

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

...

HCP No. 85/2024

Reserved on: 28.11.2024

Pronounced on: 29.11.2024

Gagandeep Singh Age 27 years
S/o Sh. Paramjeet Singh
R/O Ajit Colony TalabTillo Camp, Jammu
At present lodged in District Jail Kathua.

.....Petitioner(s)

Through: Mr. Sagir Ahmed Khan, Advocate.

Vs.

1. Union Territory of Jammu and Kashmir,
Through Commissioner/ Secretary Home,
Civil Secretariat Jammu/ Srinagar.
2. Divisional Commissioner, Jammu.
3. Senior Superintendent of Police Jammu.
4. Superintendent District Jail, Kathua.

.....Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG.

CORAM:HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGEMENT

1. In the instant petition, the petitioner has challenged his detention ordered by the respondent No.2 vide Order No. PITNDPS 13 of 2024 dated 01-02-2024, whereby the petitioner has been placed under preventive detention with a view to prevent him from spreading, expanding, continuing with his drug peddling activities under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

HCP No. 85/2024

2. The subjective satisfaction drawn by respondent No.2 is founded on the grounds of detention prepared on the basis of dossier supplied by Senior Superintendent of Police, Jammu, and served upon the detenue at the time of execution of the detention order.

3. As per the grounds of detention, the petitioner is stated to be a notorious and hard core habitual criminal involved in drug peddling and is involved in many offences under the NDPS Act, thereby not only terrorizing the innocent citizens but also spoiling the career of the youth of the locality by selling drugs for his pecuniary gains. As per the grounds of detention, the petitioner is involved in number of FIRs including FIR no.109/2019 under Section 8/21/22/25/29 NDPS Act, FIRNo.38/2023 under Sections 323/341/382 IPC, FIRNo.60/2023 under Sections 8/21/22/29/60 NDPS Act and FIR No.302/2023 under Sections 8/21/22/27 NDPS Act. In two of the FIRs, being FIR Nos.109/2019 and 38/2023, the charge-sheets have already been presented before the competent court and the petitioner has been bailed out. However, in cases FIR No.60/2023 and FIR No.302/2023, it has been stated that charge-sheets are being produced before the competent courts.

4. In the grounds of detention it has been stated that the detenue, as per the dossier submitted by the Senior Superintendent of Police, Jammu, is a notorious criminal/drug peddler/habitual smuggler engaged in the sale and purchase of illicit traffic in narcotic drugs and psychotropic substances posing a serious threat to the lives of young generation. The petitioner is active in drug consumption and drug trafficking besides alluring young generation in the menace of drug addiction by supplying contraband substances to them, thus, posing a serious threat to the lives of young generation and to the economy and security of the State.

HCP No. 85/2024

5. The impugned order of detention is challenged by the petitioner on the following, amongst other, grounds:-

- (i) That the impugned order suffers from non-application of mind. The respondent No.2 has, in the order of detention, referred to alleged commission of various offences and registration of FIRs, but has not spelled out the involvement of the petitioner in the commission of any activity which has the potential of being prejudicial to the security of the State;
- (ii) That the respondent No.2 has, in the grounds of detention, mentioned that petitioner has succeeded in securing bail and on being released on bail, he has again indulged in criminal activities. However, the respondent No.2 has not made any mention as to whether the prosecution has ever sought cancellation of bail of the petitioner on the ground that he, while being on bail in a case, has again committed the crime;
- (iii) That the petitioner was not provided with the legible copies of the material relied upon by the respondent No.2 to draw subjective satisfaction as a result whereof the petitioner was deprived of his right to make an effective representation to the Government against his detention;
- (iv) That charge-sheets against the petitioner have been shown to be pending before the competent courts of law wherein the petitioner has been granted bail also and the ground taken to detain the petitioner i.e. that substantive law is not capable of stopping the petitioner from doing the criminal activities attributed to him in the

HCP No. 85/2024

dossier submitted by the concerned SSP, is totally against the law as substantive criminal law is well capable of trying the petitioner.

6. On notice, the Detaining Authority has filed the reply affidavit and justified the detention of the petitioner on the grounds enumerated in the grounds of detention. It is submitted that the petitioner was posing serious threat to the public order as also to the health of the people; that the ordinary law has failed to deter the petitioner as is evident from the police dossier. It is stated that the repeated and continuous involvement of the petitioner in illicit traffic of drugs/narcotics had led to the issuance of detention order and that at the time of execution of the detention order the grounds of detention along with the police dossier and detention order (total 130 leaves) were provided to the petitioner-detenu and read over and explained in the language which he understood and the petitioner was informed about his right to make representation to the Government as also before the detaining authority against the order of his detention.

