

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

**Reserved on: 10.11.2023
Pronounced on : 20.12.2023**

Case No. HCP no. 22/2023

Abdul Qayoom Khan aged 44 years S/o Late Sarfaraz
Ahmad Khan R/o Baila Boniyar District Baramulla
through his wife Zarifa Begum aged 35 years.

.....Petitioner(s)

Through: Mr. N.H. Shah, Sr. Advocate

Vs

1. Union Territory of J&K through
Additional Chief Secretary, Home
Department, Civil Secretariat
Jammu/Srinagar.
2. Divisional Commissioner Kashmir
Srinagar.
3. Superintendent Central Jail, Kote
Bhalwal Jammu.

..... Respondent(s)

Through: Mr. Sajad Ashraf, GA

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

JUDGMENT

1. Heard learned counsel for the petitioner and perused the pleadings.
2. The petitioner finds his constitutionally guaranteed fundamental right of personal liberty curbed by an Order no. DIVCOM-K/95/2023 dated 04.07.2023 passed by the respondent no. 2-Divisional Commissioner, Kashmir

purportedly acting under the provisions of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, '**Act of 1985**') thereby subjecting the petitioner to suffer detainment and lodgment in Central Jail, Kot Bhalwal, Jammu which order has landed the petitioner behind bars in the confines of the Central Jail, Kot Bhalwal, Jammu.

3. The preventive detention of the petitioner was solicited by the Senior Superintendent of Police (SSP), Baramulla by submitting a case in the form of a dossier no. LGL/PIT-NDPS/2023/1598-1601 dated 15.06.2023 whereby the petitioner was reckoned to be deserving loss of his personal liberty for preventing him from indulging in the acts prohibited by the Act of 1988.
4. The respondent no. 2-Divisional Commissioner, Kashmir came to pass the aforesaid detention order based upon the grounds of detention forming the basis for the issuance of the said preventive detention order.
5. The grounds of detention formulated by the respondent no. 2-Divisional Commissioner, Kashmir upon which he came forth to recommend to the respondent no. 2-Divisional Commissioner, Kashmir to pass detention order were that

the petitioner, being a school dropout from class 8th, had started selling/dealing with banned drugs having adverse impact on the younger generation and being a member of the organized drug trafficking gang involved in procuring, transporting and sale of psychotropic substances in which connection the petitioner even came to be arrested by reference to FIR no. 22/2023 under section 8/21/29 of the Act of 1985 by the Police Station Boniyar when the petitioner had come to be apprehended carrying in his alleged possession 16 grams of Heroine, for which alleged act of omission and commission the petitioner got implicated in the said FIR.

6. The Senior Superintendent of Police, Baramulla recommended the preventive detention of the petitioner to take place although by generalizing the petitioner to be part of dealing in illegal business of narcotics.
7. The petitioner has assailed his detention on the ground that his preventive detention under the Act of 1988 is nothing but a sheer abuse of process of law inasmuch as the preventive detention has been resorted as if to be a replacement of punitive detention of the petitioner which can happen only in the event of the petitioner being held guilty

on the basis of the criminal trial proceedings qua the aforesaid FIR no. 22/2023.

8. The petitioner has further assailed his preventive detention saying that SSP, Baramulla did not disclose true state of facts pertaining to the petitioner inasmuch as the petitioner had come to be granted bail by reference to the aforesaid FIR and that bail order is dated 22.05.2023 issued by the Court of First Additional Sessions Judge, Baramulla.
9. The very fact that in the grounds of detention, there is no factual reference to the aspect about the grant of bail of the petitioner having taken place pursuant to the direction of the Court of First Additional Sessions Judge, Baramulla in May 2023 is a pointer to the fact that the Senior Superintendent of Police, Baramulla had chosen to act without due sense of duty to serve true and full disclosure of facts concerning a prospective detenu against whom a case of preventive detention was being contemplated at his end to be set up before the preventive detention order making authority.
10. In the counter affidavit submitted in the case, the respondents have not even made a whisper about grant of bail in favour of the petitioner having taken place and

further as to whether the said grant of bail was ever challenged by the prosecution before the higher court of law or for that matter any breach of terms and conditions with respect to the grant of bail took place at the end of the petitioner warranting loss of bail in his favour.

11. Therefore, this Court is convinced that the preventive detention was put as a substitute for perpetuating the detention of the petitioner in relation to the case so registered in terms of FIR no. 22/2023. Such like mindset in the matter of dealing and operating preventive detention jurisdiction under any preventive detention law including the one involved in the present case which is Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 cannot be countenanced by a constitutional court and, therefore, the preventive detention of the petitioner is held to be bad.
12. Accordingly, this writ petition is allowed. Preventive detention order no. DIVCOM-K/95/2023 dated 04.07.2023 passed by the respondent no. 2-Divisional Commissioner, Kashmir whereby the petitioner has been subjected to preventive detention is hereby quashed as a consequence whereof the petitioner is ordered to be restored to its

personal liberty by the respondent no. 3-Superintendent,
Central Jail, Kote Bhalwal Jammu.

13. **Disposed of** accordingly.

(Rahul Bharti)
Judge

SRINAGAR
20.12.2023
Naresh, Secy.

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

