HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No. 236/2022

Pronounced on: 30.12.2023

Bilal Ahmad Reshi …. Petitioner/Appellant(s)

Through:- Mr. M. Altaf Khan, Advocate.

V/s

Union Territory of J&K and anr. …..Respondent(s)

Through:- Mr. Alla-Ud-Din Ganai, AAG

CORAM :
HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The District Magistrate, Anantnag detained the detenu vide his detention order No. 19/DMA/PSA/DET/2022 dated 10.04.2022 under Section 8 of the J&K Public Safety Act, 1978 to prevent him from acting in any manner prejudicial to the security of the State. This order of detention has been assailed by the detenu through his father-Mushtaq Ahmad Reshi.

02. The detenu, aggrieved of the detention order, has challenged its legality and validity on the grounds that: (i) the procedural safeguards envisaged in terms of the J&K Public Safety Act have not been complied with by respondent No. 2 which rendered the order of detention illegal; (ii) the allegations made in the grounds of detention are vague, non-existent against which no representation can be made; (iii) it is submitted that the representations filed by the detenu on 25.04.2022 and 27.04.2022 and right to represent before the Advisory Board, which has not been considered till date; (iv) the detention order has been passed carelessly without application

of mind that the respondents have not provided any material except dossier report to the detenu to enable him to make representation before the respondents; (v) there is no subjective satisfaction arrived at by the detaining authority while ordering the detention of the detenu; (vi) the