

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

Reserved on: 30.12.2022
Pronounced on: 31.12.2022

WP (Crl) 699/2022

Zahid Nabi Khan

... Petitioner/Appellant(s)

Through: Mr. Umar Rashid Wani, Advocate

V/s

UT of J&K and others

... Respondent(s)

Through: Mr. Sajad Ashraf, GA

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

J U D G M E N T

1. Heard learned counsel for the petitioner.
2. The legality and validity of the detention order dated no. DIVCOM-“K”/152/2021 dated 27.2.2021 passed by the Divisional Commissioner, Kashmir by resort to Section 3 of the Prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substances Act, 1988 against the petitioner thereby subjecting him to the preventive detention, is being assailed by the petitioner on the grounds as set up in the writ petition. Counter Affidavit to the writ petition has been filed on behalf of the respondents.
3. The preventive detention of the petitioner come with the background that the petitioner came to be implicated in FIR no. 103/20204 for alleged commission of offences under Section 8/22 of the Narcotic Drugs and Psychotropic

Substances (NDPS) Act, 1985 for being in the company of one Imran Ahmad Dar from both of whom 72 and 52 capsules of Spasmoproxyvan Plus were found and recovered resulting in their arrest for the purpose of investigation and trial. The arrest of petitioner along with above named co-accused Imran Ahmad Dar took place on 13.5.2020.

4. The petitioner came to be bailed out by the Court of Additional Sessions Judge Sopore by virtue of an order dated 17.6.2020 subject to the terms and conditions as set out in the said bail grant order and for that the petitioner was admitted to bail on two sureties of Rs. one lakh each as well as personal bond for the same amount. This grant of the bail by the court of Additional Sessions Judge Sopore in favour of the petitioner was never ever questioned by the Prosecution.
5. On the other hand while the petitioner came to earn his bail release on 17.6.2020, the Divisional Commissioner, Kashmir acting on the purported communication no. Pros/PSA/2021/4049-52 dated 06.2.2021 of the Senior Superintendent of Police, Sopore came to feel satisfied for subjecting the petitioner to the preventive detention for the purpose of preventing the petitioner for committing any of the acts and illegal activities coming within the purview of the Narcotic Drugs and Psychotropic Substances Act, 1985.
6. The basis for the Divisional Commissioner, Kashmir to lend the satisfaction for subjecting the petitioner to preventive detention was the same very FIR 103 of 2020 in which the petitioner had come to suffer arrest and consequent bail from

the court of Additional Sessions Judge Sopore. Apart from this FIR, no antecedents of the petitioner bearing any relation with the alleged illicit traffic in narcotic drugs and psychotropic substances finds mention in the detention order against the petitioner passed by the Divisional Commissioner, Kashmir. Interestingly while the petitioner was on bail abiding by the terms and conditions of the same, the detention order dated 27.2.2021 remained unexecuted against the petitioner all along till 27.3.2022 when the same came to be executed resulting in the petitioner getting under the preventive detention custody which is continuing as on date and for quashing of which the petitioner is before this court.

7. A bare perusal of the grounds of the detention reflects that there are no factors mentioned therein and only generalizations. The Grounds of Detention germinate from the facts placed/brought before the detaining authority by the Law and Order Enforcement Agencies which include the Police. The expression "Grounds of Detention" is not a matter of wordplay of forming sentences but the appreciation of the facts available on record to generate the grounds therefrom for convincing the Detention Authority that the activities reported against the prospective detenu make out compelling case for his preventive detention and no other course of action.
8. Now in the present case, when the petitioner is earning his bail in the same very FIR and regarding which he has not offended any bail condition or has not even been booked for any new commission of offence/s of same or other nature so as to

become a repeat offender, this Court is at a loss to appreciate as to how upon the basis of the solitary FIR, the petitioner could be held to be potential doer of the apprehended unspelled acts for which the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 are made to deal with, prevent and punish. Thus, groundless was and is the detention order.

9. In addition to this, the other serious legal infirmity attending the detention order was the leisure with which its execution came to be pressed by the authorities against the petitioner. The petitioner in this case was on bail meaning thereby he was in the regular attendance before the concerned investigating agency and in a sense under the constructive custody of law and as such it should not have taken a period of more than one long year for the respondents to carry out the execution of the prevention detention order against the petitioner and as such it is a pointer to the fact that passing of the detention order was taken for the pleasure of passing an order at the end of the detaining authority rather than with the actual purpose of preventing the person under the preventive detention so as to deprive/deny him the potential opportunities/occasion to indulge in the very same activities for which the preventive detention is aimed to ward off. If the haste for preventive detention was so present on account of his alleged complicity in FIR 103 of 2020 then the deferred execution of the preventive detention order meant as if the authorities thus were allowing the detinue to enjoy free run for a period of one

year to carry on with his alleged activities for which he otherwise ought to have been under preventive custody without loss of time from the date of passing of the detention order.

10. Thus this court finds no justification to lend legitimacy, legality and validity to the impugned order no. DIVCOM-“K”/152/2021 dated 27.2.2021 of the Divisional Commissioner, Kashmir which is accordingly quashed and the detinue is directed to be released forthwith from his preventive custody by the Superintendent of the concerned jail provided the petitioner detinue is not required to remain in custody by reference to some other case pending/registered against him which warrants his custody under the law.
11. Disposed of.

(RAHUL BHARTI)
JUDGE

Srinagar
31.12.2022
N Ahmad

Whether the order is speaking:	Yes
Whether the order is reportable:	No