
(2018) 11 J&K CK 0114

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 191 Of 2018, IA No. 01 Of 2018

Farooq Ahmad Mir @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 30-11-2018

Acts Referred:

Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 — Section 3
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8, 20

Citation : (2018) 11 J&K CK 0114

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : M.A Wani, Asif Bhat

Final Decision : Dismissed

Judgement

1. Order No.DIVCOM-"K"/65/2017 dated 30.12.2017, issued by Divisional Commissioner, Kashmir (for brevity "detaining authority"), whereby Farooq Ahmad Mir alias Farooq Codeine S/o Sonaulah Mir R/o Muqam Awoora Tehsil and District Kupwara (for short "detenu") has been ordered to be detained and lodged in District Jail, Udhampur, for a period to be specified by the Government/ Advisory Board, is subject matter of challenge in this Habeas Corpus Petition.

2. As is apparent from the grounds of detention, served upon detenu that there had been in as many as four different FIRs registered in Police Station Kupwara and Police Station Trehgam, against detenu for commission of different offences punishable under Drug Control Act, Excise Act and Narcotic Drugs and Psychotropic Substances Act. It further comes to fore that detenu is an incorrigible antisocial element, who has been continuously indulging in illegal activities in trafficking of Narcotic Drugs and Psychotropic Substances clandestinely. He has been using the services of drug addicts for carrying drugs from one place to another, so as to avoid his apprehension in criminal cases. Despite the fact that detenu was arrested on a number of occasions, the same was not enough to make him to mend his ways. In the background of the activities, detenu has been continuously indulging in and their pernicious effects

on the life and health of the people, detaining authority appears to have arrived at a subjective satisfaction that with a view to preventing detenu from continuing with his activities and committing offences under the J&K Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as "the Act"), it has become imperative to detain him under Section 3 of the Act. The dossier prepared by Senior Superintendent of Police, Kupwara, gives details of illegal activities carried out by detenu continuously since the year 2010.

3. The petitioner is aggrieved of detention order and has challenged the same, inter-alia, on the following grounds:

(i) Belated issuance of the detention order has vitiated the detention, in that, the petitioner was arrested on 04.10.2017 but the detention order was passed on 30.12.2017 and, therefore, there is a delay of two and a half months between the date of arrest and the passing of the order of detention.

(ii) The dossier was submitted by Sr. Superintendent of Police, Kupwara on 25.11.2017 and it took almost one month for the detaining authority to pass the detention order.

(iii) The petitioner is shown to be booked under F.I.R No. 254/2017 under Section 8/20 NDPS Act on 04.10.2017, wherein he had neither been granted bail nor had he even applied for the same. The detaining authority has not shown any awareness of the aforesaid fact and, therefore, the order of detention is vitiated by non-application of mind.

(iv) Since the petitioner is booked under substantive law and is under arrest and, therefore, there was no compelling reason to put him under detainment. The substantive law of the land was good enough to take care of the petitioner in accordance with law. The detention order is, therefore, for oblique purpose of ensuring the illegal incarceration and, therefore, cannot sustain.

4. Heard learned counsel for parties and perused the record.

5. It is not in dispute that detenu is involved in as many as four different FIRs, bearing nos.100/2010, 303/2011, 162/2012, and 09/2016. He has been arrested in all FIRs but managed his release on one ground or the other. The registration of FIRs and his arrest has not deterred detenu from pursuing his activities, and lastly, he was arrested on 04.10.2017, and from his possession drugs were recovered, which was followed by registration of fifth FIR against detenu, bearing FIR no.254/2017 under Section 8/21, 29 NDPS Act registered in Police Station Kupwara. Senior Superintendent of Police, Kupwara, had found detenu continuously involved in activities in sale and distribution of Narcotic Drugs and Psychotropic Substances, submitted complete information to detaining authority in the form of dossier vide letter No.Pros/Detn-13/2017/37602-05 dated 25.11.2017. Acting upon the material supplied by Senior Superintendent of Police, Kupwara, the detaining authority arrived at satisfaction that it was

imperative to place detenu under preventive detention so as to prevent him from further committing the offences and the activities endangering the life and health of the people.

6. The detention order was passed on 30.12.2017. One months' time, taken by the detaining authority, only speaks about application of mind by detaining authority in arriving at subjective satisfaction that it was necessary to place detenu under preventive detention, so as to prevent from his prejudicial activities. Detaining authority has shown its awareness that detenu is under arrest in connection with FIR No. 254/2017. However, taking note of the fact that detenu had been arrested a number of occasions therebefore, but he did not mend his ways and continued with his activities of selling the drugs in Kupwara area, detaining authority took a conscious decision to place detenu under detention. Reliance placed by learned counsel for petitioner on the judgment in the case of Saeed Zakir Hussain Malik v. State of Maharashtra and ors., AIR 2012 SC 3235, is totally misplaced. The law laid down in aforesaid judgment would not apply to facts of instant case. In the instant case, there is no inordinate delay either in passing of detention order or in execution thereof. The material relied upon in grounds of detention primarily consists of five FIRs registered against detenu from time to time in different police stations. Detenu is aware of all aforesaid FIRs and has not denied the same anywhere in writ petition. Detenu is, thus, well aware about grounds on which he has been ordered to be detained by detaining authority. It is also not disputed that in earlier four FIRs, detenu, though arrested, was later on released on bail and in fifth FIR registered on 04.10.2017, he is under arrest but that cannot be the ground to quash detention order, more so, when past activities of detenu are testimony of the fact that his arrest under substantive law has not deterred him from pursuing his illegal activities of trading in the Narcotic Drugs and Psychotropic Substances.

7. Keeping in view the pernicious and deleterious effect of banned drugs and Psychotropic Substances on life and health of the people, the drug traffickers, like detenu, deserve to be prevented and Section 3 of the Act is a provision to achieve this object.

8. I have carefully gone through the whole of the record and do not find that any statutory or constitutional mandate has been violated by the detaining authority. The delay of one month from the date of supply of information by the police and passing of the detention order and the delay of two and half months from the date of arrest of the petitioner and passing of the detention order cannot be said to be inordinate delay rather is the proper time required to be taken by the detaining authority to apply its mind independently and arrive at the requisite satisfaction. The judgments of the Supreme Court in the cases of Naresh Kumar Goyal Vs. Union of India and others (2005) 8 SCC 276; Kuldip Singh and N.M Kasliwal, JJ; AIR 1993 SC 962 and Olia Mallick alias Oliruddin Mallick vs. The State of West Bengal; (1974) 1 SCC 594, would substantiate the aforesaid position of law. That apart, we should not forget 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 detenu 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, consequences thereof are irreversible.

9. Perusal of the detention record produced by learned counsel for respondents, reveals that detenu, at the time of execution of detention order, has been provided copy of the detention order, copy of the grounds of detention, and other material that finds mention in the detention order, to enable the detenu to make a representation against his detention. The detenu has also been informed that he can file representation against his detention. The grounds of detention are definite, proximate and clear from any ambiguity. The detenu has been informed with sufficient clarity what actually weighed with detaining authority while passing detention order. Detaining Authority has narrated facts and figures that made the authority to exercise its powers under section (3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, and record subjective satisfaction that the detenu was required to be placed under preventive detention in order to prevent him from committing the offence under the provisions of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988. In that view of matter, detenu is not to be heard saying that any of his Constitutional and Statutory rights have been violated while the detention order in question was slapped on him and thereafter executed.

10. In view of the foregoing reasons, I do not find that the order of detention is vitiated in any manner. The writ petition is devoid of any merit and is, accordingly, dismissed with connected IA.

11. Record be returned to learned counsel for respondents.