

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

Reserved on 03.12.2024
Pronounced on 03.02.2025

HCP No. 114/2024

Mushtaq Ahmed Aged 37 years
S/o Nazir Ahmed
R/o Village Dhanori, Birma Pul, Tehsil and
District Udhampur
Through his wife
Neha Naz aged 30 years
W/o Mushtaq Ahmed
R/o Village Dhanori, Birma Pul, Tehsil and
District Udhampur

....Petitioner(s)

Through :- Mr. S.M. Wajahat, Advocate.

V/s

1. Union Territory of Jammu and Kashmir
Through Principal Secretary to Govt.
Home Department
Civil Secretariat, Jammu.
2. Divisional Commissioner, Jammu.
3. The District Magistrate, Udhampur.
4. The Superintendent District Jail, Udhampur.

....Respondent(s)

Through Mrs. Monika Kohli, Sr. AAG.

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

JUDGMENT

1. Heard learned counsel for the parties. Perused the writ pleadings and the record therewith.
2. The petitioner, acting through his wife, is maintaining the present habeas corpus writ petition invoking article 226 of the Constitution of India in order to regain his lost personal

- liberty in the face of his ongoing preventive detention which has been carried out under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short '**PITNDPS Act, 1988**').
3. The preventive detention of the petitioner is based upon an Order PITNDPS No. 25 of 2024 dated 02.04.2024 passed by the respondent No. 2-Divisional Commissioner, Jammu which is being questioned in the present writ petition filed on 20.08.2024 after the petitioner had suffered almost four months in running of detention custody.
 4. The case for preventive detention of the petitioner under PITNDPS Act, 1988 was, in fact, sponsored by the Senior Superintendent of Police (SSP), Udhampur who, vide his letter No. Conf./Dossier/170-73 dated 01.04.2024, submitted a dossier to the respondent No. 2-Divisional Commissioner, Jammu mentioning therein the alleged activities of the petitioner reckoned to be the ones falling within the mischief of section 3 of PITNDPS Act, 1988.
 5. In the said dossier, the petitioner came to be referred as notorious drug peddler of Udhampur already involved in four criminal cases upon which the reference came to be made in the dossier.
 6. The petitioner was alleged to be booked in an FIR No. 159/2022 under sections 8/20/21 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (in short, **NDPS Act, 1985**) registered by the Police Station, Rehmbal in which case the petitioner was reported to be undergoing trial. The petitioner's involvement in an FIR No. 143/2023 for alleged commission of offences under sections 8/21/22 of NDPS Act, 1985 registered by the Police Station, Rehmbal was reported to be under investigation. The petitioner was reported to be an under-trial in connection with FIR No. 313/2023 under sections 8/21/22 of NDPS Act, 1985 registered by the Police Station, Udhampur. The petitioner was also reported to be an under-trial in connection with FIR No. 276/2023 for alleged commission of offences under sections 8/21/22/25/27-A/29 of NDPS Act, 1985 registered by the Police Station, Bari Brahmana.

7. Insofar as the status of bail of the petitioner in relation to the case under FIR No. 159/2022 is concerned, the petitioner was reported to be enlarged on bail by the Additional Sessions Judge, Udhampur in terms of an order dated 20.07.2022. The petitioner was reported to be on bail in relation to case under FIR No. 143/2023 by virtue of an order dated 26.05.2023 passed by the Additional Special Mobile Magistrate, Udhampur. The petitioner was also reported to be on bail in relation to the case under FIR No. 313/2023 by virtue of an order dated 14.08.2023 passed by

the court of Additional Sessions Judge, Udhampur. With respect to the case under investigation in FIR No. 276/2023, the petitioner was reported to be again on bail in terms of an order dated 03.02.2024 passed by the Additional Sessions Judge, Samba.

