

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

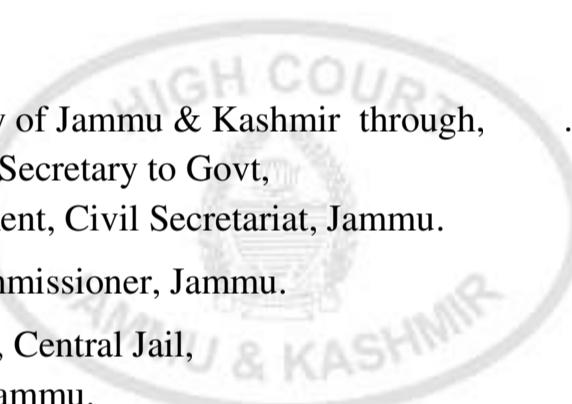
WP (Crl) No. 20/2022
CrlM No. 894/2022

*Reserved on : 17.10.2022
Pronounced on : 31.01.2023*

Daljeet Singh, Age 35 years;Petitioner/Appellant(s)
S/o S.Tarlochan Singh;
R/o Logate Morh, District Kathua;
A/P Detenue House in Central Jail
Kote Bhalwal, Jammu.

Through :- Mr. M. K. Bhardwaj, Sr. Advocate with
Mr. Gagan Kohli, Advocate.

V/s



1. Union Territory of Jammu & Kashmir through,Respondent(s)
Commissioner/Secretary to Govt,
Home Department, Civil Secretariat, Jammu.
2. Divisional Commissioner, Jammu.
3. Superintendent, Central Jail,
Kot Bhalwal, Jammu.
4. Senior Superintendent of Police, Kathua.

Through :- Mr. Dewakar Sharma, Dy.AG

Coram: HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

JUDGMENT

1. Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India questioning the legality, propriety and correctness of impugned detention order No. PIT NDPS-4 of 2022 dated 25.04.2022 passed by respondent No.2-Divisional Commissioner Jammu alongwith the proceedings conducted under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act 1988 r/w SRO 247 of 1998 dated 27.07.1988 and has

sought the quashment of the impugned detention order on the following grounds:-

- (i)** that the detention order is bad, illegal and without application of mind as the petitioner has been detained by the respondent No. 3 without providing any sufficient material i.e. copies of the FIRs, allegations in dossier of respondent No. 4, statement of witnesses recorded under Section 161 Cr.P.C and grounds of detention which is mandatory requirement as per the provisions of Public Safety Act, non providing of sufficient material has prevented the petitioner from making effective representation against the impugned detention order before the Government or detaining authority, which is clear violation of mandate of Article 22 (5) of Constitution of India r/w Section 13 of Public Safety Act, 1978 and therefore vitiates the detention order;
- (ii)** that the detection order is based on non-application of mind as respondent No. 2 while passing the detention order has not reflected in it that the petitioner was bailed out by the Court and just to detain the petitioner, respondent no. 3 has submitted the dossier, even in none of the FIRs which have been mentioned by the respondents in the detention order petitioner has been convicted by the competent Court who is on bail, but in order to defeat the objective of the bail, impugned detention order has been passed;
- (iii)** that the impugned detention order does not mention the period of detention, order of detention has been approved by the advisory board and it is for three months as provided under Section 18 of the J&K Public Safety Act 1978, the grounds of detention do not contain any brief history of the petitioner and the dates thus the petitioner has been detained on the basis of vague grounds which have been drafted in a routine manner, dossier submitted by respondent No. 3 is without any date and it is not reflected on which date he forwarded the dossier to respondent No. 2 as the forwarding letter grounds of detention and dossier have been supplied in English language which has caused great prejudice to the petitioner in making an effective representation to the competent authority, the non-supply of such documents in a language which the petitioner understands has infringed the rights of the petitioner under Article 22(5) of the Constitution of India, whereby the detention order gets vitiates;
- (iv)** that in the five (05) FIRs which have been mentioned in the dossier are of the year 2016, 2017, 2018 & 2019 and after 2019 till the date of passing of the detention order no such incident or FIR has been lodged against the petitioner, but the respondents have illegally and arbitrarily detained the petitioner in the aforesaid FIRs in which he is facing trial, the person who has drained the petitioner has not filed any affidavit or undertaking which could disclose that the person executing the detention order had explained the grounds of detention to the petitioner in the language he understands, non-filing of affidavit or undertaking is fatal for passing of the detention order.

