

(2025) 10 J&K CK 1141
In the Jammu And Kashmir High Court
Case No : HCP No.78 Of 2025

Gagan Kohli

APPELLANT

Vs

Union Territory of Jammu and Kashmir

RESPONDENT

Date of Decision : 09-10-2025

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3, 3(1), 247

Citation : (2025) 10 J&K CK 1141

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Monika Kohli

Final Decision : Dismissed

Judgement

M A Chowdhary, J

1. Divisional Commissioner, Jammu (hereinafter called 'Detaining Authority') in exercise of powers under Sub Section (1) of Section 3 of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988 (PIT NDPS Act) r/w SRO 247 of 1998 dated 27.07.1998, passed the detention Order No. PITNDPS 14 of 2025 dated 20.03.2025 (for short 'impugned order'), in terms whereof the petitioner namely Gagan Kohli S/O Harbans Lal R/O Rajbagh, Tehsil Marheen District Kathua (for short 'detenue'), has been detained, with a view to prevent him from committing any of the acts within the meaning of illicit traffic and his activities are highly prejudicial to the safety/security of the public at large.

2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 22(5) of the Constitution of India read with provisions of PIT NDPS Act, asserting therein that only the copy of detention order along with copy of dossier has been provided to the detenue, whereas no copy of FIR/DDRs and other relevant documents, relied upon by the detaining authority were provided depriving the detenue to make

effective representation against his detention; that no time period was stipulated within which he can approach the detaining authority or the Government of Union Territory of Jammu and Kashmir against the order of detention; that the cases FIRs registered against the detenu were required to be dealt with under ordinary criminal law and there was no need to detain the detenu under preventive detention; that the detaining authority has only relied upon the police dossier and without application of mind and without recording its personal satisfaction has repeated the grounds of detention and passed the impugned detention order mechanically; that the detenu has not been informed about the outcome of the representation filed by him as of now; that the detaining authority has not mentioned a word in the detention order with regard to the satisfaction drawn by it as to how it has come to the conclusion of passing the detention order.

3. Furthermore, it is stated that the petitioner has not committed any offence nor he is involved in the commission of any offence under the NDPS Act which may pose a serious threat to the health and welfare of the people, but the detaining authority without the application of mind and without considering the material on record, passed the impugned detention order, which is illegal, unjustified, unwarranted under law and, as such, the same is liable to be quashed. It is also submitted that the order of detention and the connected documents annexed with the petition clearly show violation of right of the detenu guaranteed in terms of Article 22(5) of the Constitution of India and the provisions of PIT NDPS Act.

4. Respondents, in their counter affidavit, have stated that the detenu is a habitual drug peddler involved in possession and transportation of Narcotic Drugs and Psychotropic Substances; that the detenu was ordered to be detained under the provisions of Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 and that, had he been let free, there would have been every likelihood of his re-indulging in criminal activities. It is also being stated that the detenu has filed representation to the Divisional Commissioner, Jammu for revocation of detention order and the same was considered and rejected by the respondent No.2; that on consideration of dossier submitted by the Senior Superintendent of Police, Kathua, the respondent no.2 carefully examined the dossier and the relevant records attached with it, as a result, it was found imperative to detain the detenu under the relevant provisions of the PIT NDPS Act; that the detenu after getting bail was again involved in the illicit trafficking of narcotic drugs and was posing grave threat to the public order as well as to the health and welfare of the people; that the ordinary law has failed to deter him as is evident from the conduct of the detenu.

5. Additionally, the respondents pleaded that the detenu was supplied all the relevant documents along with detention order, notice of detention, grounds of detention, dossier of detention, copies of FIR, Statements of Witnesses and other

relevant documents all legible copies (Total 90 leaves) and the executing officer explained the detinue in the language i.e. Hindi /Dogri, which detinue understands and also informed him about his right to make representation before the Government as well as detaining authority against the detention order; that all the requirements as contemplated under the Act, have been complied with and no error of law or procedure, which would invalidate the detention, is committed by the Detaining Authority; that the detention is well founded and is in conformity with the principles enshrined under Article 22(5) of the Constitution of India read with the provisions of the PIT NDPS Act. Lastly, it is prayed that the writ petition be dismissed and the impugned detention order be upheld.

6. Learned counsel for the detinue, while being heard, making reference to the grounds of detention, would argue that on a cursory look on the same it is manifest that same are vague, besides replica of the dossier. It is also submitted that the Detaining Authority, on the basis of dossier submitted by concerned Senior Superintendent of Police, without application of mind and without evaluating the allegations made against the detinue in the said dossier, proceeded to pass impugned detention order, whereby the detinue has been detained and directed to be lodged at District Jail Rajouri. It is also argued that no time period is stipulated or mentioned in the detention order within which he can approach the detaining authority or the Government of Union Territory of Jammu and Kashmir against the order of detention the Detaining Authority depriving him to make effective representation against the order of detention and has not been supplied the copies of the documents/FIRs and material relied upon by the Detaining Authority, as such, the detention order is liable to be quashed.

7. Learned counsel for the respondents, ex adverso, submits that the record reveals that there is no vagueness in the grounds of detention; that the procedural safeguards prescribed under Act and the rights guaranteed to the detinue under the Constitution have been strictly followed in the instant case. The detinue has been furnished all the material, as was required, and was also made aware in Dogri/Hindi, of his right to make representation to the detaining authority as well as government, against his detention. It is also argued that the detinue, on being released on bail in 02 cases/FIR Nos. 42/2023 and 107/2024 earlier, however, after his release, detinue re-indulged in illicit trafficking of drugs, which compelled the detaining authority to order his preventive detention.

