

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.WP No.30 of 2025  
Reserved on 31.03.2026  
Pronounced on: 09.04.2026  
Uploaded on: 09.04.2026

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Sagar .....Petitioner  
Versus

State of HP and Others .....Respondents

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*Coram:*

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.  
The Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.

*Whether approved for reporting?*

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For the petitioner: Mr. Kulwant Singh Gill, Advocate.

For the respondents: Mr. Rakesh Dhaulta, Additional Advocate  
General for the respondents-State.

Sh. Ramakant Thakur, DSP, H.Q. Sirmour  
with SI/SHO Jeet Ram Sharma, P.S. Sadar  
Nahan, are present in person.

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**G.S. Sandhawalia, Chief Justice.**

Challenge in the present writ petition filed through the mother of the petitioner is for quashing and setting aside of the detention order dated 19.12.2025 (**Annexure P-4**), passed by respondent No.-1 under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act (PIT ND&PS Act,) 1988 (as amended) (hereinafter referred to "PIT ND&PS Act",) and passing any other order deemed fit and proper, whereby the

petitioner was detained and kept in Model Central Jail Kanda District Shimla, Himachal Pradesh for a period of three months.

2. It is pertinent to notice that during the pendency of the present proceedings, the detention order has been extended for another period of three months on 17.03.2026 (**Annexure A-2**), apparently on the basis of the opinion of the State Advisory Board dated 27.02.2026.

3. A perusal of the writ petition would go on to show that on the basis of the proposal dated 25.11.2025 (**Annexure P-1**) made by Sh. Yogesh Rolta, HPS, Additional Superintendent of Police Nodal PIT ND&PS Act, District Sirmour at Nahan, Himachal Pradesh, the process had been initiated. The action was sought apparently on account of the fact that the petitioner was implicated in FIR No.121/24 dated 15.07.2024 under the provisions of Section 18, 20, 21, 22, 29 ND&PS Act in which he had been bailed out on 01.10.2024 nearly more than a year earlier and no new FIR has been registered against him. It has been pleaded that only on account of the criminal history of the petitioner's father dating back to 1972 and including the son of the petitioner, the action has been taken under the "PIT ND&PS Act" and it has been specifically pleaded that preventive detention under this Act is conceived not as a substitute for ordinary legal processes but as an additional tool to

strengthen controls against drug trafficking and intended as a precautionary measure to forestall future criminal acts concerned with the drug trafficking and illicit activities relating to Narcotic Drugs and Psychotropic Substance Act and not a punitive response to the past offences.

4. The violation of Article 22 of the Constitution of India has been pleaded and apart from that it is pleaded that the detaining authority has to consider the representation and give an opportunity under Article 22 sub-Clause (5) and also the lack of material supplied in support of the detention order. It has further been mentioned that there is no conviction as such till date against the petitioner and there was over a period of one year since release of the petitioner on bail on 01.10.2024 and the "live and proximate link" had broken to justify the detention and therefore the order was also challenged and liable to be set aside on the ground that the nexus had been irretrievably lost.

5. The lodging of the FIRs against the petitioner's sons, Sangram and his nephew Samrat and his brother Shakti Chand could not be attributed as a ground to authorize the detention of the petitioner for the acts of the son; for the history of his father and the guilt by association could not be held out against the petitioner and

the respondents have never filed any application for cancellation of bail between October, 2024 and December, 2025.

6. Respondent No.4-State in its first reply through Superintendent, Model Central Jail, Kanda, District Shimla, Himachal Pradesh had given a formal reply that the petitioner-detenu was admitted in this jail on 19.12.2025 as per the orders of respondent No.1-State and arrested to be kept for three months, whereas in the reply filed by respondents No.1 to 3-State through Superintendent of Police, District Sirmour at Nahan, Himachal Pradesh, it has been averred that the detention order dated 19.12.2025 (**Annexure P-4**) has been passed by the competent authority after due application of mind and consideration of relevant material and there is no violation of any statutory or constitutional provision made out to warrant interference under Article 226 of the Constitution of India. The detention order dated 19.12.2025 (**Annexure P-4**) had been received and each & every page has been signed by the detenu and had been duly executed. The Central Government was duly informed and the necessary correspondence has been done with the Advisory Board in terms of Section 9(b) of the "PIT ND&PS Act". It was admitted that the page No.2 of the detention could not be served upon the detenu inadvertently but no prejudice has been

caused to the detenu, since the material facts forming the basis of detention order were within his knowledge.

7. The communication regarding detention was made at the place of detention on 01.01.2026 received by him on the same date (**Annexure R-3/4**) in which it was mentioned that the copy of the petition filed was also received on 24.12.2025 through the Office of the Advocate General of Himachal Pradesh in which the factum of one page i.e. page No.2 of the detention order was missing and there has been no deliberate or intentional violation of the constitutional or statutory safeguards, nor any prejudice has been caused to the petitioner and unconditional apology has also been tendered.

8. FIR No.124/24 dated 15.07.2024 was stated to be registered against the petitioner and his family in Police Station Sadar, Nahan in which the financial investigation was conducted by the Police on the basis of backward and forward linkage and during the financial investigation, property worth Rs.95,00,485/- of the petitioner and his family had been confiscated and it was also found that one of his houses at Nahan was also illegal.

9. The detention order was thus justified and it was the continued intelligence inputs and material indicated likelihood of future involvement in illicit trafficking and justified the delay that it did

not snap the live link as the future potential threat posed by the petitioner was continuing in nature. The proposal was based on objective material and lawful inputs and not merely on family history and the petitioner continued to indulge in narcotic-related activities even after his earlier arrest and there was consistent and credible field inputs.

**10.** The denial of the Act being misused or substituted for ordinary criminal law has been averred and all safeguards under Article 22(2) of the Constitution and the "PIT ND&PS Act" had been duly complied with. The alleged delay did not snap the live and proximate link between the petitioners' activities and the need for preventive detention and the judgments cited held out were stated to be distinguishable on facts that the detention order was passed on 19.12.2025 (**Annexure P-4**) and executed on the same day which was highlighted. It was denied that the detention order is not based on the acts of the petitioner's family members and the reference to family background was only for understanding the overall network involved and not as the basis of detention and such inputs are sufficient to form the subjective satisfaction of the detaining authority.

**11.** While issuing notice on 24.12.2025, it had been noticed that the detention order was perhaps incomplete and the directions were also issued to place on record the complete detention order

alongwith reply by the respondents-State and even putting to the petitioner to caution. In view of the admission by the respondents-State that the complete detention order has not been supplied, the observations of Vacation Bench dated 23.02.2026 pale into insignificance, wherein since the reply was not complete at that point of time during the Vacation Bench had noticed that there may be a concealment, since the detailed reply was only filed on 13.03.2026 by the respondents-State.