8. In the backdrop of the aforesaid facts and circumstances by reference to the aforesaid four cases, the petitioner was reckoned to be a fit case for being booked for preventive detention in order to deter him from indulging in any illegal activities relating to the Narcotic Drugs and Psychotropic Substances Act, 1985.
9. Acting on the said dossier, the respondent No. 2-Divisional Commissioner, Jammu came to draw purported subjective satisfaction by formulating grounds of detention and came to a confirmed view that in order to prevent the petitioner from committing any offences under PITNDPS Act, 1988 and for securing the health and welfare of public at large, the petitioner's detention was warranted and accordingly, by virtue of the impugned Order PITNDPS No. 25 of 2024 dated 02.04.2024, the petitioner came to be arrested and detained in the District Jail, Udhampur.
10. The petitioner, acting through his wife, came to submit a representation dated 22.05.2024 to the Financial Commissioner (Additional Chief Secretary) Home

Department, UT of J&K and also to the respondent No. 2-Divisional Commissioner, Jammu sent through registered post on 22.05.2024 addressed to the said two Authorities.

11. The preventive detention of the petitioner has been questioned on number of grounds one of which being that the petitioner was on bail in all the aforesaid four cases in which his alleged involvement came to be attributed in relation to Narcotic Drugs and Psychotropic Substances Act, 1985 and that the Senior Superintendent of Police (SSP), Udhampur deliberately sponsored a case for preventive detention of the petitioner in order to over-reach the criminal courts of law which had come forward in granting bail to the petitioner in all the aforesaid four cases on the merits rather than on concession basis and thus, the preventive detention against the petitioner is nothing but a punitive detention enforced upon the petitioner.
12. It is an established position of law that the preventive detention jurisdiction cannot be pressed into service with a punitive mindset and for that the test available is to examine as to whether the sponsoring authority, before stepping forward seeking preventive detention of a person booked under different FIRs and bailed out by ordinary criminal court/s of law had applied and approached to the respective criminal court/s of law for seeking cancellation of bail in

favour of the said person on account of having abused the bail liberty granted in his favour and thereby indulging in repeat commission of offences of identical nature as is the present case related to the petitioner being booked in all the four cases under NDPS Act, 1985.

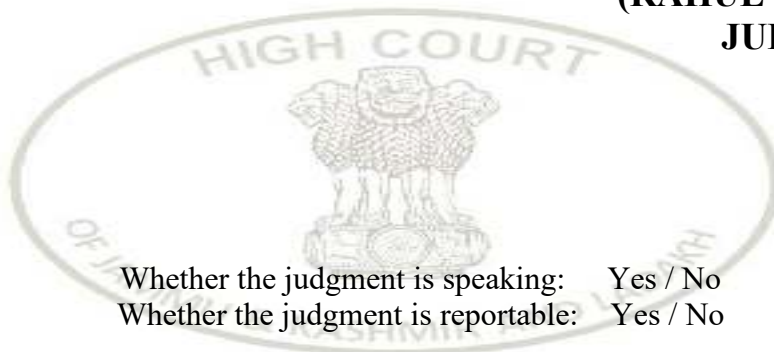
13. There is nothing in the dossier submitted by the Senior Superintendent of Police (SSP), Udhampur to exhibit that the Prosecution had applied for seeking rejection of the bail of the petitioner on account of his subsequent involvement in the alleged commission of offences under NDPS Act, 1985.
14. This is a very vital aspect attending the case which has been left un-cared by and on the part of the Senior Superintendent of Police (SSP), Udhampur thereby rendering the preventive detention of the petitioner vitiated with an illegality of being punitive.
15. In addition, the petitioner's continuing preventive detention is also rendered bad on account of the fact that his pending representation against his preventive detention has remained un-responded to him for the reasons best known to the detention order making and confirming authority.
16. The cumulative effect of the aforesaid facts and circumstances rendered the preventive detention of the petitioner as misconceived and non-compliant to the mandate of the law and, therefore, warrants to be set aside.

17. Accordingly, this Court quashes the preventive detention order PITNDPS 25 of 2024 dated 02.04.2024 passed by the respondent No. 2-Divisional Commissioner, Jammu read with confirmation/approval order and directs the release of the petitioner to his personal liberty. Superintendent of the concerned jail is directed to set the petitioner free in terms of the present judgment.

18. Disposed of accordingly.

(RAHUL BHARTI)
JUDGE

JAMMU
03.02.2025
Naresh/Secy.



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