

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

**Reserved on: 07.06.2023
Pronounced on: 12.06.2023**

WP(Crl) No. 157/2022

Jahangir Ahmad Wani

..... Petitioner/Appellant(s)

Through: Mr. G.N. Shaheen, Advocate

V/s

Union Territory of J&K and Ors.

.....Respondent(s)

Through: Mr. Rais-ud-din Ganai, Dy. AG.

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

1. District Magistrate, Pulwama-respondent No. 2 (for brevity "detaining authority"), has, by Order No. 15/DMP/PSA/22 dated 08.04.2022 placed Jahangir Ahmad Wani S/o Gh. Nabi Wani R/o Rahmoo Tehsil Rajpora District Pulwama [for short "detenue"] under preventive detention, with a view to prevent him from acting in a manner prejudicial to the security of the State. It is this order, petitioner has challenged in this petition and seeks quashment thereof on grounds averred therein.

2. In support of his contentions learned counsel for the petitioner has relied upon the following judgments; **1999 AIR (SC) page 3051 titled Sophia Ghulam Mohd Bham Versus**

State of Maharashtra; 2009 AIR (SC) page 2184 titled Tahira Haris etc versus Govt. Of Karnataka; 1981 AIR (SC) page 728 titled Shri Lallubhai Jogibhai Patel versus Union of India. However, the said judgments are distinguishable

3. Counter affidavit has been filed by the respondents in opposition to the petition. Detention record has also been produced by counsel for the respondents to substantiate the statements made in counter affidavit.

4. Heard learned counsel for the parties and considered the matter.

5. Learned counsel for the petitioner has, to augment the case set up by the petitioner in the petition on hand contended that the detinue at the time of passing of the detention order impugned herein was already in custody in case FIR No. 47/2020 U/s 7/25 I.A. Act and 23, 29 UAP Act, in which the detinue was facing the trial in the said FIR. It is further averred that the grounds of detention are vague, equivocal, obscure, indefinite, ambiguous and not connected with the detinue and are mere assertions of the detaining authority. Further averred that the respondents have not supplied relevant documents, i.e., order of detention, dossier, copy of FIRs, statement under Section 161 Cr.P.C and other documents relied upon by the detaining authority while passing the impugned detention order, so as to enable the detinue to make an effective representation.

6. *Per contra*, learned counsel for the respondents insists that detention order has been passed on subjective satisfaction by the detaining authority and detention order is in accordance with law and there is no violation or infringement of rights guaranteed under the Constitution of India. Hence, he exhorts dismissal of petition.

7. Given the case set up and submissions made by learned counsel for the parties, it is apt to mention here that whether a person, who is in jail, can be detained under preventive detention law, has been a subject matter of consideration before the Supreme Court very often. In *Dharmendra Suganchand Chelawat & anr. V. Union of India*, AIR 1990 SC 1196, the Supreme Court, while considering the same issue has reconsidered its earlier judgments on the point in *Rameshwar Shaw v. District Magistrate, Burdwan*, AIR 1964 SC 334; *Masood Alam v. Union of India*, AIR 1973 SC 897; *Dulal Roy v. District Magistrate, Burdwan*, AIR 1975 SC 1508; *Alijan Mian v. District Magistrate, Dhanbad*, AIR 1983 SC 1130; *Ramesh Yadav v. District Magistrate, Etah*, AIR 1986 SC 315; *Suraj Pal Sahu v. State of Maharashtra*, AIR 1986 SC 2177; *Binod Singh v. District Magistrate, Dhanbad*, AIR 1986 SC 2090; *Smt Shashi Aggarwal v. State of U.P.*, AIR 1988 SC 596, and came to the conclusion that an order for detention can be passed against a person in custody and for that purpose, it is necessary that grounds of detention must show that (i) detaining

authority was aware of the fact that detainee is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that detainee is already in detention. The expression “compelling reasons” in the context of making an order for detention of a person already in custody implies that there must be cogent material before detaining authority on the basis whereof it may be satisfied that (a) detainee is likely to be released from custody in near future, and (b) taking into account the nature of antecedent activities of detainee, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

8. Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, guarantee safeguard to detainee to be informed, as soon as may be, of grounds on which order of detention is made, which led to the subjective satisfaction of detaining authority and also to be afforded earliest opportunity of making representation against order of detention. Detainee is to be furnished with sufficient particulars to enable him to make a representation, which on being considered, may obtain relief to him. Detention record, made available by learned counsel for respondents, reveals that detention order was made on proper application of mind, to the facts of the case and detainee was delivered at the time of execution of detention order, the material and grounds of

detention and also informed that he had a right to represent against his preventive detention. Perusal of the execution report signed by the detinue reveals that one SI-Ghulam Mohammad No. 181/GRPK EXK. 841644 of DPL Pulwama, took custody of the Jahangir Ahmad Wani on 14th April, 2022, for execution of PSA detention warrant at Central Jail, Jammu, Kot Bhalwal and accordingly, the PSA detention warrant has been executed at Central Jail Kot Bhalwal, Jammu, on the same day, and contents of detention warrant and grounds of detention have been read over to the detinue in English and explained him in Urdu/Kashmiri language which the detinue understood fully in lieu of which his signature has been obtained. The execution report further reveals that the detinue has been provided the copy of the detention order, notice of detention, grounds of detention, Dozier of detention, Copies of FIR and other relevant documents of 07 leaves, total 14 leaves have been handed over to him on 14th April, 2022, against the proper receipt on which day detinue also acknowledged and put his signature. The detinue has also been informed that he can make representation to the Government as well as detaining authority against the detention order if he so desires. The grounds of detention are definite, proximate and free from any ambiguity. The detinue has been informed with sufficient clarity what actually weighed with Detaining Authority while passing detention order. Detaining Authority has narrated facts and figures that made the

authority to exercise its powers under Section 8 J&K Public Safety Act 1978 and record subjective satisfaction that detainee was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State.