**12.** On 26.02.2026, we had also directed that an affidavit be filed to show whether any of the family members was filing Income Tax Return or not, since sum of Rs.24,00,000/- had been recovered in cash alongwith the contraband in FIR No.124/24. Thereafter, needful has been done.

**13.** Since the extension of the detention order had been passed on 17.03.2026, the copy of the same has been placed on record on 19.03.2026 by the counsel for the petitioner and we had also called for the record of the State Advisory Board on 25.03.2026 and the judgment was accordingly reserved on 31.03.2026.

**Arguments of counsel for the petitioner:-**

**14.** Counsel for the petitioner mainly argued that firstly no opportunity was granted that the representation could be made to the detaining authority which is in violation of Article 22 sub-Clause

(5) of the Constitution of India and referral to the law laid down by a five Judge Bench of the Apex Court in *Kamleshkumar Ishwardas Patel Vs. Union of India and others, (1995) 4 SCC 51* was made and therefore prejudice has been caused.

**15.** Secondly, it was argued that the proximate link had been snapped and the respondents-State had made no effort as such to take steps that the bail be cancelled and thereafter the petitioner had not indulged in any activity which could bring the case within the ambit of the PIT ND&PS Act, since preventive detention could only be done, if the petitioner was engaging in illicit trafficking narcotics drugs and psychotropic substances and to prevent him from doing so and not on account of his earlier family history, whereby there may be some alleged criminal antecedents.

**16.** Accordingly, it is submitted that it was an order of collective punishment being imposed upon the family while highlighting that the petitioner and his wife both are Income Tax assesses and a sole NDPS case as such has been registered against him in which he was not a sole accused and the joint raid on the house was conducted and the petitioner could not have been detained.

**17.** Thirdly, it was argued that the petitioner was not given effective opportunity to put forward his case before the State

Advisory Board and was not aware and was only under the assumptions that the matter was only regarding the confirmation of the initial detention order. Therefore, the challenge has also been raised to the subsequent extension of the detention order which is stated to be suffering from non-application of mind as it is only on the basis of the opinion of the State Advisory Board. It is submitted that fresh facts of passing of the subsequent order had to be on the record as such and therefore, it is argued that time and again, it was held that the preventive detention is a drastic and harsh law and reckoning measure of ordinary laws deals with the situation and the recourse to the detention is not justified.

**18.** Reference was made to the detention only on account of the local police as such exerting pressure and imposing collective punishment on the whole family and getting the accounts frozen apart from the family and also even confiscating the gym items and to the extent that even the pet animals also were not spared including the seven German Shepherd dogs kept alongwith 35 fowls (roosters and hen of Kadak Nath breed) belongs to Shakti Chand (brother of the petitioner). Accordingly, it is submitted that the petitioner was a private contractor and running his business. In pursuance of the said detention order even as many as five vehicles

of various makes have been attached/frozen apart from 11 bank accounts of the petitioner and his close relatives.

**19.** Lastly, it is argued that the fresh extension of detention order also smacks non-application of mind as the detaining authority independently applying its mind instead of accepting the opinion of the State Advisory Board and merely reproducing the contents as such and independent consideration had to be justified as such to extend the period of detention for another period of three months, keeping in view the principles relating to the law of detention.

**Arguments of counsel for the respondents-State:-**

**20.** The respondents-State, on the other hand, submitted that the detention order was justified, keeping in view the background as such and the huge amount of cash recovery and the drugs as such recovered and therefore the said order was not liable to be interfered with.

**21.** Reliance was placed upon the judgments of the Apex Court in ***Smt. Azra Fatima Vs. Union of India and others (1991) 1 SCC 76, Kamarunnissa Vs. Union of India and others (1991) 1 SCC 128*** and ***G. Reddeiah Vs. Government of Andhra Pradesh and another (2012) 2 SCC 389*** in support of the arguments.

**22.** We are of the considered opinion that the detention order as such and the further extension of the detention order would

not be justified in the facts and circumstances as there are various infirmities in the manner in which the State has proceeded.

**Violation of Article 22 (5) of the Constitution of India:-**

23. Article 22 of the Constitution of India provides for protection against arrest and detention order and the right as such that no person who is arrested is to be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice. Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person to be detained in custody beyond the said period without the authority of a Magistrate. The exception is provided under Article 22 (3) (b), whereby a person who is arrested or detained under any law for preventive detention and the fact that under sub-Clause (4), the period of detention is not for longer period than three months, unless the Advisory Board as such reports that there is in its opinion sufficient cause for such detention. The proviso provides that authorization of the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-Clause

(b) of Clause (7) of the said Article. Sub-Clause 5 further provides the right as such of making a representation against the order and communicate to such person the grounds on which the order has been made. Articles 22(3) to (5) of the Constitution of India read as under:-

- “(3) Nothing in clauses (1) and (2) shall apply-*
- (a) to any person who for the time being is an enemy alien; or*
  - (b) to any person who is arrested or detained under any law providing for preventive detention.*
- (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-*
- (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:*  
*Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made Parliament under sub-clause (b) of clause (7); or*
  - (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).*
- (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”*

**24.** In ***Kamleshkumar Ishwardas Patel*** case (supra), a five Judge Bench of the Apex Court was considering the issue whether the detention order passed by an Officer specially empowered by the Central Government or State Government is to consider the

representation or it is only the State Advisory Board as such. Resultantly, it was held that restricted meaning cannot be given to the words making a representation against the order of Article 22(5) of the Constitution of India as it enables the person to get immediate relief and it may not be obligated to make reference to the Advisory Board, if the period is less than three months and the right to make a representation can be made to the Advisory Board but also to the detaining authority. It is also to be noticed that the Constitution Bench was also examining the "PIT ND&PS Act" and eventually came to the conclusion that the right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention. The relevant paragraph reads as under:-

*"14. Article 22(5) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority, i.e., the authority that has made the order of detention or the order for continuance of such detention, who is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to revoke the order for detention and thereby give relief to the person detained. The right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation.*

*31. With due respect we find it difficult to agree with both the premises. Construing the provisions of Article 22(5) we have explained that the right of the person detained to make a representation against the order of detention comprehends the right to make such a representation to the authority which can grant such relief, i.e., the authority which can revoke the order of detention and set him at liberty and since the officer who has made the order of detention is competent to revoke it, the person detained has the right to make a representation to the officer who made the order of detention. The first premises that such right does not flow from Article 22(5) cannot, therefore, be accepted."*

**25.** In the present case if one is to look at the detention order dated 19.12.2025 (**Annexure P-4**) which would go on to show that there is not a whisper in the said order that the petitioner could make a representation to the detaining authority. The relevant part of the said order reads as under:-

