

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

HCP No. 218/2024

Reserved On: 24th of March, 2025.
Pronounced On: 25th of March, 2025.

Shafatullah Shah.

... Petitioner(s)

Through: -

Mr Syed Sajad Geelani, 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 and the record therewith. Also perused the detention record produced from the end of the respondents.
03. The petitioner-Shafatullah Shah, age 23 years, acting through his father-Muzaffar Ahmad Shah, has come forward to maintain this writ petition filed on 6th of June, 2024 thereby seeking writ jurisdiction of this court under article 226 of the Constitution of India for issuance of a writ of habeas corpus for

restoration of his personal liberty curtailed by virtue of his preventive detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act 1988 in short).

04. The petitioner came to be in conflict with law when he along with two others namely Parvaiz Ahmad Khan and Nasir Ahmad Siraj came to be booked in an FIR No. 19/2023 by the Police Station Bomai for alleged commission of offences punishable under sections 8/22-29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act 1985). The petitioner and one of two co-accused persons are alleged to have been intercepted by a Police Party on patrol duty in a government vehicle when upon reaching near Shiva Crossing, there was a notice of suspicious movement of two persons from Dangerpora to Shiva and who, upon being apprehended, came to be Parvaiz Ahmad and the petitioner upon whose personal search narcotic drugs in the form of codeine bottles, 20 in number, were recovered from their personal possession, nine each. The registration of the said FIR, thus, led to the arrest of the petitioner and his two co-accused and upon investigation, a final police

report/ challan came to be presented on 10th of October, 2023 before the court of learned Additional Sessions Judge, Sopore.

05. Vide an order dated 19th of December, 2023, the court of Additional Sessions Judge, Sopore came to charge the accused persons under section 8/22(B) of the NDPS Act, 1985 and deleting the charge of section 29.

06. On 21st of December, 2023, the petitioner came to be granted bail by the trial court of learned Additional Sessions Judge, Sopore.

07. It is after the aforesaid development that the Senior Superintendent of Police (SSP), Sopore came forward with the dossier prepared against the petitioner and submitted to the respondent No.2-Divisional Commissioner, Kashmir vide letter No. Pros/PIT-NDPS/2024/2287-89 dated 15th of January, 2024 narrating therein that the petitioner is a member of an organized drug trafficking gang working in Sopore area involved in procuring, transporting and sale of psychotropic substances and the petitioner is clandestinely carrying out activities in narcotic drugs for a long period working in an organized and well-planned manner.

08. In this regard, the involvement of the petitioner in FIR No. 19/2023 of Police Station, Bomai was highlighted with an additional reference that the criminal case against the petitioner related to the said FIR has been presented before the court of Additional Sessions Judge, Sopore for judicial determination and the petitioner came to be enlarged on bail.

09. This dossier remained un-responded by the respondent No.2-Divisional Commissioner, Kashmir in the sense that vide letter No. Div.Com/RA-Detn/674/7401990/24 dated 13th of February, 2024 by the Revenue Attorney in the office of the respondent No.2-Divisional Commissioner, Kashmir addressed to Tehsildar, Sopore, a report was sought regarding present activities of the petitioner and his involvement in drug related activities.

10. This very communication dated 13th of February, 2024 itself hinted out that on the basis of the dossier so placed by the Senior Superintendent of Police (SSP), Sopore, the respondent No.2-Divisional Commissioner, Kashmir was not nursing any satisfaction that anything latest in terms of acts of omission or commission at the end of the petitioner was there in the dossier so as to warrant his preventive detention under PIT NDPS Act, 1988, otherwise, there would have been no scope for the Revenue

Attorney of the respondent No.2-Divisional Commissioner, Kashmir in seeking a report of the nature as mentioned in communication No. Div.Com/RA-Detn/674/7401990/24 dated 13th of February, 2024 from the Tehsildar, Sopore.

11. After sitting over the matter for an almost three months, the respondent No.2-Divisional Commissioner, Kashmir came forward with passing of the detention order No. DIVCOM-“K”/55/2024 dated 16th of April, 2024, thereby holding that the petitioner’s alleged activities were falling within the scope of mischief of section 3 of the PIT NDPS Act, 1988, therefore, warranting his preventive detention and his lodgment in Central Jail, Kote Bhalwal, Jammu.

