

(2024) 02 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 92 Of 2023

Sheikh Murtaza

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 05-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5), 22(6)
Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 —
Section 3
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21, 22

Citation : (2024) 02 J&K CK 0006

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Asifa Padroo, Sajad Ashraf

Final Decision : Allowed

Judgement

Sindhu Sharma, J

1. The Divisional Commissioner, Kashmir detained Sheikh Murtaza alias Raja Mukka, S/o Ghulam Ahmad Sheikh, R/o Gurgari Mohalla Zainakdal vide order No. DIVCOM-"K"/123/2023 dated 31.07.2023 in exercise of the powers vested in him under Section (3) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The impugned order of detention has been assailed by the detenu through his father.

2. The detaining authority had detained the detenu on the dossier submitted by the Senior Superintendent of Police, Srinagar, on the allegation that the detenu was involved in FIR No. 48/2023 under Section 8/21-22 of NDPS Act, registered in Police Station Bemina. It was observed that the detenu has become an active member of the drug mafia and is determined to ruin the lives of the younger generation by peddling drugs to them. Therefore, to prevent from further committing any offence under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, the detenu was detained

under the Public Safety Act.

3. The order of detention has been assailed by the detenue on the grounds that: -

a. the detenue has been shown to be involved in FIR No. 48/2023 under Section 8/21-22 NDPS Act, but the detenue was already granted bail in the same and the detaining authority while passing order of detention has not noticed the same.

b. the order of detention is without any application of mind.

c. the detaining authority has not prepared grounds of detention itself and it is in fact a copy of the dossier, thus, reflects non-application of mind. The detaining authority has not arrived at the subjective satisfaction itself while passing the order of detention. All the material relied upon by the detaining authority has not been furnished to the detenue. The representation submitted by the detenue has also not been considered by the detaining authority. The detenue has not been detained in accordance with the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, as such, the order is bad in law and required to be rejected.

4. The respondents have filed their counter affidavit and submitted that the activities of detenue in indulging in narcotics are highly prejudicial and causing adverse effects of drug abuse in the society and his remaining at large was a great risk, therefore, the detenue was ordered to be detained under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

5. The impugned order has been passed only after detaining authority was satisfied with the activities of the detenue were prejudicial to the health and welfare of the masses. The Detaining Authority had complied with all the statutory requirement and constitutional guarantees as provided under the said Act

6. Heard learned counsel for the parties and perused the record.

7. The grounds of detention reveal that the detenue was involved in FIR No. 48/2023 under Section 8/21-22 NDPS Act. The detaining authority has arrived at its satisfaction that the reason to detain the detenue as his remaining at large would be prejudicial to the general public at large. However, the detaining authority while passing the order of detention has not noticed the fact that the detenue was granted bail in FIR No. 48/2023 on 09.06.2023. This important fact has not been noticed by the detaining authority while passing the order of detention and reflects non-application of mind while passing order of detention. This also reflects that the detaining authority has not meticulously examined the material record available before him while passing the order of detention and which rendered same unsustainable.

8. Similar issue has been dealt by the Hon'ble Apex Court in case of "Anant Sakharam Raut Vs. State of Maharashtra and another" reported in AIR 1987 SC

137, and has held as under: -

"...We hold that there was clear non-application of mind on the part of detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith."

9. It is next submitted by the respondents that the detenu has not been provided all the material relied upon by the detaining authority while passing the order of detention.

10. Perusal of the receipt of the grounds of detention and other relevant record reveals that the detenu was provided copy of the detention order (01 leaf), dossier of detention (nil), notice of detention (01 leaf), grounds of detention (02 leaves), copies of FIR, Statements of Witnesses and other related relevant documents (08 leaves) (total 12 leaves). Thus, the detenu has not been provided with the dossier of detention which has resulted in infraction of important right and has vitiated the detention as held in "Sophia Ghulam Mohd. Bham V. State of Maharashtra and others", AIR 1999 SC 3051:

"... The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language....."

11. Reliance is also placed on Thahira Haris etc. etc. Vs. Government of Karnataka and others, reported as AIR 2009 Supreme Court 2184, has held as under:

"27. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detenu becomes illegal and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention".

12. The failure on the part of the Detaining Authority to supply the material

renders the detention order illegal and unsustainable in law.

13. In view of the aforesaid discussion, there is no need to advert to other grounds raised by the detenu in this petition. This petition is allowed and impugned detention order No. DIVCOM-"K"/123/2023 dated 31.07.2023 passed by the Divisional Commissioner, Kashmir, in terms whereof, the detenu-Sheikh Murtaza alias Raja Mukka, S/o Ghulam Ahmad Sheikh, R/o Gurgari Mohalla Zainakdal, was detained, is quashed. Accordingly, the respondents are directed to release the detenu from the custody forthwith, if he is not required in any other case.

14. Detention record be returned to learned counsel for the respondents by the Registry forthwith.