

Sr.
No.102

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

HCP No.77/2023

Reserved on: 06.05.2024

Pronounced on: 10.05.2024

Rafaqat Ali, Age 35

S/o Mohd. Shafi

R/o Near Sai Baba Mandir, Ward No.12,

Devika Udhampur

...Petitioner(s)

Through :- Mr. M. A. Bhat, Advocate.

V/s

1. Union Territory of J&K through
Principal Secretary, Home Department,
Civil Secretariat, Jammu/Srinagar.

2. The Divisional Commissioner, Jammu.

3. The Senior Superintendent of Police,
Udhampur.

4. The Superintendent, District Jail,
Udhampur.

....Respondent (s)

Through :- Ms Chetna Manhas, Advocate vice
Mr. Amit Gupta, AAG.

Coram:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner, Rafaqat Ali S/o Mohd. Shafi R/o Near Sai Baba Mandir, Ward No.12 Devika Udhampur (hereinafter referred to as 'detenue'), has challenged Order No.PITNDPS 37 of 2023 dated 14.09.2023 issued by Divisional Commissioner Jammu (hereinafter referred to as 'detaining authority') whereby he has been taken into preventive custody in terms of Section 3 of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as 'PITNDPS Act').

2. It has been contended in the petition that the detenue/petitioner has been taken into preventive custody on the basis of an order that has been passed without application of mind inasmuch as the same is a mere reproduction of dossier. It has been further contended that grounds of detention have been formulated on the basis of FIRs regarding which petitioner is facing trial and the detaining authority instead of taking resort to the normal criminal law has proceeded to pass the impugned order of detention, which is not legally permissible. It has also been contended that material forming the basis of grounds of detention has not been furnished to the detenue nor its translated version has been provided to him. Thus, according to the petitioner, statutory and constitutional safeguards available to him have been observed in breach.
3. The petition has been resisted by the respondents by filing a counter affidavit. In their counter affidavit, the respondents have submitted that the petitioner has been found repeatedly and continuously involved in trafficking of drugs, which poses a serious threat to the health and welfare of the people. It has been further submitted that the detaining authority has passed the impugned order of detention after applying its mind to the material produced before it and after recording its subjective satisfaction. It has also been submitted that the petitioner remained undeterred by the ordinary criminal law and despite facing trial in several cases, he did not stop his activities relating to commission of acts within the meaning of “illicit traffic” of drugs. This compelled the detaining authority to pass the impugned order of detention. It has been further submitted that the respondents have adhered to all the statutory and constitutional safeguards at the time of execution of impugned order of detention upon the petitioner. The respondents have produced the detention record to lend support to their contentions.

4. I have heard learned counsel for the parties and I have perused the record of the case as well as detention record produced by the respondents.
5. The main ground that has been urged by learned counsel for the petitioner for assailing the impugned order of detention is that the petitioner was already facing trial/investigation in all the four cases mention whereof is made in the grounds of detention, as such, there was no compelling circumstance for the detaining authority to pass the impugned order of detention. It has been contended that only in one case ‘commercial quantity’ of contraband drug was allegedly recovered from the possession of the petitioner whereas in all other three cases the quantity of contraband drug alleged to have been recovered from the petitioner does not fall within the category of ‘commercial quantity’, therefore, it cannot be stated that the petitioner is indulged in illicit traffic of drugs.
6. In the above context, it is to be noted that an order of preventive detention can be passed even during the period when the prosecution is pending against the detenu before the criminal Court. Therefore, merely because the petitioner is facing prosecution in all the four FIRs, which are mentioned in the grounds of detention, does not debar the detaining authority from passing the order of preventive detention against the petitioner. In this regard, it would be apt to refer to the following observations of the Supreme Court in the case of **Haradhan Saha Vs. State of W.B. (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.”

7. Again the Supreme Court in the case of **Naresh Kumar Goyal Vs. Union of India (2005) 8 SCC 276** has observed as under:-

“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 imperiling 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.”

8. From the foregoing analysis of law and subject, it is clear that merely because a person is undergoing trial in substantive offences, the detaining authority cannot be debarred from passing an order of preventive detention against him, if it is satisfied that such person is indulging in illicit traffic of drugs.
9. Adverting to the facts of the present case, the petitioner has been found involved in as many as four FIRs during the period of last five years and all these cases relate to possession of Heroin, which is a contraband substance. Therefore, there was enough material before the detaining authority to record its subjective satisfaction that despite the petitioner having been booked for substantive offences, he continues to indulge in illicit traffic of contraband substances. Thus, it cannot be stated that the detaining authority has not applied its mind to the material produced before it while passing the impugned order of detention or that there were no compelling circumstances for passing the impugned detention order.
10. The next ground that has been urged by learned counsel for the petitioner is that whole of the material forming basis of grounds of detention has not been

furnished to the detinue nor its translated version has been provided to him. In this regard, a perusal of the detention record produced by learned counsel for the respondents reveals that the detinue has been provided copies of warrant of detention, grounds of detention along with letter in English (07 leaves); dossier (04 leaves) and FIRs/ statements and other documents (100 leaves) total 111 leaves through the executing officer. The detinue has executed a receipt in this regard. Therefore, it cannot be stated that the petitioner has not been provided whole of the material that has been relied upon for formulating the grounds of detention. The detention record also contains an affidavit/undertaking executed by the Executing Officer PSI Manveer Singh, according to which, the petitioner has been briefed about the grounds of detention in the language which he understands. Therefore, the contention of the petitioner in this regard is also without any substance.

11. For the foregoing reasons, I do not find any merit in this petition. The same is **dismissed**, accordingly.
12. Detention record be returned to the concerned.

(Sanjay Dhar)
Judge

JAMMU
10.05.2024
Narinder

Whether the order is reportable? **Yes**