

2024:PHHC:126063



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

301

CRWP-12919-2025 (O&M)
Date of decision : 30.01.2026

Gurnam Singh @ Gama ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM:- HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kushager Goyal, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Article 226 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for quashing the order dated 14.07.2025 (*Annexure P-8*), passed by respondent No. 1-Secretary to Govt. of Haryana, Home Department, whereby the petitioner was ordered to be detained, and also for quashing of order dated 15.09.2025 (*Annexure P-9*), whereby the detention of the petitioner was confirmed for six months by the said respondent.
2. Brief facts relevant for the purpose of disposal of this petition are that the petitioner was involved in five cases, registered against him. All of these cases had been registered against him under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS

Act') involving non-commercial quantities of the contrabands. He had been granted concession of regular bail in all of those cases. Respondent No. 4-Superintendent of Police, Dabwali wrote a letter on 21.03.2025 to respondent No. 3-Director General of Police, Haryana State Narcotics Control Bureau requesting him to detain the petitioner on the ground that he was still involved in selling of narcotic substances. The said letter was forwarded to respondent No. 2-Director General of Police, Haryana for obtaining order under the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 (*for short 'PITNDPS Act'*). Thereafter, respondent No. 1, while acting upon the proposal sent by respondent No. 2, had ordered for detention of order, vide impugned order dated 14.07.2025. The petitioner was accordingly detained on 05.08.2025. Then, vide impugned order dated 15.09.2025, respondent No. 2 had confirmed detention order of the petitioner and the petitioner was ordered to be kept in detention for a period of six months. Aggrieved from the same, the petitioner has filed the present petition.

3. It is argued by learned counsel for the petitioner that the impugned detention order dated 14.07.2025 and the confirmation order dated 15.09.2025 are arbitrary, illegal and violative of the fundamental right to personal liberty guaranteed under Article 21 of the Constitution of India as the petitioner was already on regular bail in all the five cases registered against him under the NDPS Act, each involving non-commercial quantity. There existed no compelling necessity warranting recourse to the extraordinary power of preventive detention against the petitioner. While passing the detaining orders, the respondent-authority had mechanically relied upon the pendency of criminal cases without recording any cogent satisfaction as to why the conditions of bail imposed by the competent

Courts were insufficient to prevent the alleged activities. It is further argued that the failure to consider the efficacy of bail conditions vitiates the subjective satisfaction and renders the detention order unsustainable. The alleged involvement of the petitioner in cases relating to non-commercial quantities under the NDPS Act, by itself, does not constitute a threat to public order so as to justify preventive detention under the PITNDPS Act, particularly when no fresh material or proximate incident has been brought on record to demonstrate any imminent danger or continuing prejudicial activity. The impugned action, therefore, amounts to using preventive detention as a substitute for ordinary criminal law, which is impermissible in law and results in unreasonable and disproportionate curtailment of the personal liberty of the petitioner. The petitioner is in detention since 05.08.2025. His continued detention is a clear abuse of statutory power, which suffers from non-application of mind and violates the constitutional mandate of fairness, reasonableness and due process under Article 21, warranting interference by this Hon'ble Court. Hence, it is urged that the petition deserves to be allowed and the impugned orders are liable to be quashed, thereby setting the petitioner at liberty forthwith.

4. Reply as well as status report has been filed by the respondent-State. In terms thereof, learned State counsel has argued that there is no illegality or infirmity in the impugned orders as the same have been passed strictly in accordance with the provisions of the PITNDPS Act after due application of mind and on the basis of credible material placed before the competent authority showing the continuous involvement of the petitioner in illicit trafficking of narcotic substances. Mere grant of bail in the pending NDPS cases does not wipe out the antecedents of the petitioner nor does it curtail the power of the State to invoke preventive detention to prevent

future prejudicial activities. The repeated involvement of the petitioner in five NDPS cases, even though involving non-commercial quantity, clearly establishes a habitual pattern of narcotic trafficking posing a serious threat to public health and social order. The safeguards prescribed under the PITNDPS Act were duly complied with and the detention was subsequently confirmed after statutory review. With these broad submissions, it is stressed that the petition is liable to be dismissed.

5. This Court has heard the rival submissions.

6. The present writ petition has been filed challenging the preventive detention order dated 14.07.2025 and the confirmation order dated 15.09.2025 passed under the PITNDPS Act, whereby the petitioner, who was already on bail in five NDPS cases involving non-commercial quantities, has been detained for a period of six months. The core issue which arises for consideration is whether such detention, in the facts and circumstances of the case, satisfies the constitutional and statutory requirements governing preventive detention or not? This question finds answer in several judicial pronouncements. Hon'ble Supreme Court in ***Golam Hussain v. Commissioner of Police (1974) 4 SCC 530*** held that the past conduct alone cannot justify preventive detention of a person, unless there exists a live and proximate link between the alleged past activity and the apprehension of future prejudicial conduct. It was categorically observed that detention cannot be sustained merely because the detenu had indulged in illegal activity in the distant past, as such an approach would amount to misuse of preventive powers and virtual nullification of the judicial process. Reliance can also be placed upon ***Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14***, wherein Hon'ble Supreme had observed as under :

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.”

7. Reference can also be made to *Sama Aruna v. State of Telangana, (2018) 12 SCC 150*, wherein the Hon’ble Supreme Court reiterated that although past conduct may be taken into consideration but only such past activities which are proximate in time and have a direct bearing on the likelihood of immediate future illegal conduct can be relied upon. It was cautioned that stale incidents or remote antecedents cannot form a valid foundation for preventive detention. In *Sushanta Kumar Banik v. State of Tripura, AIR 2022 SC 4715*, Hon’ble Supreme Court held that when a detenu has been granted bail in NDPS cases and such bail orders have not been challenged by the State, the same constitutes a relevant and material circumstance which ought to have been considered by the detaining authority. It was observed that grant of bail under the stringent regime of the NDPS Act indicates judicial satisfaction regarding the prima facie case and likelihood of reoffending and non-consideration of such bail orders vitiates the subjective satisfaction forming the foundation of preventive detention.

