

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Reserved on : 05.06.2025.

Pronounced on : 30.06.2025.

**HCP No. 15/2025**

**Asha Bibi, Age 32 years,  
W/o Mohd Sadiq  
R/o Khanpur Tehsil Marheen, District Kathua,  
At present lodged at District Jail, Jammu  
Through Husband  
Mohd. Sadiq  
S/o Yousaf  
R/o Near Govt. School  
Khanpur, District Kahua  
Age 40 years.**

*.....Petitioner*

Through: Mr. Gagan Oswal, Advocate

**Vs**

- 1. UT of J&K through Commissioner Secretary, Department, of Home,  
Civil Secretariat, Srinagar/ Jammu.**
- 2. Divisional Commissioner, Jammu.**
- 3. Senior Superintendent of Police, Kathua.**
- 4. Superintendent, District Jail Ambhphalla, Jammu.**

*..... Respondents*

Through: Mrs. Monika Kohli, Sr. AAG

**CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGMENT**

01. Heard learned counsel for the petitioner as well as  
for the respondents.

02. Perused the writ pleadings and the documents therewith. Also perused the detention record produced from the end of the respondents.

03. The petitioner- Asha Bibi, who is a woman, came to suffer preventive detention under the effects of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (***"PIT-NDPS Act, 1988"*** in short) which has resulted in her confinement in the District Jail, Jammu and has come forward with the present writ petition filed through her husband- Mohd Sadiq thereby seeking a writ of habeas corpus to regain the lost personal liberty by quashment of the preventive detention order passed in the case.

04. The respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua by virtue of a letter No. Pros/PIT-NDPS/53428-34/DPO dated 30.11.2024, served a dossier to the respondent No. 2 – Divisional Commissioner, Jammu thereby highlighting the alleged acts of omission or commission on the part of the petitioner found to be serious enough warranting her preventive detention in order to prevent her from carrying on with mischief falling within the scope of PIT-NDPS Act, 1988.

05. In the dossier, it came to be mentioned by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua that the petitioner is a notorious criminal/ drug peddler/ habitual smuggler engaged in the sale and purchase of narcotics substances thereby spreading the evil of drug addiction in the Society. It also came to be alleged in the said dossier that the petitioner has been found involved in sale/ purchase/possession of the narcotic drugs time and again and infact has adopted the peddling of narcotic drugs as a profession thereby posing a serious threat to the lives of young generation of the Country and also to the economy of the State.

06. In this regard, the antecedents of the petitioner in terms of her implication in the criminal cases related to FIR No. 294/2023 and FIR No. 104/2024, both registered by the Police Station Rajbagh, for alleged commission of offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (“**NDPS Act, 1985**” in short) came to be highlighted.

07. With respect to FIR No. 294/2023 involving alleged possession of 8.45 grams of Heroine, the case was referred to be still pending investigation but whereas with respect to FIR No. 104/2024 involving alleged possession of 3.10 grams of

Heroine, the case was said to have been investigated and presented as a Final Police Report/Challan before the court of Judicial Magistrate, Ist Class, Hiranagar.

08. In addition to the petitioner's alleged involvement by reference to the said two FIRs, the dossier came to mention about DDR No. 24 dated 30.10.2024, DDR No. 25 dated 28.10.2024, DDR No. 16 dated 07.11.2024 & DDR No. 12 dated 08.11.2024, thereby purportedly meaning to say that there are repeated adverse inputs related to the alleged activities of the petitioner in narcotic deals.

09. The respondent No. 2 – Divisional Commissioner, Jammu came to formulate the grounds of detention on the basis of the dossier submitted to him by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua for the purpose of drawing a subjective satisfaction as to whether there is a case made out for subjecting the petitioner to suffer preventive detention under PIT-NDPS Act, 1988.

10. The respondent No. 2 – Divisional Commissioner, Jammu came to make a repetition of the dossier by referring to the alleged implication of the petitioner in FIR No. 294/2023 & FIR No. 104/2024 and adverse reports in terms of DDR No. 24 dated 30.10.2024, DDR No. 25 dated

28.10.2024, DDR No. 16 dated 07.11.2024 & DDR No. 12 dated 08.11.2024, all generated at the end of the Police Station Rajbagh.

