HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

(through virtual mode from Srinagar)

Reserved on : 31.08.2026
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Case:- **HCP No. 37/2026**

Masoom Ali @ Kala, Age 26 years
S/o Dullah
R/o Rakh Barotian Tehsil Vijaypur, District Samba
through his wife namely
Bibi Begum, Age 23 years
W/o Masoom Ali
R/o Rakh Barotian, Tehsil Vijaypur, District Samba.

.....Petitioner

Through: Mr. Qadri Towkeer Nazir, Advocate &
Mr. Amjed Khan, Advocate

Vs

1. Union Territory of Jammu & Kashmir through Principal Secretary to Govt., Home Department, Civil Secretariat, Jammu.
2. Chairman Advisory Board,
Constituted under the Prevention of Illicit in Narcotic Drugs and Psychotropic Substances Act, 1999 Mini Secretariat, Jammu.
3. Divisional Commissioner, Jammu.
4. Senior Superintendent of Police Samba.
5. Superintendent, District Jail Udhampur.

..... Respondents

Through: Mrs. Monika Kohli, Sr. AAG with
Ms. Nazia Fazal, Assisting Counsel.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

01. The petitioner is a preventive detention detenue undergoing preventive detention custody under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ("PIT NDPS

Act, 1988" in short) being detained in the District Jail, Udhampur with effect from **10.01.2026**.

02. From his said preventive detention confinement, the petitioner acting through his wife – Bibi Begum, came forward with the present writ petition filed on **15.05.2026** after having spent four months out of one year prescribed period of custody being lodged in the District Jail, Udhampur.

03. In this writ petition, the petitioner has come forward seeking a writ of habeas corpus for quashment of his preventive detention custody as ordered by the respondent No. 3 - Divisional Commissioner, Jammu, in terms of an order **No. PITNDPS 74 of 2025** dated **17.12.2025**, whereby the petitioner's reported alleged state of activities were reckoned by the respondent No. 3 - Divisional Commissioner, Jammu to warrant the preventive detention of the petitioner in order to prevent him from indulging in state of activities falling within the scope of mischief of PIT NDPS Act, 1988.

04. The case for preventive detention of the petitioner was, in fact, processed and put forth by the respondent No. 4 – Sr. Superintendent of Police (SSP), Samba who, vide his letter **No. Legal/PIT-NDPS/25/3875-78** dated **11.12.2025**, submitted a dossier stating therein that the petitioner – Masoom Ali @ Kala R/o Rakh Barotian, Tehsil Vijaypur, District Samba was found in continuous illegal activities of drug peddling.

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05. In said dossier, the petitioner's criminal antecedents came to be highlighted to persuade the respondent No. 3 – Divisional Commissioner, Jammu to order the preventive detention of the petitioner.

06. The respondent No. 3 – Divisional Commissioner, Jammu on his part came to formulate the grounds of detention by referring himself to the alleged stage of activities of the petitioner as adversely reported in the dossier submitted by the respondent No. 4 – Sr. Superintendent of Police (SSP), Samba.

07. In the grounds of detention the respondent No. 3 – Divisional Commissioner, Jammu came to refer to the list of criminal cases in which the petitioner has come to be booked for his trial.

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08. In this regard, first reference made is to criminal case under **FIR No. 46/2023** registered by the Police Station Samba for alleged commission of offences under section 8/21 of Narcotic Drugs & Psychotropic Substances Act, 1985 ("NDPS Act, 1985" in short), in which case, the petitioner is said to have been put up for trial going on before the criminal court of law wherein the petitioner came to be admitted to bail.

09. Next reference in terms of the petitioner's criminal antecedents is with respect to his involvement in criminal case under **FIR No. 60/2023** again registered by the Police Station Samba for alleged commission of offences under section 8/21/29 of

NDPS Act, 1985. In this case also, the petitioner is said to have been challaned in absentia.

10. The petitioner's 3rd involvement in the criminal case is in **FIR No.173/2025** registered by the Police Station Bari Brahmana for alleged commission of offences under section 8/21/25/29 of NDPS Act, 1985 highlighted in which case also the petitioner is reported to have been challaned to undergo trial but earning bail from the court which upon challenged for the sake of cancellation resulted in failure by virtue of a court order dated **04.12.2025**, whereafter the District Police switched over to book the petitioner under preventive detention custody.

11. The preventive detention warrant came to be executed upon the petitioner by **SI Romesh Chander** of Police Station Bari Brahmana who is said to have delivered a 47 leaves compilation of detention warrant, notice of detention, grounds of detention, copies of FIRs, statements and other related documents to the petitioner on **10.01.2026** and reading over the documents with their contents in English but explaining to the petitioner in Dogri/Gojri/Urdu as understood by the petitioner.

12. The petitioner is said to have been informed of his right to make a representation against the preventive detention to the Government.

13. The petitioner's preventive detention case was referred to the Advisory Board for its opinion which came to be tendered on

20.01.2026 holding the petitioner's preventive detention to be based on justifiable grounds thereby facilitating issuance of **Govt. Order No. Home/PB-V/94 of 2026** dated **23.01.2026** confirming the preventive detention of the petitioner and ordering his detention for a period of one year with effect from **10.01.2026** till **09.01.2027** to be kept lodged in the District Jail, Udhampur.

