

(2026) 03 P&H CK 1229
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4208 Of 2026

Amritpal Singh

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 27-03-2026

Acts Referred:

Constitution Of India, 1950 — Article 21, 22, 101, 105, 105(1)
National Security Act, 1980 — Section 3(2), 3(4), 3(5), 8, 15

Citation : (2026) 03 P&H CK 1229

Hon'ble Judges : Sheel Nagu, CJ; Sanjiv Berry, J

Bench : Division Bench

Advocate : R.S. Bains, Imaan S. Khara, Anmol Singh, Dheeraj Jain, Prajwal Chauhan, Anupam Gupta, Vikram Anand, Gautam Pathania, Sukhpal Singh, Salil Sabhlok

Final Decision : Dismissed

Judgement

Sheel Nagu, CJ

1. The petitioner, who is a preventive detainee, has sought quashment of order dated 02.02.2026 (Annexure P-7), by which the Department of Home Affairs, Government of Punjab has rejected the application preferred by the petitioner for temporary release under Section 15 of the National Security Act, 1980 (for brevity, 'NSA').

2. The aforesaid prayer is made to enable the petitioner, who is a sitting Member of Parliament from Constituency of Khadoor Sahib, Amritsar, to attend the Budget Session of Parliament convened in two phases, i.e. from 28.01.2026 to 13.02.2026 and 09.03.2026 to 02.04.2026.

3. The grounds raised in support of the aforesaid challenge are as follows:

(1) The District Magistrate, Amritsar is bereft of any power under Section 3(2) of NSA to issue preventive detention order dated 17.04.2025.

(2) Since the petitioner is subjected to repeated preventive detention orders since last three years, it is an abuse of the power under the NSA.

(3) No relevant material in support of the preventive detention order dated 17.04.2025 was supplied to the petitioner.

(4) Since the petitioner was already in detention at the time of alleged incident of murder (FIR No.159/2024), involvement of the petitioner in the said murder is untenable.

(5) The statements of witnesses, Sukh Raj Karan Singh, Harpreet Kaur, Vikramjit Singh alias Bhagat Singh Dubaiya, Sukhpreet Singh and Palwinder Singh, alone cannot form foundation for order of preventive detention dated 17.04.2025.

(6) The intelligence alerts relied upon by the Detaining Authority in the earlier detention orders dated 12.10.2024 and 23.03.2025 were never supplied to the petitioner.

(7) Mandatory procedure under Sections 3(4), 3(5) and 8 of NSA while passing preventive detention order dated 17.04.2025 was not complied with. More so, the report of the Central Government has not been shown to the petitioner and the grounds of detention were not supplied within prescribed period.

(8) The extraordinary remedy of preventive detention cannot be invoked when the ordinary criminal law is sufficient to deal with the situation.

(9) Preventive detention is an anathema to fundamental right of liberty under Article 21 of the constitution.

(10) Order of preventive detention is politically motivated to silence the voice of the electorate of Khadoor Sahib Constituency, which is represented by petitioner.

(11) Vide impugned order, the petitioner has been deprived of raising voice in the Session of Parliament where he is entitled to raise issues pertaining to the electorate of his Constituency which includes, aftermath of August 2025 floods where thousands of villagers were devastated, rampant rise of drug abuse in the State of Punjab and certain other developmental issues.

(12) The petitioner has also cited Article 101 of the Constitution which mandates that absence of any Member of Parliament from the Session of Parliament for 60 days or more entails the seat to be declared vacant. Thus, a prayer is made for release of the petitioner temporarily.

(13) The impugned order dated 02.02.2026 (Annexure P-7) is non-speaking order which relies upon the comments of the District Magistrate, Amritsar and Senior Superintendent of Police, Amritsar (Rural) and mechanically relies upon the same for rejecting prayer for temporary release besides assigning the reason of threat to security of State and maintenance of public order.

In support of the aforesaid grounds, the decisions of 'A.K. Roy vs. Union of India' 1982(1) SCC 271, 'Rekha vs. State of Tamil Nadu' 2011(5) SCC 244 and 'Ameena

Begum vs. State of Telangana & others' 2023 (9) SCC 587 have been relied upon.

