

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

(Through Video Conference)

Reserved on 04.06.2021

Pronounced on 15.07.2021

WP(Crl.) No. 12/2021

CrIM No. 527/2021

CrIM No. 528/2021

Wasim Ahmad Trag

...Petitioner/Applicant(s)

Through :-

Mr. M. Ashraf Wani, Advocate

v/s

Union Territory of J&K and another

.....Respondent (s)

Through :-

Mr. Mir Suhail, AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. Through the medium of this petition filed through his Uncle, the petitioner has questioned the order of detention bearing No. 01/DMP/PSA/2021 dated 02.01.2021 issued by the respondent No. 2 by virtue of which the petitioner has been ordered to be detained under the Jammu and Kashmir Public Safety Act, 1978 (for short, the Act).
2. It is stated in the petition that the petitioner was arrested by the Police of Police Station, Pulwama in the month of January, 2021 and was implicated in the FIR bearing No. 201/2020 for commission of offences under section 8, 21 and 29 of the NDPS Act by the Police Station, Pulwama. While the petitioner was in custody in the aforementioned FIR, the petitioner was ordered to be detained under the Act vide order dated 02.01.2021.

3. The petitioner has questioned the order of detention *inter alia* on the ground that the petitioner has been detained on the basis of vague grounds and no prudent man can make a representation against such vague allegations and that the order of detention has been executed in the month of February, 2021 that after a delay of one month, no documents those have been relied upon by the Detaining Authority i.e. the respondent No. 2 herein have been furnished to the petitioner and the constitutional as well as procedural safeguards as envisaged by the Constitution of India as well as under the Act have not been complied with by the Detaining Authority.
4. The respondents have filed the response, in which they have stated that the petitioner has been detained pursuant to the order of detention and they have categorically stated that the procedural as well as statutory safeguards enshrined under Article 22(5) of the Constitution of India and section 13 of the Act have been complied with by the respondents while passing the detention order. They have further stated that they have supplied all the requisite documents to the petitioner so as to enable him to make an effective representation to the detaining authority and to the Government. Pursuant to the order of detention, the warrant was executed by the Executive Officer, Syed Jaffar of Police Station, Awantipura and the petitioner was handed over to the Superintendent of Central Jail, Jammu for lodgment. The contents of the detention order/warrant and the grounds of detention were read over and explained to the petitioner in the language he fully understood.
5. The respondents have produced the soft copy of the detention record.

6. Mr. M. Ashraf Wani, learned counsel for the petitioner has vehemently reiterated the grounds those have been taken in his petition. He laid much emphasis only on the ground that the petitioner could not have been detained under the Act as the petitioner was implicated in the FIR bearing No. 201/2020 for commission of offences under sections 8, 21 and 29 of the NDPS Act and as the quantity of the contraband was commercial quantity, the petitioner could not have been granted bail, as such, the order of detention is bad in law as there was no likelihood for grant of bail to the petitioner.
7. On the contrary, Mr. Mir Suhail, learned Additional Advocate General appearing for the respondents has vehemently argued that all the documents have been served upon the petitioner. Mr. Suhail has also argued that the detention order is legal and all procedural and statutory safeguards have been complied with while passing the order of detention, as such, the order of detention is sustainable in the eyes of law.
8. Heard and perused the detention record meticulously.
9. Before appreciating the rival contentions of the parties, it would be appropriate to note that the procedural requirements are the only safeguards available to the detinue since the Court cannot go behind the subjective satisfaction of the detaining authority. In **Abdul Latif Abdul Wahab Sheikh v. B. K. Jha** reported in (1987) 2 SCC 22, the Apex Court has held that the procedural requirements are the only safeguards available to a detinue since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural

requirements are, therefore, to be strictly complied with, if any, value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.

10. From perusal of grounds of detention it reveals that the order of detention has been passed on the ground of the involvement of the petitioner in FIR bearing No. 72/2014 for commission of offences under sections 147, 148, 336, 435, 307, 353, 332 and 427 RPC, FIR bearing No. 78/2014 for commission of offences under sections 147, 148, 341, 336 and 427 RPC, FIR bearing No. 100/2015 for commission of offences under sections 148, 149, 341 and 336 RPC of Police Station, Tral and thereafter, the petitioner was found involved in FIR bearing No. 201/2020 of Police Station, Awantipora for commission of offences under sections 8, 21 and 29 of the NDPS Act as while driving a vehicle bearing registration No. JK01X 4920, the petitioner was found to be in possession of 17 bottles of Codeine Phosphate and 39 tablets of Spasmo Proxy-Von Flux, It is further stated that the petitioner is at present in custody and has applied for bail in the court of law. A perusal of the detention record reveals that the order of detention was executed on 03.02.2021 and notice of detention and contents of detention warrant and grounds of detention were read over to the petitioner in English and explained to him in the Urdu and Kashmiri language. A perusal of the execution report reveals that only four leaves i.e. one leaf of order of detention, one leaf of notice of detention and two leaves grounds of detention were furnished to the petitioner at the time of execution of warrant. However, the perusal of the grounds of detention reveals that

the Detaining Authority has relied upon all aforementioned FIRs while passing the order of detention but none of the FIR has been furnished to the petitioner as is evident from the execution report and, as such the petitioner has been deprived of his right to make an effective representation against his preventive detention to the detaining authority as also to the Government. It is only after the petitioner is supplied all the material that he can make an effective representation to the Detaining Authority and also to the Government and if the same is not done, he is deprived of his valuable constitutional right. Failure on the part of the respondent No. 2 to supply the material relied upon by him, while passing the detention order renders it illegal. Reliance is placed upon the decision of Apex Court in **Thahira Haris v. Govt. of Karnataka**, reported in **(2009) 11 SCC 438**, the relevant para is reproduced as under:

“30. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has the right to be supplied with copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention.”

11. Otherwise also, as the petitioner was found to be involved in carrying the commercial quantity of the contraband, so in ordinary course the petitioner could never have been granted bail under the NDPS Act. As such, this Court has no hesitation in observing that the satisfaction

recorded by the respondent No. 2 that the court may grant bail in the instant case is without any basis.

12. In view of the above, this petition is allowed. Detention order No. 01/DMP/PSA/2021 dated 02.01.2021 is quashed. Petitioner (detenue) be set free from the preventive custody, provided he is not required in any other case.

(RAJNESH OSWAL)
JUDGE

Srinagar:
15.07.2021
Rakesh

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

