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2026:JKLHC-JMU:1094

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

HCP No. 135/2025

Reserved on: 16.04.2026
Date of pronouncement: 23.04.2026
Date of uploading:23.04.2026
Whether the operative part or full judgment is pronounced **FULL**

Mohd. Kabir, Age 31 years, ...Petitioner(s)/Appellant(s)
S/o Late Ghulam Mohd,
R/o Draj, Rather Mandi,
Tehsil Kotranka, District Rajouri-185233,
through his elder brother
Imtyaz Ahmed, age 33 years
S/o Late Ghulam Mohd,
R/o Draj, Rather Mandi,
Tehsil Kotranka, District Rajouri-185233

Through: Mr. Rahul Raina, Advocate.

vs

01. The Union Territory of Jammu and Kashmir through its Additional Chief Secretary/Financial Commissioner (Home), Civil Secretariat, Jammu-180001. ..... Respondent(s)

02.The Divisional Commissioner, Jammu, Rail Head Complex, Jammu-182202.

03. The Senior Superintendent of Police, Rajouri-185131.

04. The Superintendent, Central Jail, Kotbhalwal, Jammu-181122.

Through: Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. Challenge in this petition has been thrown to detention order No. PITNDPS 36 of 2025 dated 16.06.2025, passed by respondent No. 2-Divisional Commissioner, Jammu, whereby petitioner came to be detained under Section 3 of the prevention of illicit traffic in the

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Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as PITNDPS Act "for short") and lodged in Central Jail, Kot Bhalwal, Jammu.

02. As background facts from the impugned order and grounds of detention would emerge, Senior Superintendent of Police, Rajouri submitted a dossier and connected documents alleging *inter alia* that District Screening Committee, Rajouri had examined case of the petitioner on the basis of various parameters and found his continuous illegal activities of drug peddling. The dossier elaborates following criminal cases against the petitioner:

S. No.	FIR No. & Offences	Police Station	Status of the case
01.	130/2020 U/S 304/34/IPC, 8/27 NDPS Act	Kandi	Under Trial
02.	13/2025 U/S 8/21/22/29 NDPS Act	Kandi	Under Trial
03.	Preventive Detention U/S 129/BNSS DDR No. 17 dated 18.04.2024 of P/S Budhal DDR No. 25 dated 12.11.2024 of P/S Kandi DDR No.20 dated 14.11.2024 of P/S Kandi DDR No. 04 dated 01.05.2025 of P/S Kandi DDR No. 29 dated 15.05.2025 of P/S Kandi DDR No. 14 dated 16.05.2025 of P/S Budhal		

03. SSP, Rajouri has recommended preventive detention of the petitioner, on the basis of aforesaid report of the District Screening Committee that petitioner was engaged in repeated trafficking of Narcotics Drugs and Psychotropic Substances, which poses a serious threat to the health and welfare of the people.

04. In the grounds of detention, stated to have been furnished to the petitioner, it was also mentioned that since despite undergoing criminal proceedings and serving penal consequences in different FIRs, there had been no observable improvement in the conduct and behaviour of the petitioner, therefore in view of his persistent involvement in the consumption, illegal possession and distribution of

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Narcotic substances, proceedings under Section 129 BNSS were also initiated against him by SHO Police Station, Budhal before Executive Magistrate, Koteranka on 17.05.2025, whereby he was remanded to judicial custody for a period not exceeding 20 days with effect from 17.05.2025 to 05.06.2025 in District Jail, Rajouri.

05. On these recommendations, impugned order came to be propounded and petitioner came to be detained.

06. Petitioner is aggrieved of his detention *inter alia* on the following grounds:

(a). That the order to detention has been passed on 16.06.2025 and the Principal Secretary (Home), J&K Government confirmed the same on 09.07.2025 and the representation dated 26.06.2025 preferred by the petitioner came to be decided by the Detaining Authority i.e. Divisional Commissioner, Jammu on 14.07.2025 when he had become Functus Officio meaning thereby that he had no jurisdiction/power to decide the representation of the petitioner after the detention order had been confirmed by J&K Government on 09.07.2025 and it is only the respondent No.1 who could have taken a decision on the representation of the petitioner particularly when the detention order had been confirmed on 09.07.2025 and in view of the settled legal position, the impugned detention order has rendered illegal and is liable to be quashed.

(b). That the detention of the petitioner is also vitiated as petitioner's representation dated 26.06.2025 duly served upon respondent No.1 through speed post remained undecided and it was incumbent upon the respondent No. 1 to take decision on the said representation and to communicate its final outcome to the petitioner but the representation of the petitioner was not considered at all by the respondent No.1 nor its outcome was shared and conveyed to the petitioner or any member of his family. The inaction on the part of the respondent No. 1 has rendered the petitioner's detention illegal and violative of Article 22(5) of the Constitution of India and thus the detention of the petitioner is liable to be quashed.