11. The respondent No. 2 – Divisional Commissioner, Jammu came to an end opinion that it is imperative to detain the petitioner under section 3(1) of the PIT-NDPS Act, 1988 and that led to the issuance of Order No. PITNDPS-50 of 2024 dated 09.12.2024 whereby the petitioner was ordered to be detained and lodged in District Jail, Jammu.

12. By virtue of a communication No.601/RA/Detention/248/cc-7614808 dated 09.12.2024 addressed to the petitioner, the respondent No. 2 – Divisional Commissioner, Jammu meant to convey to the petitioner about passing of the detention order against her and her detention to take place in terms of the said detention order. The petitioner was also meant to be apprised upon her detention as to her right to make a representation, be it to the Govt. (Home Department, UT of J&K) or to the respondent No. 2 – Divisional Commissioner, Jammu. The petitioner was meant to be served with three(3) leaves of detention order, three(3) leaves of grounds of detention and sixty (60) leaves of dossier.

13. The petitioner came to be detained by SI Som Raj of the Police Station Rajbagh. The execution report submitted by the Executing Officer-SI Som Raj refers to the fact that the petitioner was taken into custody on 10.12.2024 from the Police Station Rajbagh which further recites the fact that the detention warrant was executed on 11.12.2024. The petitioner was handed over to the Superintendent, District Jail, Ambphalla on 11.12.2024. The petitioner is said to have been explained the contents of the order and the grounds of detention along with dossier besides handing over all the relevant documents.

14. The fact of detention of the petitioner having taken place under the PIT-NDPS Act, 1988 was duly conveyed to the Ministry of Home Affairs as well as the Ministry of Finance, Govt. of India by the Home Department, UT of J&K in terms of communication No. Home/PB-V/631/2024 (7603326) dated 13.12.2024.

15. The preventive detention of the petitioner was referred to an Advisory Board for its opinion which came to be tendered on file No.Home/PB-V/631/2024 dated 26.12.2024. In its opinion, the Advisory Board came to refer the fact that the petitioner's detention had come to take place

on 11.12.2024 and that there was sufficient cause for ordering the preventive detention of the petitioner and all the procedural compliances has been carried out.

16. The Advisory Board's opinion dated 26.12.2024 paved a way for confirmation of the preventive detention of the petitioner in terms of Govt. Order No. Home/PB-V/88 of 2025 dated 14.01.2025 passed by the Home Department, UT of J&K, whereby the petitioner was ordered to be detained for a period of one year with effect from 11.12.2024 to 10.12.2025 and to be lodged in District Jail, Jammu.

17. The petitioner, at her own end, acting through her husband came to make a written representation dated 03.01.2025 to the respondent No. 2 – Divisional Commissioner, Jammu thereby seeking revocation of the preventive detention slapped against her.

18. In her said written representation, the petitioner came to refer that she was implicated in false and frivolous cases in FIR No. 294/2023 & FIR No. 104/2024. The petitioner came to refer that in both the cases related to said two FIRs she had been enlarged on bail and, therefore, the preventive detention slapped upon her was unwarranted and bad in law.

19. The institution of the present writ petition came to take place on 17.01.2025, whereby the petitioner came to challenge her preventive detention on the grounds stated in paras 6(a) to (h).

20. In her grounds of challenge as set out in the writ petition, the petitioner has assailed the detention on the grounds that she was not supplied with full compilation of the record on the basis of which the impugned detention order was passed against her which seriously prejudiced her right of making an effective representation. The petitioner has also emphasized on the point that despite being enlarged on bail in both cases relatable to said two FIRs the passing of preventive detention order against her was misconceived and infact was punitive in intent and purpose.

21. It has come to be further challenged by the petitioner that the impugned detention order is nothing but the dossier as served by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua being borrowed verbatim and given the disguise of detention order read with its grounds of detention without any independent application of mind on the part of the respondent No. 2 - Divisional Commissioner, Jammu. The petitioner has also made a



categoric challenge that her representation has gone unconsidered and unanswered which renders the continuing detention seriously vitiated.

