

(2025) 11 SHI CK 1879
In the High Court Of Himachal Pradesh
Case No : Criminal Writ Petition No 15 Of 2025

Uved Khan

APPELLANT

Vs

State Of HP & Others

RESPONDENT

Date of Decision : 11-11-2025

Acts Referred:

Constitution Of India, 1950 — Article 21, 22(3), 22(3)(B), 22(5)
Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 —
Section 3(1)
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 21, 22, 29

Citation : (2025) 11 SHI CK 1879

Hon'ble Judges : G.S. Sandhawalia, CJ; Jiya Lal Bhardwaj, J

Bench : Division Bench

Advocate : Sunny Rawat, Priyanka Chauhan

Final Decision : Allowed

Judgement

G.S. Sandhawalia , CJ

1. Challenge in the present petition is to the order dated 21.06.2025, passed by the Additional Chief Secretary (Home), Government of Himachal Pradesh, (Annexure P-1), whereby the petitioner was detained for a period three months and was taken into custody on 28.06.2025, primarily on account of the fact that there were five cases registered against the petitioner under the Narcotic Drugs and Psychotropic Substances Act, 1985 and in one of the cases, i.e., at Sr. No. 2 bearing Case No. 193 of 2016, dated 15.12.2016, lodged at Police Station Laldu, Mohali, Punjab, conviction had been recorded.

2. The said power was exercised by the State under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act), (as amended). The reasoning as such was given that the preventive custody of the petitioner would have a significant impact in reducing the rate of recidivism, drug abuse and drug-related crimes in the regions and his custody would also rehabilitate him, preventing him from continuing his drug-

related activities and severing his ties with his criminal network. The details of the said cases are as under:-

"1. Case No. 67/2015 dated 10.08.2015, Police Station Ani, District Kullu, Himachal Pradesh under Section 20 NDPS Act, about 415 grams of Charas was recovered from his possession.

2. In case number 193/2016 dated 15.12.2016, Police Station Laldu, Mohali, Punjab, under section 21,29 NDPS Act, about 20 grams of Heroin packet was recovered from his possession.

3. In case No. 228/2017 dated 16.08.2017 under Section 22 of NDPS Act, Police Station Sadar Solan, Himachal Pradesh, about 5.56 gm Heroin/Chitta was recovered from his possession.

4. No. Case No. 80/2023 dated 31.03.2023 under Section 21 NDPS Act at Police Station Past Shimla. Himachal Pradesh, about 9.69 grams of Heroin/Chitta was recovered from his possession.

5. In case No. 28/2024 dated 20.04.2024 under Police Station Kandaghat, Himachal Pradesh under Para 21, 29 NDPS Act, about 12.26 grams of Heroin/Chitta was recovered from his possession."

3. During the pendency of the proceedings, we were informed that the detention of the petitioner which was otherwise to expire on 28.09.2025, was extended on the basis of the order dated 11.08.2025 passed by the Himachal Pradesh State Advisory Board, and resultantly, his detention has now been extended after 28.09.2025 by passing a fresh order by the State in pursuance to the advice received. The said order dated 23.09.2025, is also subject matter of challenge by filing an amended petition.

4. The primary contention, which had also been raised at the initial point of time by the learned Counsel for the petitioner was that there was no opportunity as such given for filing a representation when the first detention order itself was passed. The said aspect also missed the notice of the State Advisory Board, while recommending his continued detention.

5. The State, on the other hand, in its reply sought to justify the detention orders on the ground that there was a Source Report (Annexure R-3/2) and that the petitioner has been convicted in one of the cases, as noticed above.

6. We have also gone through the Source Report (Annexure R-3/2), whereby it has been mentioned that the petitioner's father has a tailor shop in the name of "R.K. Tailor" at Old Court Road Kandaghat and the petitioner has a vehicle No. HP-01S- 1599 K-10, white colour and his mother has also a vehicle No. HP-01S-1917 Etios, white colour

7. Apparently, the State was able to convince the Advisory Board as such that the petitioner was indulging in drug peddling in a large extent and he was also having no source of legal income and also owned two vehicles and therefore,

inference as such was drawn that he was generating funds from the said trade of drugs as such.

8. Learned Counsel for the petitioner has placed some additional documents on record showing that both the vehicles were financed from Mahindra Finance, and one of the vehicles i.e. vehicle No. HP-01S-1917 Etios was in the name of his mother and the second vehicle, i.e. vehicle No. HP-01S-1599 K-10, was in his name. It has also been brought to our notice that vehicle No. HP-01S-1917 Etios has been sold thereafter.

2. It is not disputed that small intermediate quantity of 'charas' was recovered and conviction as such by the Special Judge, Mohali revealed that it was for 20 grams of heroin and the conviction was for the undergone period of three months and nine days alongwith another co-convict.

10. The specific case is that an opportunity to file a representation was not given and therefore, there was violation of the provisions of Article 22(5) of the Constitution of India and also the law laid down by a five Judges Bench of the Apex Court in Kamleshkumar Ishwardas Patel versus Union of India and others, (1995) 4 SCC 51.

11. The learned Counsel for the petitioner has accordingly placed reliance upon another judgment of the Apex Court in Rekha Vs. State of Tamil Nadu TR Sec. To Govt. & another, 2011 (4) SCR 740, to submit that the Apex Court has time and again held that liberty granted under Article 21 of the Constitution of India should not be violated and such detention orders are only on the ground of mere suspicion as such and merely on the background of the large number of cases would not be justified. It is also submitted that on account of the detention, it would be prejudicial as such to the petitioner that the prosecution was still under process and the petitioner would not be in a position to interact with his lawyer. The relevant portion of the judgment reads as under:-

"29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal" 30 to 34. xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

35. It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a 'jurisdiction of suspicion', (Vide State of Maharashtra Vs. Bhaurao Punjabrao Gawande, (supra) - para 63).

The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital.”

12. In similar circumstances, in Criminal Writ Petition No. 20 of 2025, titled as Sachin Kumar Vs. State of Himachal Pradesh & another, decided on 25.09.2025, we have also allowed the petition, whereby the detention period was again extended by the Advisory Board, on mention that one of the recoveries was of commercial quantity, whereas the recovery was of intermediate quantity.

13. As notice herein also, learned Counsel for the petitioner is able to demonstrate that both the vehicles were financed from Mahindra Finance and therefore, impression given as such was that the petitioner was involved in illegal activities and was generating a large amount of income, seems to be based on a biased information given by the State. We are not in a position to agree with the advice given by the Advisory Board keeping in view the peculiar facts and circumstances of the case.

14. Resultantly, we are of the considered opinion that the present petition deserves to be allowed. Accordingly, we quash the detention orders dated 11.08.2025 and 23.09.2025 passed by the State and the Advisory Board, respectively on the ground that there is violation of fundamental rights of the petitioner.

15. The petitioner be set free, if not required in any other case.

16. Pending application(s), if any, also stands disposed of.