

(2023) 05 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 75 Of 2022

Anit Kumar

APPELLANT

Vs

UT Of J & K& Ors

RESPONDENT

Date of Decision : 16-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5), 226
Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substance Act 1988 —
Section 3
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21, 22

Citation : (2023) 05 J&K CK 0022

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Mehtab Gulzar, Sunil Malhotra

Final Decision : Dismissed

Judgement

M.A.Chowdhary, J

1. Divisional Commissioner, Jammu (hereinafter called 'Detaining Authority?') in exercise of powers under Section 3 the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act 1988 (PIT NDPS Act) r/w SRO 247 of 1998 dated 27.07.1998, passed the detention Order No. PITNDPS 11 of 2022 dated 12.09.2022 (for short 'impugned order?'), in terms whereof the petitioner namely Anit Kumar S/O Hem Raj Sharma R/O Village Latori Kundrorian Tehsil Katra District Reasi (for short 'detenue?'), has been detained.

2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 226 of the Constitution of India read with provisions of PIT NDPS Act.

3. It is being pleaded in the petition that the detention order so passed against the petitioner was not addressed to detenue which shows the callousness and non-application of mind on the part of the detaining authority-respondent No.2;

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 petitioner has not committed any offence nor he is 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 detainee that the order of detention and the connected documents annexed with the petition clearly show violation of right of the detainee guaranteed in terms of Article 22(5) of the Constitution of India and the provisions of PIT NDPS Act.

4. Respondents in their counter affidavit have stated that the detainee 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 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 detainee, 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.

5. Learned counsel for the detainee, while being heard, makes reference to the grounds of the detention, would argue that on a cursory look on the same it is manifest that same are vague. It is also submitted that the Detaining Authority on the basis of dossier submitted by Senior Superintendent of Police, Reasi, without application of mind and without evaluating the allegations made against the detainee in the said dossier, copy of which was not even provided to the detainee, proceeded to pass impugned detention order, whereby the detainee has been detained and directed 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 detainee has right to make representation against the order of detention and has not supplied the copies of the documents/FIRs and material relied upon by the Detaining Authority, so that the petitioner could make effective and meaningful representation against the detention order to the government, as such, the detention order is liable to be quashed.

6. 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 detainee under the Constitution have strictly been followed in the instant case. The detainee has

been furnished all the material, as was required, and was also made aware of his right to make representation to the detaining authority as well as government, against his detention.

7. Heard learned counsel for both the sides at length and considered the record.

8. 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.

9. 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.

10. The detention record, as produced, reveals that the detainee was involved in following cases registered at Police Station, Katra vide:-

- (i) FIR No. 122/2018 U/S 8/21/22 NDPS Act;
- (ii) FIR No. 22/2019 U/S 8/21/22 NDPS Act;
- (iii) FIR No. 53/2022 U/S 8/21/22 NDPS Act; and
- (iv) FIR No. 233/2022 U/S 8/21/22 NDPS Act.

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 viz FIR No. 122/2018 and FIR No. 22/2019 of

Police Station, Katra, the detenue was convicted and has sentenced to payment of fine of Rs. 3000/- and Rs.5000/-respectively.

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 imperilling the welfare of the country or the security of the nation or from disturbing the public tranquillity 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. Perusal of detention record reveals that detenue at the time of execution of detention was provided copy of the detention order, copy of the grounds of detention and other material. The detenue, as record would reveal, was also

informed as regards making of representation against the detention order if he so desired, both to detaining authority and Government.

15. 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 health, wealth and welfare of the people 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.

16. The instant case relates to illicit trafficking of narcotic drugs and psychotropic substances. The drug problem is a serious threat to public health, safety and well-being 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.

17. In view of the foregoing discussion, it is clearly disclosed that it is not a 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 detainee 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. Petitioner has not been able to convincingly point out violation of any statutory or constitutional provisions.

18. Having regard to the facts and circumstances of the case and discussion

made hereinabove, the petition is found to be devoid of any merit and substance and is liable to be rejected. The petition is thus dismissed and the impugned order relating to preventive detention of the petitioner is upheld.

19. Detention record, as produced, be returned to the learned GA.