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**(2016) 2 JKJ 476**

**Jammu & Kashmir High Court**

**Case No:** HCP No. 69 of 2015

Gh. Hassan Teeli

APPELLANT

Vs

State of J&K

RESPONDENT

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**Date of Decision:** March 18, 2016

**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, Section 8
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 - Section 3

**Citation:** (2016) 2 JKJ 476

**Hon'ble Judges:** Mr. Bansilal Bhat, J.

**Bench:** Single Bench

**Advocate:** Mr. Shuja-ul-Haq, Advocate, for the Appellant/Petitioner; Mr. R.A. Khan, AAG, for the Respondents

**Final Decision:** Allowed

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**Judgement**

Mr. Bansilal Bhat, J. - The petitioner-Ghulam Mohammad Teeli, the brother of Ghulam Hassan Teeli S/o Ghulam Mohidin Teeli R/o Naidkhai

Sumbal, Sonawari, District Bandipora, has called in question the detention order No. Div.Com-K/08/2015 dated 12.09.2015 passed by the

Divisional Commissioner, Kashmir-Respondent No. 2, whereby the detenu came to be detained under the provisions of the Jammu and Kashmir

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, for short 'Act' on the grounds taken in the memo of writ

petition.

2. The case of the petitioner is that the detenue was arrested in false and frivolous FIR No. 150/2015 under Section 8/20 NDPS Act, Police

Station, Sumbal, and was detained in terms of impugned detention order which is vague, baseless and imaginary one. It is stated that the detenue

was already in the custody of the respondents in the aforesaid FIR and the detenue had not applied for bail nor there was any likelihood of grant of

bail in his favour in the aforesaid FIR, in view of the seriousness of the charges, and the detaining authority, despite being in know of the custody of

the detenue with the investigating agency, had passed the impugned detention order, thereby concurrently detaining the detenue under the Act. It is

also stated that the impugned order passed by the detaining authority has been made to prevent the detenue from committing any of the Acts within

the meaning of 'illicit traffic' and 'maintenance of public order'. In this regard, it is submitted that on the face of the record the impugned order is bad

in law as the detaining authority cannot pass the detention order with a view to prevent him from committing any of the acts within the meaning of

'illicit traffic' and 'maintenance of Public order'. It is contended that under Section 3(1) of the Act, 'with a view to prevent him from committing any

of the acts within the meaning of 'illicit traffic', the definition of expression 'maintenance of public order' is not given in the Act. Accordingly, it is

contended that there is total non application of mind on the part of the detaining authority in passing the impugned order of detention. Moreso, the

detaining authority in effect has ordered preventive detention of the detenue on a ground not within the purview of Section 3 of the Act.

3. Heard learned counsel for the parties, perused the record and considered the matter.

4. There seems to be substance in the submission of learned counsel for the petitioner. In support of the submission, learned counsel for the

petitioner has relied upon the judgments of this Court passed in Nisar Ahmad Bhat v. State of J&K (2011(2) JKJ 241 [HC]) and Mehraj

Ahmad Bhat v. State and others decided on 11th August, 2011.

5. I have gone through the judgments relied upon by learned counsel for the petitioner and am of the considered opinion that it squarely covers the

case at hand. The detaining authority has clubbed the grounds regardless of the requirement of the Act where detention can either be enforced for

activities to prevent the detainee from indulging in illicit traffic of Narcotics or maintenance of public order. The detaining authority seems to be not

definite about the purpose for which the detainee is sought to be put out of circulation upon imposition of detention order. The detention order

suffers non application of mind on part of the detaining authority.

6. Since the detention order is vitiated by reason of its having been passed on both the grounds, in view of law laid down by this Court in the

aforesaid judgment, the impugned order cannot be sustained. In that view of the matter, this Court need not deal with the other submissions made

by the learned counsel for the petitioner at the Bar during the course of arguments.

7. In the aforementioned backdrop, this petition merits acceptance, and is, accordingly allowed. The impugned detention order bearing No.

Div.Com-K/08/2015 dated 12.09.2015, issued by respondent No. 2, is quashed and it is ordered that the detainee, namely, Ghulam Hassan Teeli

S/o Ghulam Mohidin Teeli R/o Naidkhai Sumbal, Sonawari, District Bandipora, be released forthwith from the detention.

8. Record produced by learned counsel for the respondents for perusal of this Court shall be returned to learned counsel for the respondents by

the Bench Secretary of this Court against endorsement on the order sheet that he has received the same.

9. Disposed of.