Sr. No. 82

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case: LPA No.107/2024 in
HCP No.2/2024

Gourav Khajuria, Age 40 years S/o Lt. Sh. Prem Nath Khajuria through his Mother Suman, Age 58 years W/o Lt. Sh. Prem Nath Khajuria R/o H.No.91 Peerkho Jammu ..... Appellant(s)

Through :- Mr. Narinder Kumar Attri, Advocate

Vs

1. Union Territory of Jammu and Kashmir, through Commissioner Cum Secretary Home Department, Civil Secretariat Jammu.
2. Divisional Commissioner, Rail Head Complex Jammu.
3. Senior Superintendent of Police Jammu. .....Respondent(s)

Through :- Mr. Amit Gupta, AAG

CORAM:
HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT (ORAL)
24.07.2024

(Atul Sreedharan-J)

The present appeal has been filed by the appellant against the judgment and order dated 14.05.2024 passed in HCP No.2/2024 by which the Habeas Corpus petition filed by the appellant herein was dismissed by the learned Single Judge. The appellant is under preventive detention under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1998 read with SRO 247 of 1998 dated 27.07.1988.

2. The appellant was detained as hereinabove in order to prevent him from committing any act within the meaning of illicit trafficking. The detention order was challenged before the learned Single Judge by the mother of the appellant.

3. After having gone through the merits of the case, the learned Single Judge, concluded that there was no ground to interfere with the impugned order of detention and dismissed the petition.

4. The brief facts of the case are as follows. Against the appellant, as per the order of detention, two First Information Reports have been considered. They were both for offences under the NDPS Act. One FIR being, FIR No.74/2022, under Section 8/21/22 of the NDPS Act of Police Station, Pacca Danga, Jammu where the appellant was accosted and stopped by the police on 19.06.2022 and from his person 4 to 5 grams of heroin was recovered. He was arrested and sent to judicial custody and later enlarged on bail. The second case is FIR No.73/2023 under Section 8/21/22 of the NDPS Act of Police Station, Pacca Danga wherein on 05.06.2023, the appellant was once again apprehended and from his personal search 7 to 8 grams of heroin-like substance, kept in a transparent polythene was recovered. Heroin, up to 5 gram is small quantity and 250 grams and above is commercial quantity.

5. The grounds of detention clearly disclose that the appellant has been released on bail in both these cases and that there is every likelihood, according to the detaining authority, that he would again indulge in illicit trafficking. The grounds of detention also record that the appellant is continuously active in drug consumption and drug trafficking ensnaring the vulnerable young generation into drug addiction and spoiling the future of youth of the area.

6. Learned counsel for the appellant submits that there is an absence of live link between his activity and the order of detention which took him into custody. He further says that he was bailed out in the 2023 case on 14.06.2023 and for three months thereafter no action was taken against him and that the dossier by the Superintendent of Police was prepared on 30.09.2023 and the

impugned order of detention passed on 03.10.2023. In other words, the appellant was taken into detention within four months of his release on bail in the second case.

7. Learned counsel for the appellant has argued with much passion that the grounds of detention are vague and has not considered the fact that the quantity in the first case was small being 4 grams and the second case was small intermediate quantity being less than 10 grams though more than 5 grams. He has further argued that the respondents have npreventivecase with regard to the exigency for taking him under the preventive detention and how the appellant would be a nuisance to the society if he was not so detained.

8. Learned counsel for the appellant has also referred to certain judgments of the Supreme Court and this Court. The first judgment passed by the Supreme Court is in Criminal Appeal No.1708/2022 (Sushanta Kumar Banik Vs. State of Tripura & Ors.). The said judgment has been delivered on 30.09.2022. In this case before the Supreme Court also, where the detenue was detained under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and the appeal to the Supreme Court was preferred against the judgment of the High Court of Tripura dated 01.06.2022 by which the writ petition filed on behalf of the detenue was dismissed and thereby affirming the order of detention. The Supreme Court allowed the appeal as there was delay in passing the order of detention from the date of proposal, thereby snapping the live and proximate link between the prejudicial activities of the detinue, the purpose of detention and failure on the part of the detaining authority in explaining such delay. However, in this particular case before this Court, the dossier was prepared by the Superintendent of Police on 30.09.2023 and the order of detention was passed and given to the appellant

herein within a week, on 03.10.2023. The second ground on which the Supreme Court allowed the appeal of the detenue before it was that the detaining authority remained oblivious of the fact that in both the criminal cases relied upon by the detaining authority for the purpose of passing the order of detention, the appellant detenue was ordered to be released on bail by the special Court. In this particular case, the grounds of detention clearly reveal that the appellant had been granted the benefit of bail in both the cases.

