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HIGH COURT OF UTTARAKHAND AT NAINITAL

Habeas Corpus Petition No.20 of 2026

Rekha Sahni

.....Petitioner

Vs.

State of Uttarakhand & Others

..... Respondents

Presence:

1. Mr. Ankur Sharma, learned counsel for the petitioner.
2. Ms. Manisha Rana Singh, learned Deputy A.G. for the State.

Coram:Hon'ble Ravindra Maithani, J.

Hon'ble Siddhartha Sah, J.

(Per: Hon'ble Siddhartha Sah, J.)

By means of the present Habeas Corpus Petition, the petitioner has sought the following reliefs:-

- a. Issue a writ in the nature of Habeas Corpus quashing the detention order dated 17.04.2026 passed against the detenu (contained as Annexure No.1 to the writ petition);
- b. Issue a writ in the nature of Mandamus commanding and directing the respondents to produce the detenu before this Hon'ble Court and set him at liberty forthwith.

2. It is the case of the petitioner that the detention order dated 17.04.2026 has been passed on the ground that the petitioner is in the business of illegal narcotic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") as well as alleged criminal history against the petitioner.

3. In the counter affidavit filed on behalf of the State, it has been *inter-alia* stated that:-

(i) The detenu is a habitual active offender engaged in continuous illegal trade and trafficking of narcotic drugs, posing a grave threat to public health and safety. The detenu has a long criminal history of 10 registered cases under the NDPS Act at PS Rishikesh, namely:-

1. FIR No.482 of 2021 under Section 8/21 of NDPS Act.
2. FIR No.572 of 2021 under Section 8/20 of NDPS Act.
3. FIR No.161 of 2022 under Section 8/20/29 of NDPS Act.
4. FIR No.173 of 2022 under Section 8/20 of NDPS Act.
5. FIR No.727 of 2022 under Section 8/21 of NDPS Act.
6. FIR No.463 of 2023 under Section 8/21/29 of NDPS Act.
7. FIR No.73 of 2024 under Section 29 of NDPS Act.
8. FIR No.199 of 2024 under Section 8/21 of NDPS Act.
9. FIR No.355 of 2024 under Section 29 of NDPS Act.
10. FIR No.388 of 2024 under Section 8/21 of NDPS Act.

(ii) To prevent her from continuing illicit trafficking activities, the competent authority, after strictly adhering to due procedure of law under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ("the PIT NDPS Act") passed the valid detention order. The detenu was detained on 30.04.2026 in full compliance with procedural safeguards.

(iii) Direct recovery of illicit narcotic substances was made from the detenu in 6 registered cases, while in 4

other cases, co-accused persons disclosed purchasing narcotics directly from her. Based on sufficient concrete material and evidence gathered during investigation, she was arrayed as an accused under Section 29 of the NDPS Act.

(iv) Despite multiple cases being registered against the detenu continuously between 2021 and 2024, she has remained habitually and persistently active in drug trafficking.

(v) Whenever the detenu is released on bail in ordinary criminal cases, she repeatedly indulges in illicit drug trafficking. This habitual conduct necessitated preventive detention under the PIT NDPS Act.

(vi) All statutory provisions and mandatory procedural safeguards under the PIT NDPS Act were strictly complied with while taking legal action against the detenu.

(vii) The detenu is a habitual offender, and the detaining authority strictly complied with every procedural requirement under the PIT NDPS Act.

(viii) The detention order under Section 3(1) of the PIT NDPS Act was passed by the competent authority with full application of mind, following proper evaluation of material evidence.

(ix) Upon obtaining bail, the detenu continuously resumes illicit narcotic trade, destroying the younger generation and creating severe harm to public order and

health. To curb this rampant menace, preventive action was lawfully taken.

(x) The action under the PIT NDPS Act was executed in strict accordance with statutory rules.

(xi) The detention order is preventive, not punitive, and was issued based on continuous and live criminal activity and thus, sought dismissal of the writ petition.

