

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 11/2025
CM No. 2666/2025

Nek Ram @ Satnam Ag 53 yearsPetitioner(s)
S/o Chaino Ram
R/o Village Narot Jaimal Singh,
Tehsil and District Pathankot,

Through: Mr. Jagpaul Singh, Advocate

Vs.

UT of J&K and Ors. Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG with
Ms. Priyanka Bhat, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
24.07.2025

1. The petitioner herein has invoked the extraordinary writ jurisdiction of this Court enshrined in Article 226 of the Constitution of India seeking quashing of order of detention No PITNDPS 52 of 2024, dated 21.12.2024 issued by Divisional Commissioner, Jammu-respondent 2 herein (*for short, the “detaining authority”*) under and in terms of provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 (*hereinafter referred to as the, “Act of 1988”*).

2. The petitioner herein has urged the following grounds in the petition for seeking quashing of the impugned order.

- (a) *That the bare perusal of the order impugned makes it amply clear that the same is issued by the respondent 2, in an unreasonable and arbitrary manner and without proper application of mind to the peculiar facts and circumstances of the present case. On this Ground alone, the order impugned requires to be quashed by this Hon'ble Court.*
- (b) *That the grounds of detention are a verbatim account of the dossier prepared by the respondent No. 3 the respondent No. 2 has miserably failed to record its subjective satisfaction before passing*

the order impugned. In other words, respondent No. 2, is bound to record its subjective satisfaction that petitioner is engaged in the alleged act of illegal traffic in narcotic drugs and psychotropic substance, and the same poses a serious threat to the health and welfare of the people. The bare perusal of the grounds of detention and order impugned makes it a ply clear that respondent no. 2 has miserably failed to record subjective satisfaction that the petitioner is engaged in the alleged Act of illegal traffic in narcotic drugs and psychotropic substances, and the same poses a serious threat to the health and welfare of the people. The order impugned passed by the respondent No. 2 prima Facie appear to be vacuous one. On this ground also the order of detention requires to be quashed by this Hon'ble Court.

- (c) That the grounds of detention, the order of detention and dossier were not provided to the petitioner within the stipulated period as prescribed under Section 3 of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, and moreover the same was neither read over nor explained to the petitioner in the language which the petitioner understands. It needs to mention that petitioner is uneducated/illiterate and is not in a position to read or understand English Language and the grounds of detention were neither explained to him nor made him understand. The respondent did not supply all the relevant documents to the petitioner like copies of FIR and challans including the statements of witnesses recorded during the course of investigation, seizure memos etc. nevertheless respondents are bound to furnish all the relevant documents to the petitioner including the material collected during the course of investigation like statement of witnesses, seizure memos etc. within the stipulated period enabling the petitioner to file an effective representation against his detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, before the concerned authorities at the earliest. It is pertinent to mention that most of the copies supplied to the petitioner are not even legible. Petitioner does not know Urdu language, and therefore, respondents ought to provide translated copies of the Urdu documents, to the petitioner, so that petitioner could make an effective representation against his detention under this draconian legislation, before the concerned authorities. Therefore, petitioner could not make an effective representation before the detaining authority as well as before the Government, at the earliest. On this ground also the order impugned requires to be quashed by this Hon'ble Court.
- (d) that as mentioned above, the grounds of detention are based upon two criminal cases registered against the petitioner and one complaint/s 129 of BNSS, alleged to be preferred before the Executive Magistrate, 1st Class, Kathua. The bare perusal of the contents of the criminal cases registered against the petitioner, no such inference can be drawn that petitioner is engaged in the

illicit traffic in narcotic drugs and psychotropic substances, and the same poses a serious threat to the health and welfare of the people. It is significant to mention here that the perusal of the order of detention, grounds of detention and dossier, makes it amply clear that except bald allegations, there is nothing on record to support the contentions of the detaining as well as sponsoring authority that applicant is engaged in the illicit trafficking of narcotic drugs. Needless to mention that law of preventive detention talks about material against the detenu and not the mere allegations. A person cannot be detained under this draconian legislation merely by leveling bald and baseless allegations. There is not even a single instance of drug peddling against the petitioner, however, respondents have leveled false and frivolous allegations against him. Needless to mention here that mere leveling of allegations does not tantamount to the material against the petitioner for his detention under this draconian legislation. Moreover, there is nothing on record, evidencing that the copy of the complaint u/s 129 BNSS, which is annexed with the material supplied to the petitioner, alleged to be preferred before the Executive magistrate, 1st Class, Kathua, was in fact preferred before the Executive Magistrate, 1st Class, Kathua. The perusal of Section 129 BNSS, transpires that the said complaint alleged to be preferred U/s 129 BNSS, is not even maintainable, as the same falls beyond the scope and ambit of Section 129 of BNSS. In the said complaint, it is alleged that for controlling the political activities of the petitioner, the said complaint u/s 129 BNSS, is preferred. Thus, leaving the petitioner in a confused state of mind, kept on pondering as to why he is detained under this draconian legislation. Therefore, the order impugned has been issued by the respondent No. 2, without recording its subjective satisfaction. On this ground also the order impugned requires to be quashed by this Hon'ble Court.

