

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

HCP No. 200/2024

Reserved On: 22nd of April, 2025.
Pronounced On: 24th of April, 2025.

Sheikh Nisar

... Petitioner(s)

Through: -

Mr Waseem Shamas, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

Mr Jehangir Ahmad Dar, Government Advocate.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge.

(JUDGMENT)

01. Heard learned counsel for the parties.
02. Perused the pleadings of the writ petition and the record therewith.
03. The petitioner-Sheikh Nisar, acting through his next friend namely Manzoor Ahmad Bhat, is aggrieved of his preventive detention which has been carried out in terms of an Order No. DIVCOM-"K"/130/2024 dated 6th of May, 2024 passed by the respondent No.2-Divisional Commissioner, Kashmir acting in exercise of power under section (3) of the Prevention of Illicit

Traffic in Narcotic Drugs and Psychotropic Substances (PIT NDPS) Act, 1988 thereby directing the detention of the petitioner in order to check his activities falling within the mischief of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT NDPS) Act, 1988 and to be detained in the Central Jail Kot Bhalwal, Jammu.

04. The basis for the preventive detention of the petitioner was a dossier submitted by the Senior Superintendent of Police (SSP), Srinagar vide communication No. Lgl/Det-PIT/2024/6492-95 dated 4th of April, 2024 wherein the petitioner came to be addressed as an active drug peddler himself involved in drug addiction from childhood and being involved in repeated offences related to the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 by reference to FIR No. 27/2023 by Police Station, Bemina and FIR No. 114/2023 by Police Station, Budgam.

05. This dossier made the basis for the respondent No.2-Divisional Commissioner, Kashmir to exercise his consideration on the materials so submitted and there from generate the grounds of detention holding the petitioner a case for suffering preventive detention.

06. In the grounds of detention, the respondent No.2-Divisional Commissioner, Kashmir came to refer the petitioner's involvement in FIR No. 27/2023 under sections 8/20, 220 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 registered by Police Station, Bemina, FIR No. 114/2023 under sections 8/22, 4/181 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 and FIR No. 28/2014 under section 8/22 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 by Police Station, Budgam.

07. When this Court compares the dossier *vis-à-vis* the grounds of detention, this Court finds that there is a disparity and variance with respect to the FIRs mentioned.

08. In the dossier, FIRs mentioned are FIR No. 27/2023 by the Police Station, Bemina and FIR No. 114/2023 by the Police Station, Budgam whereas in the Grounds of Detention an FIR No. 28/2014 of Police Station, Budgam is mentioned which is not found mentioned in the dossier. Wherefrom the mention of FIR No. 28/2014 of the Police Station, Budgam came to be referred by reference to the petitioner by the respondent No.2-Divisional Commissioner, Kashmir is nowhere to be gathered from the dossier supplied to the petitioner. This singular fact is of vitiating

effect on the preventive detention of the petitioner that the respondent No.2-Divisional Commissioner, Kashmir has acted upon a material which is not being found mentioned in the dossier handed over to the petitioner, copy whereof is annexed with the present writ petition. Non application of mind in the case is thus writ large on the part of the respondent No. 2-Divisional Commissioner, Kashmir in not reading and knowing correctly what actually the dossier was.

09. So much so, in paragraph No.2 in the counter affidavit to the writ petition, it is being mentioned that the petitioner was apprehended by the Police in connection with FIR No. 27/2015 which FIR, however, does not find whisper of mention in the grounds of detention. Thus, the grounds of detention as well as the counter affidavit of the respondent No.2-Divisional Commissioner, Kashmir are not matching each other. In the light of this glaring mismatch, the petitioner's preventive detention is held to be illegal deserving to be set aside.

10. Accordingly, the preventive detention order No. DIVCOM-"K"/130/2024 dated 6th of May, 2024 passed by the respondent No.2-Divisional Commissioner, Kashmir with respect to the petitioner is hereby quashed. The petitioner is directed to be

released forthwith from the preventive detention custody by the Superintendent, Central Jail Kot Bhalwal, Jammu or for that matter any other jail in which the petitioner may have come to be lodged in furtherance of his preventive detention.

11. **Disposed of.**

(Rahul Bharti)
Judge

SRINAGAR

April 24th, 2025

"TAHIR"

