

(2024) 06 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 258 Of 2023

Mohammad Owais Gul

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 04-06-2024

Acts Referred:

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

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 3, 8, 15, 20, 29

Citation : (2024) 06 J&K CK 0001

Hon'ble Judges : Moksha Khajuria Kazmi, J

Bench : Single Bench

Advocate : Sheeba, Wajid Mohammad Haseeb, Jahangir Ahmad Dar

Final Decision : Dismissed

Judgement

Moksha Khajuria Kazmi, J

1. Mohammad Owais Gul son of Ghulam Mohammad Bhat resident of Drangbal, Pampore (Pulwama) (for short "detenu") has been, vide order No. DIVCOM-"K"/76/2023 dated 05.06.2023, issued by Divisional Commissioner, Kashmir-respondent No. 2 herein, ("Detaining Authority") placed under detention in terms of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, (for short Act), and lodged in Central Jail Kote Bhalwal, Jammu. The said order of detention has been assailed in the instant petition.

2. The case set up in the petition is that the detenu was falsely shown involved in the FIR No's 08/2020, 18/2021, of Police Station, Pampore for the commission of offences punishable under Section 8/20, Narcotic Drugs and Psychotropic Substances Act, (for short NDPS Act). It is maintained in the petition that the grounds of detention as formulated by the Divisional Commissioner, Kashmir have been incorporated in the dossier, prepared by the SSP Pulwama which ipso facto demonstrate complete non-application of mind on part of the Detaining

Authority and that no compelling reasons have been assigned in the detention order. The detinue is stated to have been falsely implicated in the aforementioned FIR's, when the detinue has no connection with the allegations levelled therein. It is stated that in both the FIR's, detinue has been enlarged on bail by the competent court of jurisdiction. However, the detinue was illegally taken into custody and shifted to Kotbalwal Jail, Jammu on 09.06.2023 in terms of the impugned detention order. It is further stated that the relevant material has not been furnished to the detinue so as to enable him to make an effective representation. The material which has been furnished to the detinue is not sufficient for making the effective representation. Therefore, the constitutional rights guaranteed to the detinue stand infringed and for that reason also the detention of the detinue is legally bad and liable to be set aside.

3. It is further stated that although the petitioner has made a representation, no material has been furnished to the detinue so as to enable him to make an effective representation.

4. The Detaining Authority has not applied its mind while passing the detention order inasmuch as, the Detaining Authority has prepared the grounds of detention on the basis of dossier and the other connected documents mentioned in the order of detention which have not been furnished to the detinue.

5. Per contra, learned counsel for respondents in the counter affidavit stated that detention order has been passed in exercise of powers vested with Detaining Authority under the Act, with a view to prevent the detinue from committing any of the acts within the meaning of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, The detention order is based on its own set of facts and reasons. The detinue was not only informed about his right to file a representation but was also furnished the copies of order of detention and other relevant documents. The detinue is involved in case FIR No. 08/2020 under Section 8/20 NDPS Act, FIR No. 18/2021 Under Section 8/15-29 NDPS Act, registered at Police Station, Pampore. It is further stated that the detention order does not suffer from any legal infirmity, inasmuch as, the safeguards provided under the Constitution have been followed while passing the detention order, as such, challenge thrown to the impugned order of detention is not sustainable.

6. I have heard learned counsel for the parties and considered the matter. I have gone through the detention record made available by Mr. Jahangir Dar, Government Advocate.

7. Learned counsel for the petitioner while arguing the matter has submitted that the material whatever relied upon by the respondents while passing the detention order against the detinue has not at all been furnished to the detinue, resultantly he could not make an effective representation against the detention order.

8. The record reveals that the detinue is reportedly involved in illegal trafficking of drugs, like Charas and "poppy Straw" and is working in an organized manner,

as an active member of drug mafia, to spoil the life and career of young generation. The consignments seized from the possession of detainee shows that he is fully involved in the illegal trade with conscious mind, posing a huge threat for sustaining moral values of the society.

9. The Supreme Court in *Hardhan Saha v. State of W.B.*, (1975) 3 SCC 198, has succinctly pointed out difference between preventive and punitive detention in the following words:

"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 detainee 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."

10. In *Naresh Kumar Goyal v. Union of India*, (2005) 8 SCC 276, the Court observed:

"It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperilling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so."

11. The citations referred to and relied upon by learned counsel for the detainee during the course of arguments are distinguishable from the facts and circumstances of present case.

12. Perusal of detention record reveals that detainee at the time of execution of detention was provided copy of the detention order (01 Leaf), copy of the grounds of detention (02 Leaves), Dossier of detention (04 leaves), copy of FIR, statements of witnesses and other related material (44 leaves). The detainee, as record would reveal, was also informed as regards making of representation against the detention order if he so desires, both to Detaining Authority and the Government. The grounds of detention have been read over to the detainee in the language he understands in presence of witnesses, whose signatures are

affixed overleaf the detention order. The grounds of detention are definite, proximate and free from any ambiguity. The detainee has been informed with sufficient clarity what actually weighed with the Detaining Authority to pass the detention order. The Detaining Authority has narrated facts and figures that made it to exercise its powers under Section 3 of NDPS Act, to record subjective satisfaction that detainee was required to be placed under preventive detention in order to prevent him from committing any of the acts within the meaning of illicit trafficking of narcotic drugs. The Detaining Authority has informed the detainee that he is an accused in aforementioned cases, involving illegal trafficking of narcotic substances, which poses serious threat to the society, particularly health, wealth and welfare of the people, especially young generation. The detainee, therefore cannot be heard saying that any of his Constitutional and Statutory rights have been violated by the detention order.

13. For all what has been discussed above, this Court finds no perversity in the impugned order No. DIVCOM-"K"/76/2023 dated 05.06.2023, as such, the petition dismissed.

14. Detention record be returned to counsel for respondents.

15. However, it would be pertinent to mention here that the validity of the detention order is going to expire on 05.06.2024, therefore, even in that respect the instant petition has been rendered infructuous.