

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

**Reserved on 10.11.2023
Pronounced on 17.11.2023**

LPA No.179/2023
CM No.5932/2023

Mustaq Khan alias Lucky Age 35 years
S/o Wazir Khan
R/o Lower Gujjar Nagar,
Tehsil and District Jammu
At present lodged in District Jail
Amphalla, Jammu
Through Taseen Akhtar Aged 43 years
Wife/Next friend.

.....**Appellant**

Through: Mr. Sunil Sethi, Sr. Adv., with
Mr. Navyug Sethi, Advocate.

Versus

1. Union Territory of Jammu and
Kashmir
Through Principal Secretary to
Government, Home Department,
Civil Secretariat, Jammu/Srinagar.
2. Divisional Commissioner, Jammu.
3. Senior Superintendent of Police,
Jammu.
4. Superintendent, District Jail,
Amphalla, Jammu.

.....**Respondent(s)**

Through: Mr. Pawan Dev Singh, Dy.A.G.

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

JUDGMENT

Tashi Rabstan - Judge

1. This Letters Patent Appeal is directed against the judgment dated 29.09.2023 delivered by the learned Single Judge in WP(Crl) No.50/2023, whereby the learned Single Judge while maintaining the detention order, dismissed the writ petition filed by the appellant-writ petitioner.

2. The case as set up by the appellant-detenu before the Writ Court was that the detention order came to be passed without application of mind. Although the sponsoring authority, i.e., Senior Superintendent of Police, Jammu had sent only one dossier to the writ petitioner in which there was reference of only one FIR, but in the grounds of detention there was reference of two FIRs. Not only this, in the grounds of detention it has not been mentioned whether the writ petitioner has been admitted to bail or not and that the detaining authority was not aware of the fact that the bail has already been granted to the appellant-writ petitioner in both the FIRs. Further, it is contended that the detaining authority did not supply the writ petitioner the material documents in absence of which he could not make effective representation to the writ respondents; as such the detention order is in contravention to Section 13 of the Public Safety Act. Thus, the specific case of appellant-detenu is that the provisions of Public Safety Act and the constitutional safeguards were not followed by the writ respondents while issuing the order of detention. The learned Single Judge too wrongly dismissed the writ petition filed by him challenging his detention order dated 20.04.2023. Hence, the present appeal.

3. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal file as well as the record so produced by the learned Deputy A.G.

4. Now we deal with the first contention of appellant-writ petitioner that the detaining authority, i.e., Divisional Commissioner, Jammu was not aware of the fact that the bail has already been granted to the appellant-writ petitioner in both the FIRs.

5. A perusal of communication dated 11.04.2023 addressed to the Divisional Commissioner, Jammu by the Senior Superintendent of Police, Jammu reveals that the writ petitioner has been bailed out in both the FIRs being FIR No.63/2021 and FIR No.58/2023 which came to be registered when the writ petitioner was found to be in possession of 14 grams and 25 grams heroine respectively. A perusal of the said communication further reveals that the Senior Superintendent of Police provided the information only when the Divisional Commissioner *desired* to know the fate of appellant-writ petitioner whether he has been bailed out in the said FIRs or not. After going through the wording of communication dated 11.04.2023 one can easily infer that the Divisional Commissioner wanted to know the status of appellant-writ petitioner in both the FIRs before passing the detention order. The reference of said communication has also been given in the grounds of detention. Therefore, it would be wrong to allege that the Divisional Commissioner, Jammu was not aware of the fact that the bail has already been granted to the appellant-writ petitioner in both the FIRs or that the detention order came to be passed without application of mind.

6. The further contention of appellant-writ petitioner is that he was supplied with dossier dated 09.11.2022 along with material relevant to FIR No.63/2021 and not the material relating to FIR No.58/2023.

