

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 66/2023

Reserved on: 28-03-2024

Pronounced on: 20.04.2024

Gulcharan Singh, Age 40 yrs.
S/o Late Sh. Romal Singh
R/O Raghunathpura Near PWD Guest House
Tehsil and District Udhampur.
A/p lodged at District Jail, Ambphalla.

...Petitioner(s)

Through:- Mr. Gagan Oswal, Advocate.

V/s

1. UT of J&K,
Through Commissioner Secretary
Department of Home,
Civil Secretariat, Srinagar/Jammu.
2. Divisional Commissioner, Jammu.
3. Senior Superintendent of Police,
Udhampur.
4. Superintendent of Jail,
District Jail, Ambphalla,
Jammu.

...Respondent(s)

Through:- Mr. Amit Gupta, AAG.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. Impugned in this petition, filed for issuance of a writ in the nature of habeas corpus, is an order of detention bearing No.PITNDPS-29 of 2023 dated 31.08.2023 [“impugned detention order”] passed by the

Divisional Commissioner, Jammu [“the Detaining Authority”] whereby the petitioner has been placed under detention with a view to preventing him from indulging in repeated “illicit trafficking” in narcotics and psychotropic substances.

2. The impugned order of detention has been passed by the Detaining Authority in the exercise of power vested in it under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 [“the PITNDPS Act”]. The detention of the petitioner is ordered primarily on the ground that he has been, over the time, consistently engaged in illicit traffic in narcotics drugs and psychotropic substances, in that, five FIRs i.e. (i) FIR No.96/2016 under Section 8/21/62 NDPS Act, (ii) FIR No.355/2019 under Section 8/21/22 NDPS Act, (iii) FIR No.39/2020 under Section 8/21/22 NDPS Act, (iv) FIR No. 471/2021 under Section 8/21/22 NDPS Act, and FIR No. 66/2023 under Sections 8/21/22/29 NDPS Act stand registered in Police Station, Reasi, Udhampur, Bagh-e-Bahu, Jammu and Police Station Janipur, Jammu and final reports in respect thereto have been submitted before the competent court of law after investigation.
3. On the basis of relevant material supplied by the District Police, the Detaining Authority arrived at subjective satisfaction that the petitioner is an incorrigible drug peddler and has been engaged in illicit trade of narcotics since the year 2016. He has been caught in possession of illicit drugs repeatedly and, accordingly, FIRs were

registered in the concerned Police Stations. The Detaining Authority was aware that the petitioner has been enlarged on bail in all the five cases registered against him but was of the opinion that in case the petitioner is allowed to remain at large and his illicit activities remain unchecked there is every likelihood that the petitioner would expand his illegal trade to other areas of the Union Territory and spoil the life of the youth of the area. It is on the basis of this satisfaction drawn by the Detaining Authority, impugned detention order was passed and the petitioner was taken into preventive custody of the State.

3. The petitioner is aggrieved and has assailed the impugned order of detention, inter alia, on the following grounds:-
 - i) That the detention of the petitioner ordered by the Detaining Authority is *de hors* the procedure laid down in PITNDPS and in violation of the constitutional safeguards available to a detenu.
 - ii) That there is lack of application of mind by the Detaining Authority, in that, the Detaining Authority has not appreciated that the petitioner, though, involved in five FIRs for the commission of offence under NDPS Act was granted bail by the competent court of law despite the rigors of Section 37 of NDPS Act. The State was not aggrieved by the release of the petitioner on bail and because of this reason chose not to seek

either cancellation of the bail or challenge the same before higher forum. Non-application of mind by the Detaining Authority to the relevant material vitiates the subjective satisfaction and consequently the order of detention.

- iii) That the petitioner was not provided with the requisite material relied upon by the respondent No.2 to draw subjective satisfaction as a result whereof the petitioner was deprived of his right to make an effective representation to the Government against his detention. This action on part of the Detaining Authority, it is submitted, violates the fundamental right guaranteed to the detenu under Article 22(5) of the Constitution of India making the impugned order of detention liable to be quashed.
- iv) That the Detaining Authority has also failed to take into consideration the fact that the petitioner was, though, involved in five different cases of illicit traffic of Narcotic Drugs and Psychotropic Substances, yet, the substantive law had adequately taken its course. Not only the petitioner was arrested in the cases but was later on, only after the competent Court of law intervened, granted bail on merits. In the absence of failure of the ordinary law of the land, the Detaining Authority could not have resorted to the draconian provisions of the law like PITNDPS.

