

(2024) 12 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : HCP No. 98/2023

Gurdit Singh alias Prince alias Pindi

APPELLANT

Vs

Union Territory of J&K through Principal Secretary (Home)
and Ors.

RESPONDENT

Date of Decision : 10-12-2024

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8(1)(a), 13
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8,21,22,27
Rules of Professional Conduct — Section 341, 323, 506
Indian Penal Code 1860 — Section 341, 323, 506

Citation : (2024) 12 J&K CK 0015

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Mazher Ali Khan, Bhanu Jasrotia, Rajesh Thappa

Final Decision : Allowed

Judgement

JUDGMENTTAG-JUDGMENT

Sindhu Sharma, J

1. The detenu seeks quashing of detention order No.PSA 34 of 2023 dated 12.12.2023 passed by the District Magistrate Jammu, vide which the detenu has been taken into preventive custody under section 8(1)(a) of the Jammu and Kashmir Public Safety Act, 1978, with a view to prevent him from acting in any manner prejudicial to maintenance of public order. The said order of detention has been assailed by the detenu through his mother-Amrit Kour.

2. The detenu is aggrieved of the order of detention on the grounds; that (i) the constitutional requirement of Article-22(5) of the Constitution of India has not been observed while passing the order of detention; (ii) all the material relied upon by the Detaining Authority while passing the order of detention has not been provided to the detenu which has prevented him from making any effective

representation to the Detaining Authority as well as Government; (iii) the order of detention is also based on the dossier and the documents submitted by the SSP Jammu and the Detaining Authority without arriving at its subjective satisfaction and without evaluating the allegations against the detenu, has passed the order of detention; (iv) the detenu was earlier detained vide detention order No. PITNDPS 01 of 2023 dated 16.01.2023 which was quashed on 25.08.2023 by this Court in WP(CrI) No.07/2023; (v) the order of detention is on similar grounds is without any application of mind, as such, unsustainable in law; (vi) the grounds of detention were also verbatim reproduction of the police dossier.

3. Mr. Bhanu Jasrotia, learned Government Advocate appearing on behalf of the respondents has filed the counter affidavit and has also produced the detention record. It is submitted by him that the detenu was detained under the Public Safety Act validly by virtue of detention order No.PSA 34 of 2023 dated 12.12.2023. He submits that all the procedural safeguards and constitutional guarantees were duly complied with by the Detaining Authority and the grounds of detention, order of detention as well as entire material relied upon by the Detaining Authority has been provided to the detenu under Section 13 of the Act and he was also informed of his right to make an effective representation against the order of detention. Learned GA further submits that in compliance to the order of detention, Mr. Jaswinder Singh (Inspector) has executed the detention order.

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

5. The detenu was earlier detained vide order of detention No. PITNDPS 01 of 2023 dated 16.01.2023 on the basis of three FIRs i.e., FIR No. 68/2018 under Section 8/21/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') registered with Police Station, Gangyal, Jammu, FIR No. 139/2019 under Section 8/21/22/27 of the NDPS Act registered with Police Station, Bishnah and FIR No. 250/2000 under Section 8/21/22 of the NDPS Act registered with Police Station, Gandhi Nagar, Jammu. The detention order was assailed by the detenu in WP(C) No. 07/2023 and the same was quashed by this Court vide judgment dated 25.08.2023. The respondents have issued the impugned order of detention while adding another FIR No. 115/2023 under Sections 341, 323, 506 RPC to the earlier allegations against the detenu without noticing the fact regarding earlier order of detention which stood quashed.

6. Learned counsel for the detenu submits that all three FIRs i.e., FIR No. 68/2018, FIR No. 139/2019 and FIR No. 250/2000 have been considered by this Court and the detenu was stated to be involved in NDPS Act and these FIRs have been considered by this Court and quashed. In all these FIRs, the involvement of the detenu is under NDPS Act, however, FIR No. 115/2023 is made by the complainant-Gurdeep Singh, who has stated that the detenu has fought with him and hit him multiple times on head & face and has also torn his clothes on which this FIR under Sections 341, 323, 506 IPC was registered with Police Station

Gangyal. This FIR discloses the interpersonal offences between the detenu & the complainant and the same do not reflect how the detenu is dangerous to the maintenance of public order on account of this case. This apart, the fact that the earlier FIRs and the grounds of detention have already been considered and quashed by this Court and they cannot be taken in part along with fresh grounds of detention for arriving at a subjective satisfaction, therefore, the order of detention is unsustainable.

7. In 'Chhagan Bhagwan Kahar vs. N. L. Kalna and others', AIR 1989 SC 1234, it was held as under :-

12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts of passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even alongwith the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule it nullifies the entire order."

8. Similar view has been held by the Hon'ble Supreme Court in "Jahangir Khan Fazal Khan Pathan vs. Police Commissioner, Ahmedabad and another", 1989 AIR 1812.

9. It is trite proposition of law that once an earlier order of detention stands nullified by the order of the Court, the earlier grounds mentioned in the detention order cannot be the reason for passing the fresh order of detention.

10. In view of the settled position of the law, if a detention order is quashed, the grounds of the order so quashed cannot be taken into consideration either in whole or in part or even along with the fresh grounds of detention for drawing subjective satisfaction to pass fresh order of detention. The Detaining Authority, therefore, cannot rely on the grounds which were passed in the earlier order, as such, the impugned order of detention taking into consideration the grounds on which the earlier order of detention dated 16.01.2023 is passed is vitiated and unsustainable.

11. This apart, non-application of mind by the Detaining Authority while arriving at its subjective satisfaction while passing the order of detention is writ large in view of the fact that the detenu has been enlarged on bail in all three FIRs and this fact has not been referred to by the Detaining Authority while passing the order of detention, though in the earlier ground of detention, this fact has been noticed by this Court. Thus, the Detaining Authority has not considered the fact that the detenu was on bail and its implication, therefore, this shows that there is non-application of mind by the Detaining authority while passing the order of detention.

12. In view of the aforesaid discussion and without advertent to the other grounds raised in this petition, this petition is allowed. Accordingly, detention order No.PSA 34 of 2023 dated 12.12.2023 passed by the District Magistrate Jammu, is quashed. The detenu is directed to be released from custody forthwith, provided he is not required in any other case.

13. Detention record be returned to learned counsel for the respondents by the Registry forthwith.