14. The petitioner is said to have made representation/s, through his wife, to the Principal Secretary to Govt., Home Department, UT of J&K, to the Advisory Board and also to the respondent No. 3 – Divisional Commissioner, Jammu all sent through registered post.

15. In his writ petition, the petitioner has assailed his preventive detention on the grounds as set out in para 5 by terming his detention as illegal, arbitrary and unconstitutional, ordered in utter disregard to the settled principles governing preventive detention.

16. The petitioner has alleged that the respondent No. 3 – Divisional Commissioner, Jammu and the respondent No. 1 – UT of Jammu & Kashmir have acted mechanically without any application of mind and literally following the dictates of the sponsoring agency without any independent or subjective satisfaction exercised at their respective end, but only to circumvent the bail orders granted in favour of the petitioner by the criminal court seized of the criminal trial against the petitioner.

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17. The petitioner has alleged that his right to representation has been seriously jeopardized by an omission on the part of the respondent No. 3 to apprise the petitioner as to before whom the representation was to be made from the end of the petitioner and the timeline for making the same. The petitioner submits that his wife had sent postal mode representation on **13.05.2026** which received no response whatsoever from the respondents No. 1, 2 & 3s' end.

18. In the counter affidavit filed on **25.07.2026**, the respondent No. 3 – Divisional Commissioner, Jammu has borrowed textual and contextual support from the grounds of detention formulated by him in support of detention order **No. PITNDPS 74 of 2025** dated **17.12.2025** passed by him.

19. The thrust of the learned counsel for the petitioner in assailing the preventive detention custody slapped upon the petitioner is that it is meant to overreach the earning of bail by the petitioner on the merits of the case thereby leaving the District Police upset and, thus, in order to serve a beforehand punishment unto the petitioner, case was processed for seeking the preventive detention of the petitioner and got the favour from the respondent No. 3's end.

20. Learned counsel for the petitioner submits that there is a total non-application of mind on the part of the respondent No. 3 – Divisional Commissioner, Jammu who is alleged to have acted with

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a closed mind and more like a post-office to the respondent No. 4 – Sr. Superintendent of Police (SSP), Samba.

21. This Court, while examining the facts as cited in the dossier and reproduced and referred in the grounds of detention, comes across with an informed impression that the placement of the petitioner under preventive detention custody is a counter action to the indulgence of ordinary criminal court of land in granting bail in favour of the petitioner and, thus, the respondent No. 4 – Sr. Superintendent of Police (SSP), Samba intended to overreach the bail granting criminal court/s in favour of the petitioner without bothering labour at his end to set up a case before the same very criminal court for seeking cancellation of bail granted in favour of the petitioner.

22. If the District Police of Samba did not have a conviction to consider and claim cancellation of bail granted in favour of the petitioner from the ordinary criminal court of law seized of trial of the petitioner by reference to **FIR No. 46/2023** of the Police Station Samba & **FIR No. 173/2025** of the Police Station Bari Brahmana, then on what factual basis the petitioner came to be reckoned as a person deserving of suffering preventive detention custody is something which leave this Court puzzled.

23. So much so, in the grounds of detention formulated by the respondent No. 3 – Divisional Commissioner, Jammu, there is no whisper of mention as to whether the petitioner ever suffered any

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arrest or evasion of arrest in **FIR No. 60/2023** of Police Station Samba. The respondent No. 4 – Sr. Superintendent of Police (SSP), Samba had put up the dossier against the petitioner in the month of December, 2025 and the detention order **No. PITNDPS 74 of 2025** came to be passed on **17.12.2025** and even as on that date neither the respondent No. 4 – Sr. Superintendent of Police (SSP), Samba nor the respondent No. 3 – Divisional Commissioner, Jammu are found to be having any clue about the status of the petitioner in a criminal case by reference to **FIR No. 60/2023** of Police Station Samba as to whether he is a declared absconder in said criminal case or he actually came to be arrested and then granted bail by the criminal court. This is such an alarming factual fallacy in the entire preventive detention case of the petitioner that it leaves the entire exercise a serious suspect. If the petitioner came to be granted bail in **FIR No. 173/2025** of Police Station Bari Brahmana, then how by reference to **FIR No. 60/2023** of Police Station Samba the petitioner was being hold as absent is a very intriguing fact.

24. In the light of the aforesaid glaring omission on the part of the respondent No. 4 – Sr. Superintendent of Police (SSP), Samba and the respondent No. 3 – Divisional Commissioner, Jammu in the matter of exercise of jurisdiction under the PIT NDPS Act, 1988, this Court holds the preventive detention of the petitioner as illegal and consequently sets aside/quashes the preventive detention order **No. PITNDPS 74 of 2025** dated **17.12.2025** read with confirmation order **No. Home/PB-V/94 of 2026** dated **23.01.2026** and

consequently directs release of the petitioner from preventive detention custody of District Jail, Udhampur with immediate effect for which Superintendent to carry out the compliance of the writ hereby being issued.

25. ***Disposed of***.

26. Detention record in original, if any produced to be returned back to the counsel representing the respondents.

(RAHUL BHARTI)
JUDGE

JAMMU
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Whether the judgment is speaking : Yes / No
Whether the judgment is reportable : Yes / No