

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

Reserved on : 19.09.2024.  
Pronounced on : 05.12.2024.

Case No.:- **HCP No. 49/2024**

**Poli Devi, Aged 50 years,  
Wife of Sh. Baldev Raj,  
R/o Kothey Bulandey, Tehsil Bishnah,  
District Jammu  
Presently lodged in District Jail, Kathua  
Through Jyoti Bala, Aged 30 years,  
Wife of Sh. Ram Kumar,  
R/o Kothey Bulandey, Tehsil Bishnah  
District Jammu  
Daughter-in-law/Next friend.**

*.....Petitioner*

Through: Mr. Navyug Sethi, Advocate

**Vs**

- 1. Union Territory of J&K  
through Principal Secretary,  
Home Department,  
Civil Secretariat, Jammu/Srinagar.**
- 2. Divisional Commissioner, Jammu.**
- 3. Superintendent, District Jail, Kathua.**

*..... Respondents*

Through: Ms. Chetna Manhas, Assisting Counsel vice  
Mr. Amit Gupta, AAG

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

**JUDGMENT**

01. The petitioner – Poli Devi is seeking restoration of her personal liberty through the medium of this writ petition filed on 03.04.2024 thereby invoking writ jurisdiction of this Court under

article 226 of the Constitution of India for issuance of a writ of habeas corpus.

02. The preventive detention of the petitioner is sourced to an Order No. PITNDPS 21 of 2024 dated 18.02.2024 passed by the respondent No. 2 – Divisional Commissioner, Jammu in exercise of power under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as **“PITNDPS Act, 1988”**) read with SRO 247 dated 27.07.1998 subjecting the petitioner to arrest and detention so as to prevent her from committing any of the acts falling within the mischief and meaning of the illicit traffic.

03. A case for preventive detention of the petitioner was actually sponsored by the Sr. Superintendent of Police (SSP), Jammu, vide his letter No. CRB/2024/Dossier/27/DPOJ dated 13.02.2024, bearing a dossier purportedly reporting the alleged acts of omission and commission on the part of the petitioner warranting her preventive detention as the only course of option at the end of the District Police, Jammu to prevent the petitioner from indulging in her alleged drug peddling/selling of illicit liquor activities.

04. The antecedents of the petitioner cited in the dossier are referable to :-

- FIR No. 72/2010 under section 48-E Excise Act registered by Police Station Bishnah.

- FIR No. 99/2011 under section 48-E Excise Act registered by Police Station Bishnah.
- FIR No. 138/2011 under section 48-E Excise Act registered by Police Station Bishnah.
- FIR No. 21/2012 under section 48-E Excise Act registered by Police Station Bishnah.
- FIR No. 158/2017 also under section 48-E Excise Act registered by Police Station Bishnah.
- FIR No. 155/2021 under section 8/21/22/27 NDPS Act registered by Police Station Bishnah.
- FIR No. 05/2024 under section 8/21/22 NNDPS Act registered by Police Station Bishnah &
- FIR No. 186/2021 under section 39/48/48-a/49 Wild Life Protection Act, 1972.

05. With this backdrop of FIRs and the criminal cases related therewith, the petitioner was reported to have created a sense of insecurity, terror and scare in the area disturbing public order of the locality by continuously circulating the drug menace in the society for her pecuniary benefits.

06. It came to be observed in the dossier that the action taken against the petitioner under substantive laws has not proved fruitful in deterring her from indulging in continuous drug peddling acts as the petitioner has remained successful in securing bail in all the cases including NDPS Act cases. In the dossier, it came to be

observed that the petitioner was on bail in all the referred cases. However, the dossier did not spell out as to out of the enlisted cases what was the respective stage of the trial of the cases or for that matter of pendency/disposal.

07. Acting upon this dossier, the respondent No. 2 – Divisional Commissioner, Jammu came to formulate purported grounds of detention therefrom drawing a subjective satisfaction unto himself that there is a case made out for preventive detention of the petitioner. However, in the grounds of detention, only two FIRs came to be expressly referred, whereas with respect to rest of the FIRs there is a passing mention.

08. The FIRs taken into consideration referable to the petitioner are FIR No. 155/2021 registered under section 8/21/22/27 of the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985 registered by the Police Station Bishnah and FIR No. 05/2024 under section 8/21/22 of the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985 again registered by the Police Station Bishnah.

09. The petitioner came to be taken in preventive detention custody by SI Om Parkash, No. EXJ-845541 of the Police Station Bishnah and handed over to the custody of District Jail Kathua on 22.02.2024 upon due formality of handing over to and explaining to the petitioner all the detention documents and contents thereof.