9. The grounds of detention reveals that the detainee is an active militant member of terrorist organisation Jesh-e-Mohammad (JeM) and has been providing help to the terrorists of the said organisations in carrying out subversive activities in and around the Pulwama town. The detainee have contact with active militants namely Yasir R/O Qasbayar, Manzoor Ahmad Kar R/O Sirnoo and Furkan Bhai, and has been motivating youth to join the militant ranks of the banned outfit, by exploiting their religious sentiments and is extending logistic support to the militants. It is also revealed from the grounds of detention that few days before these militants named above have visited the house of the detainee and remained there for 24 hours and the detainee have also provided his personal vehicle Wagoner bearing Registration No. JK13-8758 and have also been supported by the brother of the detainee namely Adil Nabi Wani S/O Gh. Nabi Wani, who along with the detainee would have joined the militant ranks of JeM. The grounds of detention further reveals that on 11.06.2020 Police Station, Rajpora, received a written docket from ASI Shah Fasil No. 427/PL of PC Pulwama Camp Shali Taki Putrigam crossing to the effect

that on the same date he along with other Nafri of PC Camp, accompanied with 182, 183 BN CRPF established Naka at Shali Taki Putrigam crossing after receiving an information regarding movement of militants, during naka duty one vehicle wagonar bearing Registration No. JK13-8758 in which two persons boarded was stopped for checking and during their personal checking 01 hand grenade recovered from the possession of Adil Ahmad Wani S/O Gh. Nabi Wani and 15 AK 47 live rounds were recovered from the possession of petitioner in this regard case FIR No. 47/2023 U/S 7/25 I.A Act and 23, 39 UAP Act was registered at Police Station Rajpora.

10. The law is well settled that this Court in proceedings under Article 226 of the Constitution is limited to scrutinizing whether the detention order has been passed on the material placed before it, it cannot go further and examine the sufficiency of the material. This Court does not sit in appeal over the decision of detaining authority. This Court cannot substitute its own opinion over that of detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. The Court can only examine the grounds disclosed by the Government in order to see whether they are relevant to the object which the legislation has in view, that is, to prevent detinue from engaging in activities prejudicial to the security of the State and public order. In this regard I am fortified by

decisions rendered by the Supreme Court in *State of Gujarat vs. Adam Kasam Bhaya* (1981) 4 SCC 216; *State of Punjab vs. Sukhpal Singh* (1990) 1 SCC 35; *Union of India vs. Arvind Shergill* (2000) 7 SCC 601; *Pebam Ningol Mikoi Devi vs. State of Manipura*, (2010) 9 SCC; and *Subramanian vs. State of T.N.* (2012) 4 SCC 699.

11. It may not be out of place to mention here that the Supreme Court, in several decisions, has held that even one prejudicial act can be treated as sufficient for forming the requisite satisfaction for detaining the person. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched.

12. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in [Article 22](#) in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of [Article 21](#), by humanising the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order, must be strictly construed.

However, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation. These observations have been made by the Supreme Court in *The Secretary to Government, Public (Law and Order-F) and another v. Nabila and another* (2015) 12 SCC 127.

13. The Supreme Court in *Debu Mahato v. State of W.B.* (1974) 4 SCC 135, observed that while ordinarily-speaking one act may not be sufficient to form the requisite satisfaction, there is no such invariable rule and that in a given case "one act may suffice". That was a case of wagon-breaking and given the nature of the Act, it was held therein that "one act is sufficient". The same principle was reiterated in *Anil Dely v. State of W.B.* (1974) 7 SCC 514. It was a case of theft of railway signal material. Here too "one act was held to be sufficient". Similarly, in *Israil SK v. District Magistrate of West Dinajpur* (1975) 3 SCC 292 and *Dharua Kanu v. State of W.B.* (1975) 3 SCC 527, single act of theft of telegraph copper wires in huge quantity and removal of railway fish-plates respectively, was held sufficient to sustain the order of detention. In short, the principle appears to be this: "Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of

organised activity." The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient by the Supreme Court. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, as in the present case detenu has been apprehended with arms and ammunition, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity.

14. If one looks at the acts, the J&K Public Safety Act, 1978, is designed for, is to prevent, they are all these acts that are prejudicial to security of the State or maintenance of public order. The acts, indulged in by persons, who act in concert with other persons and quite often such activity has national level ramifications. These acts are preceded by a good amount of planning and organisation by the set of people fascinated in tumultuousness. They are not like ordinary law and other crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed, but it cannot be stated as a principle that one single act

cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention. Same views and principles have been reiterated by the Supreme Court in *Gautam Jain vs Union of India and anr.* reported in *AIR 2017 SC 230*.

15. For the reasons discussed, the petition fails and is, accordingly, **dismissed**.

16. Detention record be returned to the learned counsel for respondents.

(Tashi Rabstan)
Judge

SRINAGAR:

12.06.2023

“Mir Arif”

Whether judgment is speaking: Yes/No

Whether judgment is reportable: Yes/No

