

**NARCOTICS CONTROL BUREAU  
MINISTRY OF HOME AFFAIRS  
WEST BLOCK NO.1, WING NO.V,  
R.K.PURAM, NEW DELHI - 66**

**C I R C U L A R N O. 03/2018**

**Prevention Detention under PIT NDPS Act, 1988**

Preventive detention under PITNDPS Act should be proposed in appropriate cases.

**2. Against whom:**

As per the note of Department of Revenue (enclosed), following category of persons can be considered for preventive detention.

- Organizers, Financiers and their agents who organize things from behind the scene.
- Habitual or organized illicit traffickers caught red-handed with narcotic drugs and psychotropic substances to be detained pending prosecution.
- Licensed cultivators indulging in embezzlement of opium
- Persons indulging in illicit cultivation of opium poppy / cannabis

**3. When:**

For timing of the proposal, Rule of live-link should be kept in mind, which means there should not be long gap between event of NDPS Act and date of proposal. The proposal should be sent as soon as possible – ideally within 15 days of the event. This will reduce paperwork and ensure live nexus between the event(s) and Detention. If there is a gap between event and the proposal, the same must be explained in the proposal.

**4. Approval of Regional DDG:**

Proposal under PITNDPS should be sent after approval of Regional DDGs. The draft of the proposal should also be vetted at the level of Regional DDG.

**5. Following documents should normally be enclosed with the proposal** (this would also depend on the facts of the case).

- Copy of specific information, copy of all complaints filed in Court.
- Search authorization cum seizure list, all panchnamas.
- Summons issued under Section 67 of NDPS Act, 1985.
- Statements recorded, with English translations, wherever required (only relevant statements).
- Arrest Memos, medical examination report of accused/proposed detinue. Copy of complaint, if any, made by accused to the Magistrate about ill treatment and whether another medical examination was ordered by the Magistrate, if so, copies thereof.
- Letter sent to the Government laboratory for confirming the characteristics of the samples seized and analysis report of samples received from the Government Laboratory.
- Copy of office Godown Deposit Entry Number and date of depositing the seized goods and samples.
- Details of property owned/in possession of proposed detinue(s), if relevant to the case.

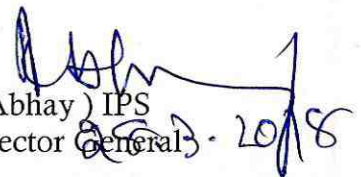
- Application for judicial remand and Court Order for remand. All bail applications filed by the accused, counter reply filed and judgments orders, if delivered.
- Details regarding adverse activity of proposed detainee, if any, noticed from the date of original case/incident till submission of proposal of preventive detention.
- Present status/outcome of court hearing in NDPS case, latest position.
- A statement indicating specifically the call details/ MMS/ Whatsapp conversations shared by the accused with co-accused with mobile number of each one shown against the names of each owner of mobile showing co-ordination and nexus between them. These conversations also establish role of accused.
- Name and place of Jail(s) where the detainee(s) is proposed to be kept.
- Details regarding passport cancelled with supporting documents, if any.
- Retraction statements, if any, with counter replies.
- An index of documents.

6. When **recording statements** find out and record all possible **addresses of the accused**. This will help in serving the Detention Order when the person is absconding. Record in the statement **what languages are known** to the proposed detainee. This will help in deciding if translation of detention order and documents is required.

7. Keep a **photograph** of the proposed detainee **in the records** to facilitate easy identification and detention.

8. All points mentioned in **DoR note** (enclosed) should also be kept in mind while preparing proposals.

**Enc:- Copy of note of DoR (7 pages)**

  
( Abhay ) IPS  
Director General - 20/18

DDG (Ops.) all DDG (Regions), DD (Ops.) and ZD at locations.

UO NCB F.No. DGs/Ops./2018

28<sup>th</sup> March, 2018

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# **Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 at a glance**

Along with provisions to Seize, Freeze and Forfeit Illegally Acquired Properties under Chapter VA of the NDPS Act 1985 after issue of Preventive Detention Order

**Department of Revenue  
Ministry of Finance  
Government of India**



## PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1988 AT A GLANCE

Trafficking and abuse of Narcotic Drugs and Psychotropic Substances has, over years, reached alarming proportions in some parts of the country. It is important that all State Governments and the Central Government use all available legal provisions to curb this menace. One very potent law which has been extremely under-utilised is the PITNDPS Act. Once a preventive detention order under PITNDPS Act is issued against a person, the illegally acquired properties of that person, his relatives and associates can be seized, frozen and forfeited through a quasi-judicial process as per Chapter VA of the NDPS Act. This note explains it in a nutshell.

### WHAT IS PITNDPS ACT?

It is an Act that provides for issue of preventive Detention Orders against any person with a view to prevent him from engaging in illicit traffic in narcotics drugs and psychotropic substances.

### WHO CAN ISSUE DETENTION ORDERS?

The Central Government, any officer specially empowered by the Central Government or the State Government or any officer specially empowered by the State Government can pass Detention Orders against any person (including a foreigner) with a view to preventing him from indulging in illicit traffic in Narcotic Drugs and Psychotropic Substances if satisfied that it is necessary to do so.

