

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

*Reserved on: 13.09.2024
Pronounced on: 24.12.2024*

Case:- HCP No. 42/2024
CM No. 1759/2024

**Tejinder Pal Singh Age 54 years
S/o Sh. Harved Singh
R/o House No. 103 – Roulki, Bakshi Nagar
Tehsil and District Jammu
At present lodged in
District Jail kathua**

.....Petitioner(s)

Through: Mr. Prince Khanna, Advocate.

Vs

- 1. Union Territory of Jammu and Kashmir Through
Commissioner/ Secretary Home Civil Secretariat Jammu/ Srinagar.**
- 2. Divisional Commissioner Jammu.**
- 3. Senior Superintendent of Police, Jammu.**
- 4. Superintendent District Jail Kathua.**

.....Respondent(s)

Through: Mr. Amit Gupta, AAG.

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

**ORDER
(24.12.2024)**

- 01.** Heard learned counsel for the parties, perused the pleadings and the documents therewith.
- 02.** The detention record produced from the end of the respondents also perused.
- 03.** The petitioner who has been subjected to preventive detention custody meant to last for a period of one year with effect from 25.01.2024 has come up with the

present writ petition filed on 27.03.2024 thereby seeking writ of habeas corpus for quashment of his preventive detention and, consequently, to restore him to his personal liberty. The petitioner has petitioned this Court while being lodged in the District Jail, Kathua.

- 04.** The respondent No. 3 – Senior Superintendent of Police (SSP), Jammu, vide a letter No. CRB/2024/Dossier/02/DPOJ dated 18.01.2024, submitted before the respondent No. 2 – Divisional Commissioner, Jammu, a dossier against the petitioner thereby setting up a case for preventive detention of the petitioner being a repeat offender under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 and thereby falling within the scope of preventive detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988.
- 05.** In the dossier, the petitioner came to be presented as a kingpin in narcotic drug smuggling of the locality and a desperate character habitual of indulging in act of violence and drug trafficking and business. In this regard, the petitioner's involvement and implication by reference to below cited FIRs came to be highlighted:-

- FIR No. 270/2015 u/s 8/21/22 of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 of Police Station Gandhi Nagar, Jammu;
- FIR No. 151/2019 u/s 8/21/22/29 of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 of Police Station Nowabad, Jammu;
- FIR No. 53/2023 u/s 8/21/22 of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 of Police Station Bus Stand, Jammu;
- DDR No. 16 dated 09.01.2024 of Police Post Sarwal, Jammu;
- DDR No. 27 dated 15.01.2024 of Police Station Bakshi Nagar, Jammu.

06. The dossier by the respondent No. 3 – Senior Superintendent of Police (SSP), Jammu was based upon the inputs gathered and made by the SHO Police Station, Bakshi Nagar, Jammu, who actually sought the preventive detention of the petitioner under Jammu & Kashmir Public Safety Act, 1978 in terms of his communication No. 27/S-1/PSBN dated 04.01.2024. The SHO Police Station Bakshi Nagar, Jammu had forwarded the copies of the FIR and challans alongwith his communication to respondent No. 3–Senior

Superintendent of Police (SSP), Jammu as referred in the dossier.

- 07.** Acting upon the said dossier, the respondent No. 2 – Divisional Commissioner, Jammu, at his end, came to formulate purported grounds of detention serving him with a subjective satisfaction that the case is made out for the preventive detention of the petitioner under PITNDPS Act, 1988 and, accordingly, came to pass an order No. PITNDPS 04 of 2024 dated 20.01.2024 issued in exercise of power under section 3 of the PITNDPS Act, 1988 and directing the preventive detention of the petitioner and upon his arrest to be detained in District Jail, Kathua for a period to be specified by the Government.
- 08.** The grounds of detention in support of the said detention order No. PITNDPS 04 of 2024 dated 20.01.2024 made a replica reproduction of the dossier by taking into consideration all the said three FIRs and two DDRs.
- 09.** The preventive detention order No. PITNDPS 04 of 2024 dated 20.01.2024 came to be executed by PSI Dhanraj Singh, PID No. EXJ-196671 I/C of Police Post Sarwal, Jammu, who came to arrest and detain the petitioner on 25.01.2024 forwarding the person of the petitioner to the Superintendent, District Jail Kathua who came to receive

the person of the petitioner for his custody and apprised the Financial Commissioner (Additional Chief Secretary) Home Department, J&K, Jammu vide his communication No. DJK/DS/524-29 dated 26.01.2024.

