

(2023) 08 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 16 Of 2023, Civil Miscellaneous No. 1145 Of 2023

Amandeep Singh Alias Aman Th. Supinder Kour

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 10-08-2023

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 3, 8, 21, 22

Citation : (2023) 08 J&K CK 0020

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Jagpaul Singh, Dewakar Sharma

Final Decision : Allowed

Judgement

Rajnesh Oswal, J

1. The petitioner through his mother has filed the present petition for quashing the order of detention bearing No. PITNDPS 09 of 2022 dated 05.09.2022 issued by the respondent No. 2, whereby the petitioner has been ordered to be detained under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

2. It is stated that the petitioner was in custody and pursuing his bail application in FIR No. 298/2022 under Section 8/21/22 NDPS Act before the court of learned Additional Sessions Judge, Kathua. He was granted bail on 05.12.2022 and then only, the mother of the petitioner was provided with a copy of order of detention and was informed that the petitioner was detained under the Act (supra).

3. The petitioner has impugned the order of detention on the ground that the grounds of detention are verbatim account of the dossier prepared by the respondent No. 3 and the respondent No. 2 has not recorded its subjective satisfaction in respect of the circumstances warranting the detention of petitioner, while passing the order impugned. The grounds of detention, order of

detention and dossier were not provided to the petitioner within stipulated time period as prescribed under Section 3 of the Act (supra). Moreover, the same were neither read over nor explained to the petitioner in language which the petitioner understands. Because of this, the petitioner could not make a representation before the detaining authority at the earliest. It is stated that it was only on 05.12.2022 that the petitioner was informed that he was detained under the Act (supra). At the time of issuance of order of detention, the petitioner was already in custody in FIR No. 298/2022 under Section 8/21/22 NDPS Act of Police Station, Kathua and the respondent No. 2 miserably failed to record compelling reasons for detaining the petitioner under the Act (supra) when the petitioner was already in custody. Earlier on the basis of four FIRs relied upon by the detaining authority, the petitioner was detained in terms of the order of detention bearing No. PSA/100 dated 19.02.2020 but the same was quashed by this Court vide order dated 31.12.2020 and as such, those four FIRs could not have been made a ground for detaining the petitioner.

4. Counter affidavit stands filed by the respondent No. 2 and it has been stated that the petitioner is a habitual drug peddler involved in number of cases in illicit traffic in narcotics drugs which poses a serious threat to the health and welfare of the people of District Kathua and other adjoining areas. The SSP, Kathua submitted dossier dated 01.09.2022, which was carefully examined and it was only after recording the subjective satisfaction, the respondent No. 2 ordered the detention of the petitioner under the Act (supra) as the ordinary law failed to deter the petitioner from indulging in illegal activities. It is further stated that no fundamental right of the petitioner has been violated and the detention order issued against the petitioner has been confirmed by the Government vide Govt. Order No. Home/PB-V/2901 of 2022 dated 18.11.2022 and the petitioner has been directed to be detained for one year. It is further averred that at the time of execution of the detention order, the Executing Officer informed the petitioner about his right to make a representation to the Government against the proper receipt.

5. Mr. Jagpaul Singh, learned counsel for the petitioner has reiterated the submissions made in the writ petition.

6. Per contra, Mr. Dewakar Sharma, learned Dy. AG argued that the petitioner is a habitual drug peddler and there are five FIRs registered against him and taking into consideration the illicit activities of the petitioner, he was ordered to be detained by the respondent No. 2. He further submitted that all the documents relied upon by the detaining authority were provided to the petitioner, which he fully understood.