4. Assailing the impugned order, learned counsel for the petitioner would submit that the last FIR was registered against the petitioner on 16.07.2024. The proposal/recommendation for preventive detention of the petitioner was mooted by the Senior Superintendent of Police, Dehradun dated 24.12.2025. However, the detention order came to be passed only on 17.04.2026.

5. Learned counsel for the petitioner would further submit that there is a huge delay in proposing/recommending the preventive detention of the petitioner. The claim of the State for seeking a detention order is stale. There is a further delay of four months in passing the preventive detention order even after the proposal/recommendation for the preventive detention.

6. Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of Sushanta Kumar Banik v. State of Tripura and others, reported in 2022 SCC OnLine SC 1333, and in particular has relied upon Paragraphs 22 and 23 thereof, which are being extracted hereunder for ready reference:-

“22. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The “live and proximate

link” between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.

VITAL MATERIAL OR VITAL FACT WITHHELD AND NOT PLACED BY THE SPONSORING AUTHORITY BEFORE THE DETAINING AUTHORITY

23. As noted above, in the case on hand, in both the cases relied upon by the detaining authority for the purpose of preventively detaining the appellant herein, the appellant was already ordered to be released on bail by the concerned Special Court. Indisputably, we do not find any reference of this fact in the proposal forwarded by the Superintendent of Police, West Tripura District while requesting to process the order of detention. The reason for laying much stress on this aspect of the matter is the fact that the appellant though arrested in connection with the offence under the NDPS Act, 1985, the Special Court, Tripura thought fit to release the appellant on bail despite the rigours of Section 37 of the NDPS Act, 1985. Section 37 of the NDPS Act, 1985 reads thus:

“Section 37. Offences to be cognizable and nonbailable.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

7. Learned counsel for the petitioner has also relied upon a judgment of this Court rendered in Habeas Corpus Petition No.8 of 2026, *Raees v. State of Uttarakhand and Others*, dated 26.05.2026. While drawing the attention of the Court to the said judgment (annexed as Annexure No. 2 to the writ petition), he would draw parallels with the said judgment and would seek quashing of the impugned detention order on the premise that petitioner’s case is squarely covered by the said judgment.

8. On the aspect that delay has occurred in passing the detention order which vitiates the detention, the learned counsel for the petitioner would refer to para 12 of the case of *Sushanta Kumar Banik (supra)*, which is extracted hereunder for ready reference:-

“12. We may recapitulate the necessary facts which have a bearing so far as the issue of delay is concerned. The proposal to take steps to preventively detain the appellant at the end of the Superintendent of Police addressed to the Superintendent of Police (C/S) West Tripura, Agartala is dated 28th of June 2021. The proposal in turn forwarded by the Assistant Inspector General of Police (Crime) on behalf of the Director General to the Secretary, Home Department is dated 14.07.2021. The order of detention is dated 12th of November, 2021. There is no explanation worth the name why it took almost five months for the detaining authority to pass the order of preventive detention.”

9. It is argued that, in fact, a stale issue should not be revived by passing any detention order. Learned counsel for the petitioner submits that there should be proximate and live link between the activities conducted by the petitioner and its detention

order. He has referred to the judgment of Hon'ble Supreme Court in the case of Aameena Begum v. State of Telangana, reported in (2023) 9 SCC 587, wherein the guidelines have been laid down by the Hon'ble Supreme Court in para 28, as to what should be considered while entertaining challenge to the detention order. Para 28 in the case of Aameena Begum (*supra*) is being extracted hereunder for ready reference:-

“28. In the circumstances of a given case, a constitutional court when called upon to test the legality of orders of preventive detention would be entitled to examine whether:

28.1. The order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

28.2. In reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

28.3. Power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

28.4. The detaining authority has acted independently or under the dictation of another body;

28.5. The detaining authority, by reason of self-created rules of policy or in any other manner not authorised by the governing statute, has disabled itself from applying its mind to the facts of each individual case.

