

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

Reserved on: 18.12.2024
Pronounced on: 20.12.2024

HCP No.38/2024

SHOIB AIJAZ GURU

...Petitioner(s)

Through: - Mr. Sheikh Manzoor, Advocate.

Vs.

UT OF J&K & ORS.

...Respondent(s)

Through: - Mr. Mubashir Majid Malik, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The Divisional Commissioner, Kashmir, in exercise of powers conferred under Section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred as to "the Act of 1988"), has, vide order No.DIVCOM-"K"/197/2023 dated 15.12.2023, ordered preventive detention of *Shoib Aijaz Guru* (hereinafter referred to as the detinue), in order to prevent him from committing any of the acts within the meaning of the Act of 1988.

2) By the instant petition, veracity and legality of the impugned detention order has been challenged by the petitioner contending that the impugned detention order has been passed without application of mind as the grounds of detention are vague, non-existent and stale on which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been complied

with in the instant case, inasmuch as whole of the material has not been provided to the petitioner. It has been further urged that there has been non-application of mind on the part of detaining authority while passing the impugned detention order as the detainee was already admitted to bail in the FIR, mention whereof has not been made in the grounds of detention.

3) The respondents, in their counter affidavit, have contended that the detainee is involved in illicit drug trafficking thereby contributing to the proliferation of narcotics which has not only endangered public health but it has also eroded the moral fabric of the society, particularly affecting the vulnerable individuals including youth and marginalized communities. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same was read over and explained to him and that all the statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority while passing the impugned detention order. To substantiate their stand taken in the counter affidavit, the respondents have produced the detention record.

4) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments, was on the ground that there has been non-application of mind on the part of the detaining authority as the detainee has already been admitted to bail in FIR No.113/2023 registered with P/S Baramulla, but this fact has not been mentioned in the grounds of detention.

5) From a perusal of the material available on file, the ground regarding non-application of mind on the part of the detaining authority appears to be forceful, inasmuch as the grounds of detention do not bear any reference to the fact that the petitioner had already been admitted to bail in FIR No.113/2023 registered with P/S Baramulla in terms of the order passed by the court of competent jurisdiction. The petitioner has placed on record a copy of order dated 26.06.2023 passed by learned 1st Additional Sessions Judge, Baramulla, whereby he has been enlarged on bail in a case arising out of FIR No.113/2023 for offences under Section 8/21 NDPS Act of P/S Baramulla. The non-mentioning of this important fact in the grounds of detention exhibits non-application of mind on the part of detaining authority. This shows that the detaining authority has not meticulously examined the record while passing the impugned order of detention which renders the same unsustainable in law. I am supported in my aforesaid view by the judgment of the Supreme Court rendered in the case of **Anant Sakharam Raut v. State of Maharashtra & Ors. AIR 1987 SC 137.**

6) For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. The respondents are directed to release the petitioner from the preventive custody forthwith, provided he is not required in connection with any other case.

7) The record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar
20.12.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No