

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

**Reserved on 02.02.2023
Pronounced on 09.02.2023**

WP(Crl) No. 58/2022
CM No. 6230/2022

Tajinder Singh alias HappyAppellant(s)/Petitioner(s)

Through: Mr. K. S. Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate

Vs

Union Territory of J&K and others Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.AG

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner-Tajinder Singh *alias* Happy S/o. Mohinder Singh, Ward No. 4, Simbal Camp, Tehsil R. S. Pura, District, Jammu(hereinafter to referred as the detenu) has challenged order No. PITNDPS 05 of 2022 dated 27.07.2022 passed by the Divisional Commissioner, Jammu (hereinafter to be referred as the Detaining Authority), whereby he has been taken into preventive custody in terms of Section 3 of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 (hereinafter to be referred as the PITNDPS Act).
2. It has been contended in the petition that the detenu/petitioner has been taken into preventive custody on the basis of an order that has been passed without application of mind. It is further contended that perusal of the order would show that the same has been passed on the grounds which are alien to requirements of Section 3 of the PITNDPS Act as the impugned order of detention has been passed on the ground that the

activities of the petitioner pose a serious threat to the health and welfare of the people. It is also contended that the mandate of Section 3 of the PITNDPS Act is not fulfilled in the instant case, inasmuch as the impugned order of detention has been passed on the basis of only a single incident relating to recovery of few grams of heroin. It has also been contended that the petitioner has not been provided the translated version of the grounds of detention etc. which prevented him from making an effective representation against the order of detention. Thus, according to the petitioner, statutory and constitutional safeguards available to the petitioner 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 is a habitual drug peddler and smuggler who is indulging in illicit traffic of narcotic drugs and psychotropic substances. It has been contended that the detenu poses a serious threat to the lives of young generation as well as to the economy of the Union Territory. It has been submitted that the petitioner has been found involved in numerous offences and various FIRs have been registered against the petitioner in District Jammu. It has been submitted that the petitioner has been provided all the relevant record along with detention order and the grounds of detention, whereafter, the Executing Officer has made him to understand the grounds of detention in Hindi/Dogri, a language which is understood by the petitioner. It has also been contended that the subjective satisfaction arrived at by the Detaining Authority cannot be subjected to judicial review by this Court in exercise of writ

jurisdiction and that the petitioner instead of availing the alternative remedy of filing a representation before the Advisory Board, cannot maintain the instant writ petition.

4. I have heard learned counsel for the parties and perused the record of the case as well as the detention record produced by the respondents.
5. The primary ground that has been projected by the learned senior counsel appearing for the petitioner for assailing the impugned order of detention is that there has been non application of mind on the part of the Detaining Authority in passing the impugned order of detention. It has been contended that the Detaining Authority has recorded in the impugned order of detention that the activities of the petitioner pose a serious threat to the health and welfare of the people which is not a ground for resorting to preventive detention in terms of Section 3 of the PITNDPS Act.
6. A perusal of the provisions contained in Section 3 of the PITNDPS Act would show that a Detaining Authority, if satisfied with respect to any person that with a view to prevent him from engaging in illicit traffic in narcotics drugs and psychotropic substances, it is necessary so to do, can make an order directing the said person be detained, meaning thereby that order of preventive detention under section 3 of the PITNDPS Act can be passed on the ground of preventing a person from engaging in illicit traffic in narcotic drugs and psychotropic substances.
7. A perusal of the impugned order of detention shows that the Detaining Authority has observed that the petitioner is engaged in repeated cases of illicit traffic in narcotic drugs and psychotropic substances which

pose a serious threat to the health and welfare of the people. The order goes on to observe that with a view to prevent the petitioner from committing any of the acts within the meaning of illicit traffic and also against the general public especially the younger generation from the use and occupation of the drugs, it is necessary to detain him.