4. Apart from the last three grounds, all the earlier grounds as stated above relate to challenge to the order of preventive detention dated 17.04.2025 or the earlier orders of preventive detention, which are not the subject matter of this petition. Therefore, this Court refrains from considering the above said grounds except last three grounds, which for clarity and ready reference are reproduced again as follows:-

(1) Vide impugned order, the petitioner has been deprived of raising voice in the Session of Parliament where he is entitled to raise issues pertaining to the electorate of his Constituency which includes, aftermath of August 2025 floods where thousands of villagers were devastated, rampant rise of drug abuse in the State of Punjab and certain other developmental issues.

(2) The petitioner has also cited Article 101 of the Constitution which mandates that absence of any Member of Parliament from the Session of Parliament for 60 days or more entails the seat to be declared vacant. Thus, a prayer is made for release of the petitioner temporarily.

(3) The impugned order dated 02.02.2026 (Annexure P-7) is non-speaking order which relies upon the comments of the District Magistrate, Amritsar and Senior Superintendent of Police, Amritsar (Rural) and mechanically relies upon the same for rejecting prayer for temporary release besides assigning the reason of threat to security of State and maintenance of public order.

5. Per contra, learned senior counsel Mr.Anupam Gupta, appearing for the State of Punjab is also heard, who primarily submits thus:

(i) The expression "may" has been used several times in Section 15 of NSA reflecting the wide discretionary power vested with the competent authority to decide the question of temporary release.

(ii) Section 15 of NSA does not begin with or use the non-obstante clause which reveals its non-mandatory nature.

(iii) No higher right of temporary release is available to an elected Member of Parliament in detention, than that available to an ordinary citizen.

(iv) Freedom of speech granted under Article 105(1) of the Constitution to every Member of Parliament does not mean that a preventively detained Member of Parliament can claim any higher fundamental right of liberty than an ordinary citizen.

(v) Under Article 21 of the Constitution, the said liberty can be deprived according to procedure established by law, which in the present case is NSA.

(vi) What the Constitution does not provide to a Member of Parliament under Article 105 of the Constitution, cannot be made available by way of a Statute under the provision of 'temporary release of persons detained' under Section 15

of the NSA.

6. Article 105 of Constitution has been subjected to judicial scrutiny on various occasions right from the case of 'K. Anandan Nambiar & another vs. Chief Secretary, Govt. of Madras & others' (1966) 2 SCR 406; 'Keshav Singh vs. Speaker, Legislative Assembly & others' AIR 1965 (SC) 745, 'Smt. Indira Nehru Gandhi vs. Shri Raj Narain' 1975 (Supp) SCC 1, 'Tej Kiran Jain & others vs. N. Sanjiva Reddy & others' AIR 1971 Delhi 86 to the recent case of 'Shekhar Tiwari vs. State of U.P. & others' 2009 SCC OnLine All 485. It has been categorically held in all these authoritative decisions that no higher or special right is available to a preventively detained sitting Member of Parliament, than an ordinary citizen. Therefore, a sitting Member of Parliament as well as a common man would be subjected to the same privileges and obligations as contained in Section 15 of NSA.

7. Our Constitution is though federal in nature, but certain provisions therein indicate that it gives more power to the Union of India rather than the States, which is amply evident from Part XI of the Constitution, which deals with Relations Between the Union and the States, and Part XII relating to Finance, Property, Contracts and Suits, where comparatively dominant rights have been bestowed upon the Union of India rather than the States.

7.1 Even the subject matters under which the Parliament and the State Assemblies can legislate under Seventh Schedule of the Constitution vests authority with the Parliament to legislate on all important issues under the Union List, leaving comparatively less important issues for the States to legislate under the State List. The matters concerning preventive detention are delineated at item No.9 of List 1–Union List of Seventh Schedule, which is indicative of importance given to the subject matters of preventive detention.

8. This Court is conscious of the fact that Article 22 of the Constitution enables the competent authority to preventively detain a person under certain terms and conditions which has led to the promulgation of the National Security Act, 1980.

