

(2023) 08 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : Latters Patent Appeal No. 55 Of 2023

Anil Sharma

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 11-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 —
Section 3, 3(3)

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21, 22, 27(a), 29

Citation : (2023) 08 J&K CK 0029

Hon'ble Judges : Tashi Rabstan, J; Mohan Lal, J

Bench : Division Bench

Advocate : Sunny Mahajan, Dewakar Sharma

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. This Letters Patent Appeal is directed against the judgment dated 15.03.2023 passed by the learned Single Judge, whereby the appellant's Writ Petition being WP(Crl) No.66/2022 titled 'Anil Sharma v. Union Territory of J&K and others' seeking quashment of detention order No. PITNDPS 20 of 2022 dated 24.09.2022, issued by Respondent No.2-the Divisional Commissioner, Jammu (hereinafter to be referred to as the Detaining Authority), was dismissed.

2. Learned counsel for the appellant/writ petitioner has assailed the judgment impugned dated 15.03.2023, passed by the learned Single Judge, inter alia, on the following grounds:

" a. That the bare perusal of the judgment impugned makes it amply clear that the same has been passed by the learned Single Judge by not appreciating the fact that it was an admitted fact that the Appellant herein was never provided all the relevant material forming part of the dossier, that too, in the language which

the Appellant understood as per the mandate of law.

b. That the learned Single Judge failed to take note of the fact that bare perusal of the order of detention impugned makes it amply clear that the same has been issued by Respondent No.2 in an extremely casual and mechanical manner, and without proper application of mind to the peculiar facts and circumstances of the present case.

c. That the order of detention as also the copies of dossier and other relevant documents were never provided to the Appellant within the stipulated period as prescribed under Section 3(3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

d. That the reasons enshrined in the order of detention is contrary to the views as repeatedly expressed by hon'ble the Supreme Court that even if a person is granted bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. That State can always prefer appeal against the bail order granted and/or apply for the cancellation of bail. Merely on the ground that an accused in detention as an under-trial prisoner was released on bail, an order of detention under any preventive detention law should not ordinarily be passed. Thus, in view of law laid down by Hon'ble Apex Court, the above stated detention order dated 24.09.2022 is patently illegal, thus, the Judgment impugned as also the order of detention, as such, is required to be set aside."

3. The appellant/writ petitioner has challenged detention order No. PITNDPS No.20 of 2022 dated 24.09.2022 foisted upon him by respondent No.2-the Divisional Commissioner, Jammu before the writ Court by filing petition bearing WP(Crl.) No.66/2022 being the same in breach of the provisions of Article 22(5) of the Constitution of India read with provisions of PITNDPS and also the same is alleged to have been passed arbitrarily and in a mala fide manner without application of mind, as the detaining authority has not provided the grounds of detention, copies of dossier and other related documents in the language which the detenu understands and, as such, he has been prevented in making an effective representation against the impugned order of detention within time.

4. Learned counsel for the appellant/writ petitioner submitted that the detaining authority has not mentioned a word in the detention order with regard to the satisfaction drawn by it as to how it has come to the conclusion of passing the detention order. Furthermore, it is stated that the appellant/writ petitioner has not committed any offence nor is he involved in the commission of any offence under the NDPS Act, which pose a serious threat to the health and welfare of the people, but the respondents without the application of mind and without considering the material on record had issued and passed the impugned detention order which is illegal, unjustified, unwarranted under law and as such the same is liable to be quashed. It is also the submission of learned counsel for the detenu that the order of detention and the connected documents annexed with the petition clearly show violation of right of the detenu guaranteed in

terms of Article 22(5) of the Constitution of India and the provisions of PIT NDPS Act. It is lastly submitted by the learned counsel for the appellant/writ petitioner though it was admitted in Para-5 of the Counter affidavit filed by respondent no.2 that the representation filed by the appellant was pending consideration with the Home Department, yet the Home Department had confirmed the order of detention without going through the representation.

