

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

Reserved on: 27.02.2025
Pronounced on: 06.03.2025

HCP No. 101/2024

**Moomin Kamal, aged 27 years
S/O Asgar Ali Kamal,
R/O Kamal Mohalla,
Tehsil and District Kishtwar
through his father Asgar Ali Kamal.**

...Petitioner(s)

Through: Mr. Zulker Nain Sheikh, Advocate.

Vs

- 1. Union Territory of Jammu & Kashmir
through Commissioner/Secretary (Home)
Civil Secretariat, Jammu/Srinagar.**
- 2. The Divisional Commissioner, Jammu.**
- 3. The Superintendent, District Kishtwar.**
- 4. The Senior Superintendent of Police, Kishtwar.**

Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

- 01.** Through the medium of this Habeas Corpus Petition, the petitioner-Moomin Kamal (hereinafter called '**detenue**') seeks quashment of Order No. PITNDPS 29 of 2024 dated 13.05.2024 (hereinafter called '**detention order**') passed by the respondent No. 2-Divisional Commissioner, Jammu (hereinafter called '**detaining authority**')

whereby and whereunder in terms of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, PITNDPS Act), he had been ordered to be detained and lodged in District Jail, Kishtwar.

02. The detainee has pleaded that FIR Nos. 259/2022 and 139/2023 came to be registered against him on flimsy and frivolous grounds and in the said FIRs, the detainee has already been enlarged on bail and trial in the said FIRs is pending; that the detainee was detained 18.05.2024 by the Police Station, Kishtwar from his residence for no rhyme and reason; that when the father of the detainee went to the Police Station to enquire about his son, he was informed that the detainee has been shifted to District Jail, Kishtwar and when the father of the detainee visited the said Jail, he was informed that the detainee has been taken into preventive custody under the PITNDPS Act.

03. The detainee has pleaded in the grounds of his petition that the detainee has not been afforded opportunity to make effective representation due to incomplete detention order along with incomplete dossier provided by the detaining authority, that too, in English language, which has not been made understandable to the detainee in the

language known to him; that on the basis of a dossier submitted by the respondent No. 3, without application of mind and without evaluating the allegations alleged against the detainee, the detaining authority proceeded to pass the impugned detention order by invoking the provisions of PITNDPS Act; that the detainee has already been enlarged on bail in the FIRs mentioned in the grounds of detention; that the detaining authority has not specified the authority before whom the representation has to be made and lastly that the detaining authority has also not reflected as to how public order will get affected in case of non-detention of the detainee under prevention custody.

- 04.** Pursuant to notice, the respondents in their counter affidavit have stated that after carefully examining the dossier and the relevant records attached with it, it was found imperative to detain the detainee under the relevant provisions of PITNDPS Act as the detainee after getting bail was again involved in the illicit trafficking of narcotic drugs; that at the time of execution of detention order, the Executing Court has provided the complete set of dossier along with detention order, grounds of detention and explained the detention order in the language i.e., Urdu which the detainee understands fully;

that the detainee was also informed about his right to make representation before the Government as well as before the detaining authority against the detention order; that the detainee was detained under the provisions of PITNDPS Act for his repeated and continuous involvement in illicit traffic; that the detention order was confirmed by the Home Department vide Order No. Home/PB-V/1338 of 2024 dated 19.06.2024 after seeking the opinion of the Advisory Board dated 10.06.2024; that the Executing Officer has explained the detainee the grounds of detention and also informed about his right to make representation.

- 05.** Learned counsel for the detainee, reiterating the submissions made in the petition, has argued that the detainee had been detained illegally by the detaining authority without application of mind and based only on the dossier prepared by the police.
- 06.** He has argued that the detaining authority has not considered the representation submitted by the detainee; that there is no proximate link between the last activity and the detention order which vitiates the detention order. It was finally prayed that the impugned detention order be quashed and the detainee be ordered to be released forthwith from custody.

- 07.** Learned counsel for the respondents, ex adverso, argued that the detaining authority, after carefully examining the dossier and the relevant records attached with it, found imperative to detain the detune under the PITNDPS as the detenue after getting the bail from the FIRs mentioned in the grounds of detention was again involved in the illicit trafficking of narcotic drugs; that the detenue has been provided the complete set of dossier along with detention order, grounds of detention and explained the detention order in Urdu language which the detenue understood fully; that the detenue was also informed about his right to make representation before the Government as well as before the detaining authority and lastly she has argued that the impugned detention order be upheld and the petition filed by the detenue being devoid of any merit and substance, be rejected.
- 08.** Heard learned counsel for the parties, perused the detention record and considered.
- 09.** The detention order has been based on two cases registered at Police Station, Kishtwar in the years 2022 and 2023 and proceeding against the detenue under Sections 107/110/151 CrPC and the Daily Diary Reports recorded at Police Post, Hidyál on 26.02.2024 and at Police Post, Shalimar on 01.03.2024 indicating that the

