

(2024) 02 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : ?Latters Patent Appeal No. 12 Of 2023 In Writ Petition (C) No. 732 Of 2022

Jahangir Ahmed Dar

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 12-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 21
Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 — Section 3
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20
Conservation Of Foreign Exchange And Prevention Of Smuggling Activities Act, 1974 — Section 7(1)(b)

Citation : (2024) 02 J&K CK 0014

Hon'ble Judges : N. Kotiswar Singh, CJ;M. A. Chowdhary, J

Bench : Division Bench

Advocate : Usman Gani, Sajjad Ashraf

Final Decision : Dismissed

Judgement

M A Chowdhary, J

1. This intra court appeal has been preferred by the appellant Jahangir Ahmed Dar against the judgment/order dated 30.12.2022 passed by the learned Single Bench of this Court in a Writ Petition WP(CrI) No. 732/2022 titled "Jahangir Ahmed Dar vs UT of J&K & Ors," whereby his plea to quash Order No. DIVCOM-K/279/22 dated 19.10.2022 (for short "detention order") passed in terms of the Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act 1988 by the Divisional Commissioner Kashmir (hereinafter called "the Commissioner").

2. The appellant/petitioner vide detention order dated 19.10.2022, had been directed to be detained in preventive custody, in terms of Section 3 of the Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act

1988 by the Commissioner. The appellant/petitioner while challenging the order passed by the Commissioner had contented in his petition that he had been implicated falsely in case FIR No. 04/2021 for the commission of offences punishable under sections 8/20 NDPS Act and in that case he had been admitted to bail by the Court of learned 1st Additional Sessions Judge, Srinagar, besides plea that he was suffering from ailments of constipation and bleeding. The detention order was also assailed that the grounds of detention were vague on the basis of which no prudent man can make an effective representation and if the impugned order of detention is allowed to be executed, the same will result in grave economic crisis to the petitioner as he may lose his job; that no fresh activity as alleged in the grounds of detention and that the impugned order has been passed in hot haste.

3. The respondents filed their reply before the writ Court asserting that the appellant/petitioner was a hardcore drug peddler who had been instigating/motivating immature youth in his area to indulge in drug addiction and drug peddling and that in view of the past conduct of the appellant/petitioner having immoral and illegal criminal tendencies, he had been directed to be taken into preventive custody, with further allegation that he was trading in narcotic substances, sells the same to youth, drivers and college going students, as such, his activities were required to be curbed.

4. The learned Single Judge vide impugned judgment after discussing and relying upon the law laid down in "Government of India & Ors vs Alka Subhah Gadia, (1992) Supp (1) SSC 496" and "Subhash Popatlal Dave vs Union of India & Anr., reported as (2012) 7 SCC 533", rejected the plea of the appellant/petitioner for quashing of the order of detention impugned in the writ petition.

5. The appellant/petitioner having been aggrieved of the order impugned passed by the learned Single Judge challenged the same through the medium of this appeal, on the grounds that the grounds of challenge pleaded in the Writ Petition were not appreciated as no reference has been made thereof; that the judgment is perverse both on facts and law; that note of the fact that the last alleged activity was in the month of March 2021, whereas the order of detention was passed in October 2021; that the appellant/petitioner was already on bail at the time of passing of the detention order which clearly reflected non-application of mind on the part of the Detaining Authority to most of the material and vital facts vitiating the requisite satisfaction; that there was no justification with the Detaining Authority to pass the detention order that there being no live link or any fresh activity; that the learned Single Judge has not appreciated the important issues involved in the matter and passed the impugned order contrary to the well settled principles of law and that the detention order passed on 19.10.2022 had not been executed till date nor the respondents have taken any steps to seek execution of detention order in accordance with law despite the fact that the appellant/petitioner was all along available for execution as well as bound by the order of trial Court wherein he was facing trial in the case

registered against him.

6. Since the respondents have not filed objections to the main petition and had only responded to the interim application, the respondents on filing of this appeal filed reply asserting therein that in order to collect huge returns in short span of time, the appellant/petitioner had become a member of drug mafia/drug syndicate; that he had been apprehended in case FIR No. 04/2021 under Section 8/20 NDPS Act registered at Police Station Kothibagh; that the activities of the appellant/petitioner posed a serious threat to the health and welfare of the people of the area as his designs and conducts to lure the youth and school going children into menace of drugs have made the life of peace living citizens vulnerable and caused scare among their parents; that the report received from the field agencies depicted that the appellant/petitioner was associated and clandestinely dealing in illegal business of narcotic substances and out of the illegal trade, he had been exploiting the immature minds of the younger generation by making them habitual addicts; that the drug mafia with which the appellant/petitioner is associated poses a great threat to the society as from the proceeds from the drugs sale, other criminal activities can also be financed; that the activities of the appellant/petitioner were highly prejudicial and cause adverse affects in the society, his remaining at large involves great risk and maintenance of public order, as such, the petitioner/appellant was rightly ordered to be detained vide order impugned in the writ petition by the Commissioner, who was appointed as an authorised officer by the government.