5. On the other hand, learned Dy. AG, Mr. Dewakar Sharma, appearing for the State, has stated that the detinue was ordered to be detained under the provisions of Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 and had he been let free there would have been every likelihood of his re-indulging in criminal activities. It is also being stated that the appellant/writ petitioner is involved in numerous criminal activities/drug peddler/habitual smuggler engaged in the sale and purchase of illicit traffic in narcotic drugs and psychotropic substances, which poses a serious threat to the lives of young generation of the country and even to the economy of the UT. It is further submitted that the repeated and continuous involvement of the detinue, in the illicit trafficking of drugs and psychotropic substances and his disrespectful attitude towards the substantive law, it has become inevitable to detain him preventively.

6. Learned counsel for the detinue, while being heard, making reference to the grounds of detention, would argue that on a cursory look on the same it is manifest that same are vague, besides replica of the dossier. It is also submitted that the Detaining Authority, on the basis of dossier submitted by Senior Superintendent of Police, Udhampur, without application of mind and without evaluating the allegations made against the detinue in the said dossier, though copy provided to the detinue but the same is in English language, therefore, he was not made to understand of his preventive detention, the detaining authority proceeded to pass impugned detention order, whereby the detinue has been detained and ordered to be lodged at Central Jail, Kot Bhalwal, Jammu. It is also submitted that the Detaining Authority has not mentioned in the detention order that the detinue has right to make representation against the order of detention and the time frame for making such representation and has supplied the copies of the documents/FIRs and material relied upon by the Detaining Authority which are in English language thus the detinue was prevented in making effective and meaningful representation against the detention order to the government, within a reasonable dispatch, as such, the detention order is liable to be quashed.

7. Learned counsel for the respondents, ex adverso, submits that the record reveals that there is no vagueness in the grounds of detention. All the procedural safeguards prescribed under Act and the rights guaranteed to the detinue under the Constitution have strictly been followed in the instant case. The detinue has been furnished all the material, as was required, and was also made aware in Hindi of her right to make representation to the detaining authority as well as government, against her detention. It is lastly submitted by the learned Dy. AG

that the learned Writ Court has passed a detailed and reasoned judgment which does not call for any interference from this court and the appeal filed by the appellant against the impugned judgment is without any merit and substance, and be dismissed as being devoid of any merit.

8. Heard learned counsel for both the sides at length, perused the impugned judgment and considered the detention record (photo-copy) attached with the appeal.

9. The right of personal liberty is most precious right guaranteed under the Constitution. It has been held to be transcendental, inalienable and available to a person. A person is not to be deprived of his/her personal liberty except in accordance with procedures established under law and the procedure as laid down in *Maneka Gandhi v. Union of India* (1978 AIR SC 597), is to be just and fair. The personal liberty may be curtailed, where a person faces a criminal charge or has been convicted of an offence and sentenced to imprisonment. Where a person is facing trial on a criminal charge and is temporarily deprived of his/her personal liberty because of the criminal charge framed against him/her, has an opportunity to defend himself/herself and to be acquitted of the charges in case the prosecution fails to bring home his/her guilt. Where such a person is convicted of the offence, he/she still has the satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his/her defence.

10. Nevertheless, framers of the Constitution have, by incorporating Article

22 (5) in the Constitution, left room for detention of a person without a formal charge and trial and without such person having been held guilty of an offence and sentenced to imprisonment by a competent court. The object is to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would be dangerous for the people at large, to wait and watch as, by the time ordinary law is set into motion, the person having dangerous designs, would execute his/her plans, exposing the general public to risk and cause colossal damage to life and property. It is, therefore, necessary to take preventive measures and prevent the person bent upon perpetrating mischief from translating his/her ideas into action. Article 22(5) Constitution of India therefore leaves scope for enactment of preventive detention law.

11. The Hon'ble Apex Court in the judgment rendered in the case of "*Hardhan Saha v. State of W.B*" [(1975) 3 SCC 198], has succinctly pointed out difference between preventive and punitive detention in the following words:

"The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The, basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction

on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent."

12. The conceptual framework of preventive detention has been reiterated in "Khudiram Das v. State of W.B", [(1975) 2 SCR 832], as under:

"The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof."

13. In "Naresh Kumar Goyal v. Union of India", [(2005) 8 SCC 276], the Court observed:

"It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so."

14. The detention record, reveals that the detainee was involved in following cases registered at Police Station, Rehambal and Police Station Udhampur vide:-

- (i) FIR No. 114/2020 U/S 8/21/22 NDPS Act.
- (ii) FIR No. 111/2021 U/S 8/21/22/27(a)/29 NDPS Act.
- (iii) Daily Diary Report No.12 dated 13.09.2022, P/S Rehambal
- (iv) Daily Diary Report No.10 dated 15.09.2022, P/S Rehambal.