*"5. Source Report:-*

*That proposed detenu did'nt stop his illegal activities of narcotics drugs and psychotropic substances even after his arrest in previous case. Secret reports have also been received from the Security branch of District Sirmour confirms that the proposed detenu Mr. Sagar is still actively involved in illicit trafficking of NDPS articles. This shown his determination to continue his illegal NDPS trade. It is further submitted that illicit trafficking in NDPS substances cause a serious threat to the health and welfare of the people and to protect the society from the menace, it is required to take stern action against the subject.*

*Therefore, I, Kamlesh Kumar Pant, IAS, Additional Chief Secretary (Home) to the Government of Himachal Pradesh, declared and empowered as detaining authority vide Government of Himachal Pradesh, Excise and Taxation Department Notification No.EXN-F(1)-10/2018-VOL-O dated 05.04.2021 for the purpose of preventive detention of person*

*(including foreigner) engaged in illicit trafficking of Narcotics Drugs and Psychotropic Substances under Section 3 of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PIT ND&PS Act), 1988, am satisfied after going through all relevant record available/provided by the Police Department and after applying my mind independently with respect to the person known as Sagar, that with a view to preventing him from engaging in illicit trafficking of narcotic drugs & psychotropic substance, in future, it is necessary to make this order.*

*Now, therefore, in exercise of the powers conferred by section 3(1) of the Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substance Act (PIT ND&PS Act), 1988 (as amended). I directed that the said Mr. Sagar, So/ Sh. Prem Chand, R/o House No.372/11, Red Cross Road, near Petrol Pump, Balmiki Basti Nahan, District Sirmaur, Himachal Pradesh be detained and kept in Model Central Jail Kanda District Shimla, Himachal Pradesh for three months as per the Act *ibid.*"*

26. It is thus apparent that there is blatant violation of the provisions of Article 22(5) of the Constitution of India and the said detention order suffers from infirmity which is going to the root of the matter which apparently missed the notice of the State Advisory Board while placing the material before it. The extension as such has been given for another three months which led to the subsequent extension of detention order on 17.03.2026.

**Drastic provisions to be strictly applied:-**

27. It is time and again held by the Apex Court that preventive detention is drastic and harsh law. Reference can be made to the judgment of the Apex Court in ***Vijay Narain Singh vs State of Bihar & Ors (1984) 3 SCC 14***, whereby a three Judge

Bench was dealing with the meaning of “habitual offender” and “habitually offender” and there was a thread of continuity stringing together similar repetitive, repeated and persistent acts for the detention of the Bihar Control of Crimes Act, 1981 and accordingly it has been held that the person could not be called an anti-social element and merely a single act as such could not be enough to treat a person as anti-social element and power of detention was subject to the limitation enjoined by the exercise of power under Article 22(5) of the Constitution of India and there had to be certain procedural safeguards in the preventive detention of the citizens. Resultantly, it was held that the preventive detention is considered so treacherous and such an anathema to civilized thought and democratic polity that safeguards against undue exercise of the power to detain without trial which have been built in the Constitution itself and incorporated as Fundamental Rights.

28. Reliance can also be placed upon the judgment of the Apex Court in ***Rekha Vs. State of Tamil Nadu (2011) 5 SCC 244***, which would go on to show that the liberty granted under Article 21 of the Constitution of India should not be violated on the grounds of mere suspicion. The relevant paragraph reads as under:-

*“29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of*

*the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.*

30 to 34.....

35. *It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a "jurisdiction of suspicion" (vide State of Maharashtra v. Bhaurao Punjabrao Gawande, SCC para 63). The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is, in our opinion, mandatory and vital."*

29. Recently, the Apex Court in ***Mortuza Hussain Choudhary Vs. State of Nagaland and Others (2025) SCC OnLine SC 502*** has held that the provisions of PIT ND&PS Act, authorizing the preventive detention deprives a person of his/her individual liberties by detaining him/her for a length of time without being tried and convicted of a criminal offence and the prescribed safeguards have to be strictly observed to ensure due compliance with constitutional and statutory norms and requirements.

**30.** It is important to notice that the petitioner's house had been raided and as much as the following contraband alongwith Rs.24,00,000/- was recovered, which is the part of the proposal submitted by the Additional Superintendent of Police. The quantity of contraband is as under:-

*"d. Quantity of contraband-*

- 1. Spasmaxx Capsules = 366 capsules*
- 2. Charas = 159.80 gm*
- 3. Opium = 38.10 gm*
- 4. Heroine/Chitta = 23.34 gm*
- 5. Currency Notes = 24,40,000/- rupees*
- 6. Weighing Machine = 01 No."*

**Detention only if involved in illicit traffic in NDPS:-**

**31.** It is not disputed that the power to make orders detaining a person flows from Section 3 of the "PIT ND&PS Act" which specifically provides that the specially empowered officers, if satisfied, with respect to any person (including a foreigner) with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances may make an order directing that such person be detained. The relevant portion of Section 3(1) of the said Act reads as under:-

*"3. Power to make orders detaining certain persons.-(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, specially empowered for the purposes of this section by that Government, may, 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.”*

**32.** The grounds of preventive detention as recommended shows that the petitioner was 44 years old and he is alleged to be dealer as such which reads are as under:-

**“1. Intelligence Summary**

*Based on consistent inputs from confidential and reliable sources, **Sagar**, son of **Prem Chand**, has been identified as a key operator in the regional illegal drug trade. His involvement spans the **procurement, distribution, and sale of narcotics**, often coordinated through a **close-knit network of family members and associates** with criminal backgrounds.*

*Sagar has been known to operate discreetly while maintaining strategic connections within the local criminal ecosystem. Intelligence inputs also suggest that he utilizes his familial and social ties to evade law enforcement actions and sustain illegal activities.*

**2. Criminal Record Summary**

***Sagar**, son of **Prem Chand** has an extensive criminal history with **03 FIRs registered** against him under various sections of the **Indian Penal Code (IPC)** and the **NDPS Act**. All of these 03 Cases are currently pending in the court, the detail of Pending Cases is as follows:*

| <b>Sr. No</b> | <b>FIR</b>   | <b>Status of the Case</b> |
|---------------|--|---------------------------|
| 1             | 55/22 dated 26.04.2022 U/S 341, 323, 147, 148, 149, 325, 504, 506 IPC PS Nahan | Pending in Court          |
| 2             | 163/23 dated 28.10.2023 U/S 451, 147, 149, 323, 504, 506 IPC PS Nahan          | Pending in Court          |
| 3             | 121/24 dated 15.07.2024 U/S 18, 20, 21, 22, 29 NDPS Act PS Nahan               | Pending in Court          |

### **3. Family History of Sagar:**

It is not only Sagar Chand who is involved in such activities; his entire family has a long history of engaging in similar unlawful businesses and illegal activities.

