

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

Reserved on: 02.03.2024
Pronounced on: 15.03.2024

WP (Crl) 262/2023

Tajamul Islam Bhat

... Petitioner/Appellant(s)

Through: Mr. Wajid Mohammad Haseeb, Advocate

V/s

UT of J&K and another

... Respondent(s)

Through: Mr. Sajad Ashraf, GA

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

ORDER

15.03.2024

1. Heard learned counsel for the petitioner as well as for the respondents. Perused the writ pleadings and the documents annexed therewith.
2. Acting in exercise of power under section (3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988, the respondent no. 2 – Divisional Commissioner, Kashmir, has ordered preventive detention of the petitioner which has resulted in deprivation of personal liberty of the petitioner thereby bringing him through his brother to this court with the present writ petition seeking a writ of habeas corpus under article 226 of the Constitution of India for setting aside the preventive detention as being illegal and unwarranted and restore the lost personal liberty of the petitioner.

3. The process for preventive detention of the petitioner was set into effect by the Superintendent of Police, Kulgam vide his dossier no. Legal/PSA-09/2023/9004-07 dated 22.05.2023 putting up a case before the respondent no. 2 Divisional Commissioner, Kashmir upon examination of which the respondent 2 - Divisional Commissioner, Kashmir granted his indulgence by issuance of the preventive detention order above referred and the petitioner has been detained in Central Jail, Kot Bhalwal, Jammu.
4. The situation which triggered the mindset of the Superintendent of Police, Kulgam in bringing the petitioner under preventive detention is relatable to alleged involvement of the petitioner in an FIR no . 05/2023 under section 8/21, 29 Narcotic Drugs and Psychotropic Substances Act, 1983 of Police Station Qaimoh, district Kulgam. The grounds of detention generated by the respondent no. 2 Divisional Commissioner, Kashmir in its opening para has reference to the petitioner's involvement in this FIR and the petitioner is alleged to have been found in possession of alleged contraband Heroin.
5. From this incident, the petitioner was reckoned to be part of the drug mafia operating in the UT of Jammu and Kashmir and the petitioner's personal liberty thus being held posing imminent threat to the safety of the society from drug menace.
6. FIR no. 05/2023 above referred, in fact, was registered on account of an incident of 17.01.2023 when the Police Naka came to detain one Bilal Ahmad Mantoo son of Bashir Ahmad Mantoo

to find from his alleged possession brown sugar like substance and from his interrogation it came to be revealed that said Bilal Ahmad Mantoo had received the alleged contraband substance from the petitioner and that resulted in the implication of the petitioner in the said FIR as co-accused.

7. The preventive detention of the petitioner was subjected to opinion of the Advisory Board vide file no. Home/PB-V/321/2023 and which came to tender its opinion in terms of purported report dated 12.7.2023.
8. The Advisory Board has referred itself to be acting under J&K Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, which Act, in fact, stood repealed by the J&K Reorganization Act of 2019 and came to be replaced by the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988 (Act No. 46 of 1988 dated 06.09.1988) which got extended to the UT of J&K as well as UT of Ladakh vide Notification no. S.O. 3912(E) dated 30.10.2019. Therefore, the purported Advisory Board's opinion under the J&K Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988 was non-est in the eyes of law and thus the detention of the petitioner without legitimate opinion of the Advisory Board acting under section 9 of the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988 (Act No. 46 of 1988 dated 06.09.1988) is illegal and warrants its quashment.

9. In addition, the co-accused in FIR no. 05/2023 of Police Station Qaimoh, in which the petitioner was also implicated came to be detained under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988 by virtue of a detention order DIVCOM-“K”/86/2023 dated 09.06.2023 and the said detention came to be quashed by this court in terms of its judgment dated 05.02.2024 in writ petition HCP No. 15/2023. The fate of this writ petition cannot be different to the one as that of HCP No. 15/2023.
10. In the light of the aforesaid, the detention order no. DIVCOM-“K”/86/2023 dated 09.06.2023 passed by the respondent 2 – Divisional Kashmir, Kashmir against the petitioner is held to be unwarranted, and, therefore, the said order is set aside. The Superintendent of the Jail concerned, where the petitioner is being detained, is directed to set the petitioner free.
11. Disposed of.
12. The detention record be returned to Mr. Sajad Ashraf, GA.

(RAHUL BHARTI)
JUDGE

Srinagar
15.03.2024
N Ahmad

Whether the order is speaking: Yes

Whether the order is reportable: Yes