detenue was involved in the smuggling of narcotics. On 24.02.2024, a police patrolling party from Police Post, Hidyāl recovered three grams of Heroine (Chitta) and a case was registered at Police Station, Kishtwar vide FIR No. 259/2022 under sections 8/21/22 NPDS Act. Again on 28.06.2023, a police party from Police Station, Kishtwar during personal search of the detenue recovered 6.35 grams of Heroine (Chitta) from his possession and a case was registered vide FIR No. 139/2023 under sections 8/21/22 NDPS Act at Police Station, Kishtwar. In both the cases, the detenue as an accused was stated to have been admitted to bail and on 26.02.2024, an information was received which was recorded as DDR No. 14 at Police Post, Hidyāl indicating that the detenue was selling narcotics to the youth of Kishtwar town. Similarly, on 01.03.2024, another information was received at Police Post, Shalimar that the detenue had been selling narcotic substance to the youth of Kishtwar town and that information was recorded as DDR No. 8 on 01.03.2024 at Police Post, Shalimar. The detenue was detained on 24.02.2024 while found roaming in the area of Shakti Nagar, Kishtwar under suspicious conditions and during search injections/tablets were recovered from him and he was proceeded under sections 107/110/151 CrPC.

- 10.** The detaining authority keeping in view the aforesaid continuous and repeated involvement of the detainee in criminal/narcotic substance cases, on the recommendation of the concerned police, ordered preventive detention, which is a subject matter of this petition.
- 11.** The impugned detention order has been challenged mainly on the grounds, firstly that there is no proximate link between the prejudicial activities and the detention order, secondly that the detainee has already been enlarged on bail in the FIRs mentioned in the grounds of detention, thirdly that the detainee has not been afforded opportunity to make effective representation due to incomplete detention order along with incomplete dossier, fourthly that the detention order has not been explained to the detainee in the Urdu language which he fully understood and lastly that the detaining authority has not been specified the authority before whom the representation could be made.
- 12.** So far as first ground of challenge that there is no proximate link between the prejudicial activities and the detention order is concerned, it is established that the detaining authority, after carefully examining the dossier and the relevant records attached with it, found

imperative to detain the detainee under the PITNDPS as the detainee after getting the bail from the FIRs mentioned in the grounds of detention was again involved in the illicit trafficking of narcotic drugs. The same is evident from the grounds of detention in this regard reports vide DDR No. 14 dated 26.02.2024 entered at Police Post, Hidya, DDR No. 08 dated 01.03.2024 entered at Police Post, Shalimar and preventive action U/Ss 107/110/151 CrPC which shows that the detaining authority has rightly detained the detainee under preventive detention in terms of PITNDPS Act as there is a proximate link between the prejudicial activities and the purpose of detention.

- 13.** So far as second ground of challenge that the detaining authority has not considered this aspect of the matter while passing the detention order that the detainee has already been enlarged on bail in the FIRs mentioned in the grounds of detention is concerned, the detaining authority has mentioned in the grounds of detention that the detainee after getting bail in the FIRs in reference has repeatedly been involved in the illicit trafficking cases which shows that the detaining authority has rightly detained the detainee under preventive detention in terms of PITNDPS Act.

- 14.** So far as other grounds of challenge that detinue has not been afforded opportunity to make effective representation due to incomplete detention order along with incomplete dossier, that the detention order has not been explained to the detinue in the Urdu language which he fully understood and lastly that the detaining authority has not been specified the authority before whom the representation could be made are concerned, it transpires, from the perusal of the Execution Report, that all the relevant material including 82 leaves were handed over to the detinue to make an effective representation; that the all the relevant material were read over and explained to the detinue in Urdu/Kashmiri language and that the detinue was also informed that he can make representation to the Government as well as detaining authority against his detention order. As such, detention order cannot be said to have invalidated on these grounds. As a result, petition is found to be devoid of any merit and is liable to be dismissed.
- 15.** Preventive detention is neither reformatory nor curative but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation and from disturbing the public tranquility or from

indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc and such a detention is devised to afford protection to society and 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. The problem of drug smuggling in the UT of Jammu & Kashmir having regard to its geo-political location bordering hostile neighbouring countries, which have been pushing drugs to this part of the country, is all the more serious as not only its illegal trade is detrimental to the economy of the nation but to use the proceeds thereof in the sustenance of cross-border terrorism, so the menace of drugs in this part of the country has to be seriously looked into having its wider ramifications as smuggling and trade of the narcotics will not only destabilize the economy of the area but shall also be detrimental to the national security if the proceeds of illegal trade are used to sustain the terrorism. Besides the apprehension of the narco-terrorism, the lives of millions of gullible youth are at stake as the children of younger age become victims of this menace once being trapped by the drug smugglers causing not only the loss of life but the sufferings for the families of those who lose their lives. In such a situation, the menace of drugs is required to be dealt with, with an

iron hand and every effort made by the public authorities, if the same falls within the legal ambit, is required to be not interfered with.

16. The judgments referred and relied upon, in support of the contentions raised by the learned counsel for the detainee for different facts of those cases have no relevance to the case on hand.

17. As a sequel to the aforementioned discussion and observations made hereinabove, impugned detention order is upheld and the petition alongwith connected application(s), is hereby rejected/dismissed. Detention records received from Mrs. Monika Kohli, learned Sr. AAG is returned to her against proper receipt.

18. *Disposed of* as dismissed.

(M A CHOWDHARY)
JUDGE

JAMMU
06.03.2025
Naresh/Secy

Whether order is speaking: Yes
Whether order is reportable: Yes