2. Respondent No. 2- Divisional Commissioner Jammu, has filed counter, wherein passing of the impugned detention order has been defended, and it has been specifically pleaded that the petitioner/detenu is involved in Illicit Traffic in Narcotic Drugs and Psychotropic Substances which poses serious threat to the health and welfare of the people and has deleterious effect on the national economy, the detention order was passed by him only after careful examination of the dossier and the relevant record made available by SSP Kathua vide his endorsement No. PA/2022/PSA/3925-30 dated 19.04.2022 and after following due procedure of law under the relevant provisions of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988. It is contended, that the detention warrant was duly executed upon the petitioner/detenu and the copy of the detention warrant, grounds of detention and other relevant record was read over and explained to the petitioner/detenu in the language he understands, and the above documents were handed over to the petitioner in presence of Jail Authorities of Central Jail Kot-Bhalwal Jammu, moreover, petitioner/detenu was informed about his right to make representation to the Government as well as to the detaining authority against the order of detention.
3. Mr. M. K. Bhardwaj, learned senior counsel appearing for the petitioner, has sought the setting aside of the impugned detention order by vehemently articulating arguments, that petitioner/detenu has not been supplied the detention record/material viz; copies of dossier, copies of FIRs, site plan, recovery memo, statements of witnesses recorded under Section 161 Cr.P.C to enable him to make a effective representation against the impugned detention order, by not supplying the essential material petitioner/detenu's right to make a effective representation to the Government or detaining authority has been violated/infringed under Article 22 (5) of the Constitution of India r/w Section 13 of the J & K

Public Safety Act 1978 and such failure on part of the detaining authority vitiates whole of the detention order. It is argued, that there is unexplained delay in passing the order of detention from the date the proposal was sent to the detaining authority by respondent No. 4, the detention order has been based on non application of mind by the detaining authority, the dossier submitted by respondent No. 3 is without any date as it is not reflected on which date the same has been submitted to the detaining authority i.e. respondent No. 2, the grounds of detention and dossier have been supplied to the petitioner in English language which he does not understand and the same has caused great prejudice to the petitioner who has been debarred from making effective representation to the competent authority and on these counts even the detention order requires to be quashed. To support his arguments, Mr. Bhardwaj, learned senior counsel has relied upon the judgments *viz;* (i) Cr. Appeal No. 1708 of 2022 (Arising out of SLP (Crl) No. 6683 of 2022 titled Sushant Kumar Banik **vs.** State of Tripura & others, decided by Hon'ble Supreme Court on 30.09.2022 and (ii) WP(Crl) No. 55/2021, decided on 23.03.2022 by Jammu and Kashmir High Court (Jammu Bench) [Hamraz Singh **vs.** Union Territory of Jammu and Kashmir].

4. Mr. Dewakar Sharma, learned Dy. AG has vehemently supported the impugned detention order against the petitioner and has sought its affirmation by projecting arguments, that the petitioner/detenu is involved in as many as five FIRs *viz;* (i) FIR No.93/2016 under Section 8-B/21/22 NDPS Act of Police Station Kathua, (ii) FIR No. 12/2017 under Sections 8/21/22 NDPS Act Police Station Lakhanpur, (iii) FIR No. 142/2017 under Sections 8/21/22 NDPS Act Police Station Kathua, (iv) FIR No. 214/2018 under Sections 8/21/22 NDPS Act Police Station Rajbagh and (v) FIR No. 157/2019 under Sections 8/21/22 NDPS Act Police Station Kathua, wherein, from his possession contraband heroine has been recovered on different dates of occurrences; petitioner/detenu is habitual criminal involved in illicit trafficking leading to spread of drug