22. In the counter affidavit dated 05.03.2025 filed in response to the writ petition, the respondent No. 2 – Divisional Commissioner, Jammu has come to seek dismissal of the writ petition. In preliminary objections, the respondent No. 2 – Divisional Commissioner, Jammu has come to question the very maintainability of the writ petition and also highlighting the fact that the representation of the petitioner was considered at his end and was found being devoid of merits and disposed of but without disclosing in the counter affidavit as to whether the petitioner was notified about the rejection of her said representation or not.

23. In the counter affidavit, the fact has come to be mentioned that the execution of the detention warrant had taken place on 11.12.2024 and the date of expiry of detention term is 10.12.2024 which surely is a typographical mistake but nevertheless a serious lapse of attention on the part of the respondent No. 2 – Divisional Commissioner, Jammu in not being attentive to the reading of the affidavit before putting his signature thereto.

24. It has been stated in the counter affidavit that the petitioner was delivered compilation of 65 leaves related to the detention order and that she was fully explained both in Hindi as well as in Gojri the contents and context of the order of detention and the grounds of detention. In the counter affidavit, reliance has also been placed upon the judgment of the Hon'ble Supreme Court of India in the case of "Haradhan Saha Vs State of W.B.," (1975) 3 SCC, judgments of this Court in LPA No. 55/2023 titled "Anil Sharma Vs UT of J&K and others," and LPA No. 12/2023 titled "Jahangir Ahmad Dar Vs J&K & others."

25. Upon going through the detention record produced from the end of the respondents, this Court comes across with a fact that the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua while submitting his dossier to the respondent No. 2 – Divisional Commissioner, Jammu omitted to supply the bail orders related to the petitioner in connection with said two FIRs i.e. FIR No. 294/2023 & FIR No. 104/2024.

26. FIR No. 294/2023 registered by the Police Station Rajbagh is dated 05.11.2023 in which along with the petitioner another co-accused Ballo W/o Sudam Hussain

came to be implicated and arrested on the same very date on 05.11.2023. FIR No. 104/2024 also registered by the Police Station Rajbagh is dated 06.05.2024 in which connection the arrest of the petitioner is said to have place on 06.05.2024.

27. In reference to FIR No. 104/2024 a Final Police Report/Chargesheet No. 136/2024 dated 11.10.204 is said to have been presented for subjecting the petitioner to suffer trial before the competent criminal court of law. It is forthcoming from the writ petition accompanying record that it is the court of Additional Sessions Judge, Kathua which by virtue of an order dated 09.05.2024 has come to grant interim bail in favour of the petitioner by reference to her arrest in FIR No. 104/2024.

28. In his dossier, the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua by reference to FIR No. 294/2023 has stated that the investigation is in progress to ascertain the backward and forward links of the accused ladies to nab the king-pins involved in procuring and selling narcotics in the area, while simultaneously saying that the offences under section 8/21/22 of the NDPS Act, 1985 stand proved against the said two accused persons namely

petitioner and Ballo bailed out by the order of the court without mentioning vide which order and by which court.

29. As against this recital in his dossier that the investigation of the FIR No. 294/2023 is still in progress, the Final Police Report/Chargesheet No.136/2024 dated 11.10.2024 born out of FIR No. 104/2024 dated 06.05.2024 recites the fact that in connection with FIR No. 294/2023 the petitioner is an undertrial meaning thereby the right hand of the Police is not knowing what its left hand is doing in the sense that the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua is not fully versed with the fact as to the actual status of FIR No. 294/2023 in connection with which the petitioner is still under investigation or undertrial.

30. This Court is baffled by the fact that if the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua is not in a position to procure the bail orders operating in favour of the petitioner by reference to said two FIRs for the purpose of supplying them along with his dossier so as to serve a full factual picture before the detention order making authority i.e. the respondent No. 2- Divisional Commissioner, Jammu then who else is supposed to be in a position to procure the bail orders related to the petitioner for

the purpose of knowing the basis on which a criminal court came in exercise of its discretion to grant bail in favour of the petitioner relating to offences under the NDPS Act, 1985 came to pass bail orders.

