

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

Reserved on: 06.12.2023

Pronounced on: 22.12.2023

WP(Crl.) No.27/2023

MOHAMMAD AMIN MALIK

...Petitioner(s)

Through: - Mr. Usman Gani, Advocate.

Vs.

UT OF J&K & Anr.

...Respondent(s)

Through: - Mr. Sajad Ashraf, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The Divisional Commissioner, Kashmir, in exercise of powers conferred under Section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred as to “the Act of 1988”), has, vide order No.DIVCOM-“K”/334/2022 dated 28.12.2022, ordered preventive detention of *Mohd Amin Malik @ Amin Malik* (hereinafter referred to as the detenu), in order to prevent him from committing any of the acts within the meaning of the Act of 1988.

2) By the instant petition, veracity and legality of the impugned detention order has been challenged by the petitioner contending that the impugned detention order has been passed without application of mind as the grounds of detention are vague, non-existent and stale on which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been

complied with in the instant case, inasmuch as whole of the material has not been provided to the petitioner. It has been further urged that there has been non-application of mind on the part of detaining authority while passing the impugned detention order as the detenue was already admitted to bail in the FIR, mention whereof has been made in the grounds of detention.

3) The respondents, in their counter affidavit, have contended that the detenue has been covertly dealing in and supplying narcotics/liquor. The detenue has been operating a major racket of drug consignments/other narcotic substances for delivery to different areas. It has been further contended that the activities of the petitioner have posed a serious threat to the health and welfare of the people of the area. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detenue and the same was read over and explained to him. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit and that all the statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority while passing the impugned detention order. To substantiate their stand taken in the counter affidavit, the respondents have produced the detention record.

4) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments, was on the following grounds:

- (I) *That the impugned order of detention is based upon stale incidents having no proximate link to the activities alleged to be prejudicial to the maintenance of public order.*
- (II) *That there has been non-application of mind on the part of the detaining authority as the detenu has already been admitted to bail in FIR Nos.113/2021 registered with P/S Srigufwara, but this fact has not been mentioned in the grounds of detention.*

5) So far as the first ground of challenge is concerned, a perusal of the grounds of detention reveals that the incidents referred therein pertain to the year 2021, that is more than a year prior to the passing of the impugned order of detention. There is no reference to any recent incident involving the petitioner in the grounds of detention. Thus, it is clear that the order of detention has been based on past and stale incidents.

6) The Supreme Court in the case of **Sama Aruna v. State of Telengana and & anr, (2018) 12 SCC 150**, while holding that the incidents which are said to have taken place long back, cannot form basis for being satisfied that the detenu is going to engage in similar activities, observed as under:

“17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment

for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it.”

From the aforesaid enunciation of the law on the subject, it is clear that there has to be a live and proximate link between the past conduct of the detainee and the activities alleged to be prejudicial to the maintenance of security of the state. In the instant case, the said link is completely missing as the time between the order of detention and the incident referred to in the grounds of detention is far too large to presume such a link. The impugned order of detention, therefore, cannot be sustained.

7) Next it has been contended that the impugned detention order suffers from non-application of mind on the part of the detaining authority, inasmuch as the grounds of detention do not bear any reference to the fact that the petitioner had already been admitted to bail in FIR No. 113/2021 registered with P/S Srignuwara in terms of the order passed by the court of competent jurisdiction. The non-mentioning of this important fact in the grounds of detention exhibits non-application of mind on the part of detaining authority. This shows that the detaining authority has not meticulously examined the record while passing the impugned order of detention which renders the same unsustainable in law. I am supported in my aforesaid view by the judgment of the Supreme Court rendered in the case of **Anant Sakhararam Raut v. State of Maharashtra & Ors. AIR 1987 SC 137.**

8) For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. The respondents are directed to release the petitioner from the preventive custody forthwith, provided he is not required in connection with any other case.

9) The record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar
22.12.2023
"Bhat Altaf, PS"

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