- His father, **Prem Chand**, has been continuously involved in illegal activities since the year **1972**, with **10 criminal cases** registered against him. These cases pertain to **assault, rioting, theft, violations under the Excise Act, and illegal drug trade**, some of which are still pending before the Hon'ble Court.
- His brother, **Shakti Chand**, has had **5 cases** registered against him since **2008**, involving charges of **assault, rioting, road accidents, and illegal drug trade**.
- His son, **Sangram alias Anshu**, has been named in **7 cases** since **2021**, related to **assault, rioting and illegal drug trade**.
- His nephew, **Samrat alias Vasu**, son of Shri Sanjeev Kumar, has **11 cases** registered against him since **2021**, involving charges of **assault, rioting, violations under the Gambling Act, and illegal drug trade**.

Additionally, Sagar's sons, **Sangram @ Anshu** and **Yash @ Kali**, alongwith his nephew **Samrat alias Vasu** and other associates were involved in an **armed attacked at Do Sadak**. In connection with this incident, **FIR No.30/25 dated 13.02.2025** has been registered at **Police Station Sadar, Nahan**, under Sections **191(2), 196, 191(3), 118(1), 115(2), 352, 351(2), 238 of the BNS, and Section 25 of the Arms Act** and similar another incident at **Chaugan Ground Nahan** an **FIR No.153/25 dated 29.11.2025 u/s 126(2), 115(2) & 3(5) BNS** PS Sadar Nahan has been registered against **Sagar's Son Yash @ Kali** during investigation **Section 109 BNS** added in the case.

### **4. Criminal Activities of his son:-**

Sagar's boy Sangram alias Anshu has formed a group with other boys in the area to create fear in the area and has posted their photos with weapons on the social media. From this it is clear that these people are adding other boys to create terror in the

area and to expand their illegal drug trade. Sagar and his entire family are involved in **fighting, rioting, gambling, Excise Act, illegal drug trade** and even after several cases have been registered against them there is no improvement in them and they are especially involved in illegal drug trade. Due to which he and his family have become a terror in the area. Not just this, his entire family had also launched a murderous attack on the local police and the in-charge of Nahan police station.

#### **5. Financial Investigation of the case:-**

In the year 2024, a case was registered against him and his family in Police Station Sadar Nahan under **FIR No.121/24 dated 15.07.2024 under Section 18, 20, 21, 22, 29 & ND&PS Act** in which financial investigation was conducted by the police on the basis of backward and forward linkage. During the financial investigation, property worth **Rs.95,00,485/- of him and his family has been confiscated** and it is also found that one of his houses in Nahan is also illegal. But still it has been learned from secret sources that he is continuously involved in illegal drug trade.

#### **6. Source Report:-**

According to confidential information obtained from undisclosed sources, 16 cases have been registered against Sagar Chand since 2002. These cases involve charges of assault, rioting, theft and involvement in the illegal drug trade. It has also been found from secret sources that he goes to industrial areas and threatens people and demands of money. **Around 15 criminal cases related to fights, quarrels, and theft have been registered against Sagar in various police stations. Such is his influence that he manages to intimidate or manipulate witnesses and complainants, resulting in acquittals from the courts.**

**Apart from this, in addition, Sagar is currently living in his house in Nahan, while his wife works in a company in Ludhiana. His sons, Sangram alias Anshu Gupta and Yash alias Kali, also reside in Nahan. At present, Sagar moves around the area in his cherry-colored HR-registered vehicle. Through other individuals/peddlers involved in the drug trade, he**

*continues to run this illegal business and conducts cash-based financial transactions with those involved. Sagar purchases narcotic substances from the state of Haryana through peddlers and bring them into this district. He supplies these substances to the youth of Nahan and nearby areas and continues to operate his illegal trade.*

*Currently, three cases are pending against him in court, including one under the Narcotic Drugs and Psychotropic Substances Act, in which a financial investigation was also conducted. Sagar, alongwith his son Sangram alias Anshu and his father Prem Chand, is still engaged in the illegal trade of narcotic medicines. According to confidential sources, young individuals are frequently seen roaming around their house and the lanes of Nahan in search of drugs. No new cases have been registered against them recently, as they have become adept at evading police action in this illegal trade.*

#### **7. Impact of detention:-**

*The detention order of Sagar S/o Prem Chand will circulate a positive impact on reducing the rate of recidivism, drug consumption and drug-related crimes in the area of Nahan city by deterring him from engaging in drug trafficking. His detention will facilitate him with rehabilitation and social reintegration. He will be prevented from engaging in drug trafficking and will be isolated from his network of associates and contacts, who assist him in procuring, transporting and selling drugs.*

*Therefore, proposal for the detention order of Sagar son of Shri Prem Chand resident of House N.372/11, Mohalla Balmiki Basti Nahan Tehsil and Police Station Nahan, Himachal Praesh age 44 yrs. is being submitted for your kind perusal please."*

33. Thus, it is apparent that there is only one case under the NDPS Act, against the petitioner and his other family members. It is also pertinent to notice that the petitioner's father Prem Chand was granted bail on 09.08.2024 by Special Judge-II, Nahan, District

Sirmaur, Himachal Pradesh which transpires that the recovery was done from the second floor of his father's portion. Being 71 years old, he was given the benefit of the bail and on medical grounds also. The petitioner also got similar relief on 01.10.2024 from the same Court, wherein also again it was recorded that the search was conducted from the second floor and the accused Prem Chand had opened an almirah and it was done at 11:00 pm at night on the basis of the secret information received. It is also apparent that nothing incriminating as such was recovered from the person as such of the petitioner whose servant also Rajni Kant was arrested.

**34.** The Trial Court recorded that the contraband was of the intermediate quantity and there was no criminal history of the co-accused Mayank who had also been arrested and therefore strict controlling stringent conditions could be put for grant of bail. The respondents-State made no effort as such even to file an application for cancellation of the bail order and on that proposal primarily on the ground that the family is involved in various matters under IPC, the detention order has been passed under Section 3 of the "PIT ND&PS Act" which has already been reproduced above and therefore, apparently there is snap in the live link as such between a period of a year and five months had passed since the NDPS case was registered in July, 2024.

**Snapping of live link:-**

**35.** The principle laid down by a three Judge Bench of the Apex court in ***Sushanta Kumar Banik Vs. State of Tripura and Others (2022) SCC Online SC 1333*** would thus come into play, wherein it was held that there was a delay in passing the order of detention as the proposal was dated 28.06.2021 and the order of detention order was dated 12.11.2021 and there was no explanation why it took almost five months for the detaining authority to pass the order of preventive detention. Accordingly, it was held that on the part of the detaining authority or executing authority it would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings and there should be a “live and proximate link” between the grounds of detention and the purpose of detention snapped in arresting the detenu and it would be *prima facie* unreasonable and the respondents-State has no reason to explain the delay.