- (e) That in the order of detention, it is further alleged that the activities of the petitioner are prejudicial to the safety/security of the public at large. In the grounds of detention, it is alleged that the activities of the petitioner are highly prejudicial to the maintenance of public order and illicit traffic in narcotic drugs and psychotropic substances. Thus, the Divisional Commissioner, Jammu, while passing the order of detention of the applicant under Prevention of Illicit Traffic in Narcotic drugs and psychotropic substances Act, 1988, has recorded its satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order, although a person cannot be detained under Prevention of Illicit Traffic in Narcotic Drugs and psychotropic Substances Act, 1988, for the activities which are prejudicial to the maintenance of public order, as the same is covered by J&K Public Safety Act, 1978. However, the Divisional Commissioner, Jammu in the grounds of detention has further alleged that the activities of the petitioner are prejudicial to the illicit traffic in Narcotic Drugs. It

prima facie transpires that the respondent No. 2 himself was doubtful as to whether the activities of the petitioner are detrimental and prejudicial to the maintenance of public order or prejudicial to the illicit traffic in Narcotic Drugs. Thus, leaving the petitioner in a confused state of mind as to whether he is detained under the aforementioned draconian legislation for the activities which are prejudicial to the maintenance of public order or for illicit traffic in narcotic drugs. Consequently, petitioner could not make an effective representation against his detention before the concerned authorities. It is pertinent to mention here that petitioner cannot be detained under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, by clubbing the grounds of detention under J&K Public Safety Act, 1978. In the grounds of detention, Divisional Commissioner, Jammu, has referred to the dossier submitted by the Sr. Superintendent of Police, Kathua, and has stated that he recommended the detention of the petitioner under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, to maintain public order, peace and tranquility, as the substantive law has failed to deter the petitioner from indulging in illicit traffic. Thus, Divisional Commissioner, Jammu has issued the order of detention of the applicant under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, primarily for the maintenance of Public order. In other words, Divisional Commissioner, Jammu has recorded his primary subjective satisfaction only to the extent that activities of the petitioner are detrimental and prejudicial to the maintenance of public order, although petitioner cannot be detained under Prevention of Illicit Traffic in narcotic Drugs and psychotropic substances Act, 1988, for the activities which are alleged to be detrimental and prejudicial to the maintenance of public order. Thus, the order impugned has been issued by the respondent no. 2 in a casual and mechanical manner, and without application of mind to the peculiar facts and circumstances of the present case. On this ground also the order impugned requires to be quashed by this Hon'ble Court.

- (f) that the perusal of the order of detention, along with grounds of detention, along with grounds of detention and other material supplied to the petitioner, transpires that the respondent No. 2 miserably failed to follow the duly procedure as laid down under the Prevention of illicit Traffic in narcotic Drugs and Psychotropic substances Act, 1988. Moreover, respondent No. 2 lacks jurisdiction to pass the order impugned. On this ground also the order impugned requires to be quashed by this Hon'ble Court.
- (g) That no doubt vast powers are conferred upon the respondents to detain a person under Prevention of Illicit Traffic in narcotic Drugs and Psychotropic Substances Act, 1988, but the same is to be exercised in just, fair and reasonable manner and not in a whimsical, capricious and fanciful manner. It needs to mention

that from the facts and circumstances of the present case it is very much evident that respondents have miserably failed to comply with the procedural safeguards though respondents are bound to strictly comply with all the procedural safe guards before detaining the petitioner under Prevention Of Illicit Traffic in Narcotic Drugs and psychotropic Substances Act, 1988. On this ground also the order impugned requires to be quashed by this Hon'ble Court.

- (h) That as discussed hither to, there are only two criminal cases registered against the petitioner, and first one was registered more than one and half year back and second one was registered more than nine months back, and petitioner is on bail in both the said criminal cases registered against him, since long. Thus, there is no live link between the date of the commission of the alleged offence and the issuance of the order of detention of the petitioner under this draconian legislation. On this ground also the order impugned requires to be quashed by this Hon'ble Court.*
- (i) That In the interest of justice and to meet the ends of justice the order impugned requires to be quashed by this Hon'bel Court and petitioner be set at liberty at the earliest. It needs to mention that Since the petitioner is in the illegal captivity of the respondents and the same has resulted in the infringement of the right to personal liberty of the petitioner, therefore, while quashing the order impugned, this Hon'ble Court requires to direct the respondent to compensate the petitioner for the infringement of his fundamental right of personal liberty by paying compensation to the tune of Rs. 50,00000 (Rupees Fifty Lakhs Only).*

