



2024:JKLHC-SGR:115

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

Reserved on : 23.02.2024.

Pronounced on : 02.04.2024.

Case:- HCP No. 126/2023

**Manzoor Ahmad Yatoo, Aged 31 years,
S/o Mohd. Sultan Yatoo,
R/o Heewan Sheeri, Tehsil Narwaw,
District Baramulla**

**Through his father
Mohd. Sultan Yatoo, Aged 61 years.**

.....Petitioner

Through: Ms. Sheeba Khan, Advocate

Vs

- 1. UT of J&K through Additional Chief Secretary, Home Department,
J&K Govt. Civil Secretariat, Srinagar/ Jammu.**
- 2. Divisional Commissioner, Kashmir.**

..... Respondents

Through: Mr. Sajad Ashraf, GA

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

01. Heard learned counsel for the petitioner as well as for the respondents. Perused the pleadings in the form of writ petition as well as counter affidavit and the documents therewith.

02. The petitioner, acting through his father, has petitioned this Court through the medium of the present writ petition under article 226 of the constitution of India thereby seeking a writ of



habeas corpus to earn restoration of his personal liberty which came to be curtailed by virtue of a preventive detention order passed by the respondent No. 2 – Divisional Commissioner, Kashmir acting in exercise of authority under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (“PIT NDPS” in short).

03. The case for preventive detention of the petitioner came to be put up by the Sr. Superintendent of Police (SSP), Baramulla by virtue of his letter No. Lgl/PIT-NDPS/2023/2195-98 dated 16.08.2023 thereby submitting a dossier against the petitioner for seeking his preventive detention under the PIT NDPS Act, 1988.

04. On the basis of the dossier so served, the respondent No. 2– Divisional Commissioner, Kashmir came to draw a subjective satisfaction by formulating the grounds of detention and thereupon passing the preventive detention Order No. DIVCOM-“K”/166/2023 dated 08.09.2023 thereby ordering the preventive detention of the petitioner in terms of section 3 of the PIT NDPS Act, 1988 and his detention place to be Central Jail Kotbhalwal, Jammu for a period to be specified by the Government/Advisory Board.

05. The grounds of detention underlying the issuance of the aforesaid preventive detention order narrate that the petitioner



has developed contacts with drug peddlers operative in Narwaw belt of district Baramulla and started selling/dealing in drugs to the youth of Baramulla area and that the petitioner is a member of an organized drug-trafficking gang working in district Baramulla. In this regard, a fact is cited with respect to the petitioner's involvement in FIR No.54/2023 for alleged commission of offences under section 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" in short) by the Police Station Sheeri for allegedly possessing 26 grams of charas like substance and 56 tablets of Spasmo Proxyvon.

06. The petitioner was reckoned to be posing a threat to the health and welfare of people of the area as per the reports received from the field agencies and thereby leaving no other way to tame the petitioner in his alleged activities other than by way of subjecting him to suffer preventive detention.

07. The preventive detention Order No. DIVCOM-"K"/166/2023 dated 08.09.2023 so passed by the respondent No. 2-Divisional Commissioner, Kashmir came to be confirmed by the Govt. in terms of an Order No. Home/PB-V/2243 of 2023 dated 03.10.2023 and setting out a one year detention period against the petitioner and that is how the petitioner is serving the said detention period.



08. Against his aforesaid detention, the petitioner came to put up a written representation dated 12.10.2023 duly received in the office of the respondent No. 2-Divisional Commissioner, Kashmir against receipt No. E-3139871 dated 12.10.2023.

09. The petitioner came to institute the present writ petition on 16.10.2023 thereby challenging the course of action at the end of the respondents in slapping the preventive detention against the petitioner. To this writ petition, the respondents came forward with filing of a counter affidavit on 04.12.2023.

10. In the writ petition, the detention order has been assailed on number of grounds. This Court, upon perusal of the facts and circumstances, comes across with some salient aspects which have vitiating effect on the legality of the preventive detention order passed against the petitioner.