**36.** As noticed, there is a period of over a year and five months after the petitioner has been released on bail and he had not indulged in any activity, whereby he was involved in any further NDPS matters rather it is but apparent that what has prevailed with the recommendatory body was the criminal background and the

involvement of the family in other FIRs pertaining to the provisions of IPC and BNSS.

**37.** The proposal as reproduced above would go on to show that the police was not even able to arrest the family members in any matters under NDPS Act and there is an admission that the family had become adept at evading police action in the illegal trade.

**Collective Punishment upon the family:-**

**38.** It is also pertinent to notice that the documents have been placed on record showing that the petitioner wife Seema Kumari is employed with a private company firming at Ludhiana and working as a Senior General Manager-Operations and drawing a salary of Rs.55,000/-, which would be clear from the appointment letter dated 12.01.2024 (**Annexure A-2**) having an annual salary of Rs.6,60,000/-. The father of the petitioner retired from the Government Department and drawing a monthly pension of Rs.12,272/- and the copy of the bank statements are enclosed as **Annexure A-3**. It is not disputed that the petitioner was running a gym and as many as 52 articles of the gym were also seized in the FIR and eventually the said order under Section 68E of the NDPS Act was not confirmed. As per the order of the Special Judge dated 29.11.2025 (**Annexure A-4**), the 52 articles of the gym have been released alongwith four bank accounts also whereby justification was

given on the part of their family members. The Income Tax Returns of brother Shakti Chand has also been placed on record pertaining to the Assessment Years 2023-2024 and 2024-2025 including the petitioner from the year 2015-2016 till the year 2023-2024 which further the counsel had highlighted that it is not that petitioner is a man of straw.

**39.** It is to be noticed that the said proceedings was also subject matter of consideration before the Competent Authority and the freezing order dated 30.10.2024 (**Annexure R-3**) was subject matter of consideration and some relief was granted to the petitioner vide order dated 30.10.2024 passed by the Competent Authority & Administrator SAFEM (FOP)A, 1976 & NDPS Act, 1985 Delhi. A perusal of the said order dated 30.10.2024 (**Annexure R-3**) would also go on to show that the following vehicles owned by the family which included four vehicles also and the bank accounts which were subject matter of consideration:-

**“List of Properties**

| <i>Sl No.</i> | <i>Name of owners</i>          | <i>Description of properties</i>                          | <i>Date/Month/Year of acquisition/ purchase</i> | <i>Value (in Rs.)</i> |
|---------------|--------------------------------|---|---|-----------------------|
| 1             | Shri Sagar, So Shri Prem Chand | Toyota Etios LMV Car bearing Registration No.HP 71 8159.  | October, 2018                                   | 8,93,0000             |
| 2             |                                | Goods Carrier bearing Registration No. HP71A-1514         | 04.03.2021                                      | 19,42,709             |
| 3             |                                | Yamaha R15 Motorcycle bearing Registration No. P71A-2484. | 02.03.2022                                      | 1,59,700              |

|    |   |  |            |              |
|----|---|--|------------|--------------|
| 4  |   | BMW Car bearing Registration No.CHO01AY-0895   | 08.08.2023 | 6,50,000     |
| 5  | Shri Shakti Chand @ Shakti Singh @ Shakti @ Bunti, S/o Shri Prem Chand                      | Mahindra Bolero Car bearing Registration No. HP18C-0316  | 16.08.2020 | 9,03,071     |
| 6  | Shri Prem Chand, S/o Late Bachna Ram  | Bank Account No.65049868445 in SBI, Branch: Nahan, District Sirmaur, Himachal Pradesh            | --         | 14,80,655.24 |
| 7  | Shri Perm Chand, S/o Late Bachna Ram  | Bank Account No.50100109556374 in HDFC Bank, Branch: Nahan, District Sirmaur, Himachal Pradesh.  | --         | 3,501        |
| 8  |   | Bank Account No.55710110185 in HPSCB Bank, Branch: Nahan District: Sirmaur, Himachal Pradesh     | --         | 826.22       |
| 9  | Shri Sagar, So/ Shri Prem Chand   | Bank Account No.919010077993063 in Axis Bank Branch: Nahan, District: Sirmaur, Himachal Pradesh. | --         | 00           |
| 10 |   | Bank Account No.50100100484850 in HDFC Bank, Branch: Nahan, District: Sirmaur, Himachal Pradesh  | --         | 00           |
| 11 |   | Bank Account No.50100006911282 in HDFC Bank, Branch: Nahan, District: Sirmaur, Himachal Pradesh  | --         | 00           |
| 12 | Ms. Seema Kumari @ Seema Chaudharay, D/o Late Joginder Pal                                  | Bank Account No.919010053938525 in Axis Bank, Branch: Nahan, District Sirmaur, Himachal Pradesh. | --         | 2,627.76     |
| 13 |   | Bank Account No.4503000100023046 in PNB Branch: Kala Amb, District: Ambala, Haryana.             | --         | 385.46       |
| 14 | Shri Shakti Chand & Shakti Singh @ Shakti @ Bunti, S/o Shri Prem Chand                      | Bank Account No.55120033906 in SBI, Branch: Nahan, District: Sirmaur, Himachal Pradesh           | --         | 3,43,420.61  |
| 15 | Smt. Mamta Rani, W/o Shri Shakti Chand @ Shakti Singh @ Shakti @ Bunti, S/o Shri Prem Chand | Bank Account No.55910119819 in Co-Oper. Bank, Branch: Nahan, District: Sirmaur, Himachal Pradesh | --         | 364.15       |
| 16 |   | FD Account No.55930313457 in Co-Oper. Bank, Branch: Nahan, District: Sirmaur, Himachal Pradesh.  | --         | 6,87,930/-   |