8. Similar view has been taken by Hon'ble Supreme Court in ***Joyi Kitty Joseph v. Union of India & Others, 2025 AIR SC 1702***, wherein it was held that preventive detention is an extraordinary measure and cannot be resorted to mechanically or as a substitute for ordinary criminal law. It was emphasized that where a detenu is already on bail in the criminal cases, then before forming the basis of detention, the detaining authority is under a constitutional obligation to consider the bail orders and the conditions imposed therein and to record specific reasons as to why such conditions are insufficient to prevent further prejudicial activities. It was further held that failure to consider this vital aspect amounts to non-application of mind and renders the "subjective satisfaction" of the detaining authority legally unsustainable.

9. Reliance can also be placed upon ***Hemlata Kantilal Shah v. State of Maharashtra (1981) 4 SCC 647***, wherein the Hon'ble Supreme Court held that though mere delay in passing a detention order is not *ipso facto* fatal but such delay must be satisfactorily explained by the detaining authority, failing which the order becomes vulnerable. The said principle was reiterated and applied in ***Pradeep Nilkanth Paturkar v. S. Ramamurthi (1993 Supp (2) SCC 61)***, wherein the Hon'ble Supreme Court quashed the detention order on account of unexplained delay and observed that absence of a reasonable explanation snaps the live and proximate link between the alleged prejudicial activities and the necessity of detention. In ***Savita Shankar Lokhande v. M.N. Singh, 2001 (2) MhLJ 410***, the Division Bench of Bombay High Court emphasized that unexplained inaction and administrative laxity cast serious doubt on the genuineness of the subjective

satisfaction recorded by the detaining authority and indicate that the detention has assumed a punitive, rather than preventive, character. It was categorically held that where the authorities fail to act with promptitude, the “live link” between the alleged activities and the detention order stands severed, rendering such detention unsustainable in law.

10. Further, reliance can be placed upon a recent pronouncement of Hon’ble Supreme Court in ***Roshini Devi v. The State of Telangana and others, 2026 INSC 41*** wherein while relying upon the ratio of law laid down in ***Ameena Begum v. State of Telangana and Others, (2023) 9 SCC 587***, it was observed as under:

“10. Section 3 (1) of the Act of 1986 enables the Government, if it is satisfied that a drug offender ought to be prevented from acting in any manner prejudicial to the maintenance of public order to make an order of preventive detention. The expression “acting in any manner prejudicial to the maintenance of public order” has been defined by Section 2(a) of the Act 1986. As per the Explanation to the said provision, if any of the activities of the person concerned causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or a section thereof or in case of a grave widespread danger to life or public health is likely to be caused, such power can be exercised. The order of detention does not indicate in what manner the maintenance of public order was either adversely affected or was likely to be adversely affected so as to detain the detenu. Mere reproduction of the expressions mentioned in Section 2(a) of the Act of 1986 in the order of detention would not be sufficient. The detention order ought to indicate the recording of subjective satisfaction by the detaining authority in that regard. It is well settled that there is a fine distinction

between “law and order” and “public order”. Mere registration of three offences by itself would not have any bearing on the maintenance of public order unless there is material to show that the narcotic drug dealt with by the detenu was in fact dangerous to public health under the Act of 1986. This material is found to be missing in the order of detention.”

11. On applying the aforesaid settled principles to the facts of the present case, this Court finds that the impugned detention order is not founded upon any credible, proximate or compelling material demonstrating imminent likelihood of the petitioner’s involvement in illicit trafficking. A careful reading of the grounds of detention, which are annexed as Annexure A with the impugned order, shows that the entire case of the respondents is based only on the petitioner’s past involvement in criminal cases and on general and vague apprehensions about his future conduct, without pointing out any specific, recent or concrete incident which could justify the extreme step of preventive detention. Merely describing the petitioner as a “habitual offender” or stating that he is “likely to resume trafficking” is not sufficient in law unless supported by credible and proximate material showing an immediate threat. It is also significant that the petitioner is on bail in all the cases. However, the detaining authority has nowhere examined or recorded any finding as to how the conditions imposed by the criminal Courts were inadequate or ineffective to prevent the alleged activities. As held by the Hon’ble Supreme Court, consideration of bail orders and bail conditions is a mandatory requirement and failure to do so reflects non-application of mind and vitiates the subjective satisfaction of the detaining authority.

12. Further, the last case against the petitioner was registered on 20.01.2025, whereas the detention order was passed only on 05.08.2025,

after a gap of more than six months, without any satisfactory explanation. Such unexplained delay clearly breaks the live and proximate link between the alleged past activities and the need for immediate preventive action. When these factors are seen together, it becomes evident that the impugned detention is based more on past history and assumptions rather than on any real and urgent necessity. The detention, therefore, assumes a punitive character instead of a preventive one and results in an unreasonable and unjustified curtailment of the petitioner’s fundamental right to personal liberty guaranteed under Article 21 of the Constitution. In view of the discussion as made above, this Court is of the considered opinion that the impugned orders are not sustainable. Accordingly, the present petition is allowed. The impugned orders are set aside. The petitioner is ordered to be released from detention forthwith.

30.01.2026

Waseem Ansari

(MANISHA BATRA)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>