11. The dossier which came to be submitted by the Sr. Superintendent of Police (SSP), Baramulla against the petitioner is through the medium of letter dated 16.08.2023. Now, after the submission of dossier and before the impugned preventive detention Order No. DIVCOM-“K”/166/2023 dated 08.09.2023 came to be issued by the respondent No. 2-Divisional Commissioner, Kashmir, an intervening development of relevance had come to take place and that was the grant of an interim bail



by the court of Principal Sessions Judge, Baramulla in terms of an order dated 19.08.2023 in favour of the petitioner by reference to his arrest under FIR No. 54/2023 of the Police Station Sheeri. The date of grant of interim bail being 19.08.2023 means just three days after the submission of dossier by the Sr. Superintendent of Police (SSP), Baramulla. This development, therefore, means that the petitioner had set into process his bail application prior to framing and submission of dossier by the Sr. Superintendent of Police (SSP), Baramulla

12. Now, as being the head of the District Police, the Sr. Superintendent of Police (SSP), Baramulla is supposed to have been fully aware of the fact that the petitioner had applied for the bail before a competent court of law and that fact at least ought to have been duly mentioned in his dossier so as to apprise the respondent No. 2-Divisional Commissioner, Kashmir about the fact that the petitioner was also seeking bail in connection with his arrest relatable to FIR No. 54/2023 being cited as a prominent fact by the respondent No. 2 - Divisional Commissioner, Kashmir in his grounds of detention against the petitioner. So much so, the District Police, Baramulla, through its Police Station Sheeri, after having come to know about the fact of grant of interim bail in favour of the petitioner in terms of an order dated 19.08.2023, had the time at its disposal to



supplement the information served in the dossier to the respondent No. 2 – Divisional Commissioner, Kashmir to apprise him about the fact that in the mean time the petitioner has been let out on an interim bail by the court of Principal Sessions Judge, Baramulla so as to keep the respondent No. 2 – Divisional Commissioner, Kashmir fully abreast of the corresponding development attending the petitioner. It is pertinent to take notice of the fact that the impugned detention Order No.DIVCOM-“K”/166/2023 came to be passed on dated 08.09.2023, i.e., almost 20 days after grant of interim bail in favour of the petitioner by the court of Principal Sessions Judge, Baramulla.

13. Thus, this non-disclosure of full state facts concerning the petitioner by the Sr. Superintendent of Police (SSP), Baramulla vitiated the very process of seeking preventive detention of the petitioner to the extent of keeping the respondent No. 2 – Divisional Commissioner, Kashmir and also the Govt. of UT of Jammu & Kashmir misinformed or say to say half informed about the true state of facts concerning the petitioner and that renders the entire detention related exercise against the petitioner an illegality in itself.

14. In addition, the petitioner’s preventive detention also stands vitiated by the fact that despite having received a



representation from the petitioner on 12.10.2023 and till the filing of the counter affidavit on 04.12.2023 the fate of the said representation of the petitioner is known only to the respondent No. 2 – Divisional Commissioner, Kashmir or for that matter the Govt. of UT of Jammu & Kashmir not being conveyed to the petitioner as if the exercise of right of representation by the petitioner against his preventive detention was an empty formality in the estimate of the respondents worthy of no indulgence to the extent of even a lip service of saying rejected.

15. Right to representation is a Constitution of India guaranteed and granted right under article 22 to a detenu and its consideration by the Govt. and/or the detention order making authority is also a corresponding constitutional obligation which cannot admit of being put to waste or neglect by the Govt. and/or the detention order making authority except at the cost of leaving a given preventive detention of such a detenu an illegality. It is not for a constitutional court to remind the Govt. and/or the preventive detention order making authority that a representation made by a detenu against his/her preventive detention admits of no avoidance or escape of its consideration at their respective end, whereas it is for the Govt. and/or the preventive detention order making authority to self-know and remind at its respective end that a representation, if any, made by a detenu against his/



her preventive detention is a matter of compulsive consideration to be done by the Govt., and/or the preventive detention authority and, accordingly, duly inform a detenu about the outcome of consideration of his/her representation.

16. The end situation of the aforesaid facts and circumstances, therefore, renders the preventive detention of the petitioner illegal and deserves to be set aside.

17. Accordingly, this Court issues a writ of habeas corpus thereby quashing the preventive detention Order No. DIVCOM-“K”/166/2023 dated 08.09.2023 read with confirmation order passed by the Govt. in terms of Order No. Home/PB-V/2243 of 2023 dated 03.10.2023. The petitioner is directed to be set free to his personal liberty by the Superintendent of the concerned Jail.

18. ***Disposed of*** accordingly.

(RAHUL BHARTI)
JUDGE

SRINAGAR
02.04.2024
Muneesh

Whether the order is speaking : **Yes**

Whether the order is reportable : **Yes**