10. The petitioner's detention came to be reported to the Advisory Board which came to tender its opinion in terms of opinion report 01.03.2024 confirming the cause for preventive detention of the petitioner which then paved way for issuance of the Govt. Order No. Home/PB-V/554 of 2024 dated 22.03.2024 in terms of section 9(f) read with section 11 of the PITNDPS Act, 1988.

11. The institution of the writ petition by the petitioner came to take place on 03.04.2024 assailing her preventive detention, *inter-alia*, on the ground that the processing of case against the petitioner for her preventive detention was aimed to undermine the indulgence of the criminal courts in granting bail on merits in favour of the petitioner in the cases referred in the dossier of the Sr. Superintendent of Police (SSP), Jammu and the grounds of detention formulated by the respondent No. 2 – Divisional Commissioner, Jammu. In addition thereto, another frontal ground of challenge to the detention is that while the dossier as well as the grounds of detention bear recital to a long list of FIRs and criminal cases related therewith against the petitioner but all of them being of stale nature were of no persuasive effect to be taken into consideration and it is only a singular FIR i.e. FIR No. 05/2024 which has been pressed into service for slapping preventive detention against the petitioner.

12. The respondent No. 2 – Divisional Commissioner, Jammu in his counter affidavit to the writ petition has gone at length to justify the preventive detention of the petitioner by asserting that the petitioner is an incorrigible character given to narcotic & psychotropic substances' clandestine dealings born out from the track record of FIRs and the criminal cases related therewith attending the petitioner and, therefore, the preventive detention was the last remedy at the disposal of the sponsoring authority to check the petitioner in further indulging in the deleterious activities.

13. After having perused the pleadings, heard the submissions and also going through the detention record relating to the petitioner produced for the perusal of this Court, this Court is led to hold that the preventive detention of the petitioner is vitiated not by the fact that end objective is not justifiable but the manner and process in which the attainment of the end objective was applied which was and is deficient on all counts.

14. The sponsoring authority referred to a long list of FIRs and criminal cases pending against the petitioner in its dossier submitted to the respondent No. 2 – Divisional Commissioner, Jammu. The reference starts from FIR No. 72/2010 and ends with FIR No. 05/2024. If in the estimate of the sponsoring authority the criminal antecedents of the petitioner were of relevance to bear mention in the dossier then the updated status of all the criminal

cases relatable to FIR No. 72/2010, FIR No. 99/2011, FIR No. 138/2011, FIR No. 21/2012, FIR No. 158/2017, FIR No. 155/2021 & FIR No. 5/2024 ought to have been fully gathered from the concerned criminal courts seized of the criminal trials against the petitioner and apprised to the respondent No. 2 – Divisional Commissioner, Jammu so as to complete the full profile of the petitioner warranting preventive detention against her.

15. From the record, in particular the dossier and the material supplied therewith, even this Court is not able to figure out as to how many criminal trials relatable to the FIRs mentioned in the dossier are still pending and how many closed and the outcome thereof. It cannot be heard to be said by the Sr. Superintendent of Police (SSP), Jammu that he was running against the time in acting with due diligence of having updated status of all the criminal cases relatable to the FIRs as mentioned in the dossier and, therefore, made a short cut of reference of the FIRs but without corresponding disclosure of the status of the criminal cases obtaining as on date of submission of the dossier.

16. In the light of this lacuna, attending the case set up for preventive detention of the petitioner, the application of mind on the part of the respondent No. 2 – Divisional Commissioner, Jammu in formulating the grounds of detention and passing the impugned order of detention against the petitioner is nothing but exercise of

jurisdiction on fractured state of facts to impinge the fundamental right of the petitioner to life and personal liberty otherwise guaranteed under article 21 of the Constitution of India and, therefore, vitiates her detention which is, accordingly held to be illegal warranting quashment.

17. In the facts and circumstances above referred, preventive detention Order No. PITNDPS 21 of 2024 dated 18.02.2024 read with confirmation and approval orders passed by the Govt. UT of Jammu & Kashmir are held illegal and the preventive detention of the petitioner is consequently held to be illegal and hereby quashed, as a consequence whereof the petitioner is held to be restored to her personal liberty by release from the jail custody and to this effect the Superintendent of concerned Jail to set free the petitioner forthwith.

18. The record file which is in photostat form be retained with this file.

19. ***Disposed of.***

(RAHUL BHARTI)  
JUDGE

JAMMU  
05.12.2024.  
Muneesh

Whether the order is speaking : Yes / No

Whether the order is reportable : Yes / No