### WHY PREVENTIVE DETENTION?

Illicit traffic in NDPS poses a serious threat to the health and welfare of the people and the activities of persons engaged in such illicit traffic have a deleterious effect on the national economy. Such persons are prosecuted under Narcotic Drugs and Psychotropic Substances Act, 1985 but to further strengthen controls, the **Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act was enacted in 1988.** Preventive Detention is not a substitute for the normal laws nor is it intended to be used in lieu of such laws. This is an additional weapon in the armoury of the law enforcement agencies aimed at organized trafficking of drugs. While specific contraventions of NDPS Act will continue to be dealt with by prosecutions in court, some situations may arise even in such cases where preventive detention may be found

necessary to prevent the continued illegal activities of the persons concerned. The basic objective of the Preventive Detention Law is to target the main operators such as the organizers, financiers, kingpins and others who generally remind and operate behind the scene.

### WHO CAN BE DETAINED UNDER PITNDPS ACT?

Preventive Detention orders can be issued against any person if the detaining authority considers it necessary to do so with a view to preventing him from indulging in illicit traffic in NDPS. The subjective satisfaction of the Detaining Authority is important for the Detention Order to be issued. Detention Orders, for instance, may be issued in respect of the following categories of persons:

1. Organizers, Financiers and their agents who organize things from behind the scene: These persons do not normally handle narcotic drugs or psychotropic substances themselves nor do they directly engage in illicit trafficking. They do not give written instructions, and the carriers and others who actually work on their behalf are afraid to give any evidence against them. However, the intelligence gathered over a period of time and the circumstantial evidence would be adequate to be satisfied that these persons have been organizing or financing illicit trafficking and should, therefore, be detained to prevent them from continuing their prejudicial activities.
2. **Habitual or organized illicit traffickers caught red-handed with narcotic drugs and psychotropic substances to be detained pending prosecution.** These persons caught red-handed and proceeded against continue to indulge in their prejudicial activities whenever released on bail. They are also able to tamper with witnesses and the evidence and thereby weaken the prosecution cases frustrating the ends of justice.
3. **Licensed cultivators indulging in embezzlement of opium**
4. **Persons indulging in illicit cultivation of opium poppy / cannabis**

The above is only an illustrative list of types of persons who could be detained.

### THE PROCESS

1. The Sponsoring Authorities such as police, NCB, CBN, Customs, etc. send proposals for preventive detention to be Detaining Authority. Sponsoring Authority working under State Government such as Police can send proposals to the Detaining Authority in their State or to the Detaining Authority in the Centre. Similarly, Sponsoring Authorities working under Central Government such as NCB or Customs can also send proposals either to the Detaining Authority under the Central Government or to the Detaining Authority under the State Government.



2. Although the law does not mandate it, screening committees have been created by the Governments to screen the proposals before they are sent to the Detaining Authority.
3. After vetting by the Screening Committee, the Detaining Authority, if he/she is subjectively satisfied, issues the Detention Order. The opinion of the Screening Committee is not binding on the Detaining Authority who has to independently arrive at his/her subjective satisfaction before issuing the Detention Order.
4. When the Detention Order is issued by the State Government or an officer of the State Government, the State Government shall, within ten days, send a report to the Central Government in respect of such order.
5. Execution of the Detention Order: The Detention Order can be executed at any place in India in the manner provided for execution of warrants or arrest under the Criminal Procedure Code, 1973. Usually, the Detention Order is executed through the police.
6. Grounds of Detention and Relied Upon Documents: These should be served on the detainee as soon as may be after detention but ordinarily not later than five days and in exceptional circumstances, for reasons to be recorded in writing, not later than fifteen days from the date of detention.
7. Advisory Boards: Advisory Boards comprising, usually, sitting judges of High Courts are created by the Centre and the State Governments. Within five weeks of detention of any person, a reference should be made to the Advisory Board who will give their opinion within eleven weeks from the detention as to whether there are sufficient grounds for detention or otherwise.
8. If the Advisory Board opines that there are no sufficient grounds for detention, the detainee is released forthwith. If the Advisory Board finds that there are sufficient grounds for detention, the concerned Government may confirm the Detention Order and also decide the duration of Detention (maximum period of detention is one year).

## **FORFEITURE OF ILLEGALLY ACQUIRED PROPERTIES**

Once a Preventive Detention order has been issued under PITNDPS Act against a person, illegally acquired properties of the person, his relatives and associates can be seized, frozen and forfeited as per Chapter VA of the NDPS Act. Every officer empowered under Section 53 of the Act and every officer in-charge of a police station can identify, seize or freeze the illegally acquired properties and send a copy of that order to the Competent Authority appointed under Section 68D within 48 hours. The Competent Authority has to confirm the seizing/freezing order within 30 days. Thereafter, the Competent Authority issues notice to the affected person and decides on the forfeiture of the properties.

