

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

Reserved on: 30.10.2023
Pronounced on: 10.11.2023

WP (CrI) No. 20/2023

Kewal Krishan

.....Appellant(s)/Petitioner(s)

Through: Mr. Rajnesh Singh Parihar, Advocate

Vs

Financial Commissioner ACS Home
Department and ors.

..... Respondent(s)

Through: Mr. Dewakar Sharma, Dy. AG

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

JUDGMENT

1. The order bearing No. PITNDPS 43 of 2022 dated 28.12.2022 issued by the respondent No. 2, whereby the petitioner has been detained under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'the Act'), has been impugned by the petitioner on the following grounds:-

- (a) That only the detention order along with grounds/dossier was made available to the petitioner and no other material relied upon by the respondent No. 2 was provided to the petitioner.
- (b) That the grounds of detention are vague, irrelevant and non-existent and the grounds of detention do not disclose any activity which would be a threat to the health and welfare of the people.

- (c) That the incidents as alleged in the FIR have no live nexus with the impugned order, as such, the order of detention is not sustainable in the eyes of law.
- (d) That the order of detention suffers from non application of mind as there is nothing on record to suggest that the detenu has indulged in any activity as alleged in the detention order and even if version of the respondents is taken to be true that the petitioner has indulged in any illegal activity, still no action was taken against the petitioner.
2. The respondents have filed the response stating therein that the detention order dated 28.12.2022 was issued against the petitioner as three FIRs in drug trafficking cases had been registered against him, two in Police Station, Udhampur and one in Police Station, Rehambal. In one FIR bearing No. 432/2018 under Section 8(a)/21/22 NDPS Act of Police Station, Udhampur, the petitioner was convicted and a fine of Rs. 6000/- was imposed upon him by the court of Chief Judicial Magistrate, Udhampur vide order dated 29.01.2019. In FIR No. 76/2021 under Section 8/21/22/27-A/29 NDPS Act of Police Station, Udhampur and FIR No. 201/2021 under Section 8/21/22 NDPS Act of Police Station, Rehambal, the petitioner has been released on bail. Besides these FIRs, two entries were made in the Daily Diary of the Police Station, Udhampur due to repeated involvement of the petitioner in drug trafficking. Taking into consideration the activities of the petitioner, he was ordered to be detained under the Act as his activities were posing serious threat to the health and welfare of the people of District Udhampur and other adjoining areas. The detention order was executed by PSI Raman Kumar of Police Station,

Udhampur and the documents pertaining to detention of the petitioner were provided to him and the grounds of detention were read over and explained to the petitioner in Hindi/Dogri language, which he fully understood and in acknowledgment thereof, his signatures were obtained. He was also made aware that he can make a representation against the order of detention. More so, the copies of FIRs along with seizure memos, reports of FSL have been provided to the petitioner at the time of execution of the detention warrant. In nutshell, the stand of the respondents is that the procedural safeguards have been followed at the time of issuance as well as the execution of the order of detention.

3. Learned counsel for the petitioner has submitted that the petitioner has been detained on vague grounds and in fact the delay in passing the detention order snapped the causal live link between the prejudicial activities and purpose of detention.
4. *Per contra*, learned counsel for the respondents has submitted that assertion made by the petitioner that the documents relied upon by the detaining authority at the time of passing the detention order were not provided to him is falsified by the execution report. He has further submitted that the procedure prescribed under law has been meticulously followed by the respondents at the time of issuance of order of detention and also at the time of execution of the detention order.
5. Heard and perused the detention record.
6. A perusal of the grounds of detention framed by respondent No. 2 would reveal that respondent No. 2 has relied upon the following FIRs and DDRs:

