

(2020) 12 J&K CK 0034
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 60 Of 2020

Mohammad Amin Dar

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 23-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

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

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 22

Citation : (2020) 12 J&K CK 0034

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : Wajid Mohammad Haseeb

Final Decision : Disposed Of

Judgement

1. The petitioner has challenged detention order No. DIVCOM-â??Kâ?/123/2020 dated 10.03.2020, passed by respondent No. 2, whereby the

petitioner-Mohd. Amin Dar S/o Late Abdul Gani Dar has been detained in terms of Section 3 of Prevention of Illicit Traffic in Narcotic Drugs and

Psychotropic Substances Act, 1988 (hereinafter called the Act). The detention order has been challenged on the ground that the grounds of detention

are vague and non-existent; that the order has been passed on an alleged single activity of the petitioner; that the petitioner was already in custody in

FIR No. 27/2020 registered with Police Station, Magam and had neither applied for bail nor was bail due to him in view of the provisions of NDPS

Act; that no reason has been given which compelled the respondents to issue the order of detention; that the respondent only relied upon police dossier

and the copy of dossier and the material have not been provided to the petitioner

while detaining the petitioner. The petitioner only understands Urdu and Kashmiri language whereas the detention order was in English and the translated version of the detention order has not been provided to the petitioner thereby depriving him of making effective representation in the matter.

2. The reply to the petition has been filed wherein the respondents have denied the assertions made in the grounds of the petition. It is submitted that

the order has been passed strictly in accordance with the Act; that the petitioner was found in possession of Narcotic substance and the report of FSL

also confirmed the same. The petitioner is involved in illegal trade of contraband and that the order impugned has been passed by the detaining

authority after applying the mind. It is pleaded that the petition in hand be dismissed.

3. The record has been produced by the respondents.

4. The words "preventive detention" speak for themselves the meaning. The preventive detention and prosecution have different purposes and the

nature of proceedings is also entirely different. The difference between the preventive detention and prosecution is aptly described in the following

observations of the Apex Court in Haradhan Saha's case reported in (1975) 3 SCC 198:

"32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary

power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution

even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made

before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even

acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are

different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past

act is merely the material for inference about the future course of probable conduct on the part of the detenu."

5. The petitioner-Mohammad Amin Dar has been detained as the petitioner is stated to be notorious trafficker of contraband substance like Cannabis

and involved in the distribution of the contraband among the youth of the area. The petitioner has been arrested in FIR No. 27/2020 under Sections

8/22 of NDPS Act. The FIR reveals that the petitioner is in illegal trade with conscious mind and poses serious threat to the welfare of the people in the State in general and district Budgam in particular.

6. The record also reveals that the grounds of detention have been provided to the petitioner and read over to him in Kashmiri language while

executing the detention order on 13.03.2020. The signatures of the petitioner are also on the receipt of grounds of detention. Two leaves have been

provided to the petitioner as is revealed from the receipt of grounds of detention. It means that only grounds of detention which consist of two leaves

have been supplied to the petitioner and nothing more. The order of detention has been passed on the basis of dossier provided by Superintendent of

Police, district Budgam. Indeed, the copy of FIR, seizure memo and other documents were available with the detaining authority but the same have

not been supplied to the petitioner while executing the warrant of detention. It shows that the petitioner has been deprived of his right to have the

complete material which formed the basis of the detention order. The petitioner is entitled to have all the relevant material so as to make him aware of

the same and be able to represent before the competent authority in case he chooses to do so against his detention order. Merely informing the

petitioner that the petitioner has right to be heard in person by the competent authority does not fulfill the responsibility of the respondents unless the

petitioner has been provided with the relevant material as stated above. The providing of material by the detaining authority is not mere formality and if

the same is not done by the detaining authority the detention order cannot be upheld in law. It is ironical that in numerous cases it has been observed

that detaining authority has failed to fulfill the statutory obligation and responsibility which is cast upon the authority of providing the necessary material to the detainee. The detention order is liable to be quashed on the above mentioned ground alone.

7. The petitioner, as mentioned above, is stated to be habitual drugs trafficker. The petitioner has been found to be in possession of some narcotic

substance and that is why the FIR came to be lodged against the petitioner and consequently resulted into passing of detention order against the

petitioner. It is not revealed from the record that except for one FIR alleging that the petitioner is involved under Section 8/22 NDPS Act, there was

any other material with the detaining authority to conclude that the petitioner is habitual drug trafficker. A single act in certain circumstances can be

sufficient to invoke preventive detention. The order of detention cannot be passed on mere assumptions and the detaining authority has to address

itself to the question if the ordinary law to which the petitioner is subjected to is sufficient to deal with the situation. It is apt to rely upon the

observations of the apex Court in the case of *Rekha vs. State of Tamil Nadu* (2011) 5 SCC 244 wherein it was observed:

“Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: Was the

ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case,

the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Indian Penal Code and the

Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was

illegal.”

8. The court has no hesitation in holding that there was no material available with the detaining authority to hold that the petitioner was habitual drug

trafficker and therefore the detention order against the petitioner. In the present case the respondent No. 2 has in fact relied upon the single FIR while

passing the detention order. There can be no gainsaying that the petitioner could be taken care of his alleged activity under the provisions of NDPS

Act and detention order on the basis of sole FIR against the petitioner was uncalled for.

9. The satisfaction of the detaining authority while passing the detention order is subjective one. The court will not ordinarily interfere or assess the

subjective satisfaction of detaining authority but at the same time the judicial authority is not barred from scrutinizing the subjective satisfaction of the

detaining authority in any given case.

10. In *Union of India Vs. Dimple Happy Dhakad* (Appeal No. 1064/2019 decided

on 18.07.2019) the Hon?ble Supreme Court has held that the subjective satisfaction of the detaining authority is not immune from judicial reviewability.

11. To summarize the discussion, the detention order is bad for the reason that the necessary material was not provided to the petitioner, the single

alleged act of the petitioner was not sufficient to invoke the detention order and that the petitioner has been deprived of his right to representation

before the competent authority in an effective manner as he was deprived of the relevant material which formed basis of detention order.

12. Looked from any angle, the detention order impugned in the present writ petition is liable to be quashed and is, accordingly, quashed. The petitioner

if not presently required in FIR 27/2020 registered with Police Station, Magam, or any other case be released forthwith.

13. The petition is, accordingly, disposed of.

14. The record produced be returned to the concerned.