

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

WP(Crl) No. 19/2023

Reserved on: 17.08.2023
Pronounced on: 29.08.2023

Happy Singh, Age 28 years S/o Sh. Baldev Singh
R/o Mehtabgarh, Kapurthala, Punjab

....Appellant(s)/Petitioner(s)

Through :- Mr. Ashish Sharma, Advocate.

v.

1. Union of India Th. Ministry of
Finance, Department of Revenue (PITNDPS
Unit), Room No. 202, 2nd Floor, Jeevan Tara
Building, Parliament Street New Delhi.

2. Joint Secretary, Government of India,
Room No. 202, 2nd Floor, Jeevan Tara
Building, Parliament Street New Delhi.

3. Narcotics Control Bureau, Through
Superintendent, 42-B/B, 2nd Extension,
Gandhi nagar, Jammu

4. Superintendent, District Jail,
Amphalla, Jammu

....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI.

Coram:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Prayer

1. The petitioner (hereinafter to be referred as detenu), through the medium of the instant writ petition, is seeking quashment of impugned detention order No. U-11011/42/2022-PITNDPS dated 27.12.2022 passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of

Revenue-respondent No. 2 herein under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 (for short, the Act of 1988) with a further direction to the respondents to release him forthwith.

Arguments on behalf of petitioner

2. Learned counsel appearing for the detinue has confined his arguments to the extent that detaining authority has failed to justify as to how ordinary law of the land is not sufficient to deal and deter the detinue from indulging in activities and that the detinue had not been provided all the relevant material including copy of FIR, dossier and other material referred and considered by the detaining authority, therefore, he was not able to make effective and purposeful representation against his detention.

3. Mr. Ashish Sharma, learned counsel appearing for the petitioner has vehemently argued that such failure on the part of the respondents has infringed his constitutional right guaranteed under Article 22(5) of the Constitution of India. He further argues that the petitioner has been wrongly implicated in the false and frivolous case on the basis of which the impugned order has been passed under the Act of 1988. It is specific case of the detinue that the order impugned has been issued without due application of mind as he has not committed any offence nor he is involved in the commission of any offence which would pose serious threat to the health and welfare of the people.

4. Learned counsel for the detinue further submits that there were no compelling reasons for the detaining authority to pass the order impugned against the detinue as he was behind the bars for the last more than ten months and lodged in District Jail, Amphalla and in absence of any compelling reason as to why the detinue could not be deterred from indulging in subversive activities

by resorting to normal law. He further urges that since the petitioner was already in custody with respect to the criminal cases registered against him in two FIRs, therefore, in absence of recording subjective satisfaction that the detenu is likely to be released on bail, the detention order has been passed without arriving at the subjective satisfaction that the detenu is already in the custody with respect to the criminal case. Thus, according to learned counsel for the detenu, the detention order has been passed when detenu was already in jail and his custody in jail for the said offence has been converted into custody under the detention laws by virtue of the impugned detention order. Lastly, learned counsel for the detenu has argued that the impugned detention order is bad in the eyes of law as the same is a blanket order of detention without specifying the period of detention.

Arguments on behalf of respondents

5. *Per contra*, Mr. Vishal Sharma, learned DSGI appearing on behalf of the respondents has vehemently argued that the impugned detention order has been passed by the detaining authority i.e. the Joint Secretary to Government of India under Section 3(1) of the Act of 1988 after arriving at subjective satisfaction that the detenu is a threat to the health and welfare of the nation and his activities are continuous in nature and it has been established beyond any shadow of doubt that there was a high propensity and inclusion of the detenu to engage in such pre-judicial activities, if enlarged on bail. He further argued that the detenu has not come to this Court with clean hands and has suppressed the material facts that the detenu was duly heard by the Central Advisory Board in person in a special sitting which was held on 11.02.2023 and was given due opportunity of submitting representation within fifteen days, if any, through his

counsel. This aspect of the matter has been deliberately concealed by the detinue, as such, the petition filed by him is required to be dismissed in *limini*.

6. Learned counsel for the respondents, with a view to substantiate the grounds which led to the passing of the detention order, has projected that the detinue was actively involved in Case Crime No. 03/2022 registered at Police Station, Jhajjar Kotli, J&K, State (FIR No. 181/2021) wherein 52.424 kgs of heroin was seized from a lorry manned by one Bharat Kumar, who in his voluntary statements revealed the conscious involvement of the detinue in trafficking of the seized contraband. He further submits that it is not so, even the detinue was involved in another case registered at Police Station, Kapurthala (FIR No. 207/2021) wherein he was caught in possession of 100 gms of Heroin and, accordingly, the detinue was arrested and lodged in Kapurthala jail. Subsequently, the case of the detinue was referred to the Central Advisory Board under Section 9(b) of the Act of 1988.

