

(2020) 12 J&K CK 0033
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 51 Of 2020

Muzaffar Ahmad Marazi

APPELLANT

Vs

Ut Of J&K And Another

RESPONDENT

Date of Decision : 23-12-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 22
Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 —
Section 3

Citation : (2020) 12 J&K CK 0033

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : A. Khan, B. A. Dar

Final Decision : Allowed

Judgement

1) Impugned in this petition is the order of detention bearing No.DIVCOM-â?? Kâ?/112/2020 dated 08.02.2020, passed by Divisional Commissioner,

Kashmir, (hereinafter the detaining authority), whereby Mr. Muzaffar Ahmad Marazi (hereinafter the detainee) has been ordered to be detained in

preventive custody with a view to prevent him from committing any of the acts within the meaning of Illicit Traffic in Narcotic Drugs and

Psychotropic Substances Act, 1988 (the Act of 1988). The impugned order has been assailed by the detainee through his mother, namely, Mymoona

Begum, on various grounds which I shall advert to after briefly noticing the facts leading to the passing of the impugned order of detention.

2) Senior Superintendent of Police, Sopore, vide his letter No.Pros/PSA/2020/3893 dated 01.02.2020, submitted the record of activities of the detainee

in the shape of dossier to the detaining authority. In the dossier the information

provided to the detaining authority, inter alia, included that the detainee, who is a resident of Sofi Hamam Baramulla, has been indulging in illicit trafficking of drugs and psychotropic substances. The activities detainee has been indulging in over a period of time have posed a serious threat to the health and welfare of the people of valley in general and of Sopore area in particular as well as the economy of the country. The detainee was apprehended by the personnel of Police Station, Tarzoo, on 21st of January, 2020 and was found in possession of 200 capsules of Spasmo Proxyvan Plus (contraband drugs) which he was attempting/intending to sell among local youth. A case FIR No.04/2020 under Section 8/22 of NDPS Act was registered in Police Station, Tarzoo. It is further stated that prior to this criminal case two more cases i.e. FIR No.157/2014 and 75/2018 were registered under Section 8/22 in Police Station, Tarzoo. It is submitted that the detainee is presently under police custody in FIR No.04/2020 and there is likelihood of him being admitted to bail as the bail application on his behalf has been filed before the court of law. On the basis of two occurrences in which the detainee was caught with contraband, the police concluded that the detainee was a committed drug trafficker and his activities if not checked would destroy generation of youth. Accordingly, the police recommended that in view of activities of the detainee, it was imperative to put him under preventive detention.

3) Acting upon the aforesaid dossier supplied by the police along with other connected documents/material, the detaining authority recorded its satisfaction that given the activities indulged in by the detainee, it was necessary to detain him in preventive detention to prevent him from committing the offences under NDPS Act. Invoking Section 3 of the Act of 1988, the detaining authority directed detention of the detainee with a direction to lodge him in District Jail, Anantnag, for a period to be specified by the Government/Advisory Board.

4) The petitioner has assailed his detention, inter alia, on the following grounds:

(I) That indulging in illicit traffic in Narcotic Drugs and Psychotropic Substances and maintenance of public order are two different aspect that cannot be clubbed together;

(II) That the detainee was already in police custody when the impugned detention order was passed but the detaining authority, in the grounds of

detention, has not shown any awareness about the said fact nor has indicated any compelling reasons for slapping detention order on the detainee

when he was already in jail in connection with FIR No.04/2020 and had not been granted bail by the competent court of law.

5) The respondents have filed their reply affidavit. It is the stand of the respondents that the J&K Prevention of Illicit Traffic in Narcotic Drugs and

Psychotropic Substances Act, 1988, was repealed with the promulgation of J&K Re-organization, 2019. However, the impugned detention order was

passed by the competent authority under the corresponding Central Act i.e. the Act of 1988 which came to be extended to the Union Territory of

Jammu and Kashmir by virtue of J&K Re-organization (Removal of Difficulties) Order, 2019. The respondents have sought to draw up a distinction

between the preventive and punitive detention. On merits, it is contended by the respondents that the detainee was a habitual drug trafficker and had

been indulging in the prohibited activities over a period of time. He was caught red handed with contraband on three occasions and three FIRs came

to be registered against him. It is thus urged that in these circumstances when ordinary law of the land had failed to deter the detainee from indulging

in the activities prejudicial to the health and welfare of the public, there was no option left with the respondents but to have resort to Section 3 of the

Act of 1988 and detain the petitioner in preventive custody.

6) Having heard learned counsel for the parties and perused the record, I am of the view that the impugned detention order cannot sustain for a simple

reason that the detaining authority despite having been furnished the requisite material by Senior Superintendent of Police, Sopore, indicating that the

detainee was in police custody yet detaining authority, in the grounds of detention, has not shown any awareness about the said fact nor has indicated

any compelling reasons for slapping detention order on the detainee when he was already in jail in connection with FIR No.04/2020 and had not been

granted bail by the competent court of law.

7) From a perusal of grounds of detention served upon the detainee, it is abundantly clear that the detaining authority was aware that for three different

occurrences, three FIRs stood registered in Police Station, Tarzoo, under Section 8/22 of NDPS Act but the detaining authority is silent as to whether

the petitioner was ever arrested in those FIRs and was in custody though the

dossier supplied by the police makes such mention. The detaining authority has also not disclosed any compelling reasons to order the detention of the detainee when the detainee was already in custody in FIR

No.04/2020. This speaks volume about the non-application of mind displayed by the detaining authority in passing the order of detention. The ground of challenge that the impugned detention order is vitiated by total non-application of mind and is bereft of requisite satisfaction of the detaining authority goes to the root of detention and vitiates all actions leading to the preventive detention of the detainee.

8) The detaining authority in the order of detention has also recorded as under:

“I am satisfied that with a view to prevent Muzaffar Ahmad Marazi S/o Mohammad Akbar Marazi R/o Sofi Hamam Sopore District Baramulla

from committing any of the acts within the meaning of illicit traffic in narcotic drugs and Psychotropic Substances Act, 1988, and for maintenance of

public order it is necessary to detain him.”

9) Mention of the words “maintenance of public order” would suggest that the detaining authority himself has not been certain or has not been

alive to the legal position i.e. under Section 3 of the “Act of 1988” a person could not be detained for the acts which are prejudicial to the

“maintenance of public order”.

10) In view of the aforesaid, this Court does not find it necessary to advert to other grounds of challenge urged by the petitioner in support of his plea

seeking quashment of the detention.

11) For the foregoing reasons, this petition is allowed. The impugned order of detention is quashed. Direction is issued to the respondents to release

the detainee from the preventive custody forthwith, provided he is not required in connection with any other case.