28.6. The satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

28.7. The satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

28.8. The ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

28.9. The grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

28.10. The timelines, as provided under the law, have been strictly adhered to.”

10. Learned counsel for the petitioner has also invited the attention of the Court to para 20 of the judgment in the case of Sushanta Kumar Banik (*supra*), wherein the Hon’ble Supreme Court referred the judgment in the case of Shafiq Ahmad Vs. District Magistrate, Meerut and others, (1989) 4 SCC 556, in which case there was a delay of two and a half months in detaining the petitioner. In fact, there are two aspects of delay; (i) the passing of detention order after recommendation of the sponsoring authority and; (ii) actual detention of the detenu after passing of the detention order. In the case of Shafiq (*supra*), actual detention was done after two and a half months of the order passed and it was held in that case that the delay was unreasonable. In para 20, the Hon’ble Supreme Court observed as follows:-

“20. Sabyasachi Mukharji, J. (as the learned Chief Justice then was) in Shafiq Ahmed v. District Magistrate, Meerut, (1989) 4 SCC 556, having regard to the fact that there was a delay of two and a half months in detaining the petitioner

(detenu) therein, pursuant to the order of detention has concluded that “there was undue delay, delay not commensurate with the facts situation in that case and the conduct of the respondent authorities betrayed that there was no real and genuine apprehension that the detenu was likely to act in any manner prejudicial to public order. The order, therefore is bad and must go”. However, the learned Judge observed that “whether the delay was unreasonable depends on the facts and circumstances of each case.”

11. It is also submitted on behalf of the petitioner that the petitioner has been in bail in nine matters other than the one in which she was convicted, however, the detention order does not reflect that the detaining authority has at all considered this aspect of the petitioner being on bail and whether ordinary remedies under law are not sufficient in case of the petitioner.

12. *Per contra*, Ms. Manisha Rana Singh, learned Deputy Advocate General for the State would submit that though the facts are not in dispute, however, she would draw a distinction with the judgment in the case of Raees (*supra*) by inviting the attention of the Court to the criminal history of the petitioner, stating that she has been convicted in the year 2022 for an NDPS case in which she was sentenced to the period already undergone & fine.

13. Learned D.A.G. for the State while referring to the counter affidavit of the State, would submit that the detenu is a habitual active offender engaged in continuous illegal trade and trafficking of narcotic drugs, posing a grave threat to public health and safety. The detenu has a long criminal history of 10 registered cases under the NDPS Act at PS Rishikesh. To prevent her from continuing illicit trafficking activities, the competent authority, after strictly adhering to due procedure of law under Section 3(1) of the PIT NDPS Act, 1988, passed the valid detention order. The detenu

was detained on 30.04.2026 in full compliance with procedural safeguards.

14. Having heard learned counsel for the parties and upon perusal of the record, the following issues arise for determination:-

- (i) Whether in the present case, the last FIR against the petitioner under the NDPS Act having been registered on 16.07.2024, the proposal/recommendation dated 24.12.2025 for the preventive detention of the petitioner is highly delayed and stale, and if so, its effect?
- (ii) Whether the detention order, having been passed four months after the receipt of the proposal/recommendation can be justified on the touchstone of imminent necessity and can it be justified in the facts and circumstances of the case?
- (iii) Whether the petitioner being on bail in other nine cases having not been considered by the detaining authority vitiates the impugned detention order?

15. So far as Point for Determination No.(i) is concerned, it is not disputed that the last FIR against the detenu was registered on 16.07.2024. It is also not disputed that the proposal for detention came to be forwarded only on 24.12.2025. The petitioner admittedly has a criminal history and trials in several cases are stated to be pending. However, the question is whether the delay between the last alleged prejudicial activity and the recommendation for preventive detention can sustain the subjective satisfaction recorded by the detaining authority?