(c). That the material viz Detention Order No. PITNDPS 36 of 2025 dated 16-06-2025, Grounds of Detention and Communication No. 601/RA/Detention/370/CC-7463221 dated 16-06-2025 provided to the petitioner is in English language while the petitioner is a Matriculate and does not understand English language and thus it was an

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obligation on respondents to provide translated version of the said material enabling him to make effective representation.

(d). That as already pointed out the petitioner is already facing prosecution in aforementioned two FIRs and the trial is going on but the impugned detention has stalled the criminal court to proceed further in the matter and the respondent No.2 adopted a novel method to curtail the freedom of the petitioner by branding him as a "Drug Peddler" and "Notorious Criminal" when no court has convicted him in the aforementioned FIRs. The respondent No.2 acted hurriedly contrary to the judicial principles and there were no compelling circumstances to book the petitioner under Section 3 of aforementioned Act of 1988. The impugned detention is cryptic, stigmatic and exhibits non-application of mind.

(e). That the detention of the petitioner is not only illegal/arbitrary but also actuated with malafide considerations as the respondent No.3 illegally/malafidely/intentionally/deliberately suppressed the material fact that the name of petitioner is nowhere reflecting in FIR No. 130/2020 dated 28-09-2020 and also on 01-02-2025, the petitioner was taken from his home to the Police Station Kandi by the Kandi Police and on the next day i.e. 02-02-2025 a concocted story was made and a false/frivolous FIR No. 0013 of 2025 dated 02-02-2025 was registered against him which does not establish that the petitioner is a habitual/drug peddler and there was no occasion for the preventive detention when the petitioner was already facing the trial in the aforementioned FIRs.

07. It is contention of the petitioner that he has been wrongly projected as a notorious drug peddler, involved in drug trafficking/possession of narcotic substances, leading to spread of drug addiction among general public especially youth of the area, whereas he had already been enlarged on bail and undergoing trial in both the FIRs alleged against him. He believes in plural values. He is a strong believer in secular ethos and mutual co-existence. He is working as a driver and is the only bread earner of his family.

08. Petitioner has invoked writ jurisdiction of this Court through his brother for the quashment of impugned order and his consequent release from the detention.

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09. *Per contra*, respondents at the foremost are affront with the contention that none of the constitutional, legal or statutory right of the petitioner is found to have been infringed and disputed issues raised by the petitioner cannot be adjudicated upon through the medium of present petition. It is contended that representation submitted by the petitioner to the detaining authority for the revocation of detention order, came to be dismissed on the strong recommendation of the sponsoring authority-SSP, Rajouri.

10. It is contention of the respondents that detaining authority on examination of the dossier came to conclude that since petitioner after getting bail from the concerned Courts was found involved in the illicit trafficking of narcotic drugs posing threat to the public order and welfare of the people and ordinary law failed to deter him, it was imperative to detain him under the relevant provisions of PITNDPS Act. The executing officer, at the time of execution of the impugned detention order provided 132 leaves of the relevant documents along with detention order and grounds of detention to the petitioner and explained him in the language i.e, Hindi and Urdu which he understands and accordingly, he was informed about his right to make representation to the Government (Home Department) as well as before the detaining authority against his detention. Representation preferred by the petitioner was decided by respondents No. 1 and 2 and decision was conveyed to him through Superintendent, Central Jail, Kot Bhalwal, Jammu. Impugned detention order came to be confirmed by the Home Department vide order No. Home/PB-V/1387 of 2025 dated 09.07.2025, after opinion of the Advisory Board dated 02.07.2025.

11. Respondents have prayed for dismissal of the petition.

12. Having heard learned counsels for the parties, I have gone through the file and examined the detention record of both the detaining authority and the Department of Home.

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13. A perusal of the record reveals that before the impugned detention order came to be clamped on the petitioner on 16.06.2025, he was subjected to proceedings under Section 129 BNSS, those came to be initiated against him in the Court of Executive Magistrate 1st Class, Koteranka just a month ago on 17.05.2025, in which he was enlarged on bail on 31.05.2025.

14. Neither the recommending officer-SSP, Rajouri nor the detaining authority-respondent No. 2 has recorded any reason as to why the security proceedings were found insufficient to prevent the petitioner from engaging in activities prejudicial to the public order.

15. The preventive measures envisaged under Section 129 BNSS is a regulatory process within criminal justice framework, designed to prevent recurring criminal conduct of an individual.

16. It empowers the Executive Magistrate to require security for good behaviour from repeat offenders such as robbers, thieves or those involved in kidnapping, extortion, forgery or protecting thieves or breaching public peace to execute a bond for up to 03 years, to ensure the community safety. The target individuals also include those who habitually commit or abet offences related to Drugs and Cosmetics Act, Foreigners Act, Customs Act and laws relating to hoarding, profiteering or corruption. It also covers persons deemed so "desperate and dangerous" that there being at large without security, is hazardous to the community.

