Serial 4
Regular List

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

**HCP 15/2023**

**Mohammad Yaseen Mantoo**

… Petitioner/Appellant(s)

Through: Mr. Wajid Haseeb, Advocate

**V/s**

**UT of J&K and another**

… Respondent(s)

Through: Mr. Sajad Ashraf, GA

CORAM: **HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**O R D E R**

**05-02-2024**

1. Heard learned counsel for the parties and perused the writ pleadings, reply affidavit and the documents therewith. The record produced from the respondents' end also perused.
2. The petitioner has come to suffer preventive detention by virtue of an order no. DIVCOM-"K"/87/2023 dated 09.6.2023 passed by the Divisional Commissioner, Kashmir in purported exercise of powers under section 3 of the Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The order of detention is based upon grounds of detention accompanying it. The petitioner is said to be detained and lodged in the Central Jail, Kot Bhalwal, Jammu.
3. It is on the purposed basis of the grounds of detention that the Divisional Commissioner, Kashmir came to draw a

subjective satisfaction that the alleged acts of omission and commission on the part of the petitioner warranted his preventive detention in order to prevent him from committing any of the acts within the meaning of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

4. The preventive detention of the petitioner was sought by the Superintendent of Police, Kulgam who came up with a dossier no. Legal/PSA-08/2023/9008 dated 22.5.2023 whereby the factual inputs were provided for the notice and appreciation of the Divisional Commissioner, Kashmir upon the basis of which the preventive detention of the petitioner was solicited by the law enforcement agency of the district represented by the Superintendent of Police, Kulgam.

5. It is forthcoming from the order of detention read with grounds of detention that it is by reference to implication of the petitioner in an FIR 05/2023 registered with the Police Station Qaimoh for alleged commission of offences under section 8/21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

6. In so far as the involvement and booking of the petitioner in relation to said FIR no. 05/2023 is concerned, the petitioner had approach the court of Principal Sessions Judge, Kulgam with a bail application in which vide an interim order dated 15.4.2023 the petitioner came to be admitted to interim bail

subject to terms and conditions as embodied in the said interim bail order dated 15.4.2023. One of the conditions incorporated in the said bail order dated 15.4.2023 was to the effect that the petitioner was not to indulge in repeat of any such offence for which he had come to be booked and arrested.

7. The interim bail of the petitioner granted in terms of order dated 15.4.2023 came to be confirmed by the Principal Sessions Judge, Kulgam vide an order dated 29.4.2023. In making the interim bail absolute, the court of Principal Sessions Judge, Kulgam, had the statement of the Public Prosecutor before it reporting that the petitioner had not indulged in violation of any of the terms and conditions of the bail granted in his favour.

8. It is in the backdrop of this fact that the petitioner having been bailed out by the court of learned Principal Sessions Judge, Kulgam by virtue of an order dated 29.4.2023 that the Superintendent of Police, Kulgam steps into scene with the dossier dated 22.5.2023 meaning thereby the fact of the petitioner having been admitted to bail was well known to the Superintendent of Police, Kulgam and he cannot be allowed to plead ignorance of the said development attending grant of bail in favour of the petitioner by the Principal Sessions Judge, Kulgam and the grounds upon

which grant of bail had taken place in favour of the petitioner.

9. In the grounds of detention, the Divisional Commissioner, Kashmir is so reading the factual situation reported by the Superintendent of Police, Kulgam as if it is not communicated to him about the arrest status of the petitioner in connection with his booking for the said FIR 05/2023. This is a pointer to the fact that Superintendent of Police, Kulgam had presented a fractured factual position to the Divisional Commissioner, Kashmir for the purpose of getting the petitioner under catch of preventive detention custody.

10. By this omission on the part of the Superintendent of Police, Kulgam, this court can read many inferences as to whether the Superintendent of Police, Kulgam was having some personal interest in getting the petitioner to suffer loss of his personal liberty on one pretext or the other and for that the dossier prepared against the petitioner by reference to FIR no. 05/2023 was not to bear mention of the fact that the petitioner was admitted to bail by the court of Principal Sessions Judge, Kulgam as otherwise the Divisional Commissioner, Kashmir might not have been persuaded to exercise preventive detention jurisdiction against the petitioner keeping in consideration the fact of the petitioner having been bailed out on the terms and conditions which

came to be honoured by the petitioner and which impressed upon the court of Principal Sessions Judge, Kulgam to make absolute the interim bail of the petitioner.

11. Thus in the light of the coloured exercise of authority on the part of the Superintendent of Police, Kulgam in presenting the dossier with an edited factual position, the exercise of authority though based on the subjective satisfaction of the Divisional Commissioner, Kashmir is vitiated right from the inception which renders the preventive detention of the petitioner illegal and deserves quashment.

12. For the preceding reasons, the impugned detention order no. DIVCOM-"K"/87/2023 dated 09.6.2023 passed by Divisional Commissioner, Kashmir is quashed and detenue is directed to be set at liberty. Superintendent, Central Jail Kot Bhalwal, Jammu to set free the petitioner.

**(RAHUL BHARTI)**
**JUDGE**

Srinagar
05-02-2024
*N Ahmad*

Whether the order is speaking : Yes
Whether the order is reportable : No