16. Preventive detention is an extraordinary measure and cannot ordinarily be invoked when the ordinary law of the land is available to address the situation. The long gap between the last FIR and the recommendation for detention raises a serious doubt regarding the existence of any imminent necessity for invoking the provisions of the PIT NDPS Act.

17. The Hon'ble Supreme Court in *Sushanta Kumar Banik (supra)* has held that where the detaining authority acts without promptitude and the delay remains unexplained, the live and proximate link between the grounds of detention and the purpose of detention stands snapped. Applying the said principle to the facts of the present case, this Court finds that the recommendation/proposal itself appears to have been made after considerable delay and without demonstrating any compelling or immediate necessity for preventive detention.

18. Accordingly, Point for Determination No.(i) is answered in favour of the petitioner.

19. Regarding Point for Determination No.(ii), it is an admitted position that even after the proposal for detention was forwarded on 24.12.2025, the detention order came to be passed only on 17.04.2026. Thus, there is a further delay of close to four months in passing the detention order.

20. The very object of preventive detention is to prevent an imminent and continuing threat. Where the detaining authority itself takes several months in passing the detention order, the plea of urgency or imminent danger becomes difficult to sustain. In the present case, no satisfactory explanation has been offered by the

respondents for the delay occurring after receipt of the proposal/recommendation.

21. At this stage, it would also be relevant to notice that this Court in the case of *Raees (supra)*, while considering a challenge to an order of preventive detention under the PIT NDPS Act, held that where there is an inordinate and unexplained delay between the alleged prejudicial activities, the proposal for detention and the passing of the detention order, the live and proximate link between the alleged activities of the detenu and the object sought to be achieved by preventive detention stands snapped. This Court further observed that preventive detention being an exceptional measure, the detaining authority is required to demonstrate a real and imminent necessity for invoking such power.

22. In the present case also, the last FIR against the detenu was registered on 16.07.2024, whereas the proposal for detention was made on 24.12.2025 and the detention order came to be passed on 17.04.2026. The delay at both stages remains unexplained. The facts of the present case, therefore, stand on a similar footing and the principle laid down in *Raees (supra)* also supports the conclusion that the impugned detention order cannot be sustained in law.

23. In view of the discussion made hereinabove and having regard to the law laid down by the Hon'ble Supreme Court in *Sushanta Kumar Banik (supra)* and the judgment of this Court in *Raees (supra)*, this Court is of the considered view that the live and proximate link between the alleged activities of the detenu and the purpose sought to be achieved by preventive detention stood snapped. The delay in forwarding the proposal as well as the delay in passing the detention order remains unexplained and renders the

subjective satisfaction recorded by the detaining authority unsustainable in law.

24. Consequently, this Court is of the view that there existed no live and proximate link between the alleged prejudicial activities attributed to the detenu and the detention order ultimately passed against her. The delay in passing the detention order clearly indicates that there was no immediate necessity warranting recourse to preventive detention. Thus, point for determination no.(ii) is also answered in favour of the petitioner.

25. Regarding Point for Determination No.(iii), it is argued on behalf of the petitioner that one of the essential fact before passing an order under Section 3 (1) of the PIT NDPS Act was that the petitioner was on bail. But, it is argued that the impugned order, by which satisfaction for detaining the petitioner has been recorded as well as the detention order, does not reveal that this fact was considered by the competent authority that the petitioner was on bail in all the nine cases.

26. The proposal/recommendation forwarded by the SSP, Dehradun on 24.12.2025 records that in all nine cases the petitioner was on bail. But, it is also admitted neither the order recording satisfaction to detain the petitioner nor the detention order reveal that this fact was considered that the petitioner was on bail. Two things are different. The proposal for detaining the petitioner as forwarded by the SSP, Dehradun reveals that the petitioner was on bail in all the four cases pending against him. But, the order by which the satisfaction to detain the petitioner was recorded does not reveal that the fact that the petitioner was on bail in all four cases has been considered by the competent authority.

