

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

(Through Virtual Mode)

Case: HCP No.18/2023

Reserved on: 16.05.2024

Pronounced on: 30.05.2024

Manzoor Ahmad Bhat, aged 38 years
S/o Ghulam Ahmad Bhat R/o
Chersoo near Toll Plaza, Tehsil
Awantipora, Kashmir through his
father Ghulam Ahmad Bhat aged 70
years S/o Mohammad Sultan Bhat
R/o Chersoo near Toll Plaza Tehsil
Awantipora, District Pulwama
Kashmir.

.....Petitioner(s)

Through: Mr. Usman Gani, Advocate.

Vs

1. U.T. of Jammu and Kashmir
through Commissioner Secretary to
Govt., Home Department, Civil
Secretariat, Srinagar.
2. Divisional Commissioner Kashmir,
Srinagar.
3. Superintendent Central Jail Kot
Bhalwal Jammu

..... Respondent(s)

Through: Mr. Mohsin Qadiri, Sr. AAG with
Ms Nadiya Abdullah, Advocate.

CORAM:

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

01. The petitioner-Manzoor Ahmad Bhat through his father has challenged the detention order No.DIVCOM-K/102/2023 dated 06.07.2023 issued by respondent No.2- Divisional Commissioner, Kashmir on the grounds; i)

that the detention order has been passed by the authority without application of mind as the grounds mentioned in the detention order are vague and do not mention of the bail granted to the petitioner by the trial court in FIR No.54/2023 registered under Sections 8/20-29 of Narcotic Drugs and Psychotropic Substance Act, 1988; ii) that there was no cogent material before the authority to pass the impugned order; and iii) that the representation has been filed before the authorities but he has not been heard in the matter in person or through his counsel or friend.

02. The counter affidavit has been filed by the respondents wherein it is submitted that the respondent has passed the impugned order after complying with all the formalities as required by law; that the petitioner was influencing immature minds of young generation and making them habitual and addict; that the Advisory Board has confirmed the detention of the petitioner and subsequently the Government has also confirmed the detention of the petitioner. The grounds mentioned are not vague but precise ones. The counter affidavit refers to apprehending of the petitioner in FIR No.54/2023 under NDPS Act.
03. Heard learned counsel for the parties. Photo copy of the detention record is also produced by learned counsel for the respondents.
04. The impugned order has been passed by respondent No.2 against the petitioner in terms of Section 3 of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 (hereinafter to be referred as 'PITNDPS'). The contention raised by learned counsel for the petitioner is that the grounds of detention speak of non-application of mind on the part of detaining authority as the same has been passed only on the basis

of one FIR, in which, the petitioner has been bailed out. The petitioner was granted bail by the Court vide order dated 22.05.2023. However, there is no mention of the same in the detention order.

05. The learned Sr. AAG has argued that the non-mention of the bail having been granted to the petitioner does not make any difference to the case of the petitioner as no right of the petitioner has been violated due to the omission in the detention order. The dossier does speak of the bail having been granted to the petitioner by the court in the aforesaid FIR.
06. The detention order has been passed vide order dated 06.07.2023 and the bail has been granted by the Court on 22.05.2023 in FIR No.54/2023. Indeed the aforesaid FIR is mentioned in the detention order itself. However, the detention order does not speak of the granting of bail to the petitioner which was granted just sometime before passing of the detention order. It is not that the detention order is not passed on the basis of aforesaid FIR. The mention of the same in the detention order but not stating that the petitioner has been bailed out in the FIR can not be ignored by this Court while analyzing the detention order. What prevented respondent No.2 from stating the afore stated fact that the bail has been granted to the petitioner by the Court is not made known to the court. The fact of bail having been granted was bound to be reflected in the detention order.
07. The argument of learned counsel for respondents that the non-mentioning of bail in the detention order is not fatal cannot be accepted. The Registration of FIR against the petitioner is the core ground for passing

the detention order, therefore, the non-mentioning of the same in the detention order renders the detention order illegal.

