

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on : 07.11.2024

Pronounced on : 25.11.2024

HCP No. 37/2024

AMJAD KHAN, Age 36 Years
S/o Nazir Ahmed R/o Subash
Nagar, Udhampur
Thropugh his wife
R/o Wad No. I H.No. 106 Subash
Nagar, Udhampur

....Petitioner(s)/Appellant(s)

Through :- Mr. Tanveer Khan, Advocate

V/s

1.UNION TERRITORY OF J&K THROUGH
COMMISSIONERSECRETARY TO HOME
DEPARTMENT, CIVIL SECRETARIAT,
JAM M U.

....Respondent(s)

2. FINANCIAL COMMISSIONER (ADDITIONAL
CHIEFSECRETARY) HOME DEPARTMENT, J&K,
CIVIL SECRETARIATJAM M U.

3. DIVISIONAL COMMISSIONER, JAMMU.

4. SUPERINTENDENT OF POLICE, UDHAMPUR

5. SUPERINTENDENT OF DISTRICT JAIL,
UDHAMPUR

Through :- Mr. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
JUDGMENT

1. Through the medium of this writ petition, Order No. PITNDPS 19 of 2024 dated 15.02.2024, passed by Divisional Commissioner, Jammu - respondent no.3 (for short "detaining authority") whereby detenu, namely, Amjad Khan S/o Nazir Ahmed R/o Subash Nagar, Udhampur has been

placed under preventive detention with a view to prevent him from committing any offence under Prevention of Illicit Traffic in narcotic Drugs and Psychotropic Substances Act, 1988 and to secure the health and welfare of public at large is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. The impugned Detention order dated 09.02.2024, passed by the detaining authority reads as under:-

Whereas, the Sr. Superintendent of Police, Udhampur vide letter No. Conf/Dossier/76-79 dated 13.02.2024 has produced material record, such as documents in respect of Amjad Khan S/o Nazir Ahmed R/o Subash Nagar, Udhampur.

Whereas, after perusal of records submitted by the Sr. superintendent of Police, Udhampur and after applying my mind carefully and having regard to the requirements of law, I am satisfied that Amjad Khan S/o Nazir Ahmed R/o Subash Nagar, Udhampur is engaged in repeated Illicit Traffic in Narcotic Drugs and Psychotropic substances cases which poses a serious threat to the health and welfare of the people and with a view to prevent him from committing any of the acts within the meaning of illicit traffic, it is necessary to detain him on the basis of grounds enclosed as Annexure-I.

Now, therefore ,in exercise of powers vested in me under Section 3of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 read with SRO 247 dated 27.07.1988, I, Ramesh Kumar, Divisional Commissioner, Jammu, hereby direct that Amjad Khan S/o Nazir Ahmed R/o Subash Nagar, Udhampur be detained and is ordered to be lodged in District Jail' Udhampur for a period to be specified by the Government.”

3. The detention order dated 15.02.2024 passed by the detaining authority is being challenged by the petitioner-detenu, broadly, on the grounds:-

(i) that the order impugned / detention order against the detenue is unconstitutional, illegal and bad in

law. The order of detention has been passed in breach of the mandate of law as declared by the Hon'ble Supreme Court in its catena of Judgments and also by the various authorities / judgments pronounced by this Hon'ble court. Therefore on this ground alone the order of detention is liable to be set aside and quashed and entitles the detenue for the reliefs as stands prayed for;

- (ii) that the detaining authority has not followed the constitutional and statutory procedural safeguards. The detaining authority has not followed the procedural safeguards as provided under Article 22(5) of the Constitution of India, read with subsection (3) of section 3 of Prevention of Illicit Traffic in Narcotic and Psychotropic substances Act , 1988. The detaining authority has not complied with the said provisions and mandate thereof, as the wife of the detenue has approached all the offices of the respondents, for obtaining the copies of the detention order and other related documents regarding the detenue and only after struggling for weeks, the order of detention and grounds of detention have been obtained by her from the office of District Magistrate along with the copy of the F.I.R registered against the detenue. Whereas, the statements of the witnesses recorded under section 161 Cr.P.C or t64 / A Cr. P.C, seizure memos, inventory made u/s 52-A of NDPS Act, dossier prepared by the police and other connected material have not been supplied to the detenue, to which he was entitled as per the mandate of law .Therefore the dereliction of the duty cast upon the detaining authority amounts to the non-communication of the grounds of the detention which has resulted in depriving the detenue from filing of an effective and meaningful representation against the order of detention;*
- (iii) that the detenue is a driver by profession, so the detaining authority was under a constitutional and legal duty to provide him with the ground of the detention and other material connecting his case with the guilt, which is even not proved till date*

and ought to have read and explained the same to the detenue in his native language which the detenue could better understand and the breach of it has swayed the mind of the detaining authority while passing the detention order in hand against the detenue and hence in this behalf the detaining authority has not complied with the constitutional and legal safeguard as are guaranteed to the detenue;

