

(2019) 12 J&K CK 0070
In the Jammu And Kashmir High Court
Case No : WP Crl No. 289 Of 2019

Fida Hussain Bhat

APPELLANT

Vs

State Of J&K And Ors

RESPONDENT

Date of Decision : 31-12-2019

Acts Referred:

Jammu And Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 3
Public Safety Act, 1953 — Section 15
Constitution Of India, 1950 — Article 22(3)

Citation : (2019) 12 J&K CK 0070

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : B.A Dar

Final Decision : Dismissed

Judgement

1. The preventive detention of the detenu, ordered by the respondent no.2 (Divisional Commissioner, Kashmir) in exercise of the powers vested in him under Section 3 of the J&K Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for brevity "PITNDPS"), is the subject matter of challenge in this petition for habeas corpus.

2. Before taking note of the grounds of challenge taken in this petition to assail the impugned order, it would be appropriate to give brief resume of the activities of the petitioner-detenu, which have led him to preventive detention. As is born out from the grounds of detention served on the detenu, he is a habitual indulgent in the trade of narcotics and psychotropic substances. The detenu was selling drugs to the young generation in Kulgam District and thereby making the young people who are future of the nation as drug addicts. The detenu was involved in a case FIR No. 171/2018 U/s 8/20 NDPS Act registered at Police Station Qazigund. On 26.07.2018 during the checking of vehicles an Alto Car bearing Registration No. JK)3E 2984 coming from Kulgam to Qazigund was

intercepted and a polythene bag carrying Brown Sugar was recovered from the detenu and other associates. During the investigation, the detenu's involvement was established and charge sheet was produced before the competent court of law on 13.09.2018. The detenu was bailed out in the above mentioned FIR and has repeated the same act and did not desist from indulging in illegal trade of Narcotic Drugs and Psychotropic Substances. The detaining authority after arriving at a satisfaction that the detenu is an incorrigible drug peddler, operating in an organised and well-planned manner and thereby posing serious threat to the life and health of the people, particularly younger generation and with a view to prevent the detenu from further committing the offence(s) under NDPS Act, the respondent no. 2 passed the order of detention bearing no. DIVCOM-'K'/83/ /2019 dated 13th June 2019, impugned in this petition.

3. The detenu through his wife has challenged the order of detention on the following grounds:

"a) that no compelling reason or circumstance was disclosed in the order or grounds of detention to take the detenu in preventive detention, moreso in view of the fact that no fresh activity has taken place after the detenu was admitted to bail;

b) that the detenu has not been provided the material forming basis of the detention order, to make an effective representation against his detention order and not applied its mind while passing the detention order;

c) that the detaining authority has not prepared the grounds of detention by itself, which is a pre-requisite for him before passing any detention order.

d) that there is lack of application of mind on the part of the detaining authority who has simply copy pasted the dossier of the sponsoring authority in the grounds of detention."

4. Notice was issued to respondents. They appeared through their learned counsel and did not chose to file counter affidavit, however, the photo copy of detention record was produced and submitted that the detention order is well founded in fact and law and seeks dismissal of the Heabus Corpus Petition.

5. Heard learned counsel for the petitioner-detenu as well as the learned counsel for the respondents, perused and considered the writ record, as also the detention record.

6. Ms. Asma Rashid, learned appearing counsel for petitioner (detenu) while strengthening her argument with reference to the grounds taken in the petition submits that the ground taken in the detention order and the material referred to and relied upon has no relevance because the detenu was already admitted to bail, after furnished bail bond before the competent authority, there was no possibility that the detenu would indulge in prejudicial activities, as the detenu was facing trial before the competent court. It is submitted that in absence of material the detention order is passed without subjective and objective

satisfaction of detaining authority, therefore, the detention order is bad in law.

7. Learned counsel for the petitioner-detenu further submits that the detaining authority has not applied its mind while issuing the impugned order, for, it refers to the activities of the detenu being prejudicial to the young generation of the State merely by referring to the dossier and no independent mind has been applied and material discussed, therefore, the detention order is bad in law.

8. The learned counsel for petitioner (detenu) further submits that the detenu has not been provided the material referred to in the grounds of detention resultantly the right of making effective representation against the impugned order of detention, as enshrined under Article 22 (3) of the Constitution, has been violated.

9. Mr. B.A Dar, Sr. AAG on the other hand, submits that the impugned order of detention is well founded and there is nothing bad about it. He submits that the detenu has been provided the material relied upon by the detaining authority while detaining him. He further submits that the detenu has also been informed about his right of making representation against his detention. He submitted that the detaining authority has fully applied its mind while issuing the detention order and there is nothing on record to controvert it. Learned State Counsel referred to and relied upon the law laid down in 2011 (2) JKJ 213; 2012 (1) JKJ, 332 and 20123 (I) SLJ 303.

10. Perusal of the records would reveal that the detenu has been furnished the grounds of detention along with the requisite material. He has also been informed about his right of making representation against his detention, but the detenu has chosen not to make the representation, therefore, the fault, if any, is attributable to the detenu and not to the detaining authority. Thus, the ground raised vis-à-vis non-furnishing of material to the detenu is rejected.

11. The perusal of the record would further reveal that the grounds of detention have been explained to the detenu in the language he understands and the copy has been handed over to him along with the records and the detenu has been informed about his right of making representation against his detention. This would mean that the requirement of Section 15 of the Public Safety Act has been fulfilled.

13. The next contention of the learned counsel for petitioner that the impugned order is an outcome of non-application of mind is also belied by the records produced by the learned State Counsel. The records would show as to how the detenu has been involved in carrying out unlawful activities. The detailed grounds of detention and the records referred to by the detaining authority were sufficient to derive satisfaction as regards the detention of detenu under the provisions of the Act. Thus the order does not appear to be suffering from non-application of mind.

14. As per the settled position of law if a detention order is issued on more than

one ground independent of each other, the detention order will survive even if one of the grounds is found to be unfound or legally unsustainable. In the present case the detention order is issued on more than one ground independent of each other, therefore, the detention order does not get vitiated even if one of the grounds taken in support of the petition is turns affirmative. My this view is fortified by a law laid down by the Supreme Court in case titled "Gautam Jain v. Union of India and anr.", reported as 2017 (1) Jammu Kashmir Law Times, Vol. 1 (SC) p. 1.

15. Since the court has already held that the detention survives even if one of the grounds taken in support of the petition remains unexplained or proves to be bad in law, therefore, the detention order can be maintained in absence of any explanation on this count by the respondents.

16. In view of the above fact situation and having regard to the law laid down by the Hon'ble Supreme Court, this petition fails and is dismissed as such. The impugned detention order challenged in this petition, accordingly, sustains and is maintained. Detention record is returned to the learned Senior Additional Advocate General in the open court.