7. Learned DSGI categorically states that the Central Advisory Board in its meeting, which was held on 11.02.2023 in Jammu comprising of a sitting Chief Justice of the High Court and two sitting Judges of the High Court, in the instant case vide communication dated 02.02.2023 permitted the detinue to engage the services of counsel or a friend at the time of hearing and in case the detinue desires to represent his case in person, he can represent himself before the Advisory Board. However, to the contrary, the detinue did not engage either the services of counsel and rather chose to appear in person and he was produced before the Advisory Board wherein he was heard in length before the Advisory Board and after the conclusion of the hearing, the Advisory Board provided the detinue further opportunity of fifteen days to forward his representation, if any, through his counsel but the detinue had not availed the said opportunity.

8. The specific case which has been advanced by learned counsel for the respondents is that the detaining authority was fully aware/conscious of the fact that the detenu is in judicial custody in the instant case and he has already filed bail application before the learned Principal Sessions Judge, Jammu which was pending disposal and keeping in view the conscious involvement of the detenu in illegal trafficking of drugs and psychotropic substances on repeated occasions which was detrimental to the society at large, the detaining authority arrived at the subjective satisfaction that there is high propensity that the detenu will indulge in such activities in future, if released on bail, the order of detention came to be passed. Thus, as per the stand of the respondents, the filing of the bail application also weighed with the detaining authority to arrive at the subjective satisfaction for passing the order of detention. Lastly, Mr. Sharma, learned DSGI submits that pursuant to the opinion of the Central Advisory Board, the fresh detention order has been issued wherein his detention has been confirmed and the said order has not been called in question by the detenu.

9. Learned counsel submits that impugned detention order has been passed by the detaining authority only after attaining satisfaction of the facts and circumstances of the case supported by the record/material strictly in accordance with the law/rules in vogue and detaining authority derived satisfaction that preventive detention of the detenu was necessary.

Legal Analysis

10. Having heard rival contention of the parties, I have given my thoughtful consideration to the facts attending the present case as also the law governing the field.

11. The present case relates to illicit trafficking of narcotic drugs. It is discernible from the grounds of detention that the detenu was involved in

trafficking of amount of 52.424 Kgs of heroin and was also caught in possession of 100 grams of heroin. It is also mentioned in the grounds of detention that the detenu was actively involved in trafficking of narcotic drugs and psychotropic substances and as such his repeated involvement in the same is detrimental to the society. The grounds of detention further reveal that the offences committed by the detenu are interlinked and continuous in character and are of such nature that these affect security and health of the nation. The drug problem is a serious threat to public health, safety and well-being of humanity. Even globally, the society is facing serious consequences of drug abuse and it undermines the socio-economic and political stability of a nation. Besides, it distorts health and fabric of society. Drug trafficking along with drug abuse, especially by younger generation has continued its significant toll on valuable human lives and productive years of many persons around the globe. With the growth and development of world economy, drug traffickers are also seamlessly trafficking various types of drugs from one corner to other ensuring availability of contrabands for vulnerable segments of society who fall into the trap of drug peddlers and traffickers.

12. The Directive Principles, which are part of our Constitution, lay down that the State shall make endeavors to bring about the prohibition of substances injurious to health except for medicinal and scientific purposes. In recent years, India has been facing a problem of transit traffic in illicit drugs. The spillover from such traffic has caused tribulations of abuse and addiction. This trend has created an illicit demand for drugs within the country. The illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and activities of persons engaged in such illicit traffic have a deleterious effect on the national economy as well.

13. The object of the law of preventive detention is not punitive, but is only preventive. In preventive detention, no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability. The essential concept of preventive detention is that detention of a person is not to punish him for something he has done, but to prevent him from doing it. Its basis is the satisfaction of the Executive of a reasonable probability of detinue acting in a manner similar to his past acts, and preventing him by detention from so doing.

14. Preventive detention, an anticipatory measure, is resorted to when the executive is convinced that such detention is necessary to prevent a person detained from acting in a manner prejudicial to certain objects which are specified by the law. In preventive detention, no offence is proved and justification of such detention is suspicion or reasonable probability. The order of detention is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of surrounding circumstances. The power of preventive detention is exercised in reasonable anticipation. An order of preventive detention may be made before or during prosecution. 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.