3. **Counter affidavit** has been filed to the petition by the detaining authority, wherein the petition is being opposed on the premise that none of the constitutional, legal or statutory right of the petitioner have been infringed or violated by the answering respondents, entitling the petitioner to invoke extraordinary writ jurisdiction of this Court. It is also stated that the petition is grossly misconceived and without any legal foundation, as such, merits outright dismissal, more so, in absence of any infringement of constitutional, legal or statutory right of the petitioner by the answering respondents. It is further stated that a dossier in respect of the petitioner dated 17.12.2024 came to be submitted by the Senior Superintendent of Police, Kathua/respondent 3 herein to the detaining authority and after examining the same and relevant record attached thereto

deemed it imperative to detain the petitioner under the Act of 1988, as the petitioner after getting bail in FIRs' he was involved having committed the offences under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, posed a serious threat to the public order and health and welfare of the People and since ordinarily law failed to deter him from indulging in the said activities in Drugs, the preventive detention of the petitioner was ordered. It is further stated that at the time of the execution of the detention order, the petitioner came to be provided all relevant documents by the executing officer including the detention order, grounds of detention with total (76 leaves) and also came to be explained the same in English, Hindi and Dogri, the language he understood and was also informed about his right to make a representation before the Government and the detaining authority against his detention. It is being further stated that after issuance of the order of detention, same came to be confirmed by the Home Department on 13.01.2025 after seeking an opinion from the Advisory Board furnished by it on 21.01.2025.

4. A **rejoinder affidavit** has also been filed by the petitioner herein through motion/ CM No. 2666/2025 stating therein that a representation came to be filed against the detention order before the respondents 1 and 2 on 08.01.2025 and fate of the said representation was not made known to the petitioner, however on 04.02.2024, the petitioner came to be informed by the Jail authorities that the representation submitted by him against his detention before respondent 1 stands rejected vide communication dated 31.01.2025.

Heard learned counsel for the parties and perused the record.

5. Notwithstanding aforesaid multiple grounds of challenge urged by the petitioner herein against the impugned order, Mr. Jagpaul Singh, appearing counsel for the petitioner would press following grounds during the course of hearing of the instant petition against the impugned order.

Firstly, Mr. Singh, would contend that the respondent 1 seems to have considered and decided the representation of the petitioner submitted against the impugned order belatedly, after the furnishing the opinion by the Advisory Board, and without application of independent mind by the and secondly, the said representation submitted before the respondent 2 was never considered, thus, the mandate of Article 22(5) of the constitution stands observed in breach.

6. On the contrary, Ms. Monika Kohli, learned Sr. Additional Advocate General appearing counsel for the respondents while opposing the submissions of Mr. Jagpaul Singh appearing counsel for the petitioner, would insist that the order under challenge has been passed validly and legally against the petitioner and in the process all legal, statutory and constitutional provisions and guarantees stand fulfilled and complied with. Ms. Kohli, would further submit that the representation of the petitioner was considered rightly and a decision whereof also came to be conveyed to the petitioner. Ms. Kohli, would further submit that since the representation of the petitioner stands considered by respondent 1 also being an authority competent to consider the representation beside the respondent-2, the said consideration, can said to be substantial compliance of the provision of Article 22 (5) of the constitution and no prejudice, whatsoever, can be said to have been caused to the petitioner on account of non consideration of his representation by respondent 2.

7. Before advertent to the aforesaid rival submissions of the appearing counsels by the parties, it is significant to mention here that law is settled that in case of preventive detention, the procedure prescribed by the law under which the detention is made must be strictly and if the said procedure is not complied with, the detention is rendered illegal. Article 22(5) of the Constitution being relevant and significant to controversy involved in the instant petition provides a right to the detainee to make a representation against the order of the detention and is a most cherished valuable right to the detainee against the order of detention, and if there is any infraction of that right, the detention is rendered bad and illegal.

It is consistent view of the Constitutional Courts that right of a person detained to make a representation against the order of detention is a comprehensive one and it comprehends that a person detained has the right to make a representation not only to the officer, who made the order of detention, but as well as to the State/Central Government.

The Apex Court in case titled as, “**Kamlesh Kumar Ishwardas Patel V.s Union of India**”, reported in, “**1995 4 SCC 51**” has also held that the right provided under Article 22(5) of the Constitution has the same force and sanctity as any other provision relating to fundamental right and the said fundamental right available to the detainee must be enforced irrespective of the nature of activities the detainee is involved.