addiction among the general public especially the youth of the area; the criminal activities of the petitioner/detenu are prejudicial to the society at large besides detrimental to the peace and tranquility and menace to the public order; petitioner/detenu is engaged in sale and purchase of illicit traffic in narcotics drugs and psychotropic substances which poses a serious threat to the health and lives of the young generation; petitioner/detenu has close nexus with the gang of criminals involved in illicit trafficking of drugs in clandestine manner to earn huge and easy bucks and has spread the network of drug peddling in the entire UT of J & K; petitioner/detenu has no respect for law and order and public tranquility causing serious threats prejudicial to the security of UT of J & K. It is argued, that keeping in view the continuous and repeated involvement of the petitioner/detenu in the narcotic trade, respondent No. 4 vide his endorsement vide No. PA/2022/PSA/3925-30 dated 19.04.2022 recommended the detention of the petitioner/ detenu to prevent him from indulging in illicit traffic in Narcotic Drugs and Psychotropic Substances, and in a view to prevent the petitioner/detenu from further committing any illicit trafficking in Narcotic Drugs and to secure the health and welfare of public at large petitioner/detenu has been rightly and correctly detained under Section 3 of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988. It is moreso argued, that as per the detention record the petitioner has been supplied all the essential detention record including the copies of detention order, notice of detention, grounds of detention, dossier of detention, copies of FIRs, statements of witnesses and other related relevant documents (total 23 leaves) through Executing officer Sh. O.P.Chib Police Inspector No. ESJ-955634 of Police Station Kathua, moreso, the impugned detention order has been read over and explained to the petitioner/detenu in Hindi and Dogri language understood by him fully and he has also been informed of his right to make representation to the Government as well to the Detaining

Authority if he so desires, the order of detention has been passed by respondent No. 2 on 25.04.2022 and the same has been executed upon the petitioner on 26.04.2022 without any delay. In support of his arguments, learned Dy. AG has relied upon a judgment titled *Yudhvir Singh vs. Union Territory of J&K and others* {WP (Crl) No. 28/2021 decided on 03.12.2021 by Coordinate Bench of this Court}.

5. I have heard learned counsel for the parties, perused the averments of the petition, counter affidavit filed by the respondent No. 2, record made available by the respondents and the relevant law on the subject matter coupled with the judgments relied upon by learned counsel for the parties.
6. Dealing with the first argument canvassed by learned senior counsel for the petitioner, that he has not been supplied with essential material of detention record which has debarred him from making effective representation to the Government or to the detaining authority which has vitiated the detention order, it is apt to reiterate here, that bare perusal of the detention record clearly demonstrates that the impugned detention order No. PIT NDPS-4 of 2022 has been passed by respondent No.2-Divisional Commissioner Jammu on 25.04.2022 on the strength of material like dossier submitted by respondent No.4- SSP Kathua vide his endorsement No. PA/2022/PSA/3925-30 dated 19.04.2022. The grounds of detention have been clearly delineated by respondent No. 2 which reads as under:-

“You Daljeet Singh S/o Tariochan Singh R/o Legate Morh Tehsil and Distt. Kathua aged 39 years, as per dossier prepared by Senior Superintendent of Police, Kathua do hereby informed that you are a habitual criminal involved in the various crimes/drug trafficking cases leading to spread of drug addiction among the general public, specially youth of the area. You are acting in a manner which is prejudicial to the society at large besides detrimental to the peace and tranquility and menace to the public order. Due to your activities and network as well as muscle power you are engaged in sale and purchase of illicit traffic in narcotics drugs and psychotropic substances which poses a serious threat to the health and lives of young generation and even to the economy of the UT of J & K. You are posing threat to the security of the UT of J &

K and Country as well, also to the health of general public at large. You have very close nexus with the gang of criminals who have started illicit trafficking of drugs in a clandestine manner to earn huge and easy bucks and also have spread the network of drug peddling in the entire UT of J & K. It is also not out of the place to mention that you have no respect for the laws of the land and you have been committing breach of peace and law and order and public tranquility. You are surreptitiously being indulging in criminal activity like drug mafia inside and outside the Kathua District endangering not only the youth but causing serious threats prejudicial to the security of UT of J & K.

Reportedly, you are habitual narcotics consumer and engaged in smuggling for narcotics for couple of years and smuggle it to Kathua District in large quantity and although you are bailed out, but still you are continuing with all such activities. Your criminal activities are highly prejudicial to the maintenance of the public order and detrimental to the health and lives of the public at large. The details of cases registered against you and you are as under:-

1. "FIR No. 93/2016 U/S 8-B/21/22 NDPS Act of P/S Kathua:-

On 03-03-2016 a police party of P/S Kathua led by ASI Mohd Hanief when reached near CTM NHW you and your associate on seeing the Police party tried to escape away from the spot. You were chased by the police party and apprehended from the spot. During search, police party recovered 10 grams of heroin from your possession and 5.75 gm Heroin from your associate, namely, Darshan Singh. On this, the instant case FIR No. 93/2016 U/S 8-B/21/22 NDPS Act was registered at P/S Kathua and investigation of the case entrusted to SI Mohan Lai 1/C PP Ind. Estate Kathua. After completion of all required/ legal formalities in the instant case the investigation of case was closed as Challan was produced before the Hon'ble Court on 28-03-2016 for judicial determination.

