

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 287/2024

Reserved on: 27.03.2025
Pronounced on: 03.04.2025

Adil Hussain Mir

... Petitioner(s)

Through: Mr. Ateeb Kanth, Advocate

Vs.

UT of JK and others

...Respondent(s)

Through: Mr. Zahid Q Noor, GA

CORAM:

HON'BLE MR. JUSTICE RAJESH SEKHRI-JUDGE

JUDGMENT

1. Challenge in this petition has been thrown to detention order No. DIV COM (K)/45/2024 dated 16.04.2024, passed by Respondent No.2, under Section 3 of the Prevention of Illicit Traffic and Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act), vide which the petitioner ["the detenu"], has been directed to be detained and lodged in Central Jail Kot Bhalwal, Jammu, for a period to be specified by the Government/Advisory Board.
2. The detenu, through his father, Shri Fayaz Ahmad Mir, has invoked writ jurisdiction of this Court for the issuance of appropriate writs commanding the respondents to release his person.
3. The petitioner has assailed the impugned order of detention on multiple grounds, however, learned counsel for the petitioner has confined his argument primarily on the ground that allegations attributed to him in the grounds of detention may be a law and order problem but do not qualify within the definition of Public Order under Section 8 of the J&K Public Safety Act 1978 {PSA, for short}, and that the grounds of detention are vague in nature, because there is no specific allegation regarding involvement of the petitioner in the unlawful activities attributed to him.

4. On the other hand, the respondents, in the counter affidavit, are affront with the contentions that the detenue is a notorious illicit drug peddler and a principal dealer of Narcotic Drugs and Psychotropic Substances in his area. He was exposing the youth and gullible minds, including the school going children into the world of drugs in furtherance of criminal intention to make them habitual addicts. It is also contention of the respondents that the detenue was an active member of a larger drug mafia operating not only in the local area of his residence but also in the surrounding areas of his district. According, to the respondents, the activities of the detenue have posed a serious threat to the health and welfare of the people especially general people of District Anantnag. The detenue being a member of an intricate drug syndicate procure narcotics i.e. brown sugar/Heroin and Charas like substances and have been continuously indulging in offences under the NDPS Act. Therefore, he came to be apprehended in case FIR no. 133/2022, under Section 8/21-22 NDPS Act of Police Station Bijbehara.
5. It is contention of the respondents that with a view to prevent the detenue from indulging in similar activities, he was ordered to be detained in accordance with the Provisions of the Act vide impugned Order dated 16.04.2024. He was duly informed of his detention on the grounds specified and that he has a right to make a representation to the Government, if he so desires. The detention order was executed by the concerned police and the grounds of detention was read over and explained to him in the language which he understands. It is also contention of the respondents that only after the Advisory Board was satisfied that there was sufficient ground for his detention, the Government confirmed the detention order on 10.06.2024, under Section 9 (f) read with section (11) of the PITNDPS and he came to be detained for a period of one year in Central Jail Kot Bhalwal, Jammu. According, to the respondents, the detention of the detenue, in the present case is precise and proximate and since all statutory

constitutional Provisions and legal formalities of PSA have been duly followed, there is no vagueness in the grounds of detention.

6. Having heard rival contentions of the parties, I have gone through the detention record.
7. Learned counsel on the rival sides have reiterated their respective pleadings in their arguments.
8. Before a closer look at the grounds urged in the memo of petition, it shall be apt to have an overview of the background facts.
9. It is evident from a perusal of the grounds of detention as also the impugned order of detention that detention in the present case traces its origin to a solitary FIR No.133/2022 for offences under Section 8/21-22 NDPS ACT of police station, Bijbehara. Aside, the allegations against the detenu are that he is a notorious illicit drug peddler, becoming the principal dealer of Narcotic Drugs and Psychotropic Substances in and around his area. He was a part of an active member of a larger drug mafia, relentlessly involved in drug trafficking, exposing the gullible minds of youth of his area including the school going children into the menace of drugs, making them habitual addicts. His activities posed a serious threat to the health and welfare of the people; especially general people of District Anantnag and it also have an adverse impact on the national economy. It is alleged that the detenu is a member of intricate drug syndicate and, therefore, with a view to prevent him from indulging similar type of activities, he came to be detained under the Provisions of PITNDPS Act.
10. In view of the aforesaid background, a question to be discoursed is that whether allegation contained in the grounds of detention against the detenu, would constitute an act amounting to disturbance of public order. It is settled law that if ordinary law of the land is competent to deal with criminal activities of a criminal, recourse to the provisions of preventive detention laws are illegal. It is so because the expressions "Public Order" and "Law and Order", operate in different fields and have different connotations. If an Act has the

potentiality to disturb public order, it is the public at large which is affected by the said criminal activity. On the other hand, a particular criminal activity of a person shall be prejudicial to a particular individual or members of the society at large. Breach of law, by indulging in a criminal activity or in contravention of the provisions of a particular statute, can be termed as a law and order problem, but certainly it does not amount to disturbance of public order.