The Apex Court in case titled as, “**A.C. Razia vs. Government of Kerala**” reported in **2004 2 SCC 621**” has held that combined effect of the constitutional and statutory provision from the point of view of the detainee’s right to make representation is to provide more than one forum to re-examine and re-

view the case of the detainee and to afford him various means for redressal of his grievance and that though Article 22 does not state before whom the representation is to be made and that as to whether a representation can be made before one or the other authority including the detaining authority would depend upon the nature of legislation, whereby and whereunder the order of detention has been passed.

“In *Union of India and Anr. V/s Chaya Ghoshal & Anr* reported in 2005 10 SCC 97”, the Apex Court has observed that a constitutional protection is given to every detainee which mandates the grant of liberty to the detainee to make a representation against his detention, as imparted in Article 22 Clause 5, which also impetrates the authority to whom the representation is addressed to deal with the same with utmost expedition and that the representation is to be considered in its right perspective keeping in view fact that the detention of the detainee is based on the subjective satisfaction of authority concerned and the infringement of the said constitutional right conferred under Article 22(5) of the Constitution would invalidate a detention order.

8. Here a reference to Section 3 of the Act of 1988 would also be appropriate, which reads as under:-

3 Power to make orders detaining certain person. (1) The Central Government or a state Government, or any officer of the Central Government, not below the rank of a joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, if satisfied, with respect to any person (including a foreigner), that with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

2 When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

3 For the purposes of clause (5) of Art, 22 of the Constitution, the communication to a person detained

in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

9. Keeping in mind the aforesaid position and provision of law and reverting back to the case in hand in general and, in particular, the aforesaid first plea of the learned counsel for the petitioner, examination of the detention record produced by the learned counsel for the respondents becomes imperative more so, as well, it is not being disputed by the respondents that the petitioner submitted a representation against his detention, which representation is stated to have been received in the office of the respondent 2 on 11.01.2025, however, not considered owing to the reason that the detention record have had been sent to the Advisory Board for its opinion on 10.01.2025 itself. The aforesaid position emerges from Communication bearing No. Home/PBV/6599/2024/7606614 dated 15.01.2025.

Record would however, show that the Advisory Board upon receipt of the detention case of the petitioner has framed and furnished an opinion on 21.01.2025, which opinion interestingly at para-4 reveals that the Advisory Board in fact has accorded consideration to the representation of the petitioner received from the Home Department vide No Home/PBV/659/2024 dated **15.01.2025** and has opined that no substance is found in the said representation while rejecting the same.

Record would further show that the copy of the representation after receiving by the office of the detaining authority has been forwarded through Deputy Legal Remembrance to respondent 1 vide Communication No. 601/RA/CC-7621636 dated 11.01.2025 for perusal and necessary action in the

matter, thus, manifestly signifying that the respondent 2 indisputably did not address to the said representation at all. A reference here to the judgment of Apex Court passed in case titled as, **“Kamlesh Kumar Ishwardas Patel Vs. Union of India** reported in **1995 4 SCC 51”** would be relevant, wherein at para-38, following has been held:-

“38. Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act the question posed is thus answered: Where the detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation of the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorized by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such representation and the failure to do so results in denial of the right of the person detained to make a representation.”

10. Since as is noticed in the preceding paras, the representation submitted by the petitioner to both respondents 1 and 2 is not being denied to have been received by the said respondents, yet neither respondent 1 nor respondent 2 have addressed and considered the said representation and instead the Advisory Board has considered and rejected the said representation without any power in law to consider the said representation, as the law is no more *rest-integra* and stands settled that the function of the Advisory Board is purely advisory to report to the Government whether a detenue is to be detained or not, whereupon the receipt of

such report the Government upon its own application of mind and on the merits of each case has to either agree with the said opinion or to disagree with the same.

11. Thus, from the above, the only inescapable conclusion that can be drawn is that on the one hand, respondents 1 and 2 have violated the cherished and valuable right of the petitioner enshrined under Article 22(5) of the Constitution which failing to consider the representation submitted by the petitioner against his detention and have in essence shunned their statutory and constitutional obligation to consider the said representation and on the other hand the Advisory Board, has illegally arrogated upon itself a power that the law has never vested unto it, i.e., the power to consider and decide a representation made by a detainee against the detention order.

12. Viewed thus, for what has been observed, considered, and analyzed hereinabove, the instant petition succeeds, as a consequence whereof impugned Order No. No PITNDPS 52 of 2024, dated 21.12.2024, is quashed, with a direction to the respondents to release the petitioner from the preventive detention, unless is required in any other case.

13. Disposed of.

14. Detention record produced by the counsel for the respondents is returned back in the open Court.

(Javed Iqbal Wani)
Judge

Jammu:
24.07.2025
Javid Iqbal

Whether the judgement is speaking? Yes/No

Whether the judgement is reportable? Yes/No