2. FIR No. 12/2017 U/S 8/21/22 NDPS Act of P/S Lakhanpur:-

On 25/01/2017 Inspector Kulbir Singh SHO P/S Lakhanpur alongwith other official of P/S Lakhanpur while on patrolling/Naka checking duty at Lakhanpur near Ravi Bridge. During checking your car bearing registration No. JK01P-8707 coming from Punjab towards Kathua was signaled to stop for checking purpose. During preliminary enquiry you disclosed your name as Daljeet Singh S/o Tarlochan Singh R/o Logate Morh, Kathua. On your personal search 4.50 grams Heroin was recovered from left pocket of your pajama. On this instant case FIR No.12/2017 U/S 8/21/22 NDPS Act was registered at P/S Lakhanpur and investigation was entrusted to ASI Daljeet Singh of P/S Lakhanpur. After completion of all required /legal formalities in the instant case and the investigation of case was closed as Challan was produced before the Hon'ble Court on 22-02-2017 for judicial determination.

3. FIR No. 142/2017 U/S 8/21/22 NDPS Act of P/S Kathua:-

On 05/05/2017 a police party of P/S Kathua led by ASI Rashpal Singh was on patrolling/naka checking duty at Lachipur. During patrolling when they reached near Link Road Lachipur found you alongwith your associate standing in nearby bushes. On seeing the police party you alongwith your associate tried to ran away from the spot but police party with the help of other police officials surrounded you and your associate. On preliminary enquiry you disclosed your name as Daljeet Singh @ Rocky S/o Tarlochan Singh R/o Logate Morh Kathua and the name of your associate as Rangeet Singh S/o Balbir Singh R/o W. No. 13 Hatli Morh Kathua. On your personal search 06 grams Heroin was recovered from your possession and 11 grams of heroin was recovered from the possession of Rangeel Singh. On this instant case FIR No. 142/2017 U/S 8/21/22 NDPS Act was registered at P/S Kathua and investigation entrusted to SI Chander Bhushan of P/S Kathua. After completion of all required/ legal formalities in the instant case and the investigation of case was closed as Challan was produced before the Hon'ble Court on 02-06-2017 for judicial determination.

4. FIR No. 214/2018 U/S 8/21/22 NDPS Act of P/S Rajbagh:-

On 04/09/2018 police party of P/S Rajbagh led by SI Mohinder Singh was on patrolling/Vehicle checking duty at NHW Rajbagh. During checking your car bearing registration No. JK11A-4884 coming from Chadwal towards Kathua was signaled to stop for checking purpose. During checking you were found sitting in the said car along with 02 other associates. When enquired, you disclosed your name as Daljeet Singh S/o Tarlochan Singh R/o Legate Morh, Kathua and the names of your associates as Deepak Sharma S/o Kapoor Dass R/o Gokal Chack and Joginder Paul S/o Amarnath R/o Jakhbar, Kathua. During checking total 14 grams Heroin was recovered out of which 05 grams of heroin was recovered from your possession. On this instant case FIR No. 214/2018 U/S 8/21/22 NDPS Act was registered at P/S Rajbagh and investigation was entrusted to SHO P/S Rajbagh Inspector Davinder Singh. After completion of all required/ legal formalities in the instant case and the investigation of case was closed as Challan was produced before the Hon'ble Court on 12-11-2018 for judicial determination.