31. The very fact that the bail orders were withheld from being produced so as to be shared with the respondent No. 2 – Divisional Commissioner, Jammu is a pointer to the fact that the sponsoring authority i.e. Sr. Superintendent of Police (SSP), Kathua did not want to risk rejection of his dossier by the respondent No. 2 – Divisional Commissioner, Jammu that instead of seeking cancellation of bail so granted in favour of the petitioner by reference to said two FIRs, the preventive detention jurisdiction was sought to be exercised to serve in disguise punitive detention.

32. This Court is surprised at its own end that upon going through the dossier bearing a recital that the petitioner is on bail in connection with said two FIRs, the respondent No. 2 – Divisional Commissioner, Jammu did not register any concern about lack of bail orders obtaining along with the dossier.

33. The aforesaid lacuna is a serious lacuna in the entire course of action at the end of the respondent No.2 –

Divisional Commissioner, Jammu as well as the respondent No.3 – Sr. Superintendent of Police (SSP), Kathua related to the preventive detention of the petitioner which renders it vitiated with illegality.

34. Another vitiating factor related to the preventive detention of the petitioner is a suspense which seems to have bothered no one as to whether the petitioner was detained on 10.12.2024 or 11.12.2024 which contradiction is very apparent on the face of the record in terms of execution report signed by none else than SI Som Raj, who is on record saying that he has taken the custody of the petitioner from Police Station Rajbagh on 10.12.2024 at about 18.30 hrs and in the same very execution report is stating the fact that the detention warrant has been executed on 11.12.2024. This contradiction is a pointer to the fact that there is more than what meets the eye related to the preventive detention of the petitioner. Documents are meant to be an exhibit of the record of the action done by the public servants and the execution report is the very exhibit of the fact that on two dates the petitioner's detention is being related to bothering no one including the Advisory Board to confirm the fact as to on which date actually the petitioner was taken into custody.

35. With respect to the petitioner's representation and its consideration, the respondent No. 2 – Divisional Commissioner, Jammu is on record to say in his counter affidavit that her representation was considered but found to be devoid of merit and to this effect the detention record is bearing the necessary documentation but the moot point is whether the petitioner was apprised of the fact of fate of her representation having been considered and rejected. To this effect, there is no iota of proof obtaining on the file of the detention record to confirm the fact that the petitioner came to be served and delivered with a copy of the order in terms whereof the petitioner's representation was shown to have been considered and rejected for whatsoever reason that may be.

36. Mere placing of an order of rejection on the file of a detention record is not to be taken as a fact that the said consideration order has been conveyed and communicated to the petitioner and that is reason that in his counter affidavit, the respondent No. 2 – Divisional commissioner, Jammu has not risked an averment that the petitioner has been duly communicated and conveyed about the fact of rejection of her representation.

37. Cumulative effect of all the aforesaid facts and circumstances of the case render the preventive detention of the petitioner vitiated with serious illegality and compromise of procedural compliances and, therefore, warrants to be set aside. Accordingly, the preventive detention Order No. PITNDPS-50 of 2024 dated 09.12.2024 read with Govt. Order No. Home/PB-V/88 of 2025 dated 14.01.2025 are set aside and consequently directing release of the petitioner from the preventive detention custody from the Jail wherever the petitioner is lodged and accordingly, the Superintendent of the concerned Jail is directed to release the petitioner forthwith.

38. The original file of the detention record be handed over to Mrs. Monika Kohli, learned Sr. AAG against proper receipt, whereas the scanned record is to be retained along with the file of the case by the Registry.

39. ***Disposed of.***

(RAHUL BHARTI)  
JUDGE

JAMMU  
30.06.2025  
Muneesh

Whether the judgment is speaking :	<b>Yes</b>
Whether the judgment is reportable :	<b>Yes</b>