

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) no. 253/2023

Reserved on: 18.12.2023

Pronounced on: 30.12.2023

Showkat Ahmad Bhat

.....Petitioner

Through: Ms Sheeba Rashid, Advocate

V/s

UT of J&K and others

..... Respondent(s)

Through: Mr. Sajad Ashraf, GA

CORAM:

HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

1. By way of this petition, the petitioner/detenu has assailed the Order No.DIVCOM-“K”/80/2023 dated 06.06.2023 passed by Divisional Commissioner, Kashmir, detaining Showkat Ahmad Bhat @ Shaya under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988, with a view to prevent him from committing any of the acts within the meaning of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The detenu has assailed this order of detention through his mother, Nabla Begum.
2. The impugned detention order has been assailed by the detenu on various grounds, that same has been passed in violation of the Constitutional and statutory safeguards provided to him. The detenu, in fact, was already admitted to bail in FIR No.14/2023, and this fact has not been reflected in the grounds of detention, as such, the order suffers from non-application of mind. All the relevant material relied upon by detaining authority has

not been furnished by the detaining authority to the detenu to enable him to make an effective representation. The detaining authority has not prepared the grounds of detention itself, which has vitiated the detention. The allegations made in the grounds of detention are vague, non-existent and have been fabricated to justify his detention against which no effective representation could be made. It is also submitted that detenu is not medically fit for detention as he met with an accident in the year 2017 and till date the right leg of detenu is not working properly.

3. Mr. Sajad Ashraf, GA, appearing on behalf of the respondents, has filed the counter affidavit as well as produced the detention record.
4. Learned counsel for the respondents has controverted the grounds urged by the petitioner in the petition. It is submitted that the detenu was apprehended in FIR no.14/2023. The activities of detenu in indulging in narcotic trade are highly prejudicial and will cause adverse affect of drug abuse in the society and his remaining at large involves a great risk to the health and welfare of the people of the area. It is further submitted that as per the reports of the field agencies, the detenu is clandestinely dealing in illegal business of Narcotics and is exploiting the immature minds of the younger generation by making them dependent on drugs. He is supplying drugs to young immature youth. It is also submitted that all the statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority. The grounds of detention, order of detention as well as all the material relied upon by the detaining authority have been provided to the detenu within the statutory period. The detenu was also informed to make a representation either to the Detaining Authority or to the Government.

5. Heard learned counsel for the parties and perused the record.
6. The first ground taken by the detenu is that bail granted to him has not been mentioned in grounds of detention, the same has force. Detenu has been granted bail by the Court of Principal Sessions Judge, Ganderbal, vide order dated 19.04.2023, in FIR no.14/2023, registered with police station Kheerbawani. This fact is not coming forth from perusal of grounds of detention. Non-mentioning of this important fact in the grounds of detention, exhibits non-application of mind on the part of Detaining Authority. This also reflects that detaining authority has not meticulously examined the material record available before him while passing the impugned order of detention which renders the same unsustainable.
7. Similar issue has been dealt by the Apex Court in case of “**Anant Sakharam Raut v. State of Maharashtra and another**” reported in **AIR 1987 SC 137**, and has held in paragraph 8 as under:-

“We hold that there was clear non-application of mind on the part of detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the judgement of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith.....”

8. The law on the subject is trite. If detaining authority is apprehensive that in case detenu is released on bail he may again carry on his criminal activities, then in such situation, the authority should oppose the bail application and, in the event, bail is granted, the authority should challenge such a bail order in the higher forum and that merely on the ground that an accused in detention is likely to get bail, an order of preventive detention should not ordinarily be passed. Para 24 of judgement in **Saima Aruna v. State of Telangana and another, AIR 2017 SC 2662**, reads as under:

“24. There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No.221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In *Ramesh Yadav V. District Magistrate, Etah and Ors.*, this court observed as follows:

“6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail an order of detention under the Nation Security Act should not ordinarily be passed.”

9. For the foregoing reasons, without adverting to other grounds raised in this petition, this petition is allowed. Impugned order of detention bearing No. DIVCOM-“K”/80/2023 dated 06.06.2023, passed by the Divisional Commissioner, Kashmir-respondent no.2, is quashed. The respondents are directed to release the detenu forthwith provided he is not required in any other case.

10. Detention record be returned to learned counsel for the respondents by the Registry forthwith.

(SINDHU SHARMA)
JUDGE

SRINAGAR

30.12.2023

“Manzoor”

Whether the order is reportable: Yes/No