## SOME OTHER KEY POINTS

### RULE OF LEVEL-LINK/PROXIMITY RULE

When there is a long and unexplained gap between the date of arrest (say under NDPS Act) and the date of passing of the DO (under PITNDPS Act), the rule of live link can be said to have lost its efficiency. On the other hand, if there is/are tenable explanation (s) for the inordinate delay, the principle of live link can be said to subsist between the two dates. In the decision given by Bombay High Court (2203 Cri. L.J. 1884) in Usman Geni Yakubali Vs. State of Maharashtra, it was held that delay in the issuance of a Detention Order does not vitiate the same. The general rule is that it would be vitiated if there is no explanation for such inordinate delay.

### SUBJECTIVE SATISFACTION

Before passing the DO under PITNDPS Act, it is expected of the Detaining Authority to first arrive at his/her subjective satisfaction, i.e., the need for passing of the DO should arise from his/her individual consciousness or perception and the DO should not be passed without application of mind. The DA should have a clear apprehension about the possibility of the person continuing his prejudicial activities and if already in custody, about the release of the proposed detainee from custody due to grant of bail or refusal for extension of remand etc.

### DETENTION ORDER NOT INVALID / INOPERATIVE MERELY BECAUSE (SECTION 7) ONE OR MORE OF THE GROUND(S) OF DETENTION IS/ARE

- Vague
- Non-existent
- Not relevant
- Not connected with such persons
- Detainee is outside the territorial jurisdiction

### NUMBER OF COPIES OF DETENTION ORDER/GROUND OF DETENTION

Eight copies of the Detention Order are prepared and signed for distribution as follows:

- (i) The concerned Executing Authority whether SA or Police Authority through whom the Detention Order is to be executed;
- (ii) The proposed detainee;
- (iii) For proposed detainee's acknowledgement;
- (iv) The Superintendent of concerned jail in which the proposed detainee is to be lodged after his detention;
- (v) The Home Secretary of the concerned State Government;
- (vi) The concerned SA;
- (vii) The concerned Competent Authority, for action on forfeiture of property; &
- (viii) The office copy for record in the concerned file of PITNDPS Unit.



### GROUND OF DETENTION

Four copies of Grounds of Detention are prepared and signed by the Detaining Authority and these are meant:

- (i) To be served on the proposed detenu;
- (ii) To obtain an acknowledgement by the detenu;
- (iii) For record of the Sponsoring authority; and
- (iv) To be the office copy

### REPRESENTATION(S) BY DETENUES

The detenues of their relatives can made representations through Jail Authority to the DA, Secretary (Revenue) or Advisory Board against the DO issued against him/her. The representations are examined in the PITNDPS Division in consultation with the SA concerned and submitted to the Secretary (Revenue) and DA separately for their consideration. Further action is taken as per the orders passed by the two authorities.

### EXECUTION OF DETENTION ORDER

- At any place in India
- Detenu can be removed from one place to another place or from one State to another State.
- Set of acknowledged documents are obtained from the detenu

### ABSCONDERS (SECTION 8)

In cases where the proposed detenu is absconding and concealing himself / herself, the SA reports the matter to the Ministry along with Farari Panchnama etc. On receipt of such report, the Ministry initiates action for declaring the person as an absconder in terms of Section 8 (1) of the Act.

- Government makes a report to Metropolitan Magistrate or Magistrate of the First Class – issues warrant for the absconder [Section 8(1)(a)]
- Section 82 to 85 of Cr.PC for property applicable.
- Direction to Absconder through Gazette Notification to appear before the designated officer [Section 8(1)(b)]
- Non-compliance – Imprisonment up to one year or fine or both

### ADVISORY BOARDS (SECTION 9)

- Advisory Board – Statutory Body – consists of a Chairman and two other Members, i.e. Sitting judges of the High Courts [Section 9(a)]
- Reference made to the Board within five weeks from the date of Detention for making report [Section 9(b)]
- Advisory Board after hearing the detenu, sends its opinion within 11 weeks [Section 9(c)]
- Legal practitioner not allowed [Section 9(e)]
- Sufficient Cause – Detention continued [Section 9(f)]



- Detention Order revoked if not confirmed by the Advisory Board.

**REVOCAATION / MODIFICATION OF DETENTION ORDER (SECTION 12)**

- If the Detention Order is issued by the Central Government or any officer of Central Government, it can be revoked or modified by the Central Government
- If the Detention Order is issued by the State Government or any officer of the State Government, it can be revoked by that State Government or the Central Government.
- Revocation is not a bar for making another detention order against the same person.

**TEMPORARY RELEASE OF A DETENUE (SECTION 13)**

- Detenue can be released for any specified period either with condition or without it (enter into a bond with sureties)
- Cancels release for non-fulfilment of conditions.
- Released person, if fails to surrender, imprisonment upto two years or with fine or with both.
- Bond forfeited & penalty imposed for violation of condition.
- No bail provision or bail bond under the Act.

For full details please refer to:

1. The PITNDPS Act, 1988 – regarding preventive detention
2. NDPS Act, 1985 – Chapter VA – regarding seizing, freezing and forfeiture of illicitly acquired properties of drug traffickers, their relatives and associates