

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

(Through Virtual Mode)

Dated: 27th of May, 2020.

EMG-WP (Crl) No. 02-A/2020

Hilal Ahmad Mir

..... Petitioner(s)

Through: -
Mr Syed Musaib, Advocate.

V/s

Union Territory of JK & Ors.

..... Respondent(s)

Through: -
Mr B. A. Dar, Sr. AAG.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.

JUDGMENT

01. This Habeas Corpus petition is filed by one Hilal Ahmad Mir S/o Ghulam Mohammad Mir R/o Galwan Mohallah, Mazhama, through his father Ghulam Mohammad Mir, seeking quashment of detention order bearing No. DIVCOM-“K”/125/2020 dated 12th of March, 2020, whereby the *detenu* has been detained under Section 3 of the Prevention of Illicit Traffic and Psychotropic Substances Act 1988 in order to prevent him from engaging in Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The said order of detention stands executed when the *detenu* was already in custody in case bearing FIR No. 29/2020 registered under Section 8/22, 29 of the NDPS Act of Police Station Magam. The order is shown to have been passed by the detaining authority on being satisfied that with a view to preventing the *detenu* from engaging in Illicit Traffic in Narcotic Drugs and Psychotropic

Substances, it was necessary to detain him. The detention order so passed by the detaining authority was challenged by the petitioner, broadly, on the grounds: (i) that the *detenu* was not supplied the material documents on the basis of which the detaining authority had attained the requisite satisfaction thereby not only preventing the *detenu* from making an effective representation against his detention, but also violating the most precious right guaranteed to him; (ii) that one of the FIRs relied upon by the detaining authority to form its opinion pertains to the year 2012 and that all the allegations contained in the said FIR, as well as FIR No.29/2020, are stale in nature, therefore, the same could not form the basis for detaining the *detenu*, and that the detention order on that ground is vitiated; (iii) that the grounds of detention are *replica* of the Police dossier and that the detaining authority has signed the order of detention and grounds of detention without application of mind, therefore, the detention of the *detenu* suffers from non-application of mind on part of the detaining authority; (iv) that the grounds of detention are vague, indefinite, uncertain and ambiguous; and (v) that the detaining authority has not shown its awareness in the grounds of detention about the present status of the FIRs in question and whether the *detenu* had filed any application for bail therein.

02. At the hearing of this case, Mr Syed Musaib, learned counsel appearing for the petitioner, submitted that the *detenu* was not provided the relevant material viz. the Police Dossier, Case Diaries, copies of the FIRs, etc., perused by the detaining authority and on the basis of which it had attained subjective satisfaction that with a view to prevent the *detenu* from engaging in Illicit Traffic in Narcotic Drugs and Psychotropic Substances, it

was necessary to detain him under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act. The learned counsel submitted that for lack of such material, the *detenu* was prevented from making an effective representation to the detaining authority and the Government against his detention, and was, thus, deprived of his most precious right of making the representation, guaranteed to him by law. The learned counsel submitted that because of such a failure, the detention of the *detenu* is rendered illegal, therefore, the detention order is liable to be quashed. The learned counsel submitted that it has consistently been held by the Supreme Court that non-supply of all the materials relied upon by the detaining authority to arrive at the requisite satisfaction, rendered the detention order illegal and is a sufficient ground for quashing the order of detention. To buttress his submission, the learned counsel cited and relied upon the judgment of Hon'ble the Supreme Court in '*Tahira Haris v. Govt. of Karnataka: (2009) 11 SCC 438*'.

03. It was next argued by the learned counsel for the petitioner that the grounds of detention supplied to the *detenu* do not attribute any specific instance of activity to the *detenu*, instead, these grounds give out that the detaining authority assumed the requisite satisfaction on the basis of the contents of the FIRs and other material placed before and perused by him. The learned counsel submitted that apart from the fact that the grounds of detention are wholly vague, since one of the FIRs, admittedly, pertain to the year 2012, the allegations, whatever levelled therein, are stale, being 9 to 11 years old. The learned counsel submitted that it is settled law that past conduct of the *detenu* is not relevant and has no live and proximate link with immediate need

to detain him preventively. According to the learned counsel, the *detenu* has been detained on stale grounds. Concomitantly, it was argued that since the *detenu* was already in preventive custody of the respondents on the date of his detention, the detaining authority has not shown any compelling reason that despite that fact it was necessary to detain him under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act. To bring home these points, the learned counsel cited and relied upon the judgment of the Supreme Court in '*Sama Aruna v. State of Telangana: (2018) 12 SCC 150*'.

04. On notice having been issued, the respondents have filed Counter Affidavit denying therein all the averments made by the petitioner in his petition qua non-supply of material; non-application of mind on the part of the detaining authority; grounds of detention being vague and ambiguous; detaining authority not being aware about the status of the FIRs; and detaining authority not explaining the compelling reasons; etc.; etc.

05. Heard the learned counsel for the parties, perused the pleadings on record and considered the matter.

06. Perusal of the pleadings on record would reveal that the *detenu* has been furnished the grounds of detention along with the requisite material. He has also been informed about his right of making representation against his detention, but the *detenu* has chosen not to make the representation, therefore, the fault, if any, is attributable to the *detenu* and not to the detaining authority. Thus, the ground raised *vis-à-vis* non-furnishing of material to the *detenu* is rejected.

07. The next contention of the learned counsel for petitioner that the impugned order is an outcome of non-application of mind is also belied not only by the pleadings on record but also by the stand adopted by the respondents. The grounds of detention and the records referred to by the detaining authority were sufficient to derive satisfaction as regards the detention of *detenu* under the provisions of the Act. Thus, the order does not appear to be suffering from non-application of mind.

08. As per settled position of law, if a detention order is issued on more than one ground, independent of each other, the detention order will survive, even if one of the grounds is found to be unfound or legally unsustainable. In the present case, the detention order is issued on more than one ground, independent of each other, therefore, the detention order does not get vitiated, even if one of the grounds taken in support of the petition turns affirmative. This view is fortified by the law laid down by the Supreme Court in case titled '*Gautam Jain v. Union of India & Anr. : 2017 (1) Jammu Kashmir Law Times, Vol. 1 (SC) p. 1*'.

09. The next ground taken by the *detenu* that the detaining authority did not record as to under which compelling reasons the *detenu* is required to be kept in custody under preventive laws when he was already in jail, though not applied for bail. Since, the Court has already held that the detention survives even if one of the grounds taken in support of the petition remains unexplained or proves to be bad in law, therefore, the detention order can be maintained in absence of any explanation on this count by the respondents.

10. Furthermore, in the instant case, it may be noted here that the *detenu* is a habitual and incorrigible offender and is a part of an organized and well-planned drug mafia. The *detenu* is such a compulsive offender that his earlier arrest by the police in case bearing FIR No.08/2012 did not deter him from continuing with his activities. In such circumstances, I do not find anything wrong with the satisfaction arrived at by the detaining authority that normal law of the land, i.e., the provisions of the NDPS Act, would not be sufficient to deter the *detenu* from rebuilding his activities. The same view was held by a Co-ordinate Bench of this Court, in case titled '*Khaleeq Ahmad Sheikh v. State of JK & Ors. : 2019(2) JKLT 617 (J&K)*', while dealing with an almost similar issue.

11. For the reasons recorded hereinabove, this petition is found to be without any merit. It entails dismissal and is, accordingly, *dismissed*. The impugned detention order, challenged in this petition, thus, sustains and is upheld.

(Ali Mohammad Magrey)
Judge

SRINAGAR
May 27th, 2020
"TAHIR"

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| i. | <i>Whether the Order is speaking:</i> | <i>Yes/No</i> |
| ii. | <i>Whether the Order is reportable:</i> | <i>Yes/No</i> |