- (iv) *that the detaining authority has not assigned any compelling and cogent reason for passing the order of detention. The order of detention is not based on any cogent material which could necessitate the passing of the order of detention against the detenue under preventive law. This simply means that while imposing the detention order, it appears that whole process has swayed the mind of the detaining authority as there is no application of mind on the part of the detaining authority, while passing detention order against the detenue;*
- (v) *that the grounds of detention have been formulated by the Sr. Superintendent of Police Udhampur as is reflected from the grounds of detention formulated by the detaining authority and the subjective satisfaction of detaining authority is mandatory and sine quo non for passing of the order impugned. This important constitutional as well as legal aspect has been ignored while formulating/imposing the detention order against the detenue;*
- (vi) *that the order impugned did not approve within the statutory period nor has any reference been made to the advisory board. The detenue has neither been heard by the advisory board either in person or through his counsel or friend. The detaining authority has breached the constitutional and statutory safeguards as provided under the provisions of law;*
- (vii) *that the order of detention has not been approved by the Government. The order of detention as such*

would remain in operation only for a period of 10 days under the provisions of Prevention Of Illicit Traffic in Narcotic Drugs And Psychotropic Substances Act, 1988. It is imperative upon the detaining authority to forward within ten days a report with respect to the detention order, to the central Govt. which has not been done in the present case, which shows that there is again non application of mind on part of detaining authority.

4. Respondents have filed counter affidavit, insisting therein that the activities indulged in by detenu was posing serious threat to public order as well as to the health and welfare of the people. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.
5. I have heard learned counsel for parties. I have gone through the detention record produced by counsel for respondents and considered the matter.
6. The contention of learned senior counsel appearing for petitioner is that the material relied upon by detaining authority while passing impugned order of detention, has not been provided to detenu, violating the Constitutional and Statutory procedural safeguards as provided to detenu under Article 22(5) of the Constitution of India. In view of this contention of learned senior counsel for petitioner, I have gone through the detention record produced by counsel for respondents. Detention record, *inter alia*, consists of Receipt of Grounds of Detention. Execution Report, which reads as under:-

“Received grounds of detention along with detention issued by the Divisional Commissioner, Jammu vide order No. PITNDPS 19 of 2024 dated 15.02.2024, issued under endorsement No. 601/RA/Detention/55/CC-7409870 dated 15.02.2024, copy of Warrant, Grounds of detention along with letter in English Consisting of (04) leaves, Dossier (04 leaves) & FIRs Statements and other documents (19 leaves) total 27 leaves through execution office PSI Abhinav Bhatti (PID No. EXJ-196584) of P/S Udhampur. The contents of grounds of detention have been read over and explained to me in my own language i.e., Hindi which I fully understand today on 15.02.2024. I have also been informed that I can make the representation to the Government against the detention order if so desire.”

7. Perusal of Receipt of Grounds of Detention reveals that as many as 27 leaves have been given to detenu. Grounds of Detention have been read over and explained to detenu in Hindi and Dogri language, which he understood fully and in lieu of which, he affixed his signature on the Receipt of grounds of detention. In such circumstances, contention of learned counsel for petitioner that material relied upon by detaining authority to issue impugned order of detention had not been served upon detenu, is misconceived.
8. Perusal of grounds of detention reveals that registration of cases FIR nos. 436/2018 and 601/2023 as well as Preventive measure under Section 107/151 dated 30.12.2023 have been relied upon by the detaining authority for placing detenu under preventive detention.
9. Perusal of record would also reveal that the case was referred to the Advisory Board for its opinion as provided under Clause (b) of Section 9 of the Act and the Advisory Board vide its opinion dated 28.02.2024 has observed that there is sufficient cause for detention of the detenu. The detenu has also been informed to make representation before the Government as well as detaining authority. In examining the question

whether the ordinary laws of the land would have sufficed, and whether recourse to preventive detention was unnecessary, it must be borne in mind that the compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens, would lose their meaning, provide the justification for the laws of preventive detention. These Laws posit that an individual's conduct, prejudicial to maintenance of public order, security of State, preservation of forest wealth, preventing a person from engaging in illicit traffic in narcotic drugs and psychotropic substances, provides grounds for satisfaction for a reasonable assessment of possible future manifestations of similar propensities on the part of the offender. The object of the law of preventive detention is not punitive, but is only preventive. In preventive detention no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability.