- (a) FIR No. 432/2018 under Section 8(a)/21/22 NDPS Act registered with Police Station, Udhampur, wherein the petitioner stands convicted.
- (b) FIR No. 201/2021 under Section 8/21/22 registered with Police Station, Rehambal, wherein the charge sheet stands filed.
- (c) FIR No. 76/2021 under Section 8/21/22/27-A/29 NDPS Act registered with Police Station, Udhampur, which is still under investigation.
- (d) Two entries made in the Daily Diary of Police Station, Udhampur vide DDR No. 39 dated 12.12.2022 and DDR No. 37 dated 16.12.2022.
7. In FIR Nos. 76/2021 and 201/2021, the petitioner has been enlarged on bail. The last FIR which was registered against the petitioner on 14.09.2021 is FIR No. 201/2021 under Section 8/21/22 NDPS Act with Police Station, Rehambal. Thereafter, no illegal activity of indulging in trafficking of narcotics and drugs has been attributed to the petitioner, though two entries were made in the Daily Diary of Police Station, Udhampur vide DDRs mentioned above. The order of detention impugned in the present petition is of 28.12.2022, meaning thereby that there is a gap of one year and three months between the last illegal activity attributed to the petitioner and the detention order. This gap of one year and three months has snapped the live link between the alleged illicit activities of the petitioner and the purpose of detention order.
8. It would be apt to take note of the judgment of the Apex Court in case titled, '**Saeed Zakir Hussain Malik vs. State of Maharashtra**' reported in **(2012) 8 SCC 233**. The relevant paragraph Nos. 27 and 28 read as under:-

“27) As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after 15 months vitiates the detention

itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned.

28) It is also the duty of the court to investigate whether casual connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside. Since, we are in agreement with the contentions relating to delay in passing the Detention Order and serving the same on detenu, there is no need to go into the factual details.”

9. On this ground only, the order of detention is not sustainable in the eyes of law. Further perusal of DDR No. 37 dated 16.11.2022 would reveal that it has been mentioned that the petitioner is a habitual criminal and is involved in number of cases. It has been further mentioned that he is still active and is continuing his criminal activities of illicit drug trafficking in the vicinity of Udampur town. A perusal of DDR No. 39 dated 12.12.2022 would reveal that two FIRs stand registered against the petitioner and that the petitioner has not left his business of drug trafficking despite surveillance and he is a clever man and the activities of the petitioner are having bad impact upon the youth of the area. Both these DDRs are vague and bereft of the necessary details in respect of the specific activities of the petitioner, which necessitated the issuance of detention order and as such, these DDRs could not have relied upon by the respondent No. 2 while issuing the order of detention.
10. This Court in case titled, **‘Krishan Lal alias Lundi vs. Union Territory of J&K’**, JKJ On LINE 80364 has observed as under:-

“It appears that these DDRs were prepared in quick succession i.e. on 01.09.2022, 12.09.2022 and 13.09.2022 just to detain the petitioner and in all these DDRs extra surveillance was ordered to be kept on him. But despite the extra surveillance, the respondent No. 3 has not been able to demonstrate/establish any act in which the petitioner has indulged after he was enlarged on bail in FIR No. 20/2021. **The daily diary reports being vague and bereft of details of the activities of the petitioner which necessitated the issuance of the detention order, could not have been relied upon by the detaining authority i.e. respondent no. 2 while issuing the order of detention.** The issuance of the order of detention on vague grounds deprives the detenu of his right to make effective representation against the order of the detention and if the detention order is passed on vague grounds then the constitutional right of making representation against the detention order, as envisaged by article 22(5) of the Constitution of India would become a ‘Mirage’. The issuance of the order of detention on vague grounds would amount to be an arbitrary exercise of power by the detaining authority. The Hon’ble Apex Court in **JahangirKhan Fazalkhan Pathan v. Police Commissioner, Ahamabad and Anr. (1989) 3 SCC 590** has held that the order of detention passed on vague grounds deprives the petitioner of his right to make an effective representation against the order of detention.”

(emphasis added)

11. In view of the above, this Court is of the considered view that the order of detention bearing No. PITNDPS 43 of 2022 dated 28.12.2022 issued by respondent No. 2 i.e. Divisional Commissioner, Jammu is not sustainable and the same is, accordingly, quashed. The petitioner be released forthwith, if he is not required in any other case.
12. Record be returned to the learned counsel appearing for the respondents.

(RAJNESH OSWAL)
JUDGE

Jammu
10.11.2023
Neha-II

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