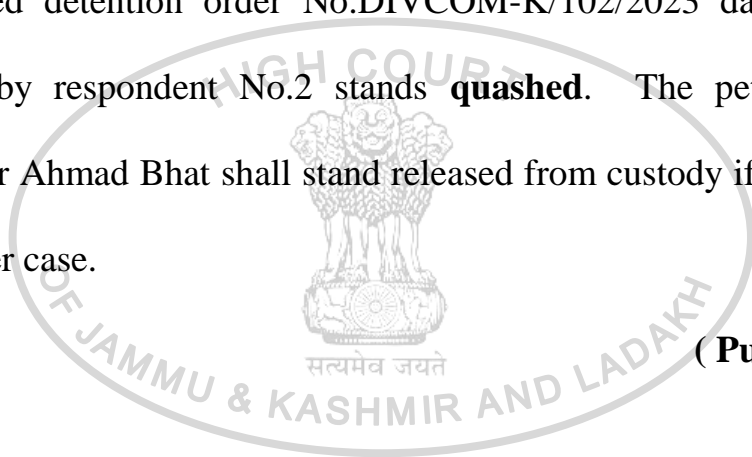
08. It is trite proposition of law that the detaining authority is required to disclose all the relevant material in the detention order as it would reflect the subjective satisfaction of the detaining authority while passing the detention order. No doubt, the subjective satisfaction of the detaining authority is not to be scrutinized by this court as a court of appeal but at the same time the court is not completely debarred from prima facie looking into the satisfaction of the detaining authority in the proceedings like the present one. The detention order is required to be quashed on the aforesaid ground of non-mention of bail order.
09. The petitioner has been provided 23 leaves in total viz. detention order (01 leaf), notice of detention (01 leaf), grounds of detention (02 leaves), Dossier of detention (03 leaves), copies of FIR, statements of witnesses and other related relevant documents (16 leaves) while executing the detention order and the petitioner is signatory to the receipt of the same. There is no reason to disbelieve that the petitioner has not been provided with the relevant material at the time of execution of the warrant. Thus, there can be no complaint by the petitioner that he has not been provided with the material which was required to be provided to him at the time of execution of warrant. The ground, thus, agitated by the petitioner that relevant material is not supplied fails.
10. The petitioner has submitted that the representation made on his behalf by his father has not been considered by the authorities and that he has not been heard in person or through his friend. The perusal of the

representation does not make out that the petitioner had sought personal hearing by the authorities on the representation made by him. Thus, the petitioner cannot raise the grievance on the aforesaid aspect of the matter. The petitioner has also raised grouse that the representation filed before the authorities has not been considered and, thus, valuable statutory right of the petitioner stands violated and infringed. The perusal of record reveals that the detaining authority had informed the petitioner vide dated 06.07.2023 that the petitioner can make representation against the order of detention to the respondent No.2 and to the government if he so desires. The representation received on 17.07.2023 stands considered and rejected vide dated 21.09.2023. In view of the fact that the representation of the petitioner has been considered by the authorities stands negated from the record.

11. Another aspect of the matter is that though the representation has been considered by the authorities but the authorities have taken more than two months to dispose of the representation of the petitioner which by no means can said to be consideration and disposal of the representation within a reasonable time. Moreso, there is no explanation from the authorities as to why so much delay has happened in considering the representation. The representation has to be considered and decided by the authorities with all promptitudes and in case there is a delay in disposal of the representation, the reasons must come forthwith from the concerned authorities.
12. In **“Sarabjeet Singh Mokha Vs. District Magistrate Jabalpur and others”** reported in (2021) 20 SCC 98 the Hon’ble Supreme Court has

reiterated that the representation, if made by the detenu, must be considered and decided without any delay as the delay in the disposal of representation deprives the detenu of his right to avail the remedy available to him. The judgment in **Sarabjeet Singh Mokha's** case (supra) applies on all fours in the case in hand.

13. The preventive detention being not a criminal proceedings and is only with a view to prevent the petitioner from indulging in illegal activities, the safeguards provided in the Act have to be scrupulously followed by the authorities and any violation of the same will be illegality committed by the concerned authorities.
14. In view of the discussion made above, the petition is **allowed** and the impugned detention order No.DIVCOM-K/102/2023 dated 06.07.2023 passed by respondent No.2 stands **quashed**. The petitioner namely Manzoor Ahmad Bhat shall stand released from custody if not required in any other case.



(**Puneet Gupta**)
Judge

Jammu
30.05.2024
Narinder

Whether the order is reportable?

Yes/No