

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

...  
WP (CrI) no.380/2022

*Reserved on: 01.03.2023*

*Pronounced on: 20.04.2023*

**Mohammad Ashraf Dar**

..... Petitioner(s)

Through: Mr Z.A.Qureshi, Senior Advocate  
with Mr Aga Faisal Ali, Advocate

**Versus**

**Union Territory of J&K and others**

.....Respondent(s)

Through: Mr Sajad Ashraf, GA

**CORAM:**

**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGEMENT**

1. Through the medium of this petition, quashment of Order no.DIVCOM "K"/233/2022 dated 25.05.2022 (for brevity "*order impugned*") passed by Divisional Commissioner, Kashmir (for short "*detaining authority*"), in terms of Section 3 of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as "*Act of 1988*") whereby, detenu, namely, Mohammad Ashraf Dar S/o Abdul Rehman Dar R/o Ashmander Pulwama, has been placed under preventive detention so as to prevent him from committing any of the acts/illegal activities coming within the purview of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, is sought on the grounds made mention of therein.
2. Respondents have filed Reply Affidavit, in which it is insisted by them that detenu is involved in illegal trade of illicit traffic in narcotic drugs and psychotropic substances
3. I have heard learned counsel for parties. I have gone through the detention record produced by counsel for respondents and considered the matter.

4. It is stated by learned senior counsel appearing for petitioner that order of detention passed by respondent no.2 is without jurisdiction as in terms of the Central Act, respondent no.2 is not competent to detain a person and that competent officer is Secretary to Government or officer of the rank of Joint Secretary specially empowered in this behalf.

To the above contention, it is stated by counsel for respondents that the Act of 1988 stands repealed in terms of J&K Reorganization Act, 2019, and, as such, impugned order of detention has been passed under the corresponding Central Act, i.e., Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, which is extended to Union Territory of J&K by virtue of J&K Reorganisation (Removal of difficulties) Order, 2019, notified vide SO 3912 (E) dated 31.10.2020, by Ministry of Home Affairs, Government of India. He also avers that in terms of Clause 5 of the said Order, all the Central Laws, Ordinances and the Rules, which are applicable to whole of India, except erstwhile State of J&K, have been made applicable to Union Territory of J&K in addition to the Central Laws specified in Table (1) of the 5<sup>th</sup> Schedule of J&K Reorganization Act, 2019, and that in terms of Clause (14) of the aforesaid Order, anything done or any action taken including any appointment of delegation made, shall be deemed to have been done or taken under the corresponding provisions of the Central Act extended to the Union Territory of J&K in terms of J&K Reorganization Act, 2019.

In such circumstances, the submission of learned senior counsel for petitioner that respondent no.2 has no powers or jurisdiction to pass impugned order, is misconceived and pales into insignificance.

5. It is also contention of learned senior counsel for petitioner that detaining authority has not attributed any specific allegation against detenu and that vague allegation has been levelled against detenu. It is also stated by learned senior counsel that detaining authority has not assigned any compelling and cogent reason for passing order of detention and that detaining authority has not specified the authority before whom the representation has to be made nor has detaining authority informed detenu to make representation to him before the order could be approved/ confirmed by the Government.

The above submissions of learned senior counsel for petitioner are again misconceived, *for*, perusal of grounds of detention reveals the compelling and cogent reasons having been given by detaining authority to pass order of detention. It is evident from grounds of detention that detenu is dealing in illegal business of Narcotic Drugs and exploiting the immature minds of younger generation by making them dependent on drugs and to make them habitual addicts. It is also mentioned in grounds of detention that detenu is supplying drugs against hefty amounts to the immature youth, which in turn has exposed them to different kinds of immoral and illegal criminal tendencies and as such resort to thefts and other illegal activities in order to purchase drugs from detenu. While giving account of activities of detenu in the grounds of detention, the detaining authority has made reference to case FIR no.178/2021, which had been registered when on 22.06.2021, police station Pulwama recovered poppy straw in a chow-shed of detenu and another Shakeel Ahmad Mir S/o Bashir Ahmad Mir at village Ashmander and thereafter the same was sent to FSL, which reported that the material seized was poppy straw. So, detenu was arrested in connection with abovementioned case-FIR. Thus, it is evident from grounds of detention that detenu is habitual in indulging in activities, which poses serious threat to the health, wealth and welfare of the people, especially young generation.

It is also evident from perusal of the record that detenu has been informed to make representation both to the Government and detaining authority.

6. Learned senior counsel appearing for petitioner would also contend that the material relied upon by detaining authority while passing impugned order of detention, has not been provided to detenu, violating the Constitutional and Statutory procedural safeguards as provided to detenu under Article 22(5) of the Constitution of India.

In the context of above submission, I have gone through the detention record produced by counsel for respondents. Perusal of Execution Report as also Receipt of Grounds of Detention, forming part of Detention Record, reveals that as many as 26 leaves have been given to detenu. Grounds of Detention have been read over and explained to detenu in

Kashmiri language, which he understood fully and in lieu of which, he affixed his signature on both Execution Report and Receipt of grounds of detention. In such circumstances, contention of learned senior counsel for petitioner that material relied upon by detaining authority to issue impugned order of detention had not been served upon detenu, is misconceived.