15. A bare perusal of record of detention clearly unfolds that the detinue has been indicted in case FIR No. 181/2020 under Section 8/21/22/25 and 29 of NDPS Act, 1985 registered at Police Station, Jhajjar Kotli, Jammu and FIR No. 207 of 2021 under Section 21(b) of NDPS Act, 1985 registered at Police Station, Subhanpur, Punjab wherein the criminal activities of the detinue have been clearly specified. As the detinue is a habitual drug peddler involved in the number of cases in NDPS Act, thus, this Court is of the view that through the

conscious involvement in illegal drug trafficking and psychotropic substances, the detenu has engaged himself in the prejudicial activities of illicit trafficking of narcotics and psychotropic substances which poses a serious threat to the health and welfare of the people of District Jammu and other adjoining area.

16. The Hon'ble Supreme Court in case titled *Sasti @ Satish Chowdhary Vs. State of West Bengal*; (1972) 3 SCC 826 held as under:-

“It is always open to the detaining authority to pass an order for the detention of a person if the grounds of detention are germane to the object for which a detention order can legally be made. The fact that the particular act of the detenu which provides the reason for the making of the detention order constitutes an offence under the Indian Penal Code would not prevent the detaining authority from passing the order for detention instead of proceeding against him in a court of law. The detaining authority might well feel that though there was-not sufficient evidence admissible under the Indian Evidence Act for securing a conviction, the activities of; the person ordered to be detained were of such a nature as to justify the order of detention. There would. be no legal bar to the making of detention order in such a case. It would, however, be imperative that the incident which gives rise to the apprehension in the mind of the detaining authority and induces that authority to pass the order for detention should be relevant and germane to, the object for which a detention order can be, made under the Act. Even in cases where a person has been actually prosecuted in a court of law in respect of an incident and has been discharged by the trying magistrate, a valid order of his detention can be passed against him in connection with that very incident.”

17. Detention record produced by the respondents reveals that detention order was passed on 27.12.2022 and the same was executed on 30.12.2023 i.e. within three days from the date of passing of detention order. Record further reveals that notice of the detention has been given to the detenu and contents of detention warrant and grounds of detention have been read over to the detenu in Punjabi/English language which he fully understood and signature of the detenu has been obtained, as an acknowledgement of this fact. Therefore, it is evident

from the detention record that the detention order in the present case has been passed by the detaining authority after following the due procedure prescribed under law, as such, the impugned order is not to be afflicted with any legal malady. Moreover, respondents have placed on record receipt of documents which were supplied to the detenu. From the record, it is crystal clear that the detenu has been duly informed that he can make representation to the Government as well as to the detaining authority against his detention. The argument of learned counsel for the detenu, on this count, is legally untenable and deserves to be rejected.

18. The contention of the learned counsel for the detenu that the detenu has not been supplied all the material on the basis which he could make an effective representation to the detaining authority is denied by the respondents by stating that the detenu has not come to the Court with clean hands and has suppressed the material fact that he was duly heard before the Central Advisory Board in person in a meeting held on 11.02.2023. It is evident from the record that the matter of the detenu was referred to the Central Advisory Board under Section 9(b) of the PITNDPS Act, 1988. The Central Advisory Board held a special sitting at Convention Centre, J&K Government, Canal Road, Jammu on 11.02.2023 for the case of the detenu. A bare perusal of Communication dated 02.02.2023 reveals that detenu was permitted to engage the services of Counsel or a friend at the time of hearing and in case the detenu desires to represent his case in person, he can represent himself before the Advisory Board. However, detenu did not engage the services of a counsel and chose to appear in person and he was produced before the Advisory Board where he was heard at length by the Advisory Board. After the conclusion of the hearing, the Advisory Board provided the detenu an opportunity of fifteen days to forward his representation,

if any, through his counsel and this fact of the matter is substantiated by communication dated 13.02.2023 which is duly signed by detenu. However, detenu did not avail the said opportunity. Thereafter, considering all the facts and circumstances of the case, the Central Advisory Board tendered its opinion that there exist sufficient grounds for the detention of the detenu. Thus, on the basis of the opinion of the Central Advisory Board Delhi, the Government of India has confirmed the detention of the detenu for a period of one year from the date of detention vide order dated 16.03.2023.

