

HIGH COURT OF JAMMU & KASHMIR AND LADAKH**AT SRINAGAR****WP(CrI) No. 01/2022***Reserved on 04.08.2022.**Pronounced on 31.08.2022.***Manzoor Ahmad Lone.**

...Petitioner/Appellant(s)

Through: Mr. Sheikh Mohammad Saleem, Advocate

Vs

UT of J&K & Anr.

...Respondent(s)

Through: Mr. Sajad Ashraf, Government Advocate.

CORAM:**HON'BLE Ms JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE****JUDGMENT**

1. *Manzoor Ahmad Lone son of Abdul Jabbar Lone* resident of Darpora, Tehsil Lalpora (for short "*detenu*") has been, vide order No. DIVCOM-"K"/178/2021 dated 23rd December, 2021, issued by Divisional Commissioner, Kashmir – respondent no.2 herein (for brevity "*Detaining Authority*") placed under detention in terms of Section (3) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (*for short NDPS Act*), and lodged in Central Jail Kote Bhalwal, Jammu. It is this order that has been assailed in instant petition.
2. The case set up in the petition is that the Detaining Authority has passed the detention order on the basis of grounds of dossier, prepared by the SSP Kupwara. It is urged that the detenu has been falsely implicated in case FIR No's. 49/2012 under Section 8/20 NDPS Act and 56/2019 under Section 8/20 NDPS Act. In both the FIR's the detenu was bailed out by the competent court, however,

after a gap of about two years and six months, detenué has been detained in terms of the impugned detention order on the basis of the material/dossier supplied by SSP Kupwara to the Detaining Authority. That there is no material, evidence or document against the detenué and it is not known, as to how and on what material the Detaining Authority has attained satisfaction to pass the detention order. It is further stated that no material has been furnished to the detenué so as to enable him to make an effective representation. Therefore, the Constitutional rights, guaranteed to the detenué stand infringed and for that reason also the detention of the detenué is legally bad and liable to be set aside.

3. Learned counsel for respondents in their counter affidavit have resisted the petition on the ground that detention order has been passed in exercise of powers vested with Detaining Authority in terms of section 3 of NDPS Act, with a view to prevent the detenué from indulging in illegal trade of illicit traffic in narcotic drugs and psychotropic substance. It is insisted that drug trafficking poses a huge threat to the society for the reason that proceeds, thereof can be utilized for financing the other criminal activities and that detenué has made the life of peace loving citizens of Lalpora, Kupwara miserable. The detenué remained a notorious trafficker of contraband substance like Cannabis and is involved in distribution of the same among the youth of the area. The detenué is involved case FIR No's. 49/2012 and 56/2019 under Section 8/20 NDPS Act of Police Station Lalpora, Kupwara and the contraband seized from the possession of the detenué in connection with the aforesaid FIR's were sent to Forensic Science

Laboratory, Srinagar (FSL), and the expert has opined that “Charas was detected in the Exhibit” It is further stated that consignment seized from detenu’s possession shows that detenu is fully involved in illegal trade with conscious mind, working in an organized manner, is a threat for sustaining moral values of the society, and to the welfare of young generation in the union territory of Jammu and Kashmir. It is further stated that the detention order does not suffer from any malice or legal infirmity, inasmuch as, the safeguards provided under the Constitution have been followed while ordering the detention of the detenu, as such, challenge thrown to the impugned order of detention is not sustainable. The basis of detention is the satisfaction of the Executive of a reasonable probability of likelihood of detenu acting in a manner similar to his past acts and preventing him by detention from doing the same.

4. I have heard learned counsel for parties and considered the matter. I have gone through the detention record made available by Mr. Sajad Ashraf, learned Government Advocate.
5. Learned counsel for petitioner, to bolster the case set up, has stated that detenu is an elected Sarpanch of village Darpora and his wife works as a shopkeeper to earn the livelihood from the genuine source of income to feed the family comprising of wife, ten minor children and old aged parents of the detenu. His next submission is that detenu was required to be supplied all documents, statements and other material relied upon in the grounds of detention, so as to enable him to make an effective and meaningful representation against his detention and failure to supply such material/documents, amounts to violation of Article 22(5) of the Constitution of India. To cement his submissions, learned counsel

places reliance on decision rendered in *(AIR 1974)-1161, Biram Chand v. State of Uttar Pradesh & Ors; 2016-2 JKJ 476, Ghulam Hassan Teeli v. State of JK & Ors.; 2011- 4 JKJ 302 Shabir Ahmad Wani v. State of J&K & Ors; and 2012 CrIj 718; 211-4 JKJ 299 Shiraj Ahmad Lone v. State.*