10. The respondent No. 2 – Divisional Commissioner, Jammu came to issue a corrigendum No. 601/RSA/Detention/CC-7393683 dated 25.01.2024 to the effect that the residential particulars of the petitioner as mentioned in impugned detention order No. PITNDPS 04 of 2024 dated 20.01.2024 mentioning the petitioner to be resident of H. No. 5-D Subash Nagar, Jammu be read as resident of H. No. 103-Roulki, Bakshi Nagar, Jammu. This corrigendum was purportedly addressed to all the concerned except the petitioner for the reason best known to the respondent No. 2 – Divisional Commissioner, Jammu.

11. At the time of arrest and detention of the petitioner carried out by the PSI Dhanraj Singh, PID No. EXJ-196671 I/C of Police Post Sarwal, Jammu, the petitioner has said to have been delivered 83 leaves compilation being order of detention, grounds of detention and other documents and was also explained about the contents of detention warrant in terms of the detention order in the language understood by the petitioner and also apprising

him of his right to make a representation to the Government against his detention.

12. The detention of the petitioner came to be forwarded to the Advisory Board constituted under the Jammu & Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988 which came forward with its report dated 19.02.2024 holding the preventive detention of the petitioner to be for a sufficient cause which paved the way for the issuance of Govt. Order No. Home/PB-V/555 of 2024 dated 22.03.2024 thereby confirming the preventive detention of the petitioner and fixing one year as period of his detention w.e.f. 25.01.2024 to 24.01.2025 in state of custody in District Jail, Kathua. The petitioner did not make any representation against his detention.

13. The issuance of impugned preventive detention order No. PITNDPS 04 of 2024 dated 20.01.2024 by the respondent No. 2 - Divisional Commissioner, Jammu was followed by a report under section 3(2) of PITNDPS Act, 1988 No. Home/PB-V/26/2024 (7395500) dated 24.01.2024 by the Home Department, Govt. of UT of Jammu & Kashmir to the Additional Secretary IS-II Division, Ministry of Home Affairs and to the Under Secretary to the Government of India, Ministry of Finance, Department of

Revenue thereby apprising about a passing of the detention order against the petitioner under PITNDPS Act, 1988. In this communication, the petitioner was mentioned to be resident of H. No. 5-D, Subash Nagar, Jammu as being his residential address.

- 14.** From the perusal of the detention record produced, the preventive detention exercise against the petitioner right from issuance of preventive detention order No. PITNDPS 04 of 2024 dated 20.01.2024 is vitiated with an illegality which is borne out from the record that while the respondent No. 2 – Divisional Commissioner, Jammu came to issue a corrigendum No. 601/RSA/Detention/CC-7393683 dated 25.01.2024 purportedly rectifying the address of the prospective detainee i.e., the petitioner to be read as H. No. 103-Roulki, Bakshi Nagar, Jammu instead of H. No. 5-D, Subash Nagar, Jammu but neither the petitioner nor even the Government was ever apprised of this intervening development that is confirmed from the very Govt. Order No. Home/PB-V/555 of 2024 dated 22.03.2024 in which the petitioner was still being referred to be resident of H. No. 5-D, Subash Nagar, Jammu, meaning thereby the Government was not made aware of any such corrigendum having been issued by the respondent No. 2 – Divisional Commissioner, Jammu

with respect to change of residential particulars of the person who was sought to be detained in terms of impugned detention order No. PITNDPS 04 of 2024 dated 20.01.2024 and the one actually came to be detained by reference to H. No. 103-Roulki, Bakshi Nagar, Jammu.

15. This aspect is good enough for this Court to intervene in the matter and hold the detention of the petitioner to be vitiated with procedural illegality and, as such, prevention detention order No. PITNDPS 04 of 2024 dated 20.01.2024 read with Govt. Order No. Home/PB-V/26/2024 (7395500) dated 24.01.2024 are hereby **quashed** and preventive detention of the petitioner is held to be illegal. The petitioner is directed to be released from his preventive detention custody forthwith by the Superintendent concerned jail.

16. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

JAMMU
24.12.2024

Bunty

Whether the order is speaking: Yes

Whether the order is reportable: No