19. It is pertinent to mention that order of detention can be validly passed against a person in custody and for that purpose, it is necessary that the grounds of detention must show that the detaining authority was aware of the fact that the detenu was already in custody. The detaining authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities.

20. After going through the grounds of detention, it is clear that the detaining authority was fully aware/conscious of the fact that the petition was in judicial custody in the instant case and that the petitioner has already filed bail application before the learned Principal Sessions Judge, Jammu which was pending disposal and keeping in view the conscious involvement of the petitioner in illegal trafficking of drugs and psychotropic substances on repeated occasions which was detrimental to the society at large, the detaining authority arrived at the subjective satisfaction that there is high propensity that the detenu will indulge in such activities in future if released on bail, the order of detention came to be passed. Thus, the filing of the bail application compelled the

detaining authority to arrive at the subjective satisfaction with regard to the passing the order of detention against the detenu.

21. The law on this point is enunciated in **Kamarunnisa v. Union of India and Another** reported as (1991) 1 SCC 128 wherein the Supreme Court has held as under:-

“13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in the case of Ramesh Yadav (1985) 4 SCC 232 was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention.”

22. Whether a person in jail can be detained under the detention law has been the subject matter for consideration before Hon’ble the Supreme Court time and again. In **Huidrom Konungjao Singh v. State of Manipur and Others** reported as (2012) 7 SCC 181, Hon’ble the Supreme Court referred to earlier decisions including **Dharmendra Suganchand Chelawat v. Union of India** reported as (1990) 1 SCC 746 and reiterated that if the detaining authority is satisfied that taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in

prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

23. Similar view has been expressed by Hon'ble Supreme Court in **Veeramani v. State of T.N.** reported as (1994) 2 SCC 337, wherein in para (6) it has been held as under:-

“6. From the catena of decisions of this Court it is clear that even in the case of a person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of the reliable material that there is a possibility of his being released on bail and that on being so released, the detenu would in all probabilities indulge in prejudicial activities and if the authority passes an order after recording his satisfaction the same cannot be struck down.”

24. Identical view has been expressed by Hon'ble the Supreme Court in Union of India Vs. Dimple Happy Dhakad reported as (2019) 20 SCC 609 where in it has been observed as under:-

“In the light of the well settled principles, we have to see, in the present case, whether there was awareness in the mind of the detaining authority that detenu is in custody and he had reason to believe that detenu is likely to be released on bail and if so released, he would continue to indulge in prejudicial activities. In the present case, the detention orders dated 17.05.2019 record the awareness of the detaining authority:-

- (i) *that the detenu is in custody;*
- (ii) *(ii) that the bail application filed by the detenues have been rejected by the Court.*

Of course, in the detention orders, the detaining authority has not specifically recorded that the “detenu is likely to be released”. It cannot be said that the detaining authority has not applied its mind merely on the ground that in the detention orders, it is not expressly stated as to the “detenu’s likelihood of being released on bail” and “if so released, he is likely to indulge in the same prejudicial activities”. But the detaining authority has clearly recorded the antecedent of the detenues and its satisfaction that detenues Happy Dhakad and Nisar Aliyar have the high propensity to commit such offences in future.”

25. It is settled proposition of law that this Court while exercising jurisdiction under Article 226 of the Constitution has a limited scope to scrutinize whether detention order has been passed on the material placed before it, and it cannot go further and examine the sufficiency of material.

26. Hon'ble the Supreme Court way back in the year 1951, in the case of **The State of Bombay v. Atma Ram Shridhar Vaidya**, reported as **AIR 1951 SC 157**, while looking into the scope subjective satisfaction arrived at by the detaining authority has held that the same is extremely limited and that the Court, while examining the material, which is made basis of subjective satisfaction of detaining authority, would not act as a court of appeal and find fault with satisfaction on the ground that on the basis of the material before detaining authority, another view was possible. Such being the scope of enquiry in this field and the contention of counsel for petitioner, therefore, cannot be accepted.

27. As is evident from the detention record, the material has been supplied to detinue and all this material was before detaining authority when it arrived at subjective satisfaction that the activities of the detinue are such, which would entail the preventive detention under the Act. In the present case, the Detaining Authority has applied its mind by going through all the material, past conduct of the detinue against whom two FIRs stand registered and accordingly, arrived at subjective satisfaction that the criminal activities of the detinue were prejudicial to the interest of the State and issued the order of detention, which cannot be faulted.