8. From the above, it is clear that the Detaining Authority has spelt out in the order of detention that activities of the petitioner pose a serious threat to the health and welfare of the people as he is engaged in repeated illicit traffic in narcotic drugs and psychotropic substances and with a view to prevent him from doing so, the order of detention has been passed. The Detaining Authority is, therefore, aware of the situation that the petitioner is indulging in illicit traffic in narcotic drugs and psychotropic substances and in order to prevent him from doing so, it is necessary to detain him. Merely, because the Detaining Authority has also observed that the activities of the petitioner pose a serious threat to the health and welfare of the people would not render the impugned order of detention illegal when it is clearly discernible from the contents of the impugned order of detention that the Detaining Authority has after recording subjective satisfaction that the petitioner is indulging in illicit traffic in narcotic drugs and psychotropic substances and that it is necessary to prevent him from doing so, passed impugned order of detention. Thus, it cannot be stated that the Detaining Authority has passed the impugned order of detention on a ground which is alien to the provisions contained in Section 3 of the PIT NDPS Act.

9. Next, it has been contended by the learned senior counsel appearing for the petitioner that most of the FIRs reference whereof is made in the grounds of detention relate to offences other than offences under NDPS Act and only two FIRs, i.e, FIR No. 76/2019 and FIR No. 62/2022 are related to offences under NDPS Act. On this ground, it has been urged that only on the basis of two instances, the impugned order of detention could not have been passed. It has also been contended that even in these two FIRs, the quantity of contraband substance recovered from the petitioner is only a few grams.
10. So far as the question whether only two incidents were sufficient for the Detaining Authority to initiate proceedings for preventive detention is concerned, it is to be noted that it is for the Detaining Authority to have subjective satisfaction about the apprehension of the petitioner indulging in illicit traffic in narcotic drugs and psychotropic substances. Even one incident may be sufficient to satisfy the Detaining Authority. It all depends upon the nature of the incident. In the instant case, the Detaining Authority was fully satisfied that there was apprehension that the petitioner would indulge in illicit traffic in narcotic drugs and psychotropic substances, in case he was allowed to remain free. The sufficiency of the material or the degree of probative criteria for satisfaction for the detention is the domain of the Detaining Authority. This Court cannot sit in appeal or exercise its powers of judicial review in this regard. The contention of the learned counsel for the petitioner is therefore, without any substance.

11. It has been contended that most of the incidents reference whereof is made in the grounds of detention are stale in nature and on the basis of these stale incidents which have no live and proximate link to the requirement of placing the petitioner in preventive custody, the impugned order of detention could not have been passed. The ground urged by the petitioner, as it appears, is without any merit for the reason that one of the incidents relates to June, 2022, when contraband drugs were recovered from the possession of the petitioner and FIR No. 62/2022 was registered against him with Police Station, Miran Sahib. The impugned order of detention has been passed on 27.07.2022 and as such, the latest incident mentioned in the grounds of detention has live and proximate link to the necessity of passing the impugned order of detention.
12. The reference of earlier incidents made by the Detaining Authority in the grounds of detention is only to show that the petitioner had the propensity and tendency to indulge in criminal activities as also activities related to drug trafficking. Merely because reference has been made to these past incidents, it cannot be stated that the petitioner has been subjected to preventive custody on the basis of stale incidents.
13. It has also been contended by the learned senior counsel for the petitioner that the translated version of the material relied upon for formulating the grounds of detention has not been supplied to the petitioner which has hampered him from making an effective representation against the impugned order of detention. It has been

contended that the petitioner is a semiliterate person as such, he could not understand the technical language used in the grounds of detention.

14. In the above context, a perusal of the record of detention shows that the petitioner has been provided all the materials including the detention order, grounds of detention, police dossier, FIRs and the material collected during investigation. The detention record contains affidavit sworn in by the Executing Official, namely, PSI Mohd. Altaf, Police Station, Miran Sahib in which he has clearly stated that the petitioner was explained the grounds of detention in the language which he understands fully and the report of execution reveals that the petitioner has been made to understand the grounds of detention in Hindi/Dogri languages which is fully understood by him. In the face of this affidavit of the Executing Official, it cannot be stated that the petitioner was not made aware about the grounds of detention in the language he understands.
15. Viewed in the above context, I do not find any ground to interfere with the impugned order of detention. The writ petition lacks merit and is dismissed as such.
16. Record of detention be returned to the learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

Jammu
09.02.2023
Rakesh

Whether the order is speaking: Yes
Whether the order is reportable: Yes