6. Learned counsel for respondents states that detention order has been passed on subjective satisfaction by Detaining Authority, therefore, petition is liable to be dismissed.
7. The record reveals that on 26.04.2012, police party of Police Station, Lalpora, Lolab received an information from Incharge Police Component Lalpora that the detenué has hidden some narcotics in his residential house. Accordingly, police party along with Executive Magistrate reached the house and recovered Charas like substance. Also on 07.08.2017 during Naka checking at Astaan Mohalla, Lalpora the detenué was caught with a polythene bag containing 400 gm of Charas for which FIR No's 49 and 56 of the year 2012 and 2019 respectively, under Section 8/20 NDPS Act was registered against the detenué. The record further reveals that despite arrest of the detenué in the aforesaid criminal cases, he has continued to do the same acts. The confidential and credible sources have repeatedly confirmed that the detenué has made drug a sole profession, which testifies his criminal nature. The consignments seized from the possession of detenué shows that he is fully involved in the illegal trade with conscious mind, posing a serious threat to the economic stability of the country and at the same time detrimental for the health, morals and culture of the society.
8. It may not be out of place to mention here that the Supreme Court, in several decisions, has held that even one prejudicial act can be

treated as sufficient for forming requisite satisfaction for detaining a person. 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 and an order of preventive detention is also not a bar to prosecution. Discharge or acquittal of a person will not preclude detaining authority from issuing a detention order. In this regard the Constitution Bench of the Supreme Court in [*Haradhan Saha's & Anr. V. State of West Bengal & Other* ((1975) 3 SCC 198)], while considering various facets concerning preventive detention, has observed:

- 9 The Supreme Court in *Hardhan Saha v. State of W.B.*, (1975) 3 SCC 198, has succinctly pointed out difference between preventive and punitive detention in the following words:

“The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The, basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a

trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent.”

- 10 ***In Naresh Kumar Goyal v. Union of India, (2005) 8 SCC 276,***
the Court observed:

“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 imperilling the welfare of the country or the security of the nation or from disturbing the public tranquillity 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.”

- 11 Perusal of detention record reveals that detenué at the time of execution of detention was provided copy of the detention order, copy of the grounds of detention, dossier of detention and other relevant documents (66 Leaves). The detenué, as record would reveal, was also informed as regards making of representation against the detention order if he so desires, both to Detaining Authority and the Government. The grounds of detention have been read over to the detenué in the language he understands in presence of witnesses, whose signatures are affixed overleaf the detention

order. The grounds of detention are definite and free from any ambiguity. The detenu has been informed with sufficient clarity what actually weighed with the Detaining Authority to pass the detention order. The Detaining Authority has narrated facts and figures that made it to exercise its powers under Section 3 of NDPS Act, to record subjective satisfaction that detenu was required to be placed under preventive detention in order to prevent him from committing any of the acts within the meaning of illicit trafficking. The Detaining Authority has informed the detenu that he is an accused in aforementioned case, involving illegal trafficking of narcotic substances, which poses serious and huge threat to the society particularly health, wealth and welfare of the people especially young generation. The detenu, therefore cannot be heard saying that any of his Constitutional and Statutory rights have been violated by the detention order.

- 12 The Hon'ble Supreme Court in *Union of India and another versus Shrimati Chaya Ghoshal and another* (2004 (AIR) SCW 6999) has observed:

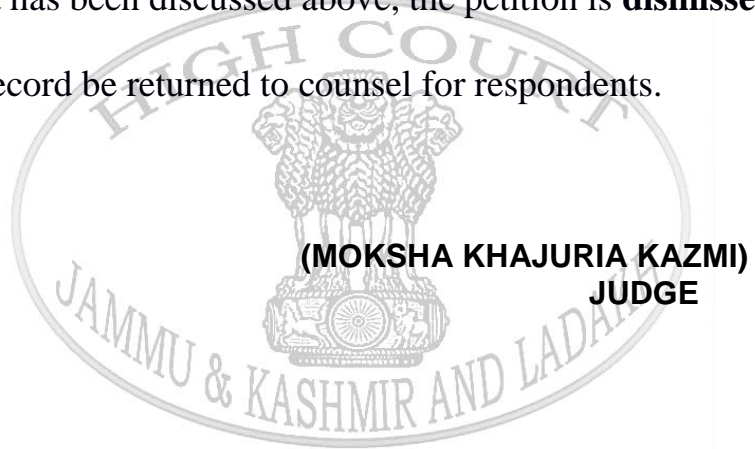
“So far as the finding of the High Court that there was only one incident is really a conclusion based on erroneous premises. It is not number of acts which determine the question as to whether detention is warranted. It is the impact of the act, the factual position as highlighted goes to show that the financial consequences were enormous and ran to crores of rupees, as alleged by the Detaining Authority. The High Court seems to have been swayed away that there was only one incident and none after release on bail. The approach was not certainly correct and the judgment on that score also is vulnerable. At the cost of repetition it may be said that it is not the number of acts which is material, it is the impact and effect of the act which is determinative. The High

Court's conclusions in this regard are therefore not sustainable.

13 What emerges from above is that it is not a number of acts that are to be determined for detention of an individual but it is the impact of the act(s) which is material and determinative. In the instant case the acts of detinue relates to drug trafficking, which has posed serious threat, apart from health and welfare of the people, to youth, most particularly unemployed youth, to indulge in such nefarious acts.

14 For all what has been discussed above, the petition is **dismissed**.

15 Detention record be returned to counsel for respondents.



Srinagar
August 31st, 2022.
"Abdul Rashid" PS

Whether the Judgment is reportable

Yes/No.