7. The respondents have further submitted that the detention order/warrant issued against the appellant/petitioner was directed to be executed and as per the report furnished by SHO Police Station Kothibagh, extensive efforts were made to carry out the aforementioned warrant as the police team led by Mushtaq Ibrahim was deputed to the native village of the appellant/ petitioner on different dates, who took help of some of the officers from Police Station Bijbehara, conducted raids at his residence, however, he was neither found at his home nor within the jurisdiction of Police Station Bijbehara; that his family did not provide any information to the police team regarding his whereabouts, whereas the local Lamberdar Ghulam Nabi Dar confirmed that the detinue had not visited his home and was not seen in the vicinity; that another police team headed by ASI Mushtaq Ahmad raided the home place of the appellant/petitioner on 06.05.2023 and conducted search, however, he was not found present and the SDPO Bijbehara and SHO Bijbehara have been requested to closely monitor the appellant/petitioner's activities and promptly inform the authorities of his whereabouts, if spotted anywhere with an aim to ensure the execution of the pending detention warrant against the appellant/petitioner.

8. Learned counsel for the appellant/petitioner has vehemently argued that the appellant/petitioner has been alleged to be an active member of drug mafia/syndicate by the sponsoring agency, whereas the fact of the matter is that there was just one case registered against him and the Detaining Authority without any

application of mind had relied upon the dossier prepared by the police concerned for passing the detention order. He has further argued that the appellant/petitioner had been detained on vague grounds and his detention has also been ordered in the month of October 2022 relying upon the involvement of the appellant/petitioner in a case of NDPS Act, registered against him in the year 2021, as such, the detention order has been passed on a stale incident with no proximate or live link between the activities of the appellant/petitioner and the detention order. He has further argued that the appellant/petitioner had been admitted to bail in the case and after his release, he was not involved in any of the activities and the learned Commissioner while passing the detention order had not considered this aspect of the matter, as even he has not stated anything in his detention order with regard to admission on bail of the appellant/petitioner in that case. As such, these facts do indicate that the Detaining Authority had not applied its mind properly while depriving the appellant/petitioner of his liberty, which is a cherished constitutional right in terms of Article 21 of the Constitution of India. Learned counsel for the appellant/petitioner in support of his submissions, has relied upon the law laid down by the Apex Court in the judgments reported as (2023) 9 SCC 587; (2008)16 SCC 14; AIR 2022 SC 4715; (2012) 2 SCC 72 and by Hon?ble Delhi High Court in AIR Online 2022 DEL 592.

9. Learned counsel for the respondents, ex adverso, argued that the appellant was a hardened criminal involved in illegal business of Narcotics and in order to carry out this illegal trade, exploiting the immature minds of the younger generation by making them dependent on drugs and to make them habitual addicts regarding which the case has been registered against him in the year 2021 and the Detaining Authority, after evaluating the relevant record placed before him, had passed the detention order in the public interest for the maintenance of public peace and order. He further argued that the writ court has rightly decided the petition filed by the appellant by an elaborate judgment, addressing all the aspects raised by the appellant, therefore, the same does not call for any interference while exercising the appellate jurisdiction by this Bench.

10. Heard learned counsel on both sides, perused and considered.

11. In a judgment, in case titled Aameena Begum vs State of Telangana & Ors, reported as (2023) 9 SCC 587, the Hon?ble Apex Court has observed that "the right of life and personal liberty is placed on such a high pedestal by the Court that it has always insisted that, whenever, there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the Court that it has acted in accordance with the law. This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirements of law, and even where a requirement of the law is breached in the slightest measure, the court has not to hesitate to strike down the order of detention or to direct the release of the detenue even though the detention may have been valid till the breach occurred. The Court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal

detention, regardless of the social cost involved in the release of a possible renegade.”

12. In the judgment titled *Deepak Bajaj vs State of Maharashtra & Anr*, reported as (2008) 16 SCC 14, the Hon’ble Apex Court has observed that “if a person against whom a preventive detention order has been passed comes to Court at the pre execution stage and satisfies the Court that the detention order is clearly illegal, there is no reason why the Court should stay its hands and compel the petitioner to go to jail even though he is bound to be released subsequently (since the detention order was illegal).

As already mentioned above, the liberty of a person is a precious fundamental right under Article 21 of the Constitution and should not be likely transgressed. Hence in our opinion *Smt. Alka Subhash Gadia's case* (supra) cannot be construed to mean that the five grounds mentioned therein for quashing the detention order at the pre execution stage are exhaustive”.