8.1 For ready reference and convenience, Section 15 of NSA is reproduced below:

"15. Temporary release of persons detained – (1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof."

8.2 A bare perusal of provision u/s 15 of NSA reveals that the appropriate Government (in the present case, Government of Punjab) may temporarily release a preventively detained person with or without conditions and may also cancel such a release, if needed. Consequences of breach of any of the conditions, subject to which a temporary release order is made, have also been provided u/s 15 of NSA.

8.3 From the angle of the grounds raised by learned counsel for the rival parties and from the pleadings of this case, this Court has to decide the legality and validity of the order under challenge which is Annexure P-7 dated 22.02.2026 rejecting the prayer for temporary release of the petitioner.

8.4 The reasons assigned in the impugned order are as follows:

(1) Gravity and enormity of grounds of detention.

(2) The conduct of the petitioner as reflected indicates towards his continuous uninterrupted preventive detention (for maximum period of 12 months with effect from 23.04.2025).

(3) Non-release of the petitioner shall be in interest of the security of the State and maintenance of public order.

(4) There is no legally enforceable right under Article 105 of the Constitution for a sitting Member of Parliament to participate in the proceedings of Parliament session, during the period of preventive detention order.

(5) The District Magistrate, Amritsar and the Senior Superintendent of Police, Amritsar (Rural) have in their representations objected to the temporary release in view of the serious threat/prejudice to the security of State and maintenance of public order.

9. We have perused the impugned order rejecting the prayer for temporary release as well as the reply by way of affidavit of Mr. Alok Shekhar, IAS Additional Chief Secretary, Department of Home Affairs, Punjab, and we are of the considered view that there is no constitutional or legal infirmity in the said impugned order for below mentioned reasons:

(1) The threat perception to the public order and security of the State continues to exist which is evident from the detailed reports of the District Magistrate Amritsar and the Senior Superintendent of Police, Amritsar (Rural) dated

22.01.2026 and 21.01.2026 respectively. These reports have been considered by the competent authority passing the impugned order herein.

(2) Whenever the right to liberty of a person, who is suffering a preventive detention order, is pitched against public order & maintenance of security of State, the first and foremost thing which needs to be considered is as to whether grant of liberty would in any manner prejudice the concept of public order & security of the State. Even if there is an iota of doubt in the mind of the competent authority that there is a possibility of public order or maintenance of security of the State being breached, then the liberty of an individual is rendered subservient and inconsequential. Sovereignty, integrity and security of the State and nation are always paramount. An individual's right to speech or liberty is always subservient to the larger concept of public order and security of the State/Nation.

(3) As regard the ground mentioned in para 8.4(4) (supra) is concerned, the same is of no avail to the petitioner since rejection of prayer for temporary release cannot be challenged on the ground that because of being preventively detained the petitioner is completing 60 days period of absence which would entail declaring the seat of his Constituency vacant. Reason being that the petitioner is always at liberty to make a prayer for exemption from the proceedings of the Parliament in session, which we have no manner of doubt will be considered and decided on its own merits in accordance with law.

10. We have no manner of doubt that national interests are paramount when compared with personal interests.

10.1 The contention of learned senior counsel for the State of Punjab opposing the prayer of temporary release of petitioner may or may not be true but the very fact that competent authority [State of Punjab and the concerned District Magistrate Amritsar and the Senior Superintendent of Police, Amritsar (Rural)] have expressed their concern about the possible breach of public order and security of the State in case of temporary release of the petitioner, we have no option but to uphold the impugned order.

10.2 The veracity of the material forming the foundation of the apprehension nursed by competent authority of breach of public order cannot be gone into. Such apprehension in the considered opinion of this Court is based on subjective satisfaction of material available on record.

11. Since the judgments relied upon by the petitioner were essentially concerning the legality and validity of the order of preventive detention, we refrain from dealing with the same.

12. In view of the above discussion, this Court is of the considered view that no illegality or impropriety can be found in the impugned order dated 02.02.2026 (Annexure P-7), which accordingly, stands upheld and the present petition stands dismissed without costs.