10. The essential concept of preventive detention is that detention of a person is not to punish him for something he has done, but to prevent him from doing it. Its basis is the satisfaction of the Executive of a reasonable probability of detenu acting in a manner similar to his past acts, and preventing him by detention from so doing. Preventive detention, an anticipatory measure, is resorted to when the executive is convinced that such detention is necessary to prevent a person detained from acting in a manner prejudicial to certain objects which are specified by the law. In preventive detention no offence is proved, and justification of such detention is suspicion or reasonable probability. The order of detention is based on a reasonable prognosis of the future behaviour of a person based

on his past conduct in the light of surrounding circumstances. The power of preventive detention is exercised in reasonable anticipation. It may or may not relate to an offence. It does not overlap with the prosecution even if it relies on certain facts for which prosecution may be, or may have been, launched. An order of preventive detention may be made before or during prosecution. It may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

11. A six Judge Constitution Bench of the Supreme Court way back in the year 1951, in the case of *The State of Bombay v. Atma Ram Shridhar Vaidya*, AIR 1951 SC 157, while looking into the scope subjective satisfaction arrived at by the detaining authority has held that the same is extremely limited and that the Court, while examining the material, which is made basis of subjective satisfaction of detaining authority, would not act as a court of appeal and find fault with satisfaction on the ground that on the basis of the material before detaining authority, another view was possible. Such being the scope of enquiry in this field, and the contention of counsel for petitioner, therefore, cannot be accepted. While going through the grounds of detention and dossier, I do not find that grounds of detention are ditto copy of dossier supplied by sponsoring authority. As is evident from the detention record, the material has been supplied to detenu. and all this material was before detaining authority when it arrived at subjective satisfaction that the activities of the detenu are such, which would entail the preventive detention under the Act.

12. It is pertinent to mention here that the powers of preventive detention under the Act of 1988, are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing commission of an offence or preventing detained person from achieving a certain end. The authority, making the order, therefore, cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of impending commission of a prejudicial act. The Act of 1988, therefore, requires that the Central Government or a State Government must be satisfied with respect to any person that with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

13. The acts, indulged in by persons, who act in concert with other persons and quite often such activities have far-reaching ramifications on our younger generation. These acts are preceded by a good amount of planning and organisation by the set of people. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed, but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention. The said views and principles have

been reiterated by the Supreme Court in *Gautam Jain v. Union of India* *another* AIR 2017 SC 230.

14. Section 2 (e) of the Act of 1988 envisions that "illicit traffic", in relation to narcotic drugs and psychotropic substances, means: (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances; (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those provided in sub-clauses (i) to (iii); or (v) handling or letting any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv), other than those permitted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), or any rule or order made, or any condition of any licence, term or authorization issued, thereunder and includes: (1) financing, directly or indirectly, any of the aforementioned activities; (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and (3) harbouring persons engaged in any of the aforementioned activities.

15. The present case relates to illicit trafficking of narcotic drugs. The drug problem is a serious threat to public health, safety and well-being of humanity. Our global society is facing serious consequences of drug abuse and it undermines the socio-economic and political stability and sustainable development. Besides, it also distorts health and fabric of society and it is considered to be originator for petty offences as well as

heinous crimes, like smuggling of arms and ammunition and money laundering. Involvement of various terrorist groups and syndicates in drug trafficking leads to threat to the national security and sovereignty of States by way of Narco- terrorism. Drug trafficking and abuse has continued its significant toll on valuable human lives and productive years of many persons around the globe. With the growth and development of world economy, drug traffickers are also seamlessly trafficking various type of drugs from one corner to other ensuring availability of contrabands for vulnerable segment of society who fall into trap of drug peddlers and traffickers. Due to India's close proximity with major opium growing areas of the region, India is facing serious menace of drug trafficking and as a spill-over effect, drug abuse especially among the youth is a matter of concern for us.

16. Our Constitution framers had visualised danger of misuse of such type of substances and, thus, made it part of directives issued to the State. The Directive Principles, which are part of our Constitution, lay down that the State shall make endeavours to bring about the prohibition of substances injurious for health except for medicinal and scientific purposes. In recent years, India has been facing a problem of transit traffic in illicit drugs. The spill over from such traffic has caused tribulations of abuse and addiction. This trend has created an illicit demand for drugs within the country. The illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and activities of persons engaged in such illicit traffic have a deleterious effect on the national economy as well. Having regard to the persons by whom and the manner in which such activities are organised and carried on, and having regard to

the fact that in certain areas which are highly vulnerable to the illicit traffic in narcotic drugs, such activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities to provide for detention of persons concerned in any manner therewith.

17.To sum up, it is relevant to refer to the observations of the Supreme Court that while dealing with the question of preventive detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, in the case of *Prakash Chandra Mohan v. Commissioner*, 1986 Cr.L.J. 786. The Supreme Court observed that it must be remembered that observance of written law about the procedural safeguards for protection of individual is normally the high duty of public official but in all circumstances not the highest. The law of self-preservation and protection of the country and national security may claim in certain circumstances higher priority.

18.In view of the reasons discussed above, the instant writ petition is without any merit and is, accordingly, **dismissed** with connected CM(s).

19.Detention record be returned to counsel for respondents.

(Vinod Chatterji Koul)
Judge

Jammu:
25.11.2024
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