27. It is noteworthy that despite the pendency of criminal cases and despite the petitioner being on bail, no material has been brought on record to indicate that the State had taken recourse to ordinary legal remedies available to it, including seeking cancellation of bail.

28. In the case of Sushanta Kumar Banik (*supra*), though in para 23, the Hon'ble Supreme Court observed that the proposal should contain every details with regard to the detention of a person including the factum of his being on bail or not in bail. But, in para 27, the Hon'ble Supreme Court has gone a step further. Not only revealing everything on the proposal, but its consideration as well is necessary. In para 27, the Hon'ble Supreme Court observed as follows:-

“27. From the above decisions, it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either **withheld** or **suppressed by the sponsoring authority** or **ignored and not considered by the detaining authority** before issuing the detention order.”

(emphasis supplied)

29. A bare reading of the observation of the Hon'ble Supreme Court makes it clear that the detention order gets vitiated if material facts are withheld or suppressed by the sponsoring authority or **ignored or not considered by the detaining authority**.

30. In fact, the scope of grant of bail and its impact on such detaining order has been discussed by the Hon'ble Supreme Court

in the case of Ameena Begum (*supra*). In paras 59 and 60, the Hon'ble Supreme Court observed as follows:-

“59. We are of the opinion that the aforesaid excerpts from the detention order lay bare the Commissioner's attempt to transgress his jurisdiction and to pass an order of detention, which cannot be construed as an order validly made under the Act. The quoted observations are reflective of the intention to detain the detenu at any cost without resorting to due procedure. It is neither 11 the case of the respondents that the detenu had not complied with the terms of the notice issued under Section 41-ACrPC, nor has it been alleged that the conditions of bail had been violated by the detenu. It is pertinent to note that in the three criminal proceedings where the detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned detention order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.”

60. In Vijay Narain Singh v. State of Bihar [Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14 : 1984 SCC (Cri) 361] , Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed : (SCC pp. 35-36, para 32)

32. ... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. **It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When** a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.”

(emphasis supplied)

31. In the instant case, admittedly, the petitioner was on bail. It has not been the case of the State that the petitioner has misused the bail. It has also not been the case of the petitioner that

any application for cancellation of bail has been moved by the State in that case.

32. It means not only revelation of the facts by the sponsoring authority is essential, but equally important is consideration of those facts by the detaining authority. In case, those facts are ignored or not considered, in view of the law, laid down by the Hon'ble Supreme Court such detaining orders further gets vitiated.

33. Since the detaining authority has not considered the factum of the petitioner having been released on bail in all the criminal cases, based on which the detention order has been passed, it per se vitiates the detention order. Thus the Point for Determination No.(iii) also needs to be answered against the respondent.

34. In view of the findings recorded on Point for Determination Nos.(i), (ii) and (iii), this Court finds that the detention order suffers from non-consideration of relevant material, absence of a live and proximate link between the alleged activities and the detention order, and unexplained delay at various stages of the process.

35. Having regard to the totality of the circumstances, namely (i) non-consideration of the fact that the detenue had already been enlarged on bail, (ii) availability of ordinary criminal law remedies, (iii) absence of any proceedings for cancellation of bail, (iv) absence of any fresh prejudicial activity immediately preceding the detention order, and (v) unexplained delay in passing the detention order, this Court is of the considered view that the subjective

satisfaction recorded by the detaining authority cannot be sustained in law.

36. Accordingly, the detention order dated 17.04.2026 passed under Section 3(1) of the PIT NDPS Act against the detenu is hereby quashed.

37. The present Habeas Corpus Petition under Article 226 of the Constitution of India is accordingly allowed.

38. The detenu shall be released forthwith unless her detention is required in connection with any other case.

(Siddhartha Sah, J.)
29.09.2026

(Ravindra Maithani, J.)
29.09.2026

Akash