

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

Case: HCP No.96/2024

Tahir Iqbal, Aged 32 years S/o
Muneer Hussain Shah R/o Village
Degwarn Terwan A/p Mohallah
Radio Station Tehsil Haveli and
District Poonch
Through his mother Sayeda Begum,
Age 70 years R/o Village Degwarn
Terwan A/p Mohallah Radio Station
Tehsil Haveli and District Poonch

.....Petitioner(s)

Through: Mr. Intikhab Shah, Advocate.

Vs

1. The Union Territory of Jammu & Kashmir, through Principal Secretary (Home), Civil Secretariat, Jammu.
2. The Divisional Magistrate, Jammu.
3. The Senior Superintendent of Police, Poonch.
4. The Superintendent, District Jail, Poonch.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG.

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDDGMENT

31.10.2024

Oral:-

01. The petitioner has challenged Order bearing No.PITNDPS 32 of 2024 dated 14.05.2024 passed by respondent No.2, Divisional Commissioner Jammu, whereby the petitioner has been subjected to preventive detention in terms of

sub-section (1) of Section 3 of the Prevention of the Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as 'PITNDPS Act').

02. It has been contended by the petitioner that impugned order has been passed by respondent No.2 in a mechanical manner without application of mind. It has been further contended that the petitioner has already been booked for substantive offences and there was no compelling reason for respondent No.2 to resort to his preventive detention. It has also been contended that whole of the material forming the basis of grounds of detention has not been furnished to the petitioner. Particular emphasis has been laid on non supply of copy of dossier of detention. It has been contended that on account of non supply of whole of the material to the petitioner, he could not make an effective representation against the impugned detention order thereby violating his constitutional and statutory rights.

03. The respondents have contested the writ petition by filing counter affidavit of the detaining authority, respondent No.2. In the affidavit, it has been submitted that the petitioner was continuously and repeatedly indulging in supply of narcotic drugs and in this regard three FIRs were registered against him, but he succeeded in getting bail on each occasion and continued to indulge in illicit trafficking of narcotics drugs, which was posing serious threat to public order as well as to the health and welfare of the people. It has been submitted that it is because of these reasons that respondent No.2 was compelled to pass the impugned order of detention. The respondents have submitted that at the time of execution of warrant of detention the Executing Officer provided complete set of documents including the dossier, grounds of detention and other

relevant documents (total 130 leaves), which is evidenced by the execution report. It has been further contended that the petitioner was informed of his right to make representation before the detaining authority as well as before the Government, but he has not availed that remedy and instead has chosen to file the instant writ petition.

04. I have heard learned counsel for the parties and perused the record including the detention record produced by Mrs. Monika Kohli, Sr. AAG, appearing for the respondents.

05. Learned counsel for the petitioner has laid much emphasis on the ground that whole of the material particularly the copy of the dossier of detention has not been furnished to the petitioner and that there were no compelling reasons for the detaining authority to pass the impugned order particularly because the petitioner was already facing prosecution in as many as three cases. In support of his contentions, the learned counsel has relied on the judgments of this court in cases titled 'Mohammad Saleem Parray Vs. Union Territory of J&K and anr.' reported in 2023 CriLJ 1893; 'Shabir Ahmad Parray Vs. UT of J&K and another' WP(Crl) No.158 of 2020 decided on 31.12.2021(Srinagar Wing); 'Reyaz Ahmed Bhat Vs. State of J&K' H.C. Petition No.292 of 2002 decided on 08.04.2003(Srinagar Wing); 'Tahir Farhat Shah Vs. State and anr.' HC(W) No.50 of 2009 decided on 27.07.2009 (Srinagar Wing); & 'Burhan Ayoub Sofi Vs. Union Territory of J&K and ors.' WP(Crl) No.741/2022 decided on 14.10.2024 (Srinagar Wing).

06. In the context of the first ground, the respondents have along with their counter affidavit placed on record the execution report which shows that at the time of execution of warrant of detention, the petitioner has been provided as

many as 130 leaves comprising i) copy of detention warrant (02 leaves); ii) grounds of detention (04 leaves); iii) notice of detention (01 leaf) and other relevant record (123) leaves. Execution report bears the signature of the petitioner in English. The respondents have also produced a copy of the affidavit sworn by Inspector Kunal Singh Jamwal, the Executing Officer, who has deposed in his affidavit that he has handed over 130 leaves to the petitioner and informed him that he can make a representation to the government and the detaining authority against the detention order. From this material, it is clear that petitioner has been provided 130 leaves which include copy of detention warrant, grounds of detention, notice of detention and other relevant record.

07. A perusal of the record of detention would reveal that dossier of detention comprises four leaves and besides this, Annexure-A comprising 60 pages, Annexure-B comprising 30 pages and Annexure-C comprising 09 pages are enclosed with it. These enclosures viz. Annexures A, B & C to the dossier are the documents pertaining to FIR No.484/2020 under Section 8/21 NDPS Act of Police Station Rajouri; FIR No.163/2023 under Section 8/21/22/25 NDPS Act of Police Station Poonch; and FIR No.69/2024 under Section 8/21/22/25/29 NDPS Act of Police Station Bahu Fort Jammu. Thus, other “relevant documents” reference whereof is made in the execution report when read in light of the record produced by learned Sr. AAG leads to only one conclusion that the petitioner has been provided with not only the copy of the dossier but also all annexures annexed with said dossier, which runs into 123 leaves. Execution report has admittedly been signed by the petitioner, therefore, it does not lie in his mouth to make a grievance that he has not received copy of the dossier. The record shows that the petitioner has not only received copy of the dossier but he

has also received Annexures-A, B & C to the dossier. The contention of the petitioner, is therefore, without any merit.

08. The next contention that has been raised by the petitioner is that it was not open to the respondents to resort to preventive detention as the petitioner was already booked for substantive offences in as many as three FIRs. In this regard, it is to be noted that in all the three FIRs, the petitioner was enlarged on bail and this fact has been clearly mentioned in the dossier by the detaining authority while formulating the grounds of detention. As per FIR No.484/2020 the petitioner was found to be in possession of 11 kg of Heroin; as per FIR No.163/2023 he was found to be in possession of 162 gms of Heroin; and as per FIR No.69/2024 he was found to be in possession of 4.78 gms of Heroin. So there was enough material on record before the detaining authority to infer that the petitioner has been repeatedly indulging in illicit trafficking of narcotic drugs even after having been booked in substantive offences. Thus, the material on record clearly shows that there were compelling reasons for the detaining authority to pass the order of preventive detention against the petitioner. The contention raised by the petitioner in this regard, is therefore, rejected.

10. For the foregoing reasons, I do not find any merit in this petition, as such, the same is dismissed.

(Sanjay Dhar)
Judge

Jammu
31.10.2024
Narinder

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