

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

WP(Crl) No. 26/2023

Reserved on : 08.12.2023

Pronounced on: 30.12.2023

Mudassir Hussain, Aged 29  
years S/o. Mehraj-ud-Din  
R/o. Om Mehta Road, Tehsil  
and District Kishtwar (J&K)  
Presently lodged in District  
Jail, Kishtwar

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

Through: Mr. Irfaan Khan, Adv.

vs

1. The Union Territory of Jammu  
and Kashmir th. Principal  
Secretary (Home), Civil  
Secretariat, Jammu
2. The Divisional Magistrate,  
Jammu
3. The Senior Superintendent of  
Police, Kishtwar
4. The Superintendent, District Jail,  
Kishtwar

.....Respondent(s)

Through: Mr. Mohd. Irfan, GA

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

**JUDGMENT**

1. The present petition has been filed by the petitioner seeking quashing of the detention order No. PITNDPS 04 of 2023 dated 20.02.2023 issued by respondent No. 2 under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'the PITNDPS Act') on the following grounds:
  - (a) That the order of detention suffers from non application of mind as the order of detention does not disclose an urgent requirement to place the petitioner in preventive detention when the ordinary law of the land was already set into motion.

- (b) That the recovery made in FIR No. 91/2022 is a meagre one i.e. 141 grams of Charas and likewise recovery made in FIR No. 271/2022 is mere 21 grams of Charas and further 5 grams of Heroin is “borderline intermediate quantity”. The third FIR No. 86/2017 has nothing to do with the NDPS Act and the same was compounded. The recoveries made in the aforesaid FIRs are trivial in nature and completely belies the claim of the respondents that the petitioner was a so called drug kingpin and notorious criminal/habitual smuggler/peddler.
- (c) That the respondent No. 2 has not specified the authority before whom the representation was required to be made and the same amounts to violation of a cherished constitutional and statutory right of the petitioner.
- (d) That the order of detention has been provided in the English language and since the petitioner (detenue) as well as his family members are not conversant with the English language, it was imperative for the respondents to furnish a translated script of the order of detention to the petitioner.

2. Response has been filed by the respondent No. 2, stating therein that he after carefully examining the dossier submitted by the Senior Superintendent of Police (SSP), Kishtwar, respondent No. 3 herein, issued the order of detention as it was specifically stated in the dossier that the detenue was enlarged on bail in FIR No. 91/2022 under NDPS Act but he again committed an offence under the NDPS Act and therefore, respondent No. 3 issued the order of detention. It is further stated that the petitioner is a notorious criminal/drug peddler and habitual smuggler

engaged in sale/purchase of narcotic substances and his repeated and continuous involvement in the dealing with contraband/narcotic substances prompted SSP, Kishtwar to process his case for detention under the PITNDPS Act. The Executing Officer has provided the detention order along with grounds of detention and relevant documents (total 66 leaves) to the detenu/petitioner and also has explained him in Urdu/Kashmiri language, which he fully understood. The Executing Officer has also informed the detenu about his right to make representation to the Government as well as to the Detaining Authority against his detention order. The order of detention issued by respondent No. 2 has also been confirmed by the Government vide order dated 03.03.2023.

3. Objections have also been filed by respondent No. 3, thereby mentioning the details of the FIRs registered against the petitioner and also about the various Daily Diary Reports entered in the record of the Police. It is further stated that the FIRs i.e. 91/2022 and 271/2022 were registered at Police Station, Kishtwar and after taking note of the FIRs and Daily Diary Reports of Police Station, Kishtwar, the activities of the petitioner were found to be prejudicial to the youth of the area, more particularly, the school going children.
4. Mr. Irfaan Khan, learned counsel for the petitioner has vehemently argued that the Daily Diary Reports relied upon by the Detaining Authority are vague and further in FIR No. 271/2022, no recovery was affected from the petitioner. He further submitted that the order suffers from non-application of mind, more particularly when no reasons have been assigned for detaining the petitioner, when he was already enlarged on bail.