12. The detention warrant issued against the petitioner came to be executed on 26th of April, 2024 by ASI Shabir Ahmad No. 703/CR (EXK-962102) of DPL, Sopore and the petitioner was handed over nineteen leaves compilation related to detention order, grounds of detention and the dossier.

13. The prevention detention case of the petitioner was referred to the Advisory Board for examination and opinion when by virtue of an opinion report on file No. Home/PB-V/243/2024

dated 16th of May, 2024, the Advisory Board came to hold the preventive detention of the petitioner justified by an express recital that there was no representation from the end of the petitioner against his preventive detention.

14. On 31st of May, 2024, the petitioner came to submit a written representation against receipt No. 4519524 to the respondent No.2-Divisional Commissioner, Kashmir.

15. Pursuant to the Advisory Board's opinion, the Home Department, Government of Jammu & Kashmir, vide Government Order No. Home/PB-V/1193 of 2024 dated 3rd of June, 2024, came to confirm the preventive detention of the petitioner for a period of one year to be lodged in the Central Jail, Kote Bhalwal and the said period was to run from 26th of April, 2024 to 25th of April, 2025 meaning thereby that the petitioner is left just with one remainder month of his detention period expiry.

16. With respect to the petitioner's representation submitted seeking recall of his preventive detention, the Revenue Attorney in the office of Divisional Commissioner, Kashmir, vide a letter No. Div.Com/RA-Detn/90/24/283 dated 6th of June, 2024 addressed to the Principal Secretary, Home Department,

Government of J&K, came to refer about the petitioner's representation without stating therein as to the fate of the said representation.

17. It is in this backdrop that the institution of the present writ petition came to take place on 6th of June, 2024 challenging the preventive detention of the petitioner.

18. The respondents came forward with submission of their counter affidavit on 29th of August, 2024.

19. The challenge to the preventive detention *inter alia* is on a number of grounds including that the preventive detention of the petitioner was an attempt to over-reach the ordinary criminal law in operation against the petitioner and to serve as a punitive punishment upon the petitioner by exercise of preventive detention jurisdiction.

20. The preventive detention of the petitioner was vitiated from the very inception in the sense that the Senior Superintendent of Police (SSP), Sopore avoided which this court can say observe with a deliberate design, to bring on record of the dossier the fact that even the charge against the petitioner and his other co-accused in relation to FIR No. 19/2023 had been altered diluting

the Prosecution's case and later the petitioner having applied for bail earning it on merits and not as a matter of mercy.

21. It is where the respondent No.2-Divisional Commissioner, Kashmir, acting through his Revenue Attorney, actually meant to know as to what was the present state of activities of the petitioner so as to warrant his preventive detention which otherwise were not being reported in an updated manner in the dossier itself, except a solitary highlighted reference of the petitioner's implication in FIR No. 19/2023.

22. If the activities of the petitioner would have been so prejudicial and pressing ones on the basis of the dossier submitted by the Senior Superintendent of Police (SSP), Sopore on 15th of January, 2024, the respondent No.2-Divisional Commissioner, Kashmir would not have allowed three months' time period to go by in making up mind that the case presented against the petitioner was deserving a quick response from his end so as to not let the petitioner have his liberty at his disposal for a period of three months to indulge in repeat of his objectionable activities. This time lag between placing of the dossier and passing of the detention order *ex-facie* may look to be very short in impression but in fact is quite sufficient to hold that the dossier itself was

lacking any conviction to generate preventive detention of the petitioner that too in the mind frame of the respondent No.2-Divisional Commissioner, Kashmir.

23. It is this aspect of the matter also which vitiates the preventive detention of the petitioner.

24. Furthermore, the representation of the petitioner remained unaddressed at the end of the respondents and even if addressed at the end of the respondents not being made known to the petitioner thereby jeopardizing his constitutional right of representation against his preventive detention.

25. The cumulative effect of all these facts and circumstances render the prevention detention of the petitioner illegal right from the very inception and, therefore, warrants quashment.

26. Accordingly, the detention order No. DIVCOM-“K”/55/2024 dated 16th of April, 2024 read with Government Order No. Home/PB-V/1193 of 2024 dated 3rd of June, 2024 are hereby quashed. The petitioner is directed to be restored to his personal liberty by release from the jail by its concerned Superintendent.

27. **Disposed of.**
28. Detention record be returned.

(Rahul Bharti)
Judge

SRINAGAR
March 25th, 2025
"TAHIR"

i. Whether the Judgment is approved for reporting? Yes/ No.