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority while passing detention order. Even in aforementioned two FIRs of Police Stations, Udhampur & Rehambal, the charge sheet are presented before the competent court of law and the cases are pending adjudication. Detention record would further show that detainee was arrested in pursuance of these two FIRs and two Daily Diary Reports entered at P/S

Rehambal. Detention record further reveals that the impugned detention order stands confirmed vide government Order No. Home/PB-V/2687 of 2022 dated 21.10.2022.

15. Perusal of Annexure-II (copy of Execution Report) attached with the Counter Affidavit filed on behalf of respondent no.2 would show that detainee at the time of execution of detention warrant was provided copy of the notice of detention, detention order (02 leaves), contents of Detention Warrant & grounds of detention order (02 leaves), Dossier of detention (43 leaves). Further perusal of the Execution Report reveals that the Executing Officer had read over the notice of the detention, contents of Detention Warrant and grounds of detention in English and explained these documents to the detainee in Hindi the language which he fully understands and to this extent, the detainee has also put his signatures on the receipt of the grounds and other relevant documents. The detainee, as execution report reveals, was also informed as regards his right of making representation against the detention order if he so desired, both to detaining authority and Government.

16. The grounds of detention are definite, proximate and free from any ambiguity. The detainee has been informed with sufficient clarity what actually weighed with the detaining authority while passing detention order. The detaining authority has narrated facts and figures that made it to exercise its powers under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, and record subjective satisfaction that detainee was required to be placed under preventive detention in order to prevent him from committing any of the acts within the meaning of illicit traffic. The detaining authority has informed detainee that he is an accused in four cases, involving illegal trafficking of narcotic substances, which poses serious and great threat to the society particularly/especially young generation. So viewed, the detainee is not to be heard saying that any of his Constitutional and Statutory rights have been violated while detention order in question was slapped on him and thereafter executed.

17. The instant case relates to illicit trafficking of narcotic drugs and psychotropic substances. The drug problem is a serious threat to public health, economy and growth of humanity. Our global community is facing serious consequences of drug abuse and it undermines the socio- economic and political stability and sustainable development. Besides, it also distorts the health and fabric of the society and it is considered to be the originator for petty offences as well as heinous crimes like smuggling of arms & ammunition and money laundering. The involvement of various terrorist groups and syndicates in drug trafficking leads to threat to the national security and sovereignty of States by the way of Narco-terrorism. The drug trafficking and abuse has continued its significant toll on valuable human lives and productive years of many persons around the globe. With the growth and development of world economy, drug traffickers are also seamlessly trafficking various type of drugs from one corner to other ensuring

the availability of the contrabands for vulnerable segment of the society who fall into the trap of drug peddlers and traffickers. Due to India's close proximity with major opium growing areas of the region, India is facing serious menace of drug trafficking and as a spill-over effect, drug abuse especially among the youth is a matter of concern for us.

18. In view of the foregoing discussion, it is clearly disclosed that it is not the number of acts that are to be determined for detention of an individual but it is impact of the act which is material and determinative. In the instant case the act of detenue relates to drug trafficking, which has posed serious threat, apart from health and welfare of the people, to youth, most particularly unemployed youth, to indulge in such acts, ramifications thereof would be irreversible and unimaginable. Appellant/writ petitioner has not been able to convincingly point out violation of any statutory or constitutional provisions.

19. So far as the contention of the learned counsel for the appellant/writ petitioner that the non consideration of the representation filed by the petitioner before the competent authority while confirming the detention order is concerned, the said contention has been satisfactorily addressed by the learned Single Judge and needs not be dealt with any further.

20. Having regard to the facts and circumstances of the case and discussion made hereinabove; the appeal is found to be devoid of any merit and substance and is dismissed accordingly. The judgment passed by the learned Single Judge, being a reasoned and detailed judgment, does not call for any interference by this court and the same is accordingly upheld and so is the preventive detention order of the detenue.

21. The appeal is dismissed.

22. Detention record be returned to the learned counsel for the respondents.

23. No order as to costs.