7. Heard and perused the record of detention.

8. A perusal of grounds of detention reveals that the petitioner was found involved in FIR No. 298/2022 dated 01.08.2022 under Section 8/21/22 NDPS Act of Police Station, Kathua. It is further evident that the petitioner was

apprehended by the Police and from his custody, 18-19 grams of heroin like substance was recovered from right front pocket. Though in the grounds of detention, it has not been specifically mentioned that the petitioner was arrested but ?tone and tenor? of the grounds of detention reflects that the petitioner was arrested on the same date. In the dossier also, it was mentioned that 18.59 grams of heroin was recovered from the petitioner on 01.09.2022. A perusal of the docket of the court of Additional Sessions Judge, Kathua further demonstrates that the petitioner was ordered to be released on 05.12.2022. In the grounds of detention, the respondent No. 2 has nowhere recorded his subjective satisfaction that there is every likelihood of the petitioner being released on bail and in fact the grounds of detention are absolutely silent. It is a settled law that once the detenue is already in custody under substantive offence, he can be detained under the preventive detention laws, provided the detaining authority records its satisfaction that there is every apprehension that the detenue would be released on bail and may indulge again in illegal activities. In *Surya Prakash Sharma v. State of U.P.*, 1994, Supp (3) SCC 195, the Hon?ble Apex Court has held as under:

5. The question as to whether and in what circumstances an order for preventive detention can be passed against a person who is already in custody has had been engaging the attention of this Court since it first came up for consideration before a Constitution Bench in *Rameshwar Shaw v. District Magistrate, Burdwan* . To eschew prolixity we refrain from detailing all those cases except that of *Dharmendra Suganchand Chelawat v. Union of India* wherein a three-Judge Bench, after considering all the earlier relevant decisions including *Rameshwar Shaw* answered the question in the following words:

“The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression ?compelling reasons? in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.”

6. When the above principles are applied to the facts of the instant case, there is no escape from the conclusion that the impugned order cannot be sustained. Though the grounds of detention indicate the detaining authority's awareness of the fact that the detenu was in judicial custody at the time of making the order of detention, the detaining authority has not brought on record any cogent

material nor furnished any cogent ground in support of the averment made in grounds of detention that if the aforesaid Surya Prakash Sharma is released on bail "he may again indulge in serious offences causing threat to public order". (emphasis supplied) To put it differently, the satisfaction of the detaining authority that the detenu might indulge in serious offences causing threat to public order, solely on the basis of a solitary murder, cannot be said to be proper and justified.

9 In "T. P. Moideen Koya vs. Government of Kerala and ors.", 2004 (8) SCC 106, the Hon'ble Apex Court has held as under:

"19. The very object of passing a detention order being to prevent the person from acting in any manner prejudicial to maintenance of public order or from smuggling goods or dealing in smuggled goods, etc., normally there would be no requirement or necessity of passing such an order against a person who is already in custody in respect of a criminal offence where there is no immediate possibility of his being released. But in law there is no bar in passing a detention order even against such a person if the detaining authority is subjectively satisfied from the material placed before him that a detention order should be passed."

10. In Vijay Kumar v. State of J&K (1982) 2 SCC 43, the Hon'ble Supreme Court held as under:

"If the detenu is already in jail charged with a serious offence, he is thereby prevented from acting in a manner prejudicial to the security of the State. Maybe, in a given case there yet may be the need to order preventive detention of a person already in jail. But in such a situation the detaining authority must disclose awareness of the fact that the person against whom an order of preventive detention is being made is to the knowledge of the authority already in jail and yet for compelling reasons a preventive detention order needs to be made."

11. Further, it is evident that the petitioner was earlier detained vide order of detention No. PSA/100 dated 19.02.2020 passed by the District Magistrate under Public Safety Act, 1978 but the said order of detention was quashed by this Court vide order dated 31.12.2020. The respondent No. 3 in its dossier to respondent No. 2 has nowhere whispered about the earlier issued order passed against the petitioner under Public Safety Act. It assumes significance as earlier detention order though under Public Safety Act was also issued on the basis of Police dossier. It was obligatory on the part of the respondent No. 3 to bring to the notice of the detaining authority that the petitioner was earlier detained under Public Safety Act. This too vitiates the order of detention.

12. In view of all what has been discussed above, the present petition is allowed. The detention order No. PITNDPS 09 of 2022 dated 05.09.2022 is hereby quashed. Petitioner (detenu) be set free from the preventive custody, provided his custody is not required in any other case.

13. The detention record be sent back.