11. Back to the case, the detenu is found involved in a single FIR no. 133/2022 for offences under Section 8/21-22 of NDPS Act of police station, Bijbehara. The charge sheet of the said case stands produced in the court of Principal Sessions Judge, Anantnag on 12.10.2022. It is contention of the respondents that since detenu “managed” to get bail in the said case, therefore, normal law has proven insufficient.
12. Be it noted, that an accused involved in the commission of an offence has a right to seek his enlargement on bail from the competent court of law, and if he chooses to exercise his right, the prosecution is also well within its right to oppose the plea right at the motion stage and if, he succeeds in his endeavor, the prosecution or the State or the Union Territory, as the case may be, has an efficacious remedy under the ordinary law of the land to seek cancellation of his bail by approaching the Trial court or even by approaching the higher forum.
13. What has been said, held and laid down regarding the issue by Hon’ble Supreme Court in **Banka Sneha Sheels vs. State of Telangana & Ors** reported as (2021) 9 SCC 415, is significant and important to be discoursed off. It reads as:

“There can be no doubt that what is alleged in the five FIRs pertain to the realm of “Law and Order” in that various acts of cheating are ascribed to the Detenu which are punishable under the three sections of the Indian Penal Code set out in the five FIRs. A close reading of the Detention Order would make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known

remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm of feeling of security among the general public spoken of in Section 2(a) of the Telengana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case.”

14. It is manifest from the aforequoted proposition of law enunciated by Hon'ble Supreme Court that a person cannot be put under preventive detention on the premise that he managed to secure bail from a competent court.
15. The detenu in the present case has been booked in a sole FIR and there is nothing to suggest that ordinary law of the land is not competent to deal with the situation. The allegations leveled against the detenu may be a serious law-and-order problem but certainly do not fall within the category of 'Public Order'. The apprehension of the Detaining Authority or the cause of concern of the concerned police that enlargement of the detenu will have an impact upon public faith, is unfounded and cannot form basis for putting him under preventive detention. The impugned order is liable to be quashed on this ground alone.
16. The detenu has also questioned the impugned order of detention on the ground of vagueness of allegations. The allegations against the detenu in the grounds of detention are as follows:

“...You have transformed into a notorious illicit drug peddler becoming the principal dealer of narcotic drug and psychotropic substances in Bijbehara area and its surroundings areas of your District. However, with the passage to time, you developed contacts with drug peddlers operative in District Anantnag and started selling/dealing in drugs among the youth of your area which have adverse impact on the younger generation. You have continuously exposing and influencing the young and immature minds, including school going children by selling and inducting them in the evil world of drugs and making them habitual addicts.

That you are a part and active member of larger drug mafia who are relentlessly involved in drug trafficking not only in local area of your residence but are involved in such illegal activities at the District level and also in the surrounding area of your district. Your activities are directly affecting the health and welfare of people especially general people of District Anantnag and also have an adverse impact on the national economy. You have been found that you have adopted the drug trafficking as your regular source of earning and have been motivating and influencing the young minds into the drug consumption.

The credible sources reveal that you being a member of an intricate drug syndicate procure narcotics i.e. brown sugar/Heroin and Charas like substances and have been continuously indulging in offences under the provisions of Narcotic Drug and Psychotropic Substances Act.”

17. The aforesaid allegations against the detenu are indeed serious.

However, the fact remains that there is only one FIR against him. Had detenu being a chronic miscreant, as claimed by the detaining authority in the grounds of detention, he would have been booked under multiple cases and still could be dealt with in accordance with the ordinary law of the land. The vague allegations that he is a notorious drug peddler or principal dealer of narcotic drugs and psychotropic substances or that he is an active member of a larger drug mafia who expose and influence the youth of his area or that he is a member of an intricate drug syndicate, do not satisfy the requirements envisaged under section 8 of PSA, because such unfounded allegations of the detaining authority have no connection with the maintenance of public order. The sole criminal activity attributed to the detenu does not appear to have been disturbed normal life of people of District Anantnag. Therefore, in view of vagueness of allegations made in the grounds of detention, the detenu was prevented to make an effective representation against the impugned order of detention.

18. In the context of what has been observed and discussed above, it is held that a person involved in a solitary criminal activity cannot be put under preventive detention, if ordinary law of the land is competent

and sufficient to deal with such activity. The detaining authority is under a legal obligation and constitutional mandate to provide in clear terms, complete particulars of all the criminal activities attributed to the detenu and if, relevant provisions of the penal code are sufficient to deal with the activity attributed to a criminal, recourse to PSA or preventive detention laws shall not only be illegal but unconstitutional.

19. Having regard what has been observed and discussed above, the present petition is allowed and impugned order of detention is quashed. As a result, the detenu is directed to be released forthwith from the detention, provided he is not involved in any other case or offence.

20. Disposed of.

21. Record produced by learned counsel for the respondents is returned back.

(RAJESH SEKHRI)
JUDGE

SRINAGAR
03.04.2025
"Imtiyaz"

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| i. | Whether the Judgment is Speaking? | Yes |
| ii. | Whether the Judgment is Reportable? | Yes. |