5. FIR No. 157/2019 U/S 8/21/22 NDPS Act of P/S Kathua:-

On 16/05/2019 ASI Kuldeep Kumar of P/S Kathua along with police party was on patrolling duty when reached near Kalibari Shar Khan Bridge found you along with your associate and after seeing the police party you along with your associate tried to ran away towards housing colony. But police party with the help of other police officials surrounded you and captured

you. On preliminary enquiry you disclosed your name as Daljeet Singh S/o Tarlochan Singh R/o Legate Morh and the name of your associate as Sumit Sharma S/o Rakesh Kumar R/o Tandyari, Marheen. During the personal search total 9.35 Grams Heroin was recovered from your possession and from the possession of your associate. On this instant case FIR No. 157/2019 U/S 8/21/22 NDPS Act was registered and investigation entrusted SI Ved Parkash of P/S Kathua. After completion of all required/ legal formalities in the instant case and the investigation of case was closed as Challan was produced before the Hon'ble Court on 24-12-2019 for judicial determination.

Keeping in view your continuous and repeated involvement in narcotic substance cases, Sr. Superintendent of Police, Kathua vide letter No. PA-2022/PSA/3925-30 dated 19.04.2022 has recommended that you may be detained under the provisions of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

From above facts and circumstances, it is evident that you are drug peddler involved in possession and transportation of Narcotic Drugs and Psychotropic Substances, which as per Section 2 of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 means "illicit traffic". Such "illicit traffic" poses serious threat to the health and welfare of the people of Union Territory of J&K at large.

Now, therefore, with a view to prevent you from further committing any offence of Illicit Traffic in Narcotic Drugs and Psychotropic Substances and to secure the health and welfare of public at large, I have reached to the conclusion that it has become imperative to detain you U/S 3 of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988".

Detention record further demonstrates that the order of detention dated 25.04.2022 has been served upon the petitioner/detenu on 26.04.2022 without any delay, whereby, copies of detention order (02 leaves), Notice of detention (01 leaf), grounds of detention (04 leaves), dossier of detention (06 leaves), copies of FIRs, statements of witnesses and other related relevant documents (10 leaves), total 23 leaves have been handed over/furnished to the petitioner/detenu through Executing officer, Sh. O.P.Chib Police Inspector No.ESJ-955634 of Police Station Kathua and receipt thereof has been given by the petitioner/detenu by writing his name in English which clearly indicates that the petitioner understands English language also. Moreso, the execution report depicts that the

contents of detention warrant and grounds of detention have been read over to the petitioner/detenu in English and also explained to him in Hindi/Dogri language which he fully understands and in lieu thereof petitioner has appended signature on the execution report. In view of the detailed record submitted by the respondents, it is discernable, that the petitioner/detenu has been supplied whole of the detention record/essential material so as to enable him to make an effective representation against the said detention order before the Government or Detaining Authority and therefore, no right much less any right of the petitioner guarantee to him under Article 22 (5) of the Constitution of India r/w Section 13 of Public Safety Act has been violated. Case law relied upon by the learned counsel for the petitioner titled *Hamraz Singh vs. UT of Jammu & Kashmir* [WP (Crl.) 55/2021] is clearly distinguishable and inapplicable to the facts of the case in hand. Arguments of learned counsel for the petitioner that non-supply of record/documents/ essential material to him in regard to his detention violating/infringing his fundamental right and debarring him from making an effective representation are far from reality, legally unsustainable, repelled, rejected and discarded.

7. The next argument urged by learned senior counsel for the petitioner is, that there is unexplained delay in passing the order of detention from the date the proposal was sent to detaining authority by respondent No. 4-SSP Kathua and on that count even the detention order requires to be quashed.

From the perusal of the record, it is clearly gatherable that respondent No. 4-SSP Kathua has supplied the dossier to respondent No. 2 on 19.04.2022 and after perusal of the dossier and all connected record, respondent No. 2 vide impugned detention order No. PIT NDPS-4 of 2022 dated 25.04.2022 has issued the detention order within 06 days without any unnecessary delay in exercise of powers vested in him under Section 3 of The Prevention of Illicit Traffic in