5. *Per contra*, Mr. Amit Gupta, learned counsel appearing for the respondents justifies issuance of the order of detention on the grounds enumerated in the grounds of detention served upon the petitioner. In the reply affidavit filed by the Detaining Authority, it is submitted that the detention is neither a curative nor a punitive action but an anticipatory measure aimed at preventing anti-social and subversive elements from endangering the security of the nation or from disturbing the tranquility or from indulging in illicit traffic of Narcotic Drug and Psychotropic Substances.

6. It is submitted that in the instant case the petitioner has been found indulging in illicit traffic in narcotic drugs and psychotropic substances since 2016. Each time he comes out on bail, he indulges in the same activities yet again. This has happened on four occasions. The petitioner had been managing bail from the Courts on technical grounds and after being enlarged on bail repeating the same activities calculated to imperil the health and welfare of the people in general and young generation in particular. It is submitted that on apprehending that the petitioner, who has deep roots in the illicit trade and would expand his activities beyond the districts of Reasi, Udhampur and Jammu, detention of the petitioner under PITNDPS was found necessary and imperative. The Detaining Authority is on affidavit that the entire procedural safeguards were scrupulously adhered to and the petitioner was served with a copy of notice, order of detention and the grounds of detention besides copy of the dossier

consisting of 142 pages and in this regard receipt was also obtained from the petitioner. The petitioner was informed about his right to make a representation against the order of detention and the petitioner preferred a representation against his detention, which was duly forwarded by the detaining authority to the Government and the same was rejected by the competent authority.

7. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the order of detention impugned in this petition does not suffer from any illegality or infirmity.
8. The PITNDPS was enacted by the State legislature in the year 1988 with an object to provide for detention in certain cases for the purpose of preventing illicit traffic in narcotic drugs and psychotropic substances and for matters connected therewith. The term “illicit Traffic” is defined in Section 2(c) of the PITNDPS Act, which reads thus:-

(c) “illicit traffic” means—

- (i) cultivating any coca plant or gathering any portion of coca plant ;
- (ii) cultivating the opium, poppy or any cannabis plant ;
- (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State or transshipment, of narcotic drugs or psychotropic substances ;
- (iv) dealing in narcotic drugs or psychotropic substances otherwise than as provided in sub-clauses (i) and(iii) ;

- (v) handling or letting any premises for use for any of the purposes referred to in sub-clauses (i) to (iv) ;
 - (vi) financing any activity by himself or through any other person in furtherance or in support of doing any of the aforesaid acts ;
 - (vii) harbouring persons engaged in any of the activities specified in sub-clauses (i) to (vi) ; or
 - (viii) abetting or conspiring in the furtherance or in support of doing any of the aforesaid acts,
- except to the extent permitted under the Narcotic Drugs and psychotropic Substances Act, 1985, or any rule or order made, or any condition of any licence, permit or authorisation issued thereunder”

9. Section 3 is a provision which confers power on the competent authority to make orders for detaining certain persons, which for ready reference is reproduced hereunder:-

“3.Powers to make orders detaining certain persons. –

(1) The Government or any officer of the Government, not below the rank of the Secretary to Government, specially empowered for the purposes of this section by the Government, may, if satisfied with respect to any person (including a foreigner) that, with a view to preventing him from committing any of the acts within the meaning of “illicit traffic” as defined in clause (c) of section 2, it is necessary so to do, make an order directing that such person be detained.

(2) For the purpose of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.”

10. From a reading of Section 3, in light of the definition of “illicit traffic” given in Section 2(c), it is evident that the competent authority vested with the powers of detention under Section 3 may pass an order of detention in the following manner:-
- i) That the detention order must be based on the subjective satisfaction of the Detaining Authority.
 - ii) It should be with a view to preventing the detenu from committing any of the acts falling within the meaning of “illicit traffic” under PITNDPS Act.
 - iii) The prevention of the detenu must be in respect of committing the acts enumerated in Section 2(c) of the PITNDPS Act defining the term “illicit traffic”.
11. Engaging in production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption etc. etc. fall within the definition of “illicit traffic”. The subjective satisfaction of the Detaining Authority based upon relevant material is not subject to judicial review by the Court, in that, the Court hearing a challenge against the detention based on subjective satisfaction of the Detaining Authority cannot substitute its mind for the subjective satisfaction of the detaining authority nor can it adjudicate upon the validity or otherwise of the detention as if it is a Court of appeal. The law in this regard is well settled. *It is only in a*

case where subjective satisfaction is vitiated by total non-application of mind by the Detaining Authority or the same is based on some extraneous or irrelevant material, the Court would be loath to interfere with the order of detention.

