

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

Reserved on: 01.05.2024
Pronounced on 17.05.2024

HCP No. 50/2023

- 1. Pawan Singh alias Panna (age 43 years), S/o Sh.Nand Singh R/o Chanjwan Devipur, Tehsil Akhnoor, District Jammu. (presently lodged in Central Jail Kot Bhalwal, Jammu)**

Through: Mr. Virender Dev Singh, Advocate

Vs.

- 1. Union Territory of Jammu and Kashmir, through Principal Secretary (Home) Civil Secretariat, Jammu.**
- 2. District Magistrate, Jammu.**
- 3. Senior Superintendent of Police, Jammu.**
- 4. Superintendent Central Jail, Kot Bhalwal, Jammu.**

Through: Mr. Pawan Dev Singh, Dy. AG

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

01. Aggrieved of the order of detention bearing No. 08 of 2023 dated 28.06.2023 issued by the District Magistrate, Jammu-respondent No. 2 (hereinafter to be referred as "the detaining authority") under Section 8 (1) (a) of Jammu and Kashmir Public Safety Act, 1978 (for short, 'the PSA'), the

petitioner, has filed the instant petition, thereby assailing the order impugned on the following grounds:

- (i) That the petitioner was already in custody of the Police when the order of detention was issued, as the petitioner was arrested on 25th June, 2023.
- (ii) That the material relied upon by the detaining authority while passing the order impugned, was not provided to the petitioner.
- (iii) That the petitioner was not informed about the time period for making the representation against the order of detention.
- (iv) That the order of detention suffers from non-application of mind and has been issued in a mechanical and an arbitrary manner.

02. The respondents have filed the response, stating therein that the petitioner is a notorious bootlegger and habitual criminal. It is also stated that taking into consideration the seven FIRs registered against the petitioner, he was ordered to be detained by virtue of order of detention dated 28.06.2023. The order of detention was executed upon the petitioner on 04.07.2023 and the petitioner was furnished the detention order, notice of detention, grounds of detention, dossier, copies of FIRs, statements of the witnesses and other related documents. The petitioner was also read over the warrant of detention and the grounds of detention and the contents were explained to him in Hindi/Dogri language, which he fully understood. It has been further stated that the petitioner was also apprised of his right to make representation to the Government as well as the detaining authority. The respondents have placed

on record the execution report, the receipt of grounds of detention and detention order dated 28.06.2023.

03. Learned counsel for the petitioner has argued that the order impugned has been passed without proper application of mind and in a mechanical manner. He has further submitted that the petitioner could not have been detained under the Act for the maintenance of public order particularly on the allegations levelled against him.

04. *Per contra*, Mr. Pawan Dev Singh, learned Dy. AG has submitted that there were five FIRs registered against the petitioner under the Excise Act within a span of six years and taking into consideration that his activities were prejudicial to the maintenance of public order, the order impugned was issued. He has further submitted that all the statutory and constitutional safeguards have been meticulously followed by the respondents while issuing and executing the order impugned.

05. Heard learned counsel for the parties and perused the record including the detention record.

06. A perusal of the record reveals that the dossier was prepared by the respondent No. 3 and thereafter recommendation was made to the respondent No. 2 to detain the petitioner under the Public Safety Act, as in the opinion of the respondent No. 3 i.e. the Sponsoring Agency, the activities of the petitioner were prejudicial to the tranquillity in society/public peace and public order. In the dossier, the details of the criminal activities of the petitioner have been mentioned, which read as under:

S.No.	Name of PS	Case FIR No.	Sec. of law	Status of case.
1.	Akhnoor	41/2005	4/25 A. Act	Challan
2	Akhnoor	182/2006	3/25 A. Act	Challan
3.	Akhnoor	22/2018	48-A Excise Act	Challan
4.	Akhnoor	54/2020	48-E Excise Act	Challan
5.	Akhnoor	151/2021	48-A, 49-F Excise Act	Challan
6.	Akhnoor	80/2023	48-A Excise Act	UI
7.	Akhnoor	93/2023	48-A Excise Act	Challan