**GYM ARTICLES**

|    |                                 |   |                           |           |    |
|----|---------------------------------|---|---------------------------|-----------|----|
| 17 |                                 | 05 Olympia Rods   | --                        | 28000     |    |
| 18 |                                 | 01 Junctional Trainer Machine   | --                        | 20000     |    |
| 19 |                                 | 01 Smith Machine  | --                        | 15000     |    |
| 20 |                                 | 01 Preacher Bench   | --                        | 9000      |    |
| 21 |                                 | 01 Leg Curls  | --                        | 8000      |    |
| 22 |                                 | 05 Benches  | --                        | 16000     |    |
| 23 |                                 | 01 Rowing Machine   | --                        | 15000     |    |
| 24 |                                 | 01 Cable Preacher   | --                        | 11000     |    |
| 25 |                                 | 01 Chest Fly  | --                        | 12000     |    |
| 26 |                                 | 01 Cable Cross  | --                        | 15000     |    |
| 27 |                                 | 01 Leg Press  | --                        | 11000     |    |
| 28 |                                 | 01 Leg Pull Down Machine  | --                        | 13000     |    |
| 29 |                                 | 01 Bench Press  | --                        | 30000     |    |
| 30 |                                 | 01 Decline Bench Press  | --                        | --        |    |
| 31 |                                 | 01 Incline Bench Press  | --                        | --        |    |
| 32 |                                 | 01 Dumble Rack  | --                        | --        |    |
|    | Shri Sagar, S/o Shri Prem Chand | <b>Dumbles:-</b><br>i. 01 Kg = 01 Pair<br>ii. 05 Kg = 01 Pair<br>iii. 7.5 Kg = 01 Pair  | --                        | 40,0000/- |    |
|    |                                 | <b>Rubber Dumbles:-</b><br>i. 5 Kg = 02 Pairs<br>ii. 7.5 Kg = 02 Pairs<br>iii. 10 Kg = 03 Pairs<br>iv. 15 Kg = 01 Pair<br>v. 20 Kg = 02 Pairs<br>vi. 25 Kg = 01 Pair<br>vii. 30 Kg = 01 Pair<br>viii. 35 Kg = 01 Pair |                           |           |    |
|    |                                 | <b>Iron Double Weight:-</b><br>i. 15 Kg = 01 Pair<br>ii. 30 Kg = 01 Pair  |                           |           |    |
|    |                                 | <b>Rubber Plates:-</b><br>i. 5 Kg = 10 Nos.<br>ii. 2.5 Kg = 04 Nos.<br>iii. 7.5 Kg = 04 Nos.<br>iv. 10 Kg = 14 Nos.<br>v. 15 Kg = 8 Nos.<br>vi. 20 Kg = 3 Nos.  |                           | 45,0000/- |    |
| 34 |                                 |   | 01 Plate Stand            | --        | -- |
| 35 |                                 |   | 06 Nos. of Small Iron Rod | --        | -- |
| 36 |                                 |   | 03 Iron Grips             | --        | -- |
| 37 |                                 |   | 03 Try/Blue Small Rods    | --        | -- |
| 38 |                                 |   | 01 Lets Iron Grip         | --        | -- |
| 39 |                                 |   | 01 Triceps Rope           | --        | -- |
| 40 |                                 | 06 Nos. of Weight Locks   | --                        | --        |    |

|    |  |  |  |  |
|----|--|--|--|--|
| 41 |  | 01 Pair of Rubber Grip   | --                                     | --   |
| 42 |  | 04 Gym Belts   | --                                     | --   |
| 43 | Shri Prem Chand S/o<br>Late Bachna Ram                                     | Drug Money   | --                                     | 24,40,000/-  |
| 44 | Ms. Seema Kumari<br>@ Seema<br>Chaudharay, D/o<br>Late Joginder Pal        | 118.8 Grams of Gold<br>ornaments   | 9,22,482 (rate<br>per gram =<br>7,765) | Loan amounting to<br>Rs.5,38,000 was<br>taken from Muthoot<br>Finance Company<br>Kala-Amb by<br>mortgaging gold<br>ornaments by her in<br>the year 2023. |
| 45 | Shri Sagar, S/o Shri<br>Prem Chand   | 32.700 Grams of Gold<br>ornaments.   | 2,53,915.5                             | Loan amounting to<br>Rs.1,12,200 was<br>taken from Muthoot<br>Finance Company<br>Kala-Amb by<br>mortgaging gold<br>ornaments by her in<br>the year 2023. |
| 46 | Shakti Chand @<br>Shakti Singh @<br>Shakti @ Bunti, S/o<br>Shri Prem Chand | Presently about 113<br>livestock (भेड़े, बकरियाँ<br>तथा बकरे), 35 Nos. of<br>Fowl (rooster and hen)<br>Kadak Nath Breed and<br>07 Nos. of German<br>Shepherd Dogs are kept<br>by him in his farm house<br>located at Satiwal near<br>Shambuwalla, Nahan,<br>District Sirmaur,<br>Himachal Pradesh. | 2018-19                                | 15,00,000<br>(esitimated cost)   |

40. We do not wish to further comment upon the said proceedings but it only vindicates the stand of the petitioner that the action of the detaining authority as such was an order of a collective punishment being imposed upon the petitioner and his family and the same cannot be justified for the purpose of passing the detention order.

41. Reliance can be placed upon the judgment of Apex Court in **RE: Directions in the Matter of Demolition of Structures, (2025) 5 SCC 1**, which pertains to the “Bulldozers justice” meted out by the State wherein the principle as such was laid down under

Article 21 which would come into play as an order of confiscation as such would take away the right of life and shelter of the petitioner's family who is not associated with the crime.

42. As noticed even the gym articles as such were seized as noticed above apart from livestock and the pets by the State apparently in an order of crack-down on account of the criminal antecedents of the family pertaining to the law and order situation rather than the drug trade under which the detention order has been passed. The grounds which had to be based are inconsistent with the facts and materials and has to be self-sufficient and self-explanatory and the statements and other materials which have been relied upon the detention and further extension of detention would go on to show that it is de hors the power under the Act and the detaining authority to detain the person and keep him in incarceration at its whims and fancies and only conclusion is that the action is an arbitrary Act, which cannot be sustained.

43. Therefore we are of the considered opinion on this ground also the detention order is not sustainable and there had to be fresh facts for passing the subsequent order dated 17.03.2026 as laid down in ***Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others (1989) 2 SCC 318*** that there has to be some additional and fresh materials and the order of detention would be vitiated as such there

was no plausible reasons as such to extend the detention merely on the ground of the criminal antecedents of the persons in the absence of any other NDPS case having been registered against the petitioner. Thus, if we have to strike down the earlier order dated 19.12.2025 all consequential proceedings are to be nullified.

44. The Apex Court recently in ***Pesala Nookaraju Vs. Government of Andhra Pradesh and Others (2023) 14 SCC 641***, while dealing with the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 delineated on the concept of public order, law and order and that the power of preventive detention is only to be exercised in reasonable anticipation. The principles laid down as such are on the essential conceptual of preventive detention and corroborated offence into punitive detention and the remedy is under Article 226 of the Constitution of India and the lawful deprivation of liberty and whether the detention is legal or illegal under Article 32 of the Constitution of India. The relevant paragraphs reads as under:-

*“16. The essential concept of the preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other*

hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between the prosecution in a Court of law and a detention order under the Act 1986. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond the reasonable doubt, whereas in the other a person is detained with a view to prevent him from doing such act(s) as may be specified in the Act authorizing preventive detention.

17. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. (See : Haradhan Saha v. The State of W.B. and others, 1974 Cri.L.J.1479]

18. In **Halsbury's Laws Of England**, it is stated thus:-  
 "The writ of habeas corpus ad subjiciendum" unlike other writs, is a prerogative writ, that is to say, it is an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate. This writ is a writ of right and is granted ex debito justitiae. It is not, however, a writ of course. Both at common law and by statute, the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown. The writ may not in general be refused merely because an alternative remedy by which the validity of the detention can be questioned. "Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ in order to regain custody. In any case, where access is denied to a

*person alleged to be unjustifiably detained, so that there are no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reason for it being made."*

19. In **Corpus Juris Secundum**, the nature of the writ of habeas corpus is summarized thus:

*"The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and detention to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf." 'Habeas corpus' literally means "have the body". By this writ, the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo- Saxon Jurisprudence."*

20. In **Constitutional and Administrative Law By Hood Phillips & Jackson**, it is stated thus:-

*"The legality of any form of detention may be challenged at common law by an application for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance of habeas corpus as providing a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by Judges and writers. Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public authority may be acting and the willingness of the Courts to examine the legality of decision made in reliance on wide ranging statutory provision. It has been suggested that the need for the "blunt remedy" of habeas corpus has diminished as judicial review has developed into an ever more flexible jurisdiction. Procedural reform of the writ may be appropriate, but it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the court may refuse relief on practical*

*grounds; habeas corpus is a writ of right, granted ex debito justitiae.”*

*21. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words “habeas” and “corpus”. ‘Habeas Corpus’ literally means ‘have his body’. The general purpose of these writs as their name indicates was to obtain the production of the individual before a court or a judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the Executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure.*

*22. In England, the jurisdiction to grant a writ existed in Common Law, but has been recognized and extended by statute. It is well established in England that the writ of habeas corpus is as of right and that the court has no discretion to refuse it. “Unlike certiorari or mandamus, a writ of habeas corpus is as of right” to every man who is unlawfully detained. In India, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this Country, which he can enforce under Article 226 or under Article 32 of the Constitution of India.*

**45.** In similar circumstances in **Cr.WP No.31 of 2025**, titled **Ankush Thakur Vs. State of HP and Others**, decided on **26.02.2026**, we had quashed the detention order dated 06.12.2025 on the ground that the last FIR as such which was lodged against the detenu was in March, 2024 and resultantly we had placed reliance upon the judgment of the Apex Court in **Mortuza Hussain**

**Choudhary** case (*supra*) regarding the satisfaction of the detention authority and the application of mind. The relevant paragraph of the observations of the Apex Court reads as under:-

*“16. Lastly, the material placed on record reflects that the detaining authority, viz., the Special Secretary, Home Department, Government of Nagaland, did not even make separate grounds of detention but merely acted upon the proposals for detention forwarded to her by the Additional Director General of Police (Administration), Nagaland. The cryptic orders of detention passed by her on 30.05.2024 merely recorded that she was satisfied, on careful examination of such proposals and other supporting documents, that sufficient grounds were made out for the detention of Ashraf Hussain Choudhary and Adaliu Chawang. This is not in keeping with the statutory scheme, inasmuch as Section 6 of the Act of 1988 specifically refers to the order of detention ‘being made’ on separate grounds. Further, Section 3(1) also records that the authorized officer, be it of the Central Government or of a State Government, must be ‘satisfied’ that the person concerned required to be detained so as to prevent him/her from engaging in illicit trafficking of narcotic drugs and psychotropic substances. Such ‘satisfaction’ of the detaining authority necessarily has to be spelt out after application of mind by way of separate grounds of detention made by the detaining authority itself and cannot be by inference from a casual reference to the material placed before such detaining authority or a bald recital to the effect that the detaining authority was ‘satisfied on examination of the proposals and supporting documents’ that the detention of the individuals concerned was necessary.*

*17. On the aforesaid analysis, we hold that the Gauhati High Court erred in the application of settled legal norms while testing the validity of the impugned detention orders. The common judgement dated 29.08.2024 passed by the Gauhati High Court dismissing the two writ petitions is accordingly set aside and the appeals are allowed.*

*In consequence, the detention orders dated 30.05.2024 passed by the Special Secretary, Home Department, Government of Nagaland, confirmed and*

*continued thereafter by way of extension orders, shall stand quashed. The detenus, Ashraf Hussain Choudhary and Adaliu Chawang, shall be set at liberty forthwith, unless their continued incarceration is warranted in connection with any other case."*

46. It has been held that in law of detention strict procedure has to be followed with adherence to all the safeguards as it is only preventive in nature and the present case seems to be a punitive act which shows over eagerness of the State on account of the local police, which has been accepted by the detaining authority without any apparent application of mind.

47. The judgments which have been relied upon by the respondents-State will not detain us for a very long time since it would be apparent that in **Smt. Azra Fatima's case (supra)**, the issue as such was of recovery of Rs. 56 Kg, 650 grams of heroin apart from other drugs which was valued of Rs.1,13,42,000/- as on 21.10.1988. A finding was recorded that the person as such was trafficking in drugs and had arisen from and was employed as delivery boy on Rs.30/- per day at one point of time and thus he was a part of the ring of traffickers in heroin and Mandrax tablets in Bombay.

48. Similarly in **Kamarunnissa's case (supra)**, the detenus as such were found smuggling items concealed in their body by swallowing them which were in the form of diamonds and

foreign currency notes and the Apex Court thus came to the conclusion that they were trained as such and not ordinary carriers and it is not a solitary effort as such while upholding the detention order.

49. Similary in **G. Reddeiah's case** (*supra*), the detenu as such was involved in as many as eight cases within a period of one year of smuggling of red-sanders trees from the forests of Andhra Pradesh and therefore, it was found that the activities had been dangerous to forest wealth and forest eco-system and prejudicial to the maintenance of public order. The detention was for twelve months which was accordingly upheld, keeping in view the fact that he is habitually indulging in trespassing forest area, illicit cutting, felling, smuggling and transporting red-sanders trees from reserved forests and it was a habitual nature and the detention was thus accordingly justified, as he was damaging the wealth of the country.