12. In the case of **Union of India v. Dimple Happy Dhakad**. AIR 2019 SC 3428, Hon'ble Supreme Court, after surveying the case law on the subject, cautioned the Courts hearing detention matters in the following manner:-

“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.”

13. Viewed in the light of settled legal position, I am of the considered opinion that the subjective satisfaction drawn by the Detaining Authority in the instant case is not vitiated in view of the tests laid down by the Supreme Court in respect of judicial reviewability of subjective satisfaction.
14. Not only the Detaining Authority was aware that the petitioner was facing trial in five different cases registered under NDPS Act but was also conscious that in all the five cases the petitioner had been let off on bail. The relevant material in the shape of FIRs registered against the petitioner was before the Detaining Authority, on the basis whereof the Detaining Authority reached its subjective

satisfaction that the remaining of the petitioner at large was detrimental to the health and welfare of the public in general and youth in particular. The Detaining Authority was well aware about the propensity of the petitioner to engage in illicit traffic of drugs and narcotics, which was well exhibited by his conduct of indulging in illicit traffic every time he came out on bail.

15. It is true that the police had not placed any material before the Detaining Authority to indicate that any effort was made by the prosecution to seek cancellation of the bail or challenge the orders of bail before the higher forums, however, in the given facts and circumstances, this omission on part of the police would not vitiate the detention.
16. It is writ large from the record that the petitioner has been indulging in illicit traffic of illicit drugs very cleverly. He has been trafficking illicit drugs in small quantity so that he could easily obtain bail from the Court without being caught by the rigors of Section 37 of the NDPS Act. In such situation, challenge to the bail granted by the Court to the petitioner in respect of either a small quantity or an intermediate quantity of illicit drug would have been a futile exercise.
17. The grounds of detention clearly reflect proper application of mind by the Detaining Authority to all aspect of the matter and in particular the propensity of the petitioner in indulging in illicit trade of illicit drugs and narcotics. It cannot be disputed that the petitioner was first caught in the year 2016 with the possession of Opium

weighing 52 milligrams and cash of Rs. 1,63,400/- and was later on enlarged on bail by the Court merely on the ground that the petitioner was allegedly found in possession of illicit drug of small quantity. The petitioner came out on bail and again indulged in the similar activities and was once again caught on 29.07.2019 and this time with 6.26 gms of heroin. It was again less than the commercial quantity and, therefore, he was let off on bail by the competent court of law. He came out on bail and again indulged in the illicit traffic. On 14-04-2020 the petitioner was again caught with 6 grms of heroin and Rs. 60,000/- in cash but on presentation of the challan the petitioner was enlarged on bail. On 12-12-2021 again the petitioner was caught with 6 grams heroin and while the case was under investigation, the petitioner was enlarged on bail by competent Court. Again on 24.06.2023, the petitioner was caught with 11 gms of heroin, again a small quantity of contraband. The petitioner was again granted bail by the Court. Having regard to his past conduct and his continuous involvement in the illicit traffic without being deterred by registration of cases against him, the police authorities brought the entire material to the notice of the Detaining Authority.

18. As noticed above, in the instant case where the petitioner had been very smartly indulging in trafficking of heroin of small quantity and the rigors of Section 37 of NDPC were not attracted, an application for cancellation of bail or for that matter filing of appeal or revision would have been an exercise in futility. Registration of five cases in a row and the propensity of the petitioner to repeatedly indulge in

illicit traffic of small quantity of a contraband which fetches highest price in international market was material good enough to invoke PITNDPS.

20. The Detaining Authority, as is clearly apparent from the grounds of detention, applied its mind and reached subjective satisfaction that the petitioner is an incorrigible drug peddler and would not be deterred by the ordinary law of the land, therefore, it is imperative to place him under preventive detention with a view to preventing him from indulging in illicit traffic of narcotic drugs and psychotropic substances.
21. So far as the plea of the petitioner that he was not supplied with the documents relied upon by the Detaining Authority, it has been found from the record produced by the learned counsel for the respondents that the petitioner was supplied with copy of notice, order of detention, grounds of detention along with copy of the dossier consisting of 142 leaves, and receipt of the petitioner is on record duly attested by the Assistant Superintendent District Jail, Jammu.
22. Viewed thus, I find no merit in this petition and the same is, accordingly, dismissed.

(Sanjeev Kumar)
Judge

JAMMU:
20.04.2024
Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes/No