Narcotic Drugs and Psychotropic Substances Act 1988 r/w SRO 247 of 1998 dated 27.07.1988 whereby the petitioner has been detained and ordered to be lodged in Central Jail Kot-Bhalwal Jammu for a period to be specified by the Government. On passing of the impugned detention order dated 25.04.2022, without any delay on 26.04.2022, the detention order has been served upon the petitioner/detenu in Central Jail Kot Bhalwal Jammu by the Executing officer, Sh. O.P.Chib Police Inspector No.ESJ-955634 of Police Station Kathua. The detention record (Annexure R-3) further demonstrates that the Government of Jammu and Kashmir Home Department Civil Secretariat Jammu/Kashmir vide its order issued by Sh. R.K.Goyal, Financial Commissioner (ACS) Home dated 27.05.2022 clearly depicts that as per the information of Advisory Board dated 23.05.2022 under sub-clause (b) of Section 9 of the Public Safety Act sufficient ground has been found for detention of the petitioner/detenu, therefore Sh. R.K.Goyal, Financial Commissioner (ACS) Home in exercise of powers conferred under clause (f) of Section 9 read with Section 11 of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, has confirmed the impugned detention order No. PIT NDPS-4 of 2022 dated 25.04.2022 passed by respondent No. 2 whereby petitioner/detenu has been detained for a period of one (01) year. There has been no delay in execution of the detention order upon the petitioner. In Sushanta Kumar's case (supra) relied upon by learned senior counsel for the petitioner, Hon'ble Supreme Court quashed the detention order on the ground that there was unexplained delay and it took five (05) months for the detaining authority to pass the order of preventive detention. Ratio of the judgment (supra) relied upon by the learned senior counsel for the petitioner is distinguishable and inapplicable to the facts of the case in hand. In the case in hand, without any delay the impugned detention order has been passed by respondent No. 2 on 25.04.2022 and served upon the petitioner/detenu on

26.04.2022, whereas, there is even no unnecessary delay in passing the detention order by respondent No. 2 from the date of receipt of dossier and other documents on 19.04.2022 from respondent No. 4. Respondent No. 2 after careful perusal of the detention record and by application of mind came to the conclusion that the petitioner/detenu is engaged in repeated illicit traffic in Narcotic Drugs and Psychotropic Substances cases, posing serious threat to the health and welfare of the people and in order to prevent him from committing any further criminal act of narcotic traffic it is necessary to detain him on the basis of the grounds mentioned in the dossier. As many as six days time has been taken by the respondent No. 2 in passing the order of detention on 25.04.2022 from the date of receipt of the dossier from respondent No. 4 on 19.04.2022, as such, there is no unnecessary delay in passing the order of detention. The arguments put forth by the learned senior counsel for the petitioner that huge delay has been caused in passing the impugned detention order and executing the same upon the petitioner, are legally unsustainable and accordingly rejected.

8. Although right of personal liberty is most precious right, guaranteed under the Constitution, which has been held to be transcendental, inalienable and available to a person independent of the Constitution, yet the personal liberty may be curtailed, where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. A person is not to be deprived of his personal liberty except in accordance with procedure established under law and the procedure as laid down in *Maneka Gandhi vs. Union of India*, (1978 AIR SC 597), is to be just and fair. Where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case prosecution fails to bring home his guilt. Where such person is convicted of offence, he still

has satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his defence. However, framers of the Constitution have, by incorporating Article 22(5) in the Constitution, left room for detention of a person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object is to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would be dangerous for the people at large to wait and watch as by the time ordinary law is set into motion, the person having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to life and property. It is for that reason, necessary to take preventive measures and prevent the person bent upon to perpetrate mischief from translating his ideas into action. Article 22 (5) of the Constitution of India, therefore, leaves scope for enactment of preventive detention law.

9. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of likelihood of detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. The Supreme Court in *Haradhan Saha vs. State of W.B.* (1975) 3 SCC 198, points out that a criminal conviction, on the other hand, is for an act already done, which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case, a person is punished to prove his guilt and the standard is proof, beyond reasonable doubt, whereas in preventive detention a man is prevented from doing something, which is necessary for reasons mentioned in the Act, to prevent.

10. Article 22 (5) of the Constitution of India and Section 13 of the J&K Public Safety Act 1978, guarantee safeguard to detenu to be informed, as soon as may be, of grounds on which order of detention is made, which led to the subjective satisfaction of detaining authority and also to be afforded earliest opportunity of making representation against order of detention. Detenu is to be furnished with sufficient particulars to enable him to make a representation, which on being considered, may obtain relief to him. Detention record, made available by learned counsel for respondents, reveals that detention order was made on proper application of mind, to the facts of the case and detenu was delivered at the time of execution of detention order, the material and grounds of detention and also informed that he had a right to represent against his preventive detention. Perusal of detention order depicts its execution. It further reveals that the copy of detention warrant, grounds of detention, notice of detention, copy of dossier etc. were received by the petitioner-detenu which were read over and explained to detenu in English/Hindi languages, which detenu understood fully in token of which the signatures of detenu had been obtained. It also divulges that detenu was informed that he can make representation to the government and detaining authority. The grounds of detention are definite, proximate and free from any ambiguity. The detenu has been informed with sufficient clarity what actually weighed with Detaining Authority while passing detention order. Detaining Authority has narrated facts and figures that made the authority to exercise its powers under Section 8 J&K Public Safety Act 1978 and record subjective satisfaction that detenu was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State.