7. Heard the learned Counsel for the parties.

8. At the time of arguments, the learned counsel for the petitioner has reiterated the grounds of challenge to the detention order, however, he has laid much stress on the ground that the material relied upon by the detaining authority was though supplied to the petitioner, but the copies supplied to the petitioner were illegible or blurred and, as such, the petitioner was not in a position to make an effective representation to the Government against his order of detention.

9. On the other hand, the learned Senior AAG, representing the respondents, has argued that the activities of the petitioner are highly prejudicial to the security of the State and the fact that the petitioner is a notorious criminal/drug

HCP No. 85/2024

peddler/habitual smuggler engaged in the sale and purchase of illicit traffic in narcotic drugs and psychotropic substances posing a serious threat to the lives of young generation, the detaining authority, on the basis of the material supplied by the Police, has rightly detained the petitioner as, remaining at large of the petitioner, would pose threat to the lives of the people, as he is engaged in selling the Illicit drugs.

10. I have considered the submissions made by learned counsel for the respective parties and perused the material available on record. I have also gone through the detention records produced by the learned Senior AAG.

11. The perusal of the detention record produced by the learned counsel for the respondents would show that on the basis of the dossier submitted by the Senior Superintendent of Police, Jammu vide his No.CRB/2024/Dossier/-II-/DPOJ dated 26.01.2024, the detaining authority came to the conclusion that, in order to secure the health and welfare of public at large, it has become imperative to detain the petitioner under the preventive detention. The detention order came to be executed on 02.02.2024 as indicated in the execution report. The execution report also indicates that at the time of execution of the detention order, the petitioner was provided with the material relied upon by the detaining authority totaling 130 leaves including detention warrant, grounds of detention and that the grounds of detention have been read over and explained to the petitioner in Urdu, Hindu and Dogri languages, which he fully understood. The petitioner was also informed about his right of making representation to the Government, if he so desire.

12. Insofar as, argument of the learned counsel for the petitioner, that the petitioner has been deprived of his right of making effective representation against the detention order as the copies of the documents supplied to the him at

HCP No. 85/2024

the time of execution of the detention order were not legible and blurred, it is well-settled principle of law that non-supply of legible copies of the documents amounts to non-communication of the grounds of detention, thus depriving the petitioner of his right to make effective representation against the order of detention. It is well settled principle of law that supply of legible copies of the documents relied upon by the detaining authority is a *sine qua non* for making an effective representation and failure to supply legible copies of the documents relied upon by the detaining authority has certainly deprived the petitioner in making an effective representation. Reliance in this regard is heavily placed by learned counsel for the petitioner on the judgment of Hon'ble the Supreme Court in the case of **State of Manipur and others v. Buyamayum Abdul Hanan @ Anand and another, 2022 SCC Online SC 1455**. In paras 21 and 22 of the judgment supra, the Apex Court has held as under:-

“21. Thus, the legal position has been settled by this Court that the right to make representation is a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of documents which has been relied upon by the detaining authority indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law.

22. It is the admitted case of the parties that respondent no.1 has failed to question before the detaining authority that illegible or blurred copies were supplied to him which were relied upon while passing the order of detention, but the right to make representation being a fundamental right under Article 22(5) of the Constitution in order to make effective representation, the detenu is always entitled to be supplied with the legible copies of the documents relied upon by the detaining authority and such information made in the grounds of detention enables him to make an effective representation.”

13. The ground taken by the petitioner, that he was not provided with legible copies of the material/ documents relied upon by the detaining authority while detaining the petitioner, has not been denied by the respondents. In that, the respondents have only stated that, the petitioner was provided with the material relied upon by the detaining authority totaling 130 leaves including detention

HCP No. 85/2024

warrant, grounds of detention and that the grounds of detention have been read over and explained to the petitioner in Urdu, Hindi and Dogri languages, which he fully understood. Whether the material/documents supplied were not legible, has not been specifically admitted or denied by the respondents. Therefore, non-supply of legible copies of the documents has caused prejudice to the petitioner while making an effective representation. The right to make effective representation being a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of documents indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law.

14. For the foregoing reasons and without going into the other grounds of challenge urged by the petitioner, I find merit in this petition and the same is, accordingly, allowed. The impugned order of detention is quashed with a direction to the respondents to release the petitioner/detenu forthwith, if not required in any other case.

(Moksha KhajuriaKazmi)
Judge

JAMMU:
29.11.2024
Vijay

Whether the order is reportable: No