

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

HCP No. 233/2024

Reserved On: 17th of March, 2025.
Pronounced On: 25th of March, 2025.

Abdul Momin Peer @ Momin.

... Petitioner(s)

Through: -

Mr N. A. Tabassum, Advocate with
Mr Idrees, Advocate.

V/s

Union Territory of J&K and Anr.

... 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.
03. The petitioner, acting through his father, has come forward with the institution of present writ petition on 20th of June, 2024 thereby seeking a writ of *habeas corpus* for earning back his lost personal liberty on account of his preventive detention effected by an Order No. DIVCOM-“K”/29/2024 dated

1st of April, 2024 passed by the respondent No.2-Divisional Commissioner, Kashmir.

04. At the time of institution of the present writ petition, the petitioner was 22 years old.

05. A case for seeking preventive detention of the petitioner was mooted and sponsored by the Senior Superintendent of Police (SSP), Handwara who, vide his communication No. Pross/Dossier-PIT NDPS/2024/432-36 dated 20th of January, 2024, submitted a dossier by reference to the alleged antecedents of the petitioner warranting his preventive detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT-NDPS) Act, 1988.

06. This dossier so submitted by the Senior Superintendent of Police (SSP), Handwara in January, 2024 remained unattended and un-responded at the end of the respondent No.2-Divisional Commissioner, Kashmir to whom the dossier was addressed for indulgence.

07. After expiry of two months, the respondent No.2-Divisional Commissioner, Kashmir at his end came forward with issuance of the detention order No. DIVCOM-“K”/29/2024 dated

1st of April, 2024 thereby reckoning the alleged activities and antecedents of the petitioner warranting his detention under section (3) of PIT-NDPS Act, 1988. The petitioner was directed to be detained and kept in confinement in Central Jail Kot Bhalwal, Jammu.

08. The detention order was passed on the basis of purported grounds of detention formulated by the respondent No.2-Divisional Commissioner, Kashmir in which the incidents relatable to the petitioner by reference to his involvement in FIR No. 105/2023 registered by Police Station Handwara for alleged commission of offences under sections 8/20, 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 came to be highlighted alleging that the petitioner was a part and active member of a local drug mafia active in the area and whose personal liberty is a peril to the Society at large and, thus, required to be curbed.

09. Upon being arrested and detained, the petitioner came to make a written representation dated 20th of May, 2024 sent by registered post to the respondent No.2-Divisional Commissioner, Kashmir and also to the Principal Secretary to the Government of

Union Territory of Jammu & Kashmir, Home Department thereby seeking revocation/ recalling of preventive detention against him.

10. Finding no response from the end of the respondent No.2-Divisional Commissioner, Kashmir, the petitioner came forward with the institution of the present writ petition assailing his preventive detention on number of grounds as set out in paragraph Nos. 2 (a) to 2 (l).

11. The preventive detention exercise at the end of the Senior Superintendent of Police (SSP), Handwara and respondent No.2-Divisional Commissioner, Kashmir is being found fault with by the petitioner on the point of a very salient aspect related to his situation of being on bail in reference to FIR No. 105/2023 which fact was kept withheld from being disclosed and declared both by the Senior Superintendent of Police (SSP), Handwara and the respondent No.2-Divisional Commissioner, Kashmir.

12. A bare perusal of the dossier read with grounds of detention would show that while the reference to FIR No. 105/2023 came to be made along with a copy of challan presented against the petitioner before the court of law, there is a deafening silence about the fact as to whether the petitioner was granted bail

in the case or not whereas the fact is that by virtue of an order dated 7th of August, 2023, the court of Additional Sessions Judge, Handwara had come to grant bail in favour of the petitioner by reference to FIR No. 105/2023 which fact is borne out from the documents annexed with the writ petition.

13. Thus, by the time the Senior Superintendent of Police (SSP), Handwara was involved in framing his dossier and to submit it vide his communication No. Pross/Dossier-PIT NDPS/2024/432-36 dated 20th of January, 2024, the Senior Superintendent of Police (SSP), Handwara was well aware of the fact, or is supposed to have been well aware of the fact, that the petitioner was on bail and, therefore, if he was indulging in repeat of alleged activities, then why the first endeavour of the Senior Superintendent of Police (SSP), Handwara instead of going for cancellation of the bail of the petitioner was for taking the matter towards preventive side detention of the petitioner. This is here where the preventive detention case against the petitioner was set on a wrong foot rendering it liable to be quashed.

14. In addition, there is an unexplained delay on the part of the respondent No.2-Divisional Commissioner, Kashmir as to why

it took him more than two months in considering the dossier submitted by him for preventive detention of the petitioner. This two months' time gap is a pointer towards the fact that the case against the petitioner was not taken with any note of urgency and seriousness at the end of the respondent No.2-Divisional Commissioner, Kashmir, otherwise, if the case would have been one presenting a pressing situation for immediate preventive detention of the petitioner, then every lost day of the period of two months in passing the detention order on 1st of April, 2024 meant that the petitioner was kept loose by the law and enforcement authority/ agency to indulge in the alleged activities for which he was bound to be booked for preventive detention without loss of single day. Thus, the preventive detention of the petitioner is obviously an exercise borne out of *malice* in law, if not on fact.

15. For the aforesaid reasons, a case is made out for quashment of the preventive detention of the petitioner. Accordingly, preventive detention order bearing No. DIVCOM-“K”/29/2024 dated 1st of April, 2024 passed by the respondent No.2-Divisional Commissioner, Kashmir read with consequent approval/ confirmation order is hereby quashed. The petitioner is