5. *Per contra*, Mr. Mohd. Irfan, learned GA, appearing for the respondents, has vehemently argued that the activities of the petitioner were found to be prejudicial and posing serious threats to the health and welfare of the residents of the Kishtwar, more particularly, the youth and all the statutory safeguards have meticulously followed by the respondents, while issuing and executing the order of detention.
6. Heard and perused the record.
7. A perusal of the record reveals that the respondent No. 2, while preparing the grounds of detention, has relied upon two FIRs and the Daily Diary Reports of Police Station, Kishtwar. The allegations in FIR bearing No. 91/2022 for commission of offences under sections 8 and 20 of the NDPS Act of Police Station, Kishtwar are in respect of 141 grams of Charas recovered from the petitioner on 21.04.2022, whereas in FIR No. 271/2022 for commission of offences under sections 8, 20, 21, 22 and 29 of the NDPS Act of Police Station, Kishtwar, allegations against the petitioner are that one person, namely, Umar Khandey S/o. Farooq Ahmed Khanday R/o. Sirgwari, Kishtwar had purchased the narcotic substances i.e. 21 grams of Charas and 5.5 grams of Heroin from the petitioner. The said FIR was registered on 12.11.2022. The respondent No. 2 after perusing the dossier placed on record by the petitioner himself, issued the order of detention as he found activities of the petitioner prejudicial to the safety of the general public especially youth.
8. From the record, it is evident that the FIR No. 91/2022 was registered against the petitioner on 21.04.2022 and in the subsequent FIR, the petitioner was arrested on 06.12.2022. Though the respondent No. 3 in his dossier mentioned that the petitioner was arrested in FIR No. 271/2022 for

commission of offences under Sections 8, 21, 22 and 29 of the NDPS Act of Police Station Kishtwar and was released on bail by the Court but the respondent No. 2 has nowhere mentioned in the order of detention that the petitioner was released on bail. Once the petitioner was released on bail, it was incumbent upon the Detaining Authority to consider that aspect of the matter and then to form an opinion that the detention of the petitioner is necessary under the PITNDPS Act. In the instant case, it appears that the Detaining Authority has not applied its mind and has passed the order of detention in a routine manner. It is settled law that once the detainee is enlarged on bail, the Detaining Authority has to record its satisfaction that the ordinary law of the land has failed to deter the detainee from indulging in the activities covered under the PITNDPS Act necessitating the detention of the petitioner. The order impugned, as such, is not sustainable in the eyes of law. In **Rekha vs. State of Tamil Nadu, 2011 (5) SCC 244**, the Hon'ble Supreme Court has held as under:

“No doubt it has been held in the Constitution Bench decision in Haradhan Saha's case (supra) that even if a person is liable to be tried in a criminal court for commission of a criminal offence, or is actually being so tried, that does not debar the authorities from passing a detention order under a preventive detention law. This observation, to be understood correctly, must, however, be construed in the background of the constitutional scheme in Articles 21 and 22 of the Constitution (which we have already explained). Article 22(3)(b) is only an exception to [Article 21](#) and it is not itself a fundamental right. It is [Article 21](#) which is central to the whole chapter on fundamental rights in our Constitution. The right to liberty means that before sending a person to prison a trial must ordinarily be held giving him opportunity of placing his defence through his lawyer. It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law (Indian [Penal Code](#) or other penal statutes) will not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.

Hence, the observation in para 34 in Haradhan Saha's case (supra) cannot be regarded as an unqualified statement that in every case where a person is liable to be tried, or is actually being tried, for a

crime in a criminal court a detention order can also be passed under a preventive detention law.”

9. Further, a perusal of the order of detention reveals that the Detaining Authority has relied upon DDR Nos. 28 dated 25.05.2022, 30 dated 30.05.2022, 19 dated 30.06.2022, 37 dated 29.07.2022, 15 dated 05.09.2022, 12 dated 08.09.2022 of Police Station, Kishtwar for the purpose of issuing the order of detention. A perusal of the contents of the DDRs have been reproduced in the dossier and the same are vague and only reference in respect of the strict vigil to be kept on the activities of the petitioner has been made. Such DDRs could not have been relied upon by the Detaining Authority while issuing the order of detention.
10. This Court in case titled, **‘Krishan Lal alias Lundi vs. Union Territory of J&K’**, **JKJ OnLine 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 detinue 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)

- 10 In view of the above, this Court is of the considered view that the order of detention bearing No. PITNDPS 04 of 2023 dated 20.02.2023 issued by

respondent No. 2 i.e. Divisional Magistrate, Jammu is not sustainable and the same is, accordingly, quashed. The petitioner be released forthwith, if he is not required in any other case.

- 11 Record be returned to the learned counsel appearing for the respondents.

**(RAJNESH OSWAL)**  
**JUDGE**

Jammu  
30.12.2023  
Rakesh

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