7. A perusal of the record reveals that the Senior Superintendent of Police vide communication dated 08.04.2023 sent dossier to the Divisional Commissioner, Jammu in respect of appellant-writ petitioner containing 42 leaves. The said dossier mentions both the FIRs registered against the writ petitioner under NDPS Act. The writ petitioner has also signed receipt of grounds of detention whereby he has admitted to have received copy of notice, order of detention and grounds of detention along with dossier consisting of 39 leaves on 22.04.2023. The appellant-writ petitioner has failed to disclose which document he has not received. Further, as per his own showing the appellant-writ petitioner has failed to file a representation to the Government or to the detaining authority. Therefore, once the appellant-writ petitioner has failed to exhaust the remedy of filing a representation as per the Act, he is debarred to approach the Court.

8. Further, the aim of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing so. The Supreme Court in the case of **Naresh Kumar Goyal v. Union of India and others, (2005) 8 SCC 276**, and ingeminated in **Union of India and another v. Dimple Happy Dhakad, AIR 2019 SC 3428**, has held that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent antisocial and subversive elements from imperiling welfare of the country or security of the nation or from disturbing public tranquility or from indulging in smuggling activities or from engaging in

illicit traffic in narcotic drugs and psychotropic substances, posing threat to the health and welfare of people or have deleterious effect on the national economy, etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so.

9. To sum up, a law of preventive detention is not invalid because it prescribes no objective standard for ordering preventive detention and leaves the matter to subjective satisfaction of the Executive. The reason for this view is that preventive detention is not punitive but preventive and is resorted to with a view to prevent a person from committing activities regarded as prejudicial to certain objects that the law of preventive detention seeks to prescribe. Preventive detention is, thus, based on suspicion or anticipation and not on proof. The responsibility for security of State, or maintenance of public order, or essential services and supplies, or the health and welfare of people, rests on the Executive and it must, therefore, have necessary powers to order preventive detention. Having said that, subjective satisfaction of a detaining authority to detain a person or not, is not open to objective assessment by a Court. A Court is not a proper forum to scrutinize the merits of administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not. It is often said and held that the Courts do not even go into the question whether the facts mentioned in grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be

taken by the courts and that is not the policy of law of preventive detention. This matter lies within the competence of Advisory Board. While saying so, this Court does not sit in appeal over decision of detaining authority and cannot substitute its own opinion over that of detaining authority when grounds of detention are precise, pertinent, proximate and relevant.

10. It is apposite to mention that our Constitution undoubtedly guarantees various freedoms and personal liberty to all persons in our Republic. However, it should be kept in mind by one and all that the constitutional guarantee of such freedoms and liberty is not meant to be abused and misused so as to endanger and threaten the very foundation of the pattern of our free society in which the guaranteed democratic freedom and personal liberty is designed to grow and flourish. The larger interests of our multi-religious nation as a whole and the cause of preserving and securing to every person the guaranteed freedom peremptorily demand reasonable restrictions on the prejudicial activities of individuals which undoubtedly jeopardize the rightful freedoms of the rest of the society. Main object of Preventive Detention is security of the State, maintenance of public order or preventive illicit traffic in narcotic drugs and psychotropic substances and combating abuse of such drugs and substances which poses threat to the health and welfare of people or have deleterious effect on the national economy, effective safeguards in the larger interest of sustenance of peaceful democratic way of life.

11. Further, in both the FIRs, which were lodged against the appellant-writ petitioner, the allegations against him are similar in nature, which shows that he was repeatedly indulging in illicit traffic of narcotic drugs. Therefore, there were compelling circumstances for the detaining authority to pass the detention

order against the appellant-writ petitioner in order to prevent him from repeating similar activities, as launching of prosecution against him for substantive offences, did not deter him from indulging in similar activities.

12. The judgment cited by the learned counsel for the appellant in case, titled as, Sushanta Kumar Banik vs State of Tripura, decided on September 30, 2022 – 2022 SCC Online SC 1333, does not apply to the facts of present case as in the said case the fact of detenu being released on bail in both the cases was not brought to the notice of detaining authority, whereas in the present case the detaining authority was very much aware of the fact that the appellant-writ petitioner herein has already been released on bail.

13. For the reasons discussed above, we do not find any merit in the appeal and the same is, accordingly, dismissed along with connected CM.

14. Registry to return the record to the learned Dy.A.G. against proper receipt.

Jammu
17.11.2023
(Anil Sanhotra)

(Mohan Lal)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No