Sr. No. 25

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Case: HCP No.7/2023 **Pronounced on: 16.05.2024**

1. Farooq Ahmad Dar, age 37 ..... Petitioner(s)
S/o Mohd. Sultan Dar
R/o Lachipora Handwara
District Kupwara through his wife
Mst. Jamsheeda
W/o Farooq Ahmad Dar
R/o Lachipora Handwara District
Kupwara.

Through :- Mr. I. Sofi, Advocate

Vs

1. Union Territory of Jammu and .....Respondent(s)
Kashmir through Principal Secretary
to Govt. Home Department, Civil
Secretariat Srinagar.
2. Divisional Commissioner, Kashmir,
Srinagar.

Through :- Ms. Nadiya Abdulla, Assisting Counsel vice
Mr. Mohsin Qadri, Sr. AAG

CORAM:
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

01. Through the medium of writ petition, the petitioner-Farooq Ahmad Dar through his wife has challenged detention order No.Div.Com-K/73/2023 dated 31.05.2023 passed by the respondent No.2-Divisional Commissioner, Kashmir, on the grounds that the procedure has not been followed in the matter; that the petitioner has not been provided the relevant material while executing the warrants of detention; that the respondent No.2 has not applied its mind independently of the grounds prepared by the police for passing the

detention order and that the representation filed by the petitioner with the request that he be heard personally has not been considered by the respondents.

02. The counter to the petition has been filed wherein it is submitted that the petitioner is involved in four cases pertaining to NDPS Act; that the order has been passed under the provisions of prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1998 (*hereinafter called the Act*); that the material relevant has been provided to the petitioner and that there is no requirement that the detenue should be given personal hearing by the Advisory Board. The petition lacks substance and, therefore, be dismissed.

03. The photocopy of the record has been produced by the counsel for the respondents. The respondents have also filed written arguments in the matter.

04. Heard learned counsel for the parties and perused the record.

05. The detention order is in consequence to the dossier prepared by the Superintendent of Police, Handwara. The perusal of the detention order reveals that the respondent No.2 detaining authority has applied its mind while passing the detention order and the Court says so on the ground that the dossier though refers to six FIRs and the other material on the basis of which the detention of the petitioner has been recommended the respondent No.2 has taken note of those cases which pertain to the involvement of the petitioner in NDPS case and passed the order in terms of Section 3 of the Act. The alleged activity mentioned in the grounds of detention reveal of the illegal business of narcotics being carried by the petitioner and his involvement in selling the

drugs which influence the life and career of younger generation in a negative manner. It cannot be said by any stretch of imagination that the detention order can be said to have been passed by the respondent No.2 not independent of the dossier sent by the SP Handwara or that the grounds mentioned in the detention order have no proximate and live link with the activities of the petitioner. The Court finds aforesaid ground agitated by the petitioner for quashing the petition is not sustainable.

06. The petitioner has been deprived of the relevant material while executing the warrants of arrest is the other argument by the learned counsel for the petitioner. The photocopy of the record produced by the respondents reveals of the execution report of 02.06.2023 executed in Central Jail, Kot Bhalwal. As per the execution report 40 leaves have been provided to the petitioner and include dossier, grounds of detention and the documents pertaining to the cases registered against the petitioner. The court is not in agreement with the petitioner that he has not been granted the relevant material while executing the warrant of detention. It is also to be noted that the documents relating to FIR dated 19.04.2023, the latest one in the series of FIR registered against the petitioner stand provided to the petitioner. The petitioner if not provided some of the documents pertaining to FIR which got registered prior to the year 2023 cannot be said to be fatal as the petitioner must be knowing the nature of documents which may be part of those cases even if the challan has been produced in those FIRs. Again, the petitioner cannot take any

mileage of the argument raised that he has not been provided all relevant material in the course of proceedings by the authorities concerned.

07. Last but not the least, the argument of learned counsel for the petitioner is that the petitioner while representing to the authorities against the detention order sought personal hearing but not granted. The perusal of the reply filed by the respondents reveals that the petitioner was not granted personal hearing while the representation was being considered by the authorities. In fact, what is mentioned in the reply is that the personal hearing is not mandatory requirement and the role of the Advisory board is primarily to review the detention rather other than conducting personal hearings. The record produced by the respondents reveals that the representation on the behalf of the petitioner has been considered and found without merit vide order dated 19.10.2023 passed by the Home Department. Of course, there is no document available on the file which reveals that the personal hearing was afforded to the petitioner either by the Advisory Board or the government. Not only that the representation is received from the petitioner on 25.07.2023 but was been disposed on 19.10.2023 by the Home Department, meaning thereby the respondents took almost three months to dispose of the representation of the petitioner. The outcome of the representation has been communicated to the petitioner is also not revealed from the record. Undoubtedly, the petitioner has been deprived of knowing of the result of the representation made on his behalf by his wife. It is to be further pointed out that the record also fails to bring out what made the authorities to withhold the decision on the

representation made on behalf of the petitioner for almost three months is conspicuously absent.

08. It is suffice to take note of the judgment by the Hon'ble Apex Court reported in 2021 (20) SCC 98 titled *Sarabjeet Singh Mokha Vs. District Magistrate, Jabalpur and others*, wherein the Court held that the delay in disposal of the representation of the detenue seriously affects the valuable rights of the detenue and further that the communication of the decision taken on the representation must be communicated to the detenue.

09. The principle laid down in the aforesaid authority leaves no doubt in the mind of the court when applied in the present case that the detention order is bad in law and illegal and required to be quashed.

10. The judgments produced by the learned counsel for the respondents do not come to the aid of the respondents as those judgments do not pertain to the ground on which the court has quashed the detention order in question.

11. Accordingly, the petition is quashed. The petitioner is directed to be released from the custody provided if he is not required in any other case.

(PUNEET GUPTA)
JUDGE

Srinagar
16.05.2024
Shammi

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