17. The provision is aimed to protect public order by requiring the individuals to show cause, as to why they should not execute a bond for good behaviour. Notably, if immediate measures pending enquiry are necessary magistrate is also vested with the power, requiring an individual to execute an interim bond in terms of sub-Section 3 of Section 135. The detention/imprisonment for breach typically follows the non-compliance of final bond executed under Section 136 BNSS

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which is subject to strict judicial scrutiny and it generally occurs only after a final order is passed following a complete inquiry.

18. Preventive detention under PSA, on the other hand, is a distinct executive measure, independent of ordinary criminal or aforestated security proceedings and there is no doubt that both can co-exist. The fact that an individual is facing proceedings for good behaviour under Section 129 BNSS does not legally bar the administration from invoking PSA. But there is a caveat.

19. When a person is already in custody or facing legal proceedings under Section 129 BNSS, detaining authority is obliged to specifically demonstrate the "compelling reasons" and an independent application of mind and record as to why security proceedings under Section 129 BNSS were insufficient to prevent him from engaging in activities prejudicial to public order. Therefore, though preventive detention under PSA can be legally invoked, even while proceedings under Section 129 BNSS are ongoing, but it must meet the strict legal standards to avoid being declared unlawful.

20. The recommendation of SSP, Rajouri, in the present case, is predominantly premised on 02 FIRs of 2020 and February 2025 and 06 DDRs up to 16.05.2025. It is contention of the detaining authority that since despite undergoing criminal proceedings and serving penal consequences in different FIRs, there had been no observable improvement in the conduct of the petitioner, therefore, in view of his persistent involvement in consumption, illegal possession and distribution of drugs, proceedings under Section 129 BNSS also came to be initiated against him by SHO Police Station, Budhal in the Court of Executive Magistrate, Koteranka on 17.05.2025, i.e., just a month before impugned detention order came to be slapped on him. In the said proceedings, he was remanded to judicial custody up to 05.06.2025 but he came to be enlarged on bail on 31.05.2025. The impugned order of detention has been passed against the petitioner on

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16.06.2025 i.e., within a period of 16 days from the date, he was enlarged on bail by the Executive Magistrate.

21. Nobody can take an exception to the settled position of law that security of the state and maintenance of public peace and tranquility is exclusive domain of the administration. Subjective satisfaction of detaining authority to detain a person when he refuses to desist from his past anti-social or anti-national activities is not open to objective assessment of the Court. Writ Court has no power to substitute its satisfaction with one of the detaining authority and decide whether it was reasonable or proper or whether in the circumstances of a case a particular person should be detained or not.

22. **However, state cannot be allowed to whittle down liberty of its citizens in a mechanical and arbitrary fashion. Conduct of the detaining authority exercising such a vast jurisdiction, ought to be reasonable and in tune with the concept of fairness. It is the rule of law which should prompt the detaining authorities to act in a manner which is fair and reasonable having due regard to the concept of fundamental right of life and liberty, enshrined in Article 21 of the Constitution of India. Personal liberty of a citizen cannot be curtailed on mere dogmatic assertions of the executive.**

23. What is intriguing to note is that after a passing reference to magisterial proceedings under Section 129 BNSS, against the petitioner, grounds of detention are ominously silent about further details of the proceedings. There is nothing to suggest further that whether petitioner was served upon a show cause notice by the Executive Magistrate, as to why he should not execute a bond for good behaviour or whether he was required to execute an interim bond as an immediate measure within the meaning of Section 135(3) BNSS and if he executed any such bond, whether he flouted the bond. Neither the detaining authority has recorded any compelling reason

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which prompted him to invoke PSA against the petitioner within a period of 16 days from the date, he came to be enlarged on bail by the Executive Magistrate nor recorded an independent application of mind, as to why security proceedings were insufficient to prevent him from engaging in activities prejudicial to the public order.

24. **Preventive detention cannot be allowed to be invoked by the executive in a perfunctory fashion to clip the wings of an individual unless there is emergency-based justification which ordinary laws cannot address. It can't be *ipse dixit* of the administration.**

25. Another staggering aspect of the matter which needs attention of this Court is that detaining authority is oblivious of the fact that PIT NDPS Act is not a penal legislation. It is an act to provide for the detention in certain cases for the purposes of preventing illicit traffic in Narcotic Drugs and Psychotropic Substances and combating the abuse of such drugs and substances and for matters connecting therewith. The object of the statute is preventive in nature and not punitive. This reflects total non-application of mind on the part of the detaining authority.

26. For the foregoing reasons, the impugned detention order on vague and specious grounds does not sustain. Hence, present petition is allowed and impugned order is quashed. Petitioner is directed to be immediately released from detention.

27. ***Disposed of.***

(Rajesh Sekhri)
Judge

Jammu
23.04.2026
Sushant

Whether the judgment is speaking? **Yes**
Whether the judgment is reportable? **Yes**