8. Heard learned counsel for both the sides at length, perused the detention record and considered the matter.

9. The right of personal liberty is most precious right guaranteed under the Constitution. It has been held to be transcendental, inalienable and available to a person. A person is not to be deprived of his/her personal liberty except in accordance with procedures established under law and the procedure as laid down in *Maneka Gandhi v. Union of India* (1978 AIR SC 597), is to be just and fair. The personal liberty may be curtailed, where a person faces a criminal

charge or has been convicted of an offence and sentenced to imprisonment. Where a person is facing trial on a criminal charge and is temporarily deprived of his/her personal liberty because of the criminal charge framed against him/her, has an opportunity to defend himself/herself and to be acquitted of the charges in case the prosecution fails to bring home his/her guilt. Where such a person is convicted of the offence, he/she still has the satisfaction of having been given adequate opportunity to prefer an appeal against his conviction. In a preventive detention such a recourse is not available.

10. Nevertheless, framers of the Constitution have, by incorporating Article 22 (5) in the Constitution of India, left room for detention of a person without a formal charge and trial and without such person having been held guilty of an offence and sentenced to imprisonment by a competent court. The object is to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case, it would be dangerous for the people at large, to wait and watch as, by the time ordinary law is set into motion, the person having dangerous designs, would execute his/her plans, exposing the general public to risk and cause colossal damage to life and property. It is, therefore, necessary to take preventive measures and prevent the person bent upon perpetrating mischief from translating his/her ideas into action. Article 22(5) Constitution of India therefore leaves scope for enactment of preventive detention law.

11. The Hon'ble Apex Court in the judgment rendered in the case of "Hardhan Saha v. State of W.B" [(1975) 3 SCC 198], has succinctly pointed out difference between preventive and punitive detention in the following words:

"The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The, basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent."

12. The conceptual framework of preventive detention has been reiterated in "Khudiram Das v. State of W.B", [(1975) 2 SCR 832], as under:

"The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if

left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof."

13. In "Naresh Kumar Goyal v. Union of India", [(2005) 8 SCC 276], the Court observed:

"It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so."

14. The detention record, as produced, reveals that the detainee was involved in following cases registered at two police stations vide:-

(i) FIR No. 42/2023; U/S 8/15 NDPS Act of P/S Rajbagh.

(ii) FIR No. 107/2024; U/S 8/15 NDPS Act of P/S Hiranagar.

Besides above FIRs, following five DDRs were also recorded against the detainee at Police Station Hiranagar:

i) DDR No.28 dated 31.01.2025;

ii) DDR No.19 dated 10.02.2025;

iii) DDR No.24 dated 17.02.2025;

iv) DDR No.16 dated 18.02.2025; and

v) DDR No.17 dated 20.02.2025.

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority while passing detention order. Detention record would further show that detainee was arrested in pursuance of these 02 FIRs but was granted bail by the court in both the cases.

15. Perusal of detention record particularly copies of the DDRs, would further reveal that detainee, on being enlarged on bail again indulged in anti social activities by selling insidious silent death to the youths, which depicts that the detainee is a habitual recidivist.

16. The detainee, at the time of execution of detention, was provided copy of the detention order (03 leaf) and grounds of detention including other documents (87 leaves), total 90 leaves. The detainee, as record would reveal, was also

informed, as regards making of representation against the detention order to both the Government as well as detaining authority, if he so desires.

17. The grounds of detention are definite, proximate and free from any ambiguity. The detainee was informed with sufficient clarity what actually weighed with the detaining authority while passing detention order. The detaining authority has narrated facts and figures that made it to exercise its powers under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, and record subjective satisfaction that detainee was required to be placed under preventive detention in order to prevent him from committing any of the acts within the meaning of illicit traffic. The detaining authority has informed detainee that he was involved in a number of cases, of illicit trafficking of narcotic substances, which poses serious and grave threat to the society particularly/especially young generation. So viewed, the detainee is not to be heard saying that any of his Constitutional and Statutory rights have been violated while detention order in question was served on him at the time of its execution.

18. The instant case relates to illicit trafficking of narcotic drugs and psychotropic substances. The drug problem is a serious threat to public health, economy and growth of humanity. Our global community is facing serious consequences of drug abuse and it undermines the socio-economic and political stability and sustainable development. Besides, it also distorts the health and fabric of the society and it is considered to be the originator for petty offences as well as heinous crimes like smuggling of arms & ammunition and money laundering. The involvement of various terrorist groups and syndicates in drug trafficking leads to threat to the national security and sovereignty of States by the way of Narco-terrorism. The drug trafficking and abuse has continued its significant toll on valuable human lives and productive years of many persons around the globe. With the growth and development of world economy, drug traffickers are also seamlessly trafficking various type of drugs from one corner to other ensuring the availability of the contrabands for vulnerable segment of the society who fall into the trap of drug peddlers and traffickers. Due to India's close geographical proximity with major opium growing areas of the region, India is facing serious menace of drug trafficking and as a spill-over effect, drug abuse especially among the youth is a matter of concern for us.

19. In view of the foregoing discussion, it is clearly disclosed that it is not the number of acts that are to be determined for detention of an individual but it is impact of the act which is material and determinative. In the instant case the act of detainee relates to drug trafficking, which has posed serious threat, apart from health and welfare of the people, to youth, most particularly unemployed youth, to indulge in such acts, ramifications thereof would be irreversible and unimaginable. Petitioner has not been able to convincingly point out violation of any statutory or constitutional provisions.

20. Having regard to the facts and circumstances of the case and discussion

made hereinabove, the petition is found to be devoid of any merit and substance and is liable to be rejected. The petition is, thus, dismissed and the impugned order relating to preventive detention of the petitioner is upheld, accordingly.

21. Detention record, as produced, be returned to the respondents through learned Sr. AAG.