11. Further, although grounds of detention are by and large is replica of dossier, yet one cannot lose sight of the fact that five (05) FIRs have been lodged against the petitioner-detenu

under various sections of the NDPS Act which made basis to book him under the Public Safety Act so as to prevent him from acting in a manner similar to his past acts or engaging in activities prejudicial to security of the State or maintenance of public order. Further, the sponsoring authority has not only supplied the material, *viz*; dossier, containing gist of the activities of the detenu, but has also supplied the material in the shape of FIRs. All this material was before the detaining authority when it arrived at subjective satisfaction that activities of the detenu were prejudicial to maintenance of public order and requires preventive detention of detenu. Further, if 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 same views and principles were reiterated by the Apex Court in *Goutam Jain vs. Union of India*, AIR 2017 SC 230. In the present case, the petitioner-detenu seems to be a hard core criminal and has become a terror figure among the people of the area as against him five FIRs came to be registered in different police stations under various sections of the NDPS Act between the period 2016 to the year 2019. Since the actions taken against the petitioner-detenu under the ordinary law from time to time have not been proved to be deterrent, as such the respondents had no other option but to keep him in preventive detention.

12. 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 humanizing 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 an 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. These observations have been made by the Supreme Court in *The Secretary to Government, Public (Law and Order-F) and another vs. Nabila and another* (2015) 12 SCC 127.

13. In the present case the petitioner has been involved in many criminal activities and against him five (05) FIRs *viz*; (i) FIR No. 93/2016, (ii) FIR No. 12/2017, (iii) FIR No. 142/2017, (iv) FIR No. 214/2018 and (v) FIR No. 157/2019 under various Sections of the NDPS Act have been registered in different police stations in District Kathua. **FIR No. 93/2016** U/S 8-B/21/22 NDPS Act is registered with Police Station Kathua and recovery of 10gms of Heroin has been affected from the petitioner, in **FIR No. 12/2017** U/S 8/21/22 NDPS Act registered with Police Station Lakhanpur recovery of 4.50 gms of Heroin has been affected from the petitioner, in **FIR No. 142/2017** U/S 8/21/22 NDPS Act registered with Police Station Kathua recovery of 06 gms of Heroin has been affected from the petitioner, in **FIR No. 214/2018** U/S 8/21/22 NDPS Act registered with Police Station Rajbagh (Kathua) recovery of which 05 gms of heroin has been affected from the petitioner whereas in **FIR No. 157/2019** U/S 8/21/22 NDPS Act of P/S Kathua recovery of 9.35 gms of Heroin like substance has been affected from the petitioner. From the bare perusal of the FIRs and the allegations therein against the petitioner, it is discernable, that the petitioner is a hardcore criminal, has become a terror figure among the people of the area, the actions taken against him under ordinary law from time to time have not been proved to be deterrent. It seems that petitioner/detenu instead of mending his ways has

continuously been indulging in criminal activities and has not shown any respect for the law of the land, as such, the petitioner/detenu has created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area, has become a chronic fear amongst the people of the area. Thus, the activities of the petitioner are of hardcore criminal and habitual of indulging in acts of illicit traffic in Narcotic Drugs and Psychotropic Substances cases. The record so produced reveals that the petitioner/detenu has been indulging in illegal trade in an organized manner, which is a great threat for sustaining the conservative values of the society and the drug trafficking also possess great threat to the society for the reason that the proceeds of the drug sale can be utilized for financing of other criminal activities, hence, petitioner has been rightly detained by Respondent No. 2.

14. For the foregoing discussion, the petition sans any merit and is accordingly, dismissed along with connected application(s), if any.

15. Registry to return the detention record against proper receipt.

(Mohan Lal)
Judge

Jammu

31.01.2023

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