

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

...
HCP no.213/2024

Reserved :

05.12.2024

Pronounced on: 03.01.2025

Shahid Ahmad Bhat

..... Petitioner(s)

Through: Mr. Asif Ali, Advocate

Versus

Union Territory of J&K and others

.....Respondent(s)

Through: Mr. Jehangir A. Dar, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Quashment of Order no. DIVCOM “K”/64/2024 dated 18.04.2024 (for brevity “*order impugned*”) passed by Divisional Commissioner, Kashmir (for short “*detaining authority*”), in terms of Section 3 of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as “*Act of 1988*”) placing detenu, namely, *Shahid Ahmad Bhat S/o Bashir Ahmad Bhat R/o Brazloo Jageer District Kulgam* under preventive detention to prevent him from committing any of the acts within the meaning of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, is sought on the grounds made mention of therein.
2. Respondents have filed Reply Affidavit, in which it is insisted by them that detenu is involved in illegal trade of illicit traffic in narcotic drugs and psychotropic substances.
3. I have heard counsel for parties. I have gone through the detention record produced by counsel for respondents and considered the matter.
4. Counsel for petitioner would contend 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.

- 4.1. In the context of above submission, I have gone through the detention record produced by counsel for respondents. Perusal of Execution Report as also Receipt of Grounds of Detention, forming part of Detention Record, reveals that the material relied upon by detaining authority has been given to detenu. Grounds of Detention have been read over and explained to detenu in Urdu/Kashmiri language.
- 4.2. In such circumstances, contention of counsel for petitioner that material relied upon by detaining authority to issue impugned order of detention had not been served upon detenu, is misconceived.
5. It is also contention of counsel for petitioner that detaining authority has not attributed any specific allegation against detenu and that vague allegations have been levelled against detenu. It is also stated by him that detaining authority has not assigned any compelling and cogent reason for passing order of detention and that detaining authority has not specified the authority before whom the representation has to be made nor has detaining authority informed detenu to make representation to him before the order could be approved/confirmed by the Government.
- 5.1. The above submissions of counsel for petitioner are again misconceived, *for*, perusal of grounds of detention reveals the compelling and cogent reasons have been given by detaining authority to pass order of detention and selling/dealing in drugs among youth of the area which has adverse impact on the younger generation. It is also mentioned in grounds of detention that detenu is selling drugs among youth of the area which has adverse impact on the younger generation and he is continuously exposing young and gullible/immature minds including school going children into the heinous world of drugs and making them habitual addicts.
- 5.2. Grounds of detention also make a mention that detenu is a history sheeter inasmuch as he is involved in a number of FIRs registered against him, viz. FIR no.144/2020 under Section 8/21, 22 NDPS Act P/S Yaripora, in which 02 grams of Heroin was seized; and FIR no.76/2022 under Section 8/20, 22 NDPS Act, P/S Yaripora, in which 100 grams of Charas was seized.

- 5.3. It is also mentioned in grounds of detention that the contraband material seized in connection with case FIR no.76/2022 was sent to Forensic Science Laboratory, Srinagar, to ascertain its veracity and that the report of FSL suggests that Charas was detected in the Exhibit no.NA-31-4/22.
- 5.4. Thus, it is evident from grounds of detention that detenu is habitual in indulging in activities, which poses serious threat to the health, wealth and welfare of the people, especially young generation.
6. Perusal of the record also reveals that detenu has 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 suggest 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.
7. 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.

8. 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.
9. It may be mentioned 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.

10. 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***.
11. 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 authorisation 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.

12. 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.
13. The 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.

14. The consequences of drug use usually are not limited to user and often extend to the user's family and the greater community. The consequences of illicit drug use impact the entire criminal justice system, taxing resources at each stage of the arrest, adjudication, incarceration and post-release supervision process. It impacts productivity. It causes premature mortality, illness, injury leading to incapacitation and imprisonment all serve to directly reduce national productivity. Public financial resources expended in the areas of health care and criminal justice as a result of illegal drug trafficking and use are resources which could otherwise be available for other policy initiatives.
15. The global drug problem presents a multifaceted challenge that touches the lives of millions worldwide. From individuals struggling with substance use disorders to communities grappling with the consequences of drug trafficking and organized crime, the impact of drugs is far-reaching and complex. There is a great loss of productivity associated with drug-related premature mortality. Although it is difficult to place a dollar value on a human life, a rough calculation of lost productivity can be made based on the present discounted value of a person's lifetime earnings. There are also health-related productivity losses. An individual who enters a residential drug treatment program or is admitted to a hospital for drug treatment becomes incapacitated

and is removed from the labour force. Productivity losses in this area alone are enormous. Health-related productivity losses are higher still when lost productivity associated with drug-related hospital admissions, including victims of drug-related crimes, is included. These imperative aspects concerned with illicit traffic in narcotic drugs and psychotropic substances cannot be overlooked or ignored.

16. 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.
17. For the reasons discussed above, the instant writ petition is without any merit and is, accordingly, **dismissed** with connected CM(s).
18. Detention record be returned to counsel for respondents.

(Vinod Chatterji Koul)
Judge

Srinagar

03.01.2025

Ajaz Ahmad, Secretary

Whether approved for reporting? Yes/No