28. This Court is conscious of the fact that the Constitution and the Supreme Court are very zealous of upholding the personal liberty of an individual. But the

liberty of an individual has to be subordinated within reasonable bounds to the good of the people. Order of detention is clearly a preventive measure and devised to afford protection to the society. When the preventive detention is aimed to protect the safety and security of the nation, balance has to be struck between liberty of an individual and the needs of the society. Observing that the object of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing so. In **Naresh Kumar Goyal v. Union of India and others** reported as (2005) 8 SCC 276, it was held as under:-

“8. 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 antisocial 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.....”

29. Considering the scope of preventive detention and observing that it is aimed to protect the safety and interest of the society, in **State of Maharashtra and others v. Bhaurao Punjabrao Gawande** reported as (2008) 3 SCC 613, it was held as under:-

“36. Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. The framers of the Constitution were conscious of the practical need of preventive detention with a view to striking a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on the one hand and security and safety of the country and interest of the society on the other hand. Security of State, maintenance of public order and services essential to the community, prevention of smuggling and black marketing activities, etc.

demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life.

37. In considering and interpreting preventive detention laws, courts ought to show greatest concern and solitude in upholding and safeguarding the fundamental right of liberty of the citizen, however, without forgetting the historical background in which the necessity—an unhappy necessity—was felt by the makers of the Constitution in incorporating provisions of preventive detention in the Constitution itself. While no doubt it is the duty of the court to safeguard against any encroachment on the life and liberty of individuals, at the same time the authorities who have the responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification (vide A.K. Roy v. Union of India (1982) 1 SCC 271, Bhut Nath Mete v. State of W.B. (1974) 1 SCC 645, State of W.B. v. Ashok Dey (1972) 1 SCC 199 and ADM v. Shivakant Shukla (1976) 2 SCC 521).” [underlining added].”

30. The Court must be conscious that the satisfaction of the detaining authority is “subjective” in nature and the Court cannot substitute its opinion for the subjective satisfaction of the detaining authority and interfere with the order of detention. It does not mean that the subjective satisfaction of the detaining authority is immune from judicial reviewability. By various decisions, the Supreme Court has carved out areas within which the validity of subjective satisfaction can be tested. In the present case, the detenu was involved in trafficking of huge amount of heroine and was also caught in possession of the same. The detaining authority recorded finding that this has serious impact on the economy of the nation and is also satisfied that the detenu has propensity to indulge in the same act of smuggling and passed the order of preventive detention, which is a preventive measure. Based on the documents and the materials placed before the detaining authority and considering the individual role of the detenu, the detaining authority satisfied itself as to the detenu continued propensity and his inclination to indulge in acts of prejudicial

activities of illicit traffic of narcotics and psychotropic substances which poses threat to the health and welfare to the citizens of this country. The offences committed by the detinue are so interlinked and continues in character and are of such nature that these affect security and health of the nation.

Conclusion

31. Admittedly, detention order has been passed by the detaining authority on 27.12.2022 and the same was executed on 30.12.2023 i.e. within three days from the date of passing of detention order. The notice of the detention has been given to the detinue and contents of detention warrant as well as grounds of detention have been read over to the detinue in Punjabi/English language which he fully understood and in lieu thereof signature of the detinue has been obtained, therefore, it is evident from the detention record that the detention order in the present case has been passed by the detaining authority after following the due procedure prescribed under law, as such the impugned order is not to be afflicted with any legal malady. Moreso, the Central Advisory Board in its meeting held on 11.02.2023 vide communication dated 02.02.2023 also permitted the detinue to engage the services of counsel or a friend at the time of hearing and in case the detinue desires to represent his case in person, he can represent himself before the Advisory Board but on the contrary the detinue did not engage either the services of counsel and rather chose to appear in person before the Advisory Board, wherein, he was heard and after the conclusion of the hearing, Advisory Board provided the detinue further opportunity of fifteen days to forward his representation, if any, through his counsel but the detinue had not availed the said opportunity. In the aforesaid backdrop, the detention order passed by the detaining authority cannot be faulted with.

32. Having regard to what has been observed and discussed hereinabove, the present petition fails and is, as such dismissed. The impugned order of detention passed by respondent No.2 is, accordingly, upheld.

33. The detention record, if any, be returned.

(Wasim Sadiq Nargal)
Judge

Jammu:
29.08.2023
Neha-1

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|-------------------------------------|-----|
| Whether the judgment is reportable? | Yes |
| Whether the judgment is speaking? | Yes |