7. Perusal of record reveals that detention order has been approved by the Government within time. The detenu has also been informed to make representation before the Government as well as detaining authority. In examining the question whether the ordinary laws of the land would have sufficed, and whether recourse to preventive detention was unnecessary, it must be borne in mind that the compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens, would lose their meaning, provide the justification for the laws of preventive detention. These Laws posit that an individual's conduct, prejudicial to maintenance of public order, security of State, preservation of forest wealth, preventing a person from engaging in illicit traffic in narcotic drugs and psychotropic substances, provides grounds for satisfaction for a reasonable assessment of possible future manifestations of similar propensities on the part of the offender. 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.
8. 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 detenu acting in a manner similar to his past acts, and preventing him by detention from so doing. 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. It may or may not relate to an offence. It does not overlap with the prosecution even if it relies on certain facts for which prosecution may be, or may have been, launched. An order of preventive detention may be made before or during prosecution. It 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. An order of preventive detention is also not a bar to prosecution.

9. A six Judge Constitution Bench of the Supreme Court way back in the year 1951, in the case of *The State of Bombay v. Atma Ram Shridhar Vaidya*, 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. While going through the grounds of detention and dossier, I do not find that grounds of detention are ditto copy of dossier supplied by sponsoring authority. As is evident from the detention record, the material has been supplied to detenu. and all this material was before detaining authority when it arrived at subjective satisfaction that the activities of the detenu are such, which would entail the preventive detention under the Act.
10. It is pertinent to mention here that the powers of preventive detention under the Act of 1988, are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing commission of an offence or preventing detained person from achieving a certain end. The authority, making the order, therefore, cannot always be in possession of full detailed information when it passes the order and

the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of impending commission of a prejudicial act. The Act of 1988, therefore, requires that the Central Government or a State Government must be satisfied with respect to any person that with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

11. The acts, indulged in by persons, who act in concert with other persons and quite often such activities have far-reaching ramifications on our younger generation. These acts are preceded by a good amount of planning and organisation by the set of people. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed, but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention. The said views and principles have been reiterated by the Supreme Court in *Gautam Jain v. Union of India another AIR 2017 SC 230*.
12. Section 2 (e) of the Act of 1988 envisions that “illicit traffic”, in relation to narcotic drugs and psychotropic substances, 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, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances; (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those provided in sub-clauses (i) to (iii); or (v) handling or letting any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv), other than those permitted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder and includes: (1) financing, directly or indirectly, any of the aforementioned activities; (2) abetting or conspiring in the furtherance

of or in support of doing any of the aforementioned activities; and (3) harbouring persons engaged in any of the aforementioned activities.

13. The present case relates to illicit trafficking of narcotic drugs. The drug problem is a serious threat to public health, safety and well-being of humanity. Our global society is facing serious consequences of drug abuse and it undermines the socio-economic and political stability and sustainable development. Besides, it also distorts health and fabric of society and it is considered to be originator for petty offences as well as heinous crimes, like smuggling of arms and ammunition and money laundering. Involvement of various terrorist groups and syndicates in drug trafficking leads to threat to the national security and sovereignty of States by way of Narco-terrorism. Drug trafficking and abuse 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 type of drugs from one corner to other ensuring availability of contrabands for vulnerable segment of society who fall into trap of drug peddlers and traffickers. Due to India's close proximity with major opium growing areas of the region, India is facing serious menace of drug trafficking and as a spill-over effect, drug abuse especially among the youth is a matter of concern for us.
14. Our Constitution framers had visualised danger of misuse of such type of substances and, thus, made it part of directives issued to the State. The Directive Principles, which are part of our Constitution, lay down that the State shall make endeavours to bring about the prohibition of substances injurious for health except for medicinal and scientific purposes. In recent years, India has been facing a problem of transit traffic in illicit drugs. The spill over 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. Having regard to the persons by whom and the manner in which such activities are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to the illicit traffic in narcotic drugs, such activities of a considerable magnitude are clandestinely

organised and carried on, it is necessary for the effective prevention of such activities to provide for detention of persons concerned in any manner therewith.

15. To sum up, it is relevant to refer to the observations of the Supreme Court that while dealing with the question of preventive detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, in the case of *Prakash Chandra Mohan v. Commissioner, 1986 Cr.L.J. 786*. The Supreme Court observed that it must be remembered that observance of written law about the procedural safeguards for protection of individual is normally the high duty of public official but in all circumstances not the highest. The law of self-preservation and protection of the country and national security may claim in certain circumstances higher priority.
16. For the reasons discussed above, the instant writ petition is without any merit and is, accordingly, **dismissed** with connected CM(s).
17. Detention record be returned to counsel for respondents.

Srinagar  
20.04.2023  
Ajaz Ahmad, PS

