

(2024) 05 J&K CK 0050

In the Jammu And Kashmir High Court

Case No : ?Habeas Corpus Petition No. 02 Of 2024

Gourav Khajuria

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5), 226

Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1998 —
Section 3

Citation : (2024) 05 J&K CK 0050

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Narinder K. Attri, Amit Gupta

Final Decision : Dismissed

Judgement

Sindhu Sharma, J

1. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India by challenging the legality, propriety and correctness of impugned detention order No. PITNDPS 47 of 2023 dated 03.10.2023, passed by the Divisional Commissioner, Jammu under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1998 read with SRO 247 of 1998 dated 27.07.1988.

2. Divisional Commissioner, Jammu, has detained Gourav Khajuria S/o Prem Nath Khajuria R/o House No. 91, Peerkho, Jammu, under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 read with SRO 247 dated 27.07.1988 to prevent him from committing any act within the meaning of illicit trafficking. The order of detention has been challenged by the detinue through his mother-Suman.

3. The detention of the detinue has been ordered on the ground that he is engaged in sale and purchase of illicit trafficking in Narcotic Drugs and

Psychotropic Substance which poses a serious threat to the health and welfare of the people. As per the dossier of the Sr. Superintendent of Police, Jammu, the detainee was involved in FIR No. 74/2023 registered u/s 8/21/22 NDPS Act at Police Station, Pacca Danga, Jammu and FIR No. 73/2023 registered u/s 8/21/22 NDPS Act at Police Station, Pacca Danga, Jammu.

4. The Detaining Authority, after considering the dossier of activities submitted by the Police, has arrived at its subjective satisfaction to prevent the detainee from further committing any offences and accordingly issued the order of detention.

5. The detainee has assailed the impugned order of detention on the following grounds:

(i) The impugned order of detention has been passed on the basis of two FIRs in which the petitioner has already been enlarged on bail.

(ii) The allegations mentioned in the grounds of detention have no nexus with the detainee and has been fabricated by the Police in order to justify the illegal detention. The allegations are vague, non-existent and no prudent man can make a representation against the order.

(iii) That all the documents relied upon by the Detaining Authority have not been provided to him, which has affected his right to make an effective representation.

(iv) The detainee was not informed the time within which he had to make a representation to the Detaining Authority as well as the Government.

(v) The grounds of detention were not explained to him in his local language which he understands.

(vi) The grounds of detention verbatim of the police dossier, as such, there is no application of mind by the Detaining Authority, while passing the impugned order of detention.

6. Mr. Amit Gupta, learned AAG, has filed the counter affidavit as well as produced the record. The respondents submit that the detainee has been detained on the dossier supplied by the SSP, Jammu, and the Detaining Authority, after carefully examining the same, has arrived at a subjective satisfaction to detain the detainee for his repeated and continuous involvement in drugs trafficking, which affect the health and welfare of the people. All the statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority. The impugned order issued is legal and valid and the learned counsel for the respondents has further submitted that the grounds urged in this petition by the detainee are misconceived and untenable being without any merit.

7. Heard learned counsel for the parties at length and also perused 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 independent of the Constitution. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law and the procedure as laid down in "Maneka Gandhi vs. 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 is convicted of an offence and sentenced to imprisonment.

9. Article 22(5) of the Constitution of India, provided for detention of a person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object are to save society from activities that are likely to deprive a large number of people of their right to life and personal liberty.

10. It is well settled that the purpose of the preventive detention by detaining of a person is not to punish him for something he has done but to prevent him from doing a particular act which is prejudicial either to the security of the State or to the maintenance of the public order. In "Haradhan

Saha V. State of West Bengal", (1975) 3 SCC 198, Hon'ble the Supreme Court has held that there is no parallel between prosecution in a Court of law and a detention order under the Public Safety 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 the Act. The relevant part of the judgment is reproduced as under:-

"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."

11. In Khudiram Das V. State of West Bengal and others, (1975) 2 SCR 832, It was held that:-

".....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.....”

12. Similarly, in *Secretary to Government, Public (Law and order) and another vs. Nabila and another*, (2015) 12 SCC 127, it has been held that one act may not be sufficient to form the requisite satisfaction for detaining him. Relevant portion of the judgment is as under:

“Indisputably, the object of law of preventive detention is not punitive, but only preventive. In case of preventive detention no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability and there is no criminal conviction which can only be warranted by legal evidence...”

13. Perusal of the record also reveals that the detainee has been provided all the material relied upon by the detaining authority while passing the order of detention. The receipt of detention reveals that the detainee was provided all the material (39 leaves) which reveals that the detainee was provided with all the material and the same was explained to him in English, Hindi, Urdu and Dogri languages, which he understood. The detainee has signed the receipt of detention in English which reveals that the detainee has sufficient knowledge of the same.

14. The Detaining Authority has observed that the detainee is continuously engaging in illicit trafficking in narcotic drugs and Michal Sharma psychotropic substances which poses a serious threat to the health and welfare of the people and the young generation is affected by it. The Detaining Authority, after recording its subjective satisfaction, has passed the impugned order of detention.

15. The provisions, as contained in NDPS Act, state that if the detaining authority is satisfied to prevent any person from indulging in illicit trafficking in narcotic drugs and psychotropic substances, it would make an order directing that person to be detained. The detaining authority was aware that detainee was engaged in illicit trafficking of drugs and these acts were against the general public, therefore, making it necessary to detain the detainee.

16. It was next argued by the learned counsel for the detainee that the Detaining Authority has detained the detainee only on the basis of two FIRs. These two incidents are sufficient for the detaining authority to initiate proceedings of preventive detention if the detaining authority arrives at a subjective satisfaction that the detainee was indulged in narcotics drugs and psychotropic substances. The detention is preventive and precautionary in nature and is not punitive. It is to prevent the individual from carrying out acts which are in any manner prejudicial to the health and welfare of the people. The detaining authority was satisfied that there was every apprehension that the detainee would indulge in illicit trafficking of narcotics drugs and psychotropic substances in case he is allowed to remain free and the satisfaction for detention is the prerogative of the detaining authority, therefore, the detaining authority has rightly exercised the same. The Detaining Authority has also shown its awareness to the bail granted

to the detainee.

17. The Detaining Authority thus arrived at its subjective satisfaction regarding its apprehension that the detainee might repeat and continuously engage in illicit trafficking of narcotic drugs and psychotropic substances.

This satisfaction for detention is not subject to judicial review.

18. A perusal of the record reveals that the detainee was provided all the material relied upon by the Detaining Authority consisting of 39 leaves. The same has also been explained to him in the language he understands.

19. In view of the aforesaid, I do not find any ground to interfere in the impugned order of detention, thus, there is no merit in this petition and the same is, accordingly, dismissed.

20. Let the detention record be returned to the learned counsel for the respondents by the Registry forthwith.