50. In the judgment of the Apex Court in **RE: Directions in the Matter of Demolition of Structures case** (*supra*), it was accordingly held that it was the established principle of rule of law and the processes enshrined in constitutional law, criminal law and procedure are facets of the rule of law and thus serve to regulate the exercise of executive power and the rights and liberties of the citizens are essentials for protecting the constitutional democracy

and is an umbrella concept for a number of legal and institutional instruments to protect citizens against the power of the State and has to be considered broadly. It is also to be noticed that the State has now sought to justify that even the residence as such of the accused is by way of illegal encroachment and the concerned Station House Officer has written to the Superintendent of Police that the correspondence be made to the Deputy Commissioner to remove the illegal construction from the Government land so that the drug peddlers can be knelt down financially as the land belongs to the Municipal Committee, Nahan. Resultantly, keeping in view the peculiar facts and circumstances, we are of the considered opinion that it is a collective punishment being imposed upon the family as such on account of persons residing in the house having criminal history as such and therefore, the observations made in the said judgment would also be applicable. The relevant paragraph reads as under:-

*“21. In this respect, we may refer to the work of various scholars in the field. Thus, “for the rule of law to measure up to the requirements of a legitimate constitutional democracy, it must be more than the rule of law in the narrow sense”<sup>10</sup>. In the modern constitutional framework, “the rule of law would seem to need democratic accountability, procedural fairness, and even perhaps substantive grounding”<sup>11</sup>, such as in the provisions of the Constitution. In other words, “the rule of law means the regulative role of certain institutions and their associated legal and judicial practices”<sup>12</sup>. It has been beautifully observed:*

*“That is the law. And no Spartan, subject or citizen, man or woman, slave or king, is above the law. Where-ever law ends, tyranny begins”<sup>13</sup>.*

**22.** *This Court in the case of Smt. Indira Nehru Gandhi v. Shri Raj Narain<sup>14</sup>, has held the rule of law to be part of the basic structure of the Constitution. It will be apt to refer to the following observations of Justice Mathew:*

*“341...I cannot conceive of rule of law as a twinkling star up above the Constitution. To be a basic structure, it must be a terrestrial concept having its habitat within the four corners of the Constitution. The provisions of the Constitution were enacted with a view to ensure the rule of law...”*

**23.** *The relevance of the rule of law in our constitutional system has been considered by this Court in various judgments. In the case of National Human Rights Commission v. State of Arunachal Pradesh<sup>15</sup>, this Court was considering the plight of Chakma community in the State of Arunachal Pradesh. This Court observed thus:*

*“No State Government worth the name can tolerate such threats by one group of person to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics.”*

**24 to 65xxxxxxx**

**66.** *It is thus required that the trial must be fair and open, but not prejudiced by public clamor. The precepts of natural justice are to ensure that the legal order will be impartially and regularly maintained. An accused cannot be declared guilty, unless proven so beyond reasonable doubt before a court of law. They cannot be declared guilty, unless there is a fair trial.*

**67.** *In this regard, it will be apposite to refer to the decision of this Court in the case of Himanshu Singh*

*Sabharwal v. State of Madhya Pradesh*<sup>38</sup>, where it was held:

*“Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial...*

*The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.”*

**68.** *It has been held by this Court in the case of State of Maharashtra v. Champalal Punjaji Shah*<sup>39</sup>, that the right to a fair and speedy trial is enshrined under the right to life guaranteed under the Constitution.

**69.** *The importance and purpose of the principles of natural justice have been succinctly summed up by Lord Megarry in the case of John v. Rees*<sup>41</sup> as under:

*“It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. ‘When something is obvious,’ they may say, ‘why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.’ Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by*

*discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events.”*

**70 to 80xxxxxxx**

**81.** *The position is disputed by the learned counsels appearing on behalf of the petitioners/applicants. It is stated that the chain of events clearly depicts that the demolition of the houses was an immediate reflection of the persons being implicated in crimes. It was submitted that the time gap between the person being named as an accused and demolition of his property/properties made it apparent that the punishment of demolition was inflicted by the executive on such person being arrayed as an accused. It was also submitted that in case of demolition of the property of an alleged accused, it is difficult to believe that only a single construction belonging to an accused is unauthorized construction, whereas all other structures in the vicinity are legal and authorized as per local laws.*

**82.** *Though the learned SG may be right in submitting that in some cases it may be by sheer coincidence that the properties which were in breach of local municipal laws governing them also happen to belong to the accused persons, however, when a particular structure is chosen all of a sudden for demolition and the rest of the similarly situated structures in the same vicinity are not even being touched, mala fide may loom large. In such cases, where the authorities indulge into arbitrary pick and choose of the structures and it is established that soon before initiation of such an action an occupant of the structure was found to be involved in a criminal case, a presumption could be drawn that the real motive for such demolition proceedings was not the illegal structure but an action of penalizing the accused without even trying him before the court of law. No doubt, such a presumption could be rebuttable. The authorities will have to satisfy the court that it did not intend to penalize a person accused by demolishing the structure.*

**83.** *While considering the issue with regard to the demolition of the houses which are required to be demolished for breach of the local laws, we find that the principle of the rule of law needs to be considered even in the municipal laws. There may be certain unauthorized constructions which could be compoundable. There may be certain constructions wherein only part of the construction is required to be removed. In such cases, the extreme step of demolition of the property/house property would, in our view, be disproportionate.*

**84.** *As already discussed herein above, the right to shelter is one of the facets of Article 21 of the Constitution. If the persons are to be dishoused, then for taking such steps the concerned authorities must satisfy themselves that such an extreme step of demolition is only available and other options including compounding and demolition of only part of the house property are not available. This Court in catena of cases including the Constitution Bench cases of *Modern Dental College and Research Centre v. State of Madhya Pradesh*<sup>42</sup>, *K.S. Puttaswamy v. Union of India*<sup>43</sup> (Privacy 9-J) and *Vivek Narayan Sharma v. Union of India*<sup>44</sup> (Demonetization Case-5J) has laid emphasis on the four-pronged test of proportionality.*

**85.** *In the case of *Modern Dental College and Research Centre* (supra), this Court observed thus:*

*“60. ....Thus, while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is what is known as “doctrine of proportionality”. Jurisprudentially, “proportionality” can be defined as the set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four sub-components of proportionality which*

need to be satisfied [Aharon Barak, *Proportionality: Constitutional Rights and Their Limitation* (Cambridge University Press 2012).], a limitation of a constitutional right will be constitutionally permissible if:

- (i) it is designated for a proper purpose;
- (ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfillment of that purpose;
- (iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally
- (iv) there needs to be a proper relation (“proportionality *stricto sensu*” or “balancing”) between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right.”

**86 to 89xxxxxxx**

**90.** *In order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time needs to be given to them to vacate and arrange their affairs. It is not a happy sight to see women, children and aged persons dragged to the streets overnight. Heavens would not fall on the authorities if they hold their hands for some period.*

**91.** *At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.”*

**51.** Keeping in view the above discussion, we are of the considered opinion that the detention order dated 19.12.2025 (**Annexure P-4**) cannot be sustained and is de hors the background and the right as such to detain under the "PIT ND&PS Act" which has been limited to that extent and resultantly we allow the present petition and quash the detention order dated 19.12.2025 (**Annexure P-4**) and further the extension of detention order dated 17.03.2026 (**Annexure A-2**) is also quashed which was based upon the State Advisory Board dated 27.02.2026. The petitioner be set free in case he is not wanted in any other case.

**52.** Accordingly, the present petition is allowed. Pending application(s), if any, shall also stand disposed of.

**(G.S. Sandhawalia)**  
Chief Justice

**(Jiya Lal Bhardwaj)**  
Judge

**9<sup>th</sup> April, 2026**  
(Munish Thakur)