

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

HCP No. 222/2024

Reserved On: 7th of April, 2025.
Pronounced On: 24th of April, 2025.

Abdul Rasheed Rather alias @ Mathur

... Petitioner(s)

Through: -

Mr Gulzar Ahmad Bhat, 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-Abdul Rashid Rather, acting through his wife namely Nasreena Akhtar, came to petition this Court on 5th of March, 2024 with the present writ petition thereby seeking his release from preventive detention custody slapped upon him in

terms of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT NDPS) Act, 1988.

04. The Superintendent of Police, Kulgam served and submitted a dossier vide his communication No. Lgl/NDPS-38/2024/7094-96 dated 27th of April, 2024 to the respondent No.2-Divisional Commissioner, Kashmir thereby seeking the preventive detention of the petitioner by alleging that the petitioner is found to be involved in activities falling within the mischief of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT NDPS) Act, 1988.

05. The dossier so submitted by the Superintendent of Police, Kulgam did not earn any reciprocal response from the end of the respondent No.2-Divisional Commissioner, Kashmir and, therefore, a reminder letter No. Lgl/NDPS-38/2024/8065-69 dated 9th of May, 2024 was submitted again which resulted in issuance of Order No. DIVCOM-“K”/142/2024 dated 17th of May, 2024 by the respondent No.2-Divisional Commissioner, Kashmir thereby directing the preventive detention of the petitioner under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT NDPS) Act, 1988.

06. In the grounds of detention so supporting the order of detention of the petitioner, the respondent No.2-Divisional Commissioner, Kashmir came to make reference that the petitioner, besides being a history sheeter having number of FIRs registered against him, is an active member of a drug mafia involved in drug trafficking not only in the local area of petitioner's residence but also at district level. The criminal antecedents of the petitioner came to be highlighted by reference to FIR No. 128/2020 and FIR No. 227/2023 both under sections 8/15 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. The petitioner's involvement by reference to the said two cases was held by the respondent No.2-Divisional Commissioner Kashmir as a pointer towards the fact that the petitioner was a part of a drug mafia.

07. The petitioner has come to question his preventive detention in the present writ petition on the grounds as set out in paragraph No.5 of the writ petition.

08. In paragraph No. 5.3 of the writ petition, the petitioner has alleged that his preventive detention order has neither been approved nor referred to the Advisory Board within the stipulated period and, therefore, the preventive detention was and is illegal.

09. In response to the said averment, the counter affidavit dated 13th of September, 2024 filed by the respondents on 26th of September, 2024 makes no whisper of reference and mention of reply as to whether the detention order of the petitioner was ever approved/ confirmed at any point of time or not. Furthermore, it is also nowhere replied in the counter affidavit that whether the petitioner's detention case was referred to the Advisory Board under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT NDPS) Act, 1988 or not.

10. Since the averments made in the writ petition to the aforesaid effect have not been denied or disputed by any express averment on part of the respondents that the petitioner's detention came to be approved/ confirmed by the competent authority and that petitioner's case was referred to the Advisory Board for examination on such and such date and vide such and such file process, this Court has no basis to discard the petitioner's challenge to his preventive detention as being illegal and, therefore, the same is held to be illegal deserving to be quashed.

11. In the light of the aforesaid facts and circumstances of the case, the preventive detention order No. No. DIVCOM-“K”/142/2024 dated 17th 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 restored to his personal liberty forthwith by release from the confines of 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.

12. **Disposed of.**

(Rahul Bharti)
Judge

SRINAGAR

April 24th, 2025

"TAHIR"

