

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

HCP No. 72/2023

Reserved on: 29.02.2024

Pronounced on: 02.03.2024

**Sheela Devi @ Sheelo, age 54 years,
W/O Ram Paul, R/O Chak Drab Khan,
Tehsil & District Kathua,
A/P District Jail, Kathua
Through her husband Ram Paul**

.....Petitioner(s)

Through :- Mr. Mayank Gupta, Advocate

v/s

- 1. Union Territory of J&K, through
Principal Secretary Home Department,
J&K Govt. Civil Secretariat, Jammu.**
- 2. Divisional Commissioner, Jammu,**
- 3. Senior Superintendent of Police, Kathua.**
- 4. Superintendent of Jail, District Jail, Kathua.**

.....Respondent(s)

Through :- Mr. Amit Gupta, AAG

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

JUDGMENT

1. Divisional Commissioner Jammu (hereinafter called 'Detaining Authority')
in exercise of powers vested in him as Secretary to Government of J&K,
under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and
Psychotropic Substance Act 1988 r/w SRO 247 of 1998 dated 27.07.1998,
passed Detention Order No. PITNDPS 45 of 2023 dated 27.09.2023 (for
short 'impugned order'), in terms whereof the petitioner **Sheelo Devi @
Sheelo W/O Ram Paul, R/O Chak Drab Khan Tehsil & District Kathua**
(for short 'detenue') has been detained.

2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 226 of the Constitution of India. It is being pleaded in the petition that the detention order so passed against the petitioner was not addressed to detinue which shows the callousness and non-application of mind on the part of the detaining authority-respondent No.2; that the petitioner has not committed any offence nor she is involved in the commission of any offence under the NDPS Act which may pose a serious threat to the health and welfare of the people, but the respondents without the application of mind and without considering the material on record had issued and passed the impugned detention order which is illegal, unjustified, unwarranted under law and as such the same is liable to be quashed; that the order of detention and the connected documents annexed with the petition clearly show violation of right of the detinue guaranteed in terms of the Article 22(5) of the Constitution of India.
3. Respondents in their counter affidavit have stated that the detinue was ordered to be detained for maintenance of 'public order' and had she been let free there would have been every likelihood of her re-indulging in criminal activities. It is being stated that the power of preventive detention is different from punishment; preventive detention aimed at stopping the illegal activities of an individual which otherwise under common law, both criminal/civil cannot be stopped and the said individual creates a havoc in the society which leads to public disorder, peace, stability; that the petitioner falls under the category of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance in terms of Section 3 of the

Act of 1998, which poses a serious threat to the health and welfare of the young generation of the country and even to the economy and security of the Union Territory of J&K. It is also being stated that the petitioner is involved in numerous criminal activities, was not likely to desist from those activities which were prejudicial to the maintenance of peace and public order in District Kathua.

4. Learned counsel for the detinue while being heard, makes reference to the grounds of the detention and states that on a cursory look on the same it is manifest that same are vague. It is also submitted that the Detaining Authority on the basis of dossier submitted by Senior Superintendent of Police Kathua, without application of mind and without evaluating the allegations alleged against the detinue in the said dossier, copy of which was not even provided to the detinue, proceeded to pass impugned detention order whereby the detinue has been detained and directed to be lodged at District Jail Kathua. In addition, learned counsel submitted that the allegations levelled against the detinue are totally vague as nothing specific has been stated in the grounds of detention. It has also been urged that the petitioner is a diabetic patient and she has also suffered heart attack and in view of her health, detention of petitioner be quashed.
5. Learned AAG, ex adverso, submits that the record reveals that there is no vagueness in the grounds of detention. The procedural safeguards prescribed under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act and the rights guaranteed to the detinue under the Constitution have strictly been followed in the instant case. The detinue has been furnished all the material, as was

required, and was also made aware of her right to make representation to the detaining authority as well as government, against her detention.

6. Heard learned counsel for both the sides at length, perused and considered the record.
7. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanising the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order, must be strictly construed. However, where individual liberty comes into conflict with interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation.
8. Before appreciating the rival contentions of the parties, it would be appropriate to note that the procedural requirements are the only safeguards available to the detinue since the Court cannot go behind the subjective satisfaction of the detaining authority as has been laid down by Hon'ble Apex Court in a case titled **Abdul Latif Abdul Wahab Sheikh Vs B.K. Jha & Anr.**, reported as (1987) 2 SCC 22. The procedural requirements are, therefore, to be strictly complied with, if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.

9. The detention record, as produced, reveals that the detainee was involved in following cases registered at Police Station Kathua, vide

- (i) FIR No.61/2019 U/Ss 8/21/22 NDPS Act,
- (ii) FIR No. 284/2019 U/Ss 8/21/22 NDPS Act,
- (iii) FIR No. 304/2022 U/Ss 8/21/22 NDPS Act;
- (iv) GD Report No.15 dated 15.09.2023.

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority while passing detention order.

10. The detention of the detainee has been ordered on the basis of three FIRs lodged upto the year 2022 only and just one G D Report No.15 had been recorded in the year 2023 which too does not indicate any specific allegation or activity on the part of the detainee, therefore, all the cases except GD Report had no proximity of time with the detention order. Live and proximate link, between the past conduct of the detainee and the imperative need to detain, have to be harmonised to rely upon the alleged illegal activities of the detainee. Old and stale incidents shall be of no use as has been held in **“Sama Aruna Vs State of Telangana & Anr.”** reported as **(2018) 12 SCC 150**. Relevant paragraph No.16 is extracted as under:

““16. Obviously, therefore, the power to detain, under the Act of 1986 can be exercised only for preventing a person from engaging in or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be

considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In Golam Hussain vs State of W.B, this Court observed as follows:(SCC p.535 para 5)

“No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case”.