9. The Supreme Court also relied upon an earlier judgment passed by it in '***Ashok Kumar Vs. Delhi Administration & Ors. 1982 SCC 403'*** in which the Supreme Court had observed that preventive detention was to afford protection to the society and not to punish the offender for having done something but to intercept, using statutory authority, to prevent the detinue from doing any illegal Act. The second judgment relied upon by the learned counsel for the appellant is '***Ammena Begum Vs. State of Telangana and Ors'. (2023) 9 SCC 587***. In this case, the learned counsel for the appellant has referred to paragraph 25 of the judgment where the Supreme Court has laid down the principles to be followed while dealing with cases under preventive detention. The Supreme Court held that while deciding the legality of an order of preventive detention, the Court ought not to shut its eyes to ascertain the sufficiency or otherwise, the material on which detention has been ordered. It was also held that preventive detention is not sought to be resorted to such cases where the general law is capable of dealing with the problem.

10. Learned counsel for the appellant has also referred to the judgment passed by the learned Single Judge of this Court in ***'Iqbal Jaffer Dar Vs. Union Territory of J&K & Ors'. 2023 (1) JKJ 2023 [HC].*** He has specifically refereed to paragraph No.19, where the facts in that case are closely akin to

the facts of the present case before this Court. There also the detenue was placed under detention on the basis of offences of the years 2020 and 2021, while the impugned order of detention was passed on 24.02.2022. In that case, the learned Single Judge also observed that it was an admitted position borne by record that there was nothing in the dossier prepared by the Superintendent of Police, Kupwara, and placed before the detaining authority, to indicate that the detenue was involved in any other illegal activity after 2021. In that case, in the years 2020 and 2021, the police had recovered intermediate quantities of 20 grams of heroin in one case and 20 grams of brown sugar in the other case. There also the allegation against the detenue was that he was a supplier of drugs to the youth and that he was receiving a hefty amount for the same. Learned Single Judge observed that had this been so, the police agency would have recovered a huge cache of narcotic drugs and psychotropic substances from the possession of the detenue of commercial quantity in order to substantiate the allegations leveled in the dossier prepared by the Superintendent of Police. The said judgement does not lay down a proposition of law which could could be referred to as a *ratio decedendi*. Its opinion that there should have been the recovery of a huge cache of narcotics drugs from the detinue before the police arrived at the opinion that the detinue was a supplier of drugs is an opinion, with the greatest deference, this Court begs to differ from. In a case of preventive detention under the Prevention of Illicit Traffic in Narcotic Substances and Psychotropic Substances Act, 1988, the subjective satisfaction of the detaining authority may be based on the recovery of contraband substances him. Placing a person under preventive detention on a singular case of small quantity seized from him, may be an overkill. In such a case, the substantive law is sufficient to deal with him. However, when the

person is involved in the same offence within a short period of time (which cannot be laid down but must be inferred from the facts and circumstances of each case) it may raise a strong suspicion that he may have indulged in the same offence several times in between which may have gone undetected. A person may be an addict (who is not intended to be detained under the special law) and not a drug trafficker (whose detention is intended under the special law) or both. So, when a person is apprehended repeatedly with a small quantity of a contraband (as in this case) and he himself does not state that this quantity is for self-consumption as an addict, it may not be misplaced for the police and the detaining authority to presume for the purpose of detention, that the drugs found in his possession is for sale/trafficking, even though a small quantity. It is relevant to mention here that such an admission of facts to the police will not be a confession (as it is made to a police officer) which could affect the criminal trial detrimentally to the interest of the detinue, but it would be relevant material for the detaining authority to form his a subjective satisfaction with regard to the necessity of placing the person in detention under the special law.

11. Learned counsel for the Union Territory, on the other hand, submits that the order passed by the learned Single Judge is a well-reasoned order and that the material against the appellant herein was adequate to substantiate his detention. He further states that the appellant is a recidivist having committed the same kind of offence in two consecutive years. He further submits that the fact that the appellant was granted bail by the Court below, necessitating his detention under the special law, has been considered by the detaining authority as is reflected in the grounds of detention which record the appellant has been enlarged on bail in both the cases. He further submitted that in the

second case, the appellant was bailed out was on 14.06.2023 and within three months therefrom on 30.09.2023 the police prepared the dossier on the appellant and in less than one week thereafter, the order of detention was passed.

