

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

HCP No. 298/2024

Reserved On: 2nd of April, 2025.
Pronounced On: 24th of April, 2025.

Afrooz Ahmad Malik

... Petitioner(s)

Through: -

Mr G. N. Sofi, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with
Ms Nadiya Abdullah, Assisting Counsel.

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-Afrooz Ahmad Malik came to be detained and subjected to preventive detention in terms of Order No. DIVCOM-“K”/42/2024 dated 16th of April, 2024 passed by the respondent No.2-Divisional Commissioner, Kashmir in

exercise of power under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT NDPS) Act, 1988 holding the petitioner's reported activities falling within the scope of mischief of section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PIT NDPS) Act, 1988.

04. The petitioner's preventive detention was solicited by Senior Superintendent of Police (SSP), Anantnag who, vide his dossier No. CS/71/2023/23086-91 dated 4th of December, 2023, apprised the Divisional Commissioner, Kashmir that the petitioner by his activities in particular by his involvement in the commission of offences under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 in terms of FIR No. 49/2022 is a part of a drug mafia active in the area and without subjecting the petitioner to preventive detention it was not possible to check the illegal activities related to the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

05. The petitioner's involvement in the said FIR was on account of being allegedly caught along with three other persons when they were found to be carrying in a vehicle 14 Kgs of

substance which came to be identified by Forensic examination as Heroine (diacetyl morphine).

06. On the basis of the dossier, the Divisional Commissioner, Kashmir came to generate grounds of detention and directed the petitioner's detention and confinement to Central Jail Kot Bhalwal, Jammu which led to the preventive detention of the petitioner.

07. The petitioner came to be fully apprised about his right of making representation against his preventive detention be it to the Divisional Commissioner, Kashmir or to the Government which right came to be exercised by the petitioner by submitting a representation dated 9th of May, 2024.

08. In his representation, the petitioner came to submit that his right to make an effective representation came to be seriously prejudiced by non-supply of the materials in the form of FIR, statements under section 161 Cr. P. C., seizure memos otherwise referred in the dossier as well as in the grounds of detention but not being supplied to him. In his representation, the petitioner came to make a specific reference to a judgment of the Hon'ble Supreme Court in the case of **'Sophia Ghulam Mohammad**

Bham v. State of Maharashtra, AIR 1999 SC 3051' to emphasize his point that his right of making an effective representation has been seriously prejudiced.

09. Along with his writ petition, the petitioner came to file an application CM No. 5467/2024 seeking a direction unto the writ respondents to consider the pending representation of the petitioner meaning thereby that the petitioner was seriously seeking consideration of his representation even after having come under custody and at the time of filing of writ petition on 2nd of September, 2024 after having spent more than 3 and ½ months of detention.

10. The counter affidavit to the writ petition came to be filed by the respondents on 25th of February, 2025. In the entire counter affidavit it has nowhere been stated as to what happened to the representation of the petitioner. In fact, in the counter affidavit it is being said that the petitioner did not prefer any representation. This averment goes against the writ respondents in view of the fact that the petitioner in his application CM No. 5467/2024 in very categorical terms solicited consideration of his pending representation dated 9th of May, 2024. The respondents

cannot be heard to say that there was no representation on behalf of the petitioner.

11. Even if it is assumed to be correct, though it is not, that there was no representation filed by the petitioner, still when the petitioner came to annex the representation along with his writ petition which he solicited to be considered, then the respondents by the time came forward with the counter affidavit to the writ petition on 25th of February, 2025 ought to have considered the representation and responded to the petitioner. Having failed to do so, the respondents have rendered the preventive detention of the petitioner legally flawed by prejudicing the petitioner's right of representation.

12. The time lag between the date of dossier submission and passing of detention order lasting upto more than three months is also a vitiating factor rendering the petitioner's detention bad.

13 . The preventive detention of the petitioner is, thus, held to be illegal and consequently the preventive detention order No. DIVCOM-“K”/42/2024 dated 16th of April, 2024.

14. Accordingly, the preventive detention order No. DIVCOM-“K”/42/2024 dated 16th of April, 2024 read consequent

approval/ confirmation and extension orders are hereby quashed.

The petitioner is directed to be restored to his personal liberty by release from the concerned Jail by its Superintendent.

15. **Disposed of.**

(Rahul Bharti)
Judge

SRINAGAR

April 24th, 2025

"TAHIR"

