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(2023) 12 J&K CK 0066

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 120 Of 2023

Mukhtar Ahmad Dar — APPELLANT

Vs

Union Territory Of Jammu & Kashmir And Others — RESPONDENT

Date of Decision : 26-12-2023

Acts Referred:
Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substance, Act 1988 — Section 3
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20

Citation : (2023) 12 J&K CK 0066

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R.A. Sogami, Sajad Ashraf

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. The petitioner is aggrieved and has called in question an order of detention bearing No. DIVCOM-"K"/17/2023, dated 8th March, 2023, passed by the Divisional Commissioner, Kashmir, ["the Detaining Authority"], under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance, Act 1988, ["for short PIT-NDPS"], whereby the petitioner has been detained in preventive custody with a view to prevent him from indulging in illicit trafficking in Narcotic Drugs and Psychotropic Substance.

2. Impugned detention order is passed on the ground that the petitioner who is a driver by profession came into close contact with drug peddlers of District Shopian and other parts of the valley. He was motivated to adopt the way of illegal trade of Narcotic Drugs so as to make easy money. Persuaded by the drug peddlers, the petitioner started transporting/supplying contraband substances to common masses especially to youth for obtaining wrongful benefits.

3. Based on the aforesaid allegations, FIR No. 304/2020 under Section 8/20

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NDPS Act was registered in the Police Station Shopian. The contraband seized from the petitioner was sent to Forensic Science Laboratory (FSL) and was identified as Ganja Plant Material of Cannabis. When all these facts were brought to the notice of the Detaining Authority by the Police, the Detaining Authority arrived at subjective satisfaction that petitioner was a drug peddler and, therefore, liable to be detained under Section 3 PIT-NDPS with a view to prevent him from continuing with his activity of smuggling, transporting and supplying of contraband substances to the common masses. Apart from the FIR, the Detaining Authority has also relied upon reports received from field agencies providing information that the petitioner had been indulging in the illegal business of Narcotic Drugs and Psychotropic Substance and is involving immature minds of youth generation by making them dependent on drugs.

4. Impugned detention order is assailed by the petitioner, inter alia, on the following grounds:

(i) That the allegations of drug peddling levelled against the petitioner which are also subject matter of investigation in FIR No. 304/2020, are stale and do not have any proximate link with the issuance of detention order.

(ii) The Detaining Authority has, nowhere, in the grounds of detention even alleged that after the registration of FIR No. 304/2020, the petitioner has committed any offence under NDPS Act or has been found involved in the commission of any other offence punishable under law for the time being in force.

(iii) The impugned detention order is bad in the eye of law on the ground that the Detaining Authority has not considered all the relevant material and was kept completely unaware about the fact that the detenue was not only arrested in FIR No. 304/2020, but was later on bailed out by the Competent Court of law on 25th November, 2020.

(iv) That there is no allegation in the grounds of detention that the petitioner after his release on bail and till the passing of the impugned order of detention was found involved in the commission of any offence.

5. It is contended by the learned counsel for the petitioner that immediately upon registration of FIR, the petitioner was arrested but was later on granted bail by a competent Court of jurisdiction on 25th November, 2020. It is argued that the Detaining Authority, as is apparent from the order of detention, was not aware of this crucial information and, therefore, did not bestow consideration upon the relevant material to reach its subjective satisfaction.

6. Respondents have filed their objections and have opposed the petition on the ground that the petitioner was put under preventive detention because of his constant involvement in the activities which are offences under NDPS Act. Reference is made in the reply affidavit to registration of FIR No. 304/2020, under Section 8/20 NDPS Act registered in Police Station, Shopian, to substantiate the argument that petitioner was detained because of his

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involvement in the commission of offences punishable under NDPS Act. He was found in possession of some quantity of Ganja Plant Material of Cannabis and as reported by the field agencies the registration of the FIR has not deterred him from pursuing his illegal activities of carrying on the illegal trade of Narcotic Drugs.

7. Having heard learned counsel for the parties and perused the material on record, I am of the view that the impugned order of detention is not sustainable in law for more than one reason. From bare reading of the grounds of detention, it clearly transpires that the entire gravamen of the grounds of detention on the basis of which the petitioner has been detained is recovery of some Ganja Plant Material of Cannabis from the possession of the petitioner regarding which an FIR is registered against him in the Police Station, Shopian.

8. The Detaining Authority does not exhibit its awareness about the arrest of the petitioner in FIR No. 304/2020, nor does it show any awareness as to whether the detenue was released on bail or was still in custody of State at the time of the passing of the impugned detention order. The Detaining Authority has also not shown its awareness with regard to the stage of investigation of FIR No. 304/2020; whether the matter after investigation has been challaned in the Court of competent jurisdiction or not is also not within the knowledge of the Detaining Authority. It is thus evident that a very vital and crucial material was not brought to the notice of the Detaining Authority and, therefore, the subjective satisfaction arrived by the Detaining Authority cannot be said to be subjective satisfaction as understood in law.

9. The petitioner has, in his petition specifically pleaded that consequent upon registration of FIR NO. 304/2020 in Police Station Shopian, he was arrested and later on bailed out by the competent Court of law. He has placed on record copy of the bail order as well. Had this material been brought to the notice of the Detaining Authority, there is every possibility of the Detaining Authority taking a different view in the matter. Suffice, it to say that non availability of the relevant material before the Detaining Authority or failure of the Detaining Authority to consider the relevant material vitiates the subjective satisfaction arrived at by the Detaining Authority with regard to the necessity of placing an individual facing the charges of drug trafficking in preventive custody.

10. It is well settled that if relevant vital material is not brought to the notice of the Detaining Authority for consideration, the satisfaction of the Detaining Authority itself would be impaired and the detention order passed on the basis of such subjective satisfaction vitiated.

11. The reference to the reports received from field agencies is too vague to enable the detenue to make effective representation against it. Admittedly, the Detaining Authority did not supply the reports which it claims to have been received from the field agencies with regard to the indulgence of the petitioner in the illegal business of Narcotic Drugs. Such vague grounds of detention cannot

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be made basis of detention.

12. For all these reasons, I find merit in this petition and the same is, accordingly, allowed. The impugned order of detention dated 8th March, 2023, passed by the Detaining Authority is quashed. The respondents are directed to release the detenue forthwith from the preventive custody provided he is not required in any other case.

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