

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

**Reserved on: 10.11.2023  
Pronounced on : 20.12.2023**

Case No. WP(Crl) no. 270/2023

Abdul Rashid Dar aged about 70 years S/o Lt. Ghulam  
Nabi Dar R/o Nillow District Kulgam.  
Through his wife  
Kulsuma Bano aged about 65 years W/o Abdul Rashid  
Dar R/o Nillow District Kulgam.

.....Petitioner(s)

Through: Mr. Syed Sajad Geelani, Advocate.

**Vs**

1. UT of J&K through Financial  
Commissioner (Additional Chief  
Secretary), Home Department, J&K  
Jammu/Srinagar.
2. Divisional Commissioner Kashmir.
3. Superintendent Central Jail, Kot  
Bhalwal Jammu.

..... Respondent(s)

Through: Mr. Sajad Ashraf, GA

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

**JUDGMENT**

1. Heard learned counsel for the petitioner and perused the pleadings.
2. The petitioner who is seventy years old has approached this Court with the present writ petition filed through his wife for seeking quashment of Order no. DIVCOM-'K'/70/2023 dated 31.05.2023 passed by the respondent

no. 2-Divisional Commissioner, Kashmir thereby subjecting the petitioner to suffer preventive detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short, '**Act of 1988**').

3. The preventive detention of the petitioner was solicited by the Superintendent of Police (SP), Kulgam, by submitting a case in the form of a dossier no. Legal/PSA-07/2023/8097-8100 dated 10.05.2023, who reckoned the petitioner's personal liberty to be detrimental in the eyes of law warranting his curtailment so as to prevent the petitioner from committing any of the acts within the meaning of the Act of 1988.
4. The aforesaid dossier so submitted by the Superintendent of Police (SP), Kulgam was able to convince the respondent no. 2-Divisional Commissioner, Kashmir that there are grounds for subjecting the petitioner to suffer preventive detention and accordingly the grounds of detention came to be formulated by the respondent no. 2-Divisional Commissioner, Kashmir in which the petitioner was found to be involved in FIR no. 104/2022 and FIR no. 25/2023 under section 8/15 of the Narcotic Drugs and

Psychotropic Substances Act, 1985. Both the said two FIRs being registered by the Police Station, Kulgam and the alleged contraband involved in the said two FIRs being Poppy Straw.

5. From this involvement of the petitioner in the aforesaid two FIRs, the petitioner was read to be clandestinely dealing in illegal business of narcotics exploiting the immature minds of the younger generation by making them drug addicts and in return the petitioner earned hefty income.
6. In the grounds of detention so formulated for enabling the respondent no. 2-Divisional Commissioner, Kashmir to order the detainment of the petitioner under section 3 of the Act of 1988, there is no reference found with respect to the investigation status of the aforesaid two FIRs and also as to whether the petitioner was suffering custody qua the aforesaid two FIRs or was on bail or discharged meaning thereby the Superintendent of Police (SP), Kulgam, in his dossier, was deficient and amiss in apprising the respondent no. 2-Divisional Commissioner, Kashmir about the full state of facts concerning the petitioner in being

notified to the respondent no. 2-Divisional Commissioner, Kashmir.

7. The petitioner from his end has annexed a copy of the order dated 20.04.2023 whereby the petitioner came to be admitted to bail with respect to FIR no. 25/2023 meaning thereby before the framing of the dossier by the Superintendent of Police (SP), Kulgam, the petitioner was already enlarged on bail with respect to FIR no. 25/2023 and still this aspect was allowed to go unnoticed and unmentioned for the notice of the respondent no. 2-Divisional Commissioner, Kashmir.
8. From the counter affidavit dated 21.10.2023 filed in the case from the respondent no. 2-Divisional Commissioner, Kashmir's end, the fact is missing the mention about the status of the aforesaid two FIRs in terms of the investigation and also about the bail so granted in favour of the petitioner by the court of Principal Sessions Judge, Kulgam.
9. Thus, at the time of framing of the dossier by the Superintendent of Police (SP), Kulgam followed by formation of grounds of detention leading to issuance of

order of detention and filing of counter affidavit to the present writ petition, the status of investigation qua the aforesaid two FIRs and grant of bail in favour of the petitioner have been screened from the notice of the respondent no. 2-Divisional Commissioner, Kashmir and that sets in a serious flaw with respect to the preventive detention of the petitioner which leads this Court with no other impression than to see as if the petitioner is being handed over a punitive detainment before his trial's end with respect to the aforesaid two FIRs by none other than the Law and Enforcement Agency as well the respondent no. 2-Divisional Commissioner, Kashmir. This is not the nature of preventive detention jurisdiction envisaged under the Constitution of India. Punitive detention under rule of law can only follow upon a conviction of an accused person whereas preventive detention is not to be served as a replacement for punitive detention against an accused person.

10. Therefore, this Court holds the preventive detention of the petitioner effected vide Order no. DIVCOM-'K'/70/2023 dated 31.05.2023 passed by the respondent no. 2-

Divisional Commissioner, Kashmir as illegal warranting quashment.

11. Accordingly, this writ petition is allowed. Preventive detention Order no. DIVCOM-‘K’/70/2023 dated 31.05.2023 passed by the respondent no. 2-Divisional Commissioner, Kashmir whereby the petitioner has been subjected to preventive detention is hereby quashed as a consequence whereof the petitioner is ordered to be restored to its personal liberty by the respondent no. 3-Superintendent, Central Jail, Kot Bhalwal Jammu.

12. **Disposed of** accordingly.

(Rahul Bharti)  
Judge

SRINAGAR  
20.12.2023  
Naresh, Secy.

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No