13. In another case titled *Sushanta Kumar Banik vs State of Tripura and others*, reported as AIR 2022 SC 4715, relied upon by learned counsel for the appellant/petitioner, the Apex Court has observed that “the adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the “live & proximate link” between the grounds of detention & the avowed purpose of detention”

14. A similar view has been taken by the Hon’ble Supreme Court in *Rushikesh Tanaji Bhoite Vs. State of Maharashtra & Ors.* reported as (2012) 2 SCC 72, wherein, it has been observed that :-

“9. In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.”

15. In the judgement in a case titled *Abhishek Gupta vs Union of India & Ors*, reported as AIR Online 2022 DEL 592, rendered by Delhi High Court, it has been held in Paras 4 and 14 as under:

4. It is pertinent to note that the impugned Preventive Detention Order is yet to be served on the petitioner. Further, it was observed by this Court vide order dated 22.07.2019 that despite the detention order, which has been rendered on 26.03.2019, the same was not executed upon the petitioner on behalf of the official respondents, and in these circumstances no coercive action be taken against the petitioner.

14. To appreciate the contentions raised by the petitioner as well as the respondents, the following issues need to be considered.

(i) Whether non placement of the fact before the Detaining Authority that the subject four firms which are alleged to be operated/controlled by the petitioner were placed in Denied Entry List (Blacklist) vide order dated 21.12.2018 and 24.12.2018, prior to passing of the detention order, vitiates the subjective satisfaction of the Detaining Authority in issuing the detention order;

(ii) Whether the detaining authority or the executing agency or sponsoring authority were diligent to serve the detention order on the petitioner at the earliest despite being available for service since the detention order was passed on 26.03.2019 and the petitioner had appeared before the Ld. CMM on 28.03.2019 and 05.04.2019 after the passing of the impugned detention order;

(iii) Whether the publication of the impugned order on 21.05.2019 under section 7(1)(b) of the COFEPOSA Act was mechanical, alleging that petitioner is absconding or concealing himself to avoid execution of the impugned detention order and if the detention order is liable to be set aside for unexplained delay in service of detention order.

16. The contention of learned counsel for the appellant/petitioner that there was no proximate or live link between the activities of the appellant/petitioner and the detention order is concerned, we are of the view that the delay cannot be said to be such an inordinate so as to say that the link in the meanwhile snapped so as to vitiate the detention order. The non-reflection of granting of bail in favour of the appellant/petitioner is also not fatal to the detention order as it had been sufficiently recorded by the Commissioner while ordering the detention that he was arrested and involvement in the commission of case regarding which the FIR has been registered. The contention with regard to vague grounds is also out of relevance as there is a specific allegation against the appellant/petitioner that he was arrested while having in his possession some narcotic and that the discreet reports of the field agencies, also revealed that he was involved in the Illicit Trafficking of Narcotic Drugs and Psychotropic Substances, which is a serious issue effecting the UT of J&K.

17. Having regard to the geo-political location of the UT of Jammu & Kashmir

bordering hostile neighbouring Countries, which have been pushing drugs to this part of the Country not only for illegal trade but to use the proceeds thereof in the sustenance of cross border terrorism, so the menace of drugs in this part of Country has to be seriously looked into having its wider ramifications as smuggling and trade of the narcotics will not only destabilize the economy of the area but shall also be detrimental to the national interest if the proceeds of illegal trade are used to sustain the terrorism.

18. The next contention of the learned counsel for the appellant/petitioner that the detention order has not been executed despite availability of the detenue seems to be incorrect, as the respondents have placed on record the reports of two police teams which have been deputed to execute the warrant/order of detention against him and their reports indicated that he was neither available at his home nor in his area, as such, despite efforts by the police, he has evaded the arrest warrant by absconding. The learned Single Judge has also recorded in his judgment that the appellant/petitioner had not been even facing trial before the trial Court after being admitted to bail, which also strengthens the view that the appellant/petitioner had been absconding to evade the execution of detention order. The contention of the learned counsel that the appellant/petitioner had not appeared before the trial Court just on one date, as he was indisposed and admitted in hospital also seems to be incorrect, as it appears from the record produced by the appellant/petitioner that he had been admitted in a hospital at Anantnag on a day and discharged very next day and then again had gone there for follow up but before the detention order was passed. Therefore, the contention for being not available due to bad health and disease is not sufficient so as to justify the absence of appellant/petitioner from evading the execution of detention order. The learned Single Judge has rightly observed in the judgment that the disease of which the appellant/petitioner was suffering was just constipation and bleeding, which in no manner could be a risk to his life, as such, even being in custody, his healthcare can be taken care of.

19. Having regard to the foregoing discussion and the reasons analyzed hereinabove, we do not find any perversity or illegality in the judgment passed by the learned Single Judge, as all the important aspects as were required had been dealt with.

20. The appeal for the aforesaid reasons is found to be without any merit and substance and is, thus, dismissed along with pending application(s).