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities”.

The alleged activities against the detenu as enumerated in FIRs relied upon, indicate that two of the cases were registered in the year 2019, whereas one case was registered in the year 2022, against the detenu at Police Station Kathua, for having in her possession narcotic material. After being released from custody in the aforesaid cases, on being admitted to bail, detenu had not indulged herself in any such activities as reported in GD Report filed with the dossier by the sponsoring agency to the detaining Authority. Instead of seeking cancellation of the bail, the Police has recommended invoking preventive detention against the detenu in the month of September 2023. Based on her involvement in illicit traffic in drugs, the detenu was ordered to be detained under

preventive detention, on the two incidents of the year 2019 and one of the year 2022, which by no stretch of imagination can be said to be having proximate and live link with her detention in the year 2023. The impugned detention order, thus on this ground is initiated and is not sustainable. .

11. The requirement of law is that whole of the record, on which the detention order is based, has to be made available to the detenu in the language that he/she understands. As per the execution report, detenu has been furnished 91 leaves of copies of the detention record.
12. Hon'ble the Supreme Court in a case titled **Chaju Ram Vs The State of Jammu & Kashmir**, reported as **AIR 1971 SC 263**, held in Para-9 of the judgment as under:-

“.....The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable-right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the-detenu in his own language was not complied with.”

13. It shall also be quite apposite to reproduce the following portions from **Paras 3 and 5** of the judgment rendered by Hon'ble the Supreme Court in the case titled **“Raziya Umar Bakshi Vs Union of India & Ors.” (AIR 1980 SC 1751)**:

“3.....The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex-facie.

5.....in cases where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands.”

14. The Hon’ble Apex Court in the judgment rendered in the case of **“Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors. (AIR 1999 SC 3051)**, has also held as under:

“The right to be communicated the grounds of detention flows from [Article 22\(5\)](#) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.”

15. The detaining Authority in a communication dated 27.09.2023 to the detenu has informed her with regard to passing of the detention order with further information that she can make a representation to the Government (Home Department) J&K, as well as before the detaining Authority against the said detention order, if she so desires. As per the execution report dated 29.09.2023 by Inspector Sudhir Sadotra, SHO Police Station Kathua, the detenu was detained at District Jail Kathua and copies of detention order, grounds of detention and other documents (total 91 leaves) were handed over to the Jail Authority against proper

receipt for further lodgement and handing over to the said detainee under proper receipt and that the said detainee had also been informed that she can make a representation to the Government against the order of detention, if she so desires. The execution report, thus, is clear that the documents were not served upon the detainee by the executing officer but were hand over to Jail Authority for being served upon her, therefore, it is clear from the execution report filed by the respondents along with counter affidavit that the documents were not furnished to the detainee by the Executing Officer and she was also not informed that she can file a representation to the detaining Authority and only to the Government. Though there is a receipt issued by the detainee and attested by the Jail Superintendent that the grounds of detention relied upon by the detaining Authority in the detention order dated 27.09.2023, which were in English along with other material (91 leaves) were served upon the detainee and same were explained to her in English/Urdu/Hindi and Dogri which she fully understands and she was also informed that she can make a representation to the Government against her detention order, however, learned counsel for the petitioner has submitted that the documents that had been furnished to the petitioner were not legible and he has drawn attention of this Court towards copies of the some of the documents, which were almost blank, in such a situation when legible copies of whole of the record had not been furnished to the detainee and she had neither been informed by the Executing Officer nor by the Jail Superintendent of her right of filing the representation before the detaining authority that too within time limit provided under the statute, it can be safely held that the

detenue had been denied of her right of filing an effective and meaningful representation.

16. In a case of National Security Act, titled “**Jitendra Vs. Dist. Magistrate, Barabanki & Ors.**”, reported as **2004 CriLJ 2967**, the Division Bench of Hon’ble Allahabad High Court, has held:-

“10. We make no bones in observing that a partial communication of a right (in the grounds of detention) of the type in the instant case, wherein the time limit for making a representation is of essence and is not communicated in the grounds of detention, would vitiate the fundamental right guaranteed to the detenue under Article 22(5) of the Constitution of India, namely, of being communicated, as soon as may be the grounds of detention.”

17. This is another reason, as to why the impugned order would be vitiated since the detenue’s right to make a representation to the detaining authority was only available to him till approval of detention order by the Government, it follows as a logical imperative that the detaining authority should have communicated to the detenue in the grounds of detention the time limit, in which, she could make a representation to it i.e., till the approval of the detention order by the State Government.
18. Reproducing the dossier prepared by the Senior Superintendent of Police, Kathua in the order of detention, almost word by word; non furnishing of the whole of the record on which detention order was based; furnishing the material in English and not the language of the detenue; and not informing detenue of her right to make representation before the Detaining Authority within the statutory period, all reflect that the Detaining Authority has not applied its mind to draw the subjective satisfaction to detain the petitioner and detenue has also been deprived of her fundamental right to make effective and meaningful representation

against the detention order to the Detaining Authority and the government.

19. For the foregoing reasons and the law laid down as above, this petition is **allowed**. Impugned order of detention No. PITNDPS 45 of 2023 dated 27.09.2023 passed by the respondent-Divisional Commissioner, Jammu, is, as such, quashed. The detenue namely **Sheela Devi @ Sheelo**, W/O Ram Paul, R/O Chak Drab Khan Tehsil and District Kathua, is ordered to be released from the preventive custody forthwith provided she is not required in connection with any other case(s).
20. Writ petition is **disposed of**, accordingly along with pending application(s), if any.

JAMMU
02.03.2024
Vijay

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