12. Under the circumstances, learned counsel for the Union Territory has submitted that the live link was substantiated and established by the Union Territory in the manner in which it was conducted against the appellant. Learned counsel for the Union Territory has also submitted that the nature of drug also compels the authorities of the State to secure the detention of the appellant. He further argued that even though the quantity of contraband in the first case was small quantity and in the second case being small intermediate quantity, but the nature of drug (heroin) being such that it was potent and highly intoxicating in comparison to other kinds of Narcotic Psychotropic Substances Act due to which 250 grams or above of the said drug would constitute commercial quantity. In comparison, he states that the poppy-straw, which is also contraband, the commercial quantity is 50 kilos. On the basis of this, learned counsel for the Union Territory has argued, the subjective satisfaction of the detaining authority is based on multiple factors and that there is no rule of thumb. While assessing the need to detain a person under the provisions of the special Act, the frequency of the offence committed by the appellant, the nature of drug found from his possession and has tendency to slide back into the life of recidivism, has been taken into account to form a subjective satisfaction that his detention was necessary.

13. Heard the learned counsel for the parties and perused the record of the case. The grounds of detention specifically mentioned that the activity of the appellant is deleterious to the society at large and that he is indulging in

trafficking in drugs and thereby corrupting the youth of the area and also financial enriching himself unlawfully. The judgment of the Supreme Court in Sushanta Kumar Banik's case (supra), for the reasons stated in hereinabove will not apply to the factual aspects of the present case as already discussed hereinabove. In that case, the Court had held that the specifically grounds that the live link between the last offending act of the appellant before the Supreme Court and the dossier prepared by the police and finally the order of detention there was inordinate delay at every stage on account of which the live link was lost. In this particular case, the appellant was enlarged on bail in the second case on 14.06.2023 and the dossier was prepared in little over three months on 30.09.2023. This delay in preparing the dossier cannot be considered as inordinate. In this case, the appellant had committed two offences of the same nature back-to-back within one year. The quantity of the narcotic being small and intermediate, he was granted bail by the learned trial Court. The contention of the learned counsel for the appellant that there was no case after 2023 which could justify his detention under the special law has to be seen in the light of the fact that offences under the NDPS, as are all offences, committed in a clandestine manner evading detection. The fact that no case has been registered against the appellant after 2023 is not to a ground to quash the impugned order. .

14. In this case, the fact that the appellant after being bailed out in the first case was again arrested and from his person the same contraband of different quantity was seized in 2023 also, reflects that the appellant has tendency to commit the offence of similar nature. On the basis of the quantity seized from him it is probable that the appellant is a consumer of drugs but at the same time, it cannot be discounted altogether that he may be supplying drugs to

other. The standard of evidence which is required for proceeding against the person in a criminal trial will certainly not be same that is applicable while considering his detention under the preventive detention of laws. That having been said, the grounds of detention cannot be fanciful or illusory but must be based on certain facts which appear to be probable justifying the detention of the appellant.

15. In this case, it cannot be said that there was no basis for forming a subjective opinion that the appellant if not detained would not pose a threat to the well-being of society. There is one fact that distinguishes detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 from other detention laws. For detention under this Act, the sense of anxiety and seriousness on the part of the State is far greater than what is under other preventive detention statutes. All preventive detention statutes cannot be placed on the same pedestal when it comes to ascertain "subjective satisfaction" of the detaining authority. While far greater material and evidence may be required to form a subjective satisfaction under other detention laws, the requirement and degree of evidence in material required to form a subjective satisfaction under this Act may be far lesser depending upon the circumstances. In other words, no rule of thumb can ever be laid down as to how much material would be sufficient to form subjective satisfaction for detention under this Act. From the examination of facts of this case, it cannot be said that the material before the police and the detaining authority were inadequate to form a subjective satisfaction with regard to the detention of the appellant herein. Also, the Court cannot lay down as to what constitutes substantive satisfaction in order to displace what is arrived at by the detaining authority. However, by caution this Court would like to say that

the same does not mean that this Court cannot examine and evaluate the material on the basis of which the detaining authority had formed its subjective satisfaction. The order of detention does not require any interference of this Court. This Court is of the opinion that the material placed before the detaining authority was not so feeble and desolate that a reasonable man could not form the subjective satisfaction under the special Act to detain the detenue.

16. In view of what has been discussed hereinabove, we find no reason to interfere with the order passed by the learned Single Judge and the appeal is dismissed.

(PUNEET GUPTA)
JUDGE

(ATUL SREEDHARAN)
JUDGE

JAMMU
24.07.2024
Shammi

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