07. Acting upon the dossier of the Sponsoring Agency and the material annexed with the same, the respondent No. No. 2 ordered the detention of the petitioner by observing as under:

“4. Whereas, the subject is a habitual criminal and the substantive law is proving insufficient to deter him or curb his criminal activities and the same can be judged from his consistent involvement in above mentioned cases. The liberty of a citizen is un-doubtly important but his has to balance with the safety of the community. A balance is required to be maintained between the personal liberty of the subject and the peace and tranquillity of the society. It is the right of the society to be shielded from the hazards of being exposed to the criminal misadventures of the subject who is imminent threat to the peaceful existence of society.

05. Whereas on the basis of the dossier submitted by the Senior Superintendent of Police, Jammu, it can be satisfactorily concluded that the detention of Pawan Singh alias Panna S/o Nand Singh R/o Chanjwan Devipur, Tehsil Akhnoor, District Jammu is required to be executed immediately for maintenance of public order.

6. Now, therefore, in view of the facts and circumstances as stated above, I, Avny Lavasa, District Magistrate, Jammu in exercise of powers conferred upon me under section 8(1)(a) of J&K Public Safety Act, 1978, hereby direct that Pawan Singh alias Panna S/o Nand Singh R/o Chanjwan Devipur, Tehsil Akhbnoor, District Jammu be detained immediately.”

08. So far as FIR No. 41/2005 under Section 4/25 Arms Act and FIR No. 182/2006 under Section 3/25 Arms Act, registered with Police Station,

Akhnoor are concerned, the same could not have formed the basis for detaining the petitioner under the PSA, considering his activities in the FIRs mentioned above as prejudicial to the maintenance to the public order as the allegations in the said FIRs pertain to the year 2005-2006, which are stale in nature. So far as other five FIRs are concerned, the allegations against the petitioner are in respect of commission of offences under the Excise Act, registered with Police Station Akhnoor.

09. Section 8 of the PSA provides for detention of the persons, the same is extracted as under:

8. Detention of certain persons.

(1) The Government may-

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to-

(i) the security of the State or the maintenance of the public order;

Or

(ii) [Omitted]

(a-1) if satisfied with respect to any person that with a view to preventing him from-

(i) smuggling [timber, or liquor] or

(ii) abetting the smuggling of [timber, or liquor or

(iii) engaging in transporting or concealing or keeping in smuggled timber, or

(iv) dealing the smuggled timber otherwise than by engaging in transporting or concealing or keeping in smuggled [timber, or liquor] or

(v) harbouring persons engaged in smuggling of timber or abetting the smuggling of [timber, or liquor] or

(b) if satisfied with respect of such person who is-

(i) a foreigner within the meaning of the foreigners Act,

- (ii) a person residing in the area of the State under the occupation of Pakistan.

that with a view to regulating his continued presence in the State or with a view to making arrangements for his expulsion from the State, it is necessary so to do, make an order directing that such person be detained.

(2) any of the following officers, namely

- (i) Divisional Commissioners,
- (ii) District Magistrate,

may, if satisfied as provided in sub-clause (i) and (ii) of clause [(a) or (a-1)] of sub-section (1), exercise the powers conferred by the said sub-sections.

(3) For the purposes of sub-section (1),

(a) [Omitted.]

(b) "acting in any manner prejudicial to the maintenance of public order" means-

- (i) promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on ground of religion, race, caste, community, or region;
- (ii) making preparations for using, or attempting to use, or using, or instigating, inciting, provoking or otherwise, abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order;
- (iii) attempting to commit, or committing, or instigating, provoking or otherwise abetting the commission of, mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order;
- (iv) attempting to commit, or committing or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order;

[(c) "smuggling" in relation to timber or liquor means possessing or carrying of illicit timber or liquor and includes any act which will render the timber or liquor liable to confiscation under the Jammu and Kashmir Forest Act, Samvat, 1987 or under the Jammu and Kashmir Excise Act, 1958, as the case may be," and] *[Substituted by Act VIII of 2001, section 2.]*

[(d) "timber" means timber of Fir, Kail, Chiror Deodar tree whether in logs or cut up in pieces but does not include firewood];

[(e) Liquor includes all alcoholic beverages including beer.]

[(f) "person" shall not include a citizen of India who has not attained the age of eighteen years for being detained under clauses (a) and (a-1) thereof.]

(4) When any order is made under this section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the Government.

10. A perusal of Section 8 of the PSA reveals that the Government may detain a person, if it is satisfied that the activities of such person are prejudicial to either to security of the State or maintenance of the public order. Besides, the Government can also detain a person so as to prevent him from smuggling timber or liquor, or abetting the smuggling of timber or liquor or engaging in transporting or concealing or keeping smuggled timber or harbouring persons engaged in smuggling of timber or liquor or abetting the smuggling of timber or liquor.

11. Section 8(3)(b) of the PSA prescribes the activities, which are considered prejudicial to the maintenance of public order. Section 8(3)(c) defines "smuggling" in relation to timber or liquor means possessing or carrying of illicit timber or liquor and includes any act, which will render the timber or liquor liable to confiscation under the Jammu and Kashmir Forest Act or under the Jammu and Kashmir Excise Act as the case may be.

12. Thus, Sections 8(3) (b) and 8(3)(c) of the PSA define the activities prejudicial to the maintenance of the public order and expression "smuggling"

as used in Sections 8(1)(a) and 8 (1)(a-1) of the Act respectively. The smuggling of liquor or possession thereof, does not fall within the category of activities as defined in terms of Section 8(3)(b) of the Act considered prejudicial to the maintenance of the public order.

13. As mentioned above, the impugned order has been purportedly issued “for maintenance of public order” and not in order to prevent the petitioner from smuggling the liquor. The PSA contemplates detention of the person if he is involved in smuggling of liquor, as defined under the PSA and the definition of ‘smuggling’ is wide enough to include any infraction of the Excise Act which renders the liquor liable for confiscation. The petitioner could have been detained only under Section 8 (1)(a-1) of the PSA and not under Section 8(1)(a) of the PSA, as both the clauses (a) and (a-1) operate in different fields, the former operates in cases of activities prejudicial to the maintenance of public order and the latter in case of smuggling liquor or timber. Once the Statute provides for detention of the person under specific contingency, he cannot be detained under other contingency envisaged by the statute, unless both overlap or co-exist together.

14. So far as present case is concerned, the allegations against the petitioner are in respect of indulging in the illicit trade of liquor for getting undue profit/benefit and by no stretch of imagination, such activities of the petitioner can be termed as prejudicial to the maintenance of ‘public order’. Mere issuance of order under Section 8(1)(a) of the PSA by the respondent No. 2 for maintenance of public order is a classic example of non-application of mind on the part of the detaining authority. Therefore, this Court has no

hesitation to hold that the detaining authority i.e. District Magistrate, Jammu has acted as a rubber stamp and instead of applying its mind independently as to whether on the basis of allegations levelled against the petitioner, he could have been detained under Section 8(1)(a) of the PSA for maintenance of the public order or not, has passed the order impugned under Section 8(1) (a) of the PSA. On this ground alone, the order impugned is not sustainable in the eyes of law. The petitioner has been illegally and wrongfully detained by the respondents. As such, this court deems it proper to quash the impugned order.

15. In view of the above, this petition is allowed. Detention order No. bearing No. 08 of 2023 dated 28.06.2023 issued by the District Magistrate, Jammu-respondent No. 2 is quashed. The petitioner be released forthwith from the preventive custody, provided he is not required in any other case.

15. The detention record, as produced, be returned to Mr. Pawan Dev Singh.

(RAJNESH OSWAL)
JUDGE

Jammu

17.05.2024

Karam Chand/Secy.

Whether the order is speaking: Yes
Whether the order is reportable: Yes