

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

WP(Crl) No. 14/2023

**Shabir Ahmad Teeli, Aged 33 years
S/O: Ghulam Ahmad Teeli
R/O Hydergund Zainapora District Shopian
Through his father namely Ghulam Ahmad Teeli (Aged: 60 years)
..... Petitioner(s)**

Through: Mr. Asif Nabi, Advocate

V/s

- 1. Union Territory of Jammu & Kashmir,
Through Principal Secretary, Home
Department, J&K Govt., Civil Secretariat
Srinagar/Jammu.**
- 2. Divisional Commissioner Kashmir, Srinagar.**
- 3. Superintendent Central Jail Kotebalwal,
Jammu.**

.....Respondent(s)

Through: Mr. Sajad Ashraf, GA.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

JUDGMENT

18.12.2023

01. The petitioner is aggrieved and has called in question an order of detention bearing No. DIVCOM-“K”/340/2022, dated 30th December, 2022, passed by the Divisional Commissioner, Kashmir, [“the Detaining Authority”], under Section 3 of the Preventive of Illicit Traffic in Narcotic Drugs and Psychotropic Substance, Act 1988, [“for short PIT-NDPS”], whereby the petitioner has been detained in preventive custody with a view to prevent him from indulging in illicit trafficking in Narcotic Drugs and Psychotropic Substance.

02. Impugned detention order is passed on the ground that the petitioner who has studied up to 12th class was engaged as SPO in the Police Department in the year 2012. During his duties as SPO, he came in contact with drug peddlers and started transporting/supplying contraband substances to common masses especially to youth for obtaining benefits wrongly.

03. Based on the aforesaid allegations FIR No. 63/2021, was registered in the Police Station Zainapora, on 22nd September, 2021. This FIR was in respect of recovery of 8 to 10 Kgs of Poppy Straw from the possession of the petitioner. When this fact was brought to the notice of the Detaining Authority by the District Police, the Detaining Authority arrived at subjective satisfaction that petitioner was a drug peddler and, therefore, liable to be detained under PIT-NDPS to prevent him from continuing with his activity of smuggling, transporting and supplying of contraband substances to the common masses. Apart from the FIR, some reports received from field agencies were also considered by the Detaining Authority.

04. Impugned detention order is assailed by the petitioner, *inter alia*, on the following grounds:

- (i) That the allegations of drug peddling levelled against the petitioner which are also subject matter of investigation in FIR No. 63/2021, are stale and do not have any proximate link with the issuance of detention order.
- (ii) The Detaining Authority has, nowhere, in the grounds of detention even alleged that after the registration of FIR No. 63/2021 on 22nd June, 2021, the petitioner has committed any offence

under NDPS Act or has been found involved in the commission of such offences.

- (iii) The impugned detention order is also challenged on the ground that the material relied upon in the grounds of detention has not been furnished to the petitioner, thereby the right of the petitioner to make effective representation has been taken away.

05. It is contended that the petitioner was arrested in the year 2021 in FIR No. 63/2021 and was later on granted bail by the Competent Court of Jurisdiction. The Detaining Authority was not aware of this crucial information and, therefore, did not consider the relevant material to derive its subjective satisfaction. The petitioner also claims to have made a representation to the respondent No. 2, but the same has not been considered by the Competent Authority, thereby, violating the fundamental right guaranteed to the petitioner under Article 22 of the Constitution of India.

06. Respondents have filed their reply affidavit and have opposed the petition on the ground that the petitioner was put under preventive detention because of his constant involvement in the activities which are offences under NDPS Act. Reference is made to FIR No. 63/2021, under Section 8/15-29 NDPS Act registered in Police Station, Zainapora, to substantiate the argument that the petitioner was detained because of his involvement in the commission of offences under NDPS Act. He was found in possession of 8 to 10 Kgs of Poppy Straw and as per the field report received from various agencies was active in the Narcotic trade.

07. Having heard learned counsel for the parties and perused the material on record, I am of the view that the impugned order of detention is

not sustainable in law for more than one reason. From bare reading of the grounds of detention, it clearly transpires that the entire gravamen of the allegations made against the petitioner is the recovery of 8 to 10 Kgs of Poppy Straw from the possession of the petitioner and consequent registration of FIR against him in the Police Station, Zainapora, i.e., FIR No. 63/2021, under Section 8/15-29 NDPS Act.

08. The Detaining Authority exhibits her awareness that the detinue was arrested, but is not aware as to whether the detinue was subsequently released or was in jail at the time of passing of the impugned order of detention. The Detaining Authority is also not aware as to whether investigation in the aforesaid case was completed by the police and the final report submitted to the Competent Court of law. This was an important material to be placed before the Detaining Authority so that it could derive its subjective satisfaction on the basis of relevant material.

09. It seems that relevant material was not placed before the Detaining Authority which in turn incapacitated the Detaining Authority to consider the relevant material to base its subjective satisfaction. The petitioner has specifically claimed that subsequent to his arrest in the FIR No. 63/2021, he was released on bail by the Competent Court of jurisdiction. This fact has not been denied by the Detaining Authority in the reply affidavit. If that be the position, it was incumbent upon the Detaining Authority to record its satisfaction with regard to the activities the petitioner had indulged in after his release on bail. There is however nothing in the grounds of detention to suggest that this aspect was kept in mind by the Detaining Authority for deriving its satisfaction to put the petitioner under preventive detention.

10. The reference to the reports received from field agencies is too vague to enable the detainee to make effective representation against it. Admittedly, the Detaining Authority did not supply the reports which had been received from the field agencies with respect to the indulgence of the petitioner in the illegal business of narcotic drugs. Such vague grounds of detention cannot be made basis of detention. The petitioner has specifically submitted that he had made a representation to the Detaining Authority, but the same was not decided. There is no denial in the reply affidavit filed by the Detaining Authority with respect to the receipt of the representation, nor there is any indication that the representation made by the petitioner was ever considered. Non consideration of the representation made by the detainee against his detention violates the right of the detainee guaranteed by Article 22 of the Constitution of India and vitiates his detention.

11. For all these reasons, I find merit in this petition and the same is, accordingly, **allowed**. The impugned order of detention dated 30th December, 2022, passed by the Detaining Authority is quashed. The respondents are directed to release the detainee forthwith from the preventive custody provided he is not required in any other case.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

18.12.2023

“Mir Arif”

- i. Whether the judgment is reportable? Yes/No
- ii. Whether the judgment is speaking? Yes/No