARTI)
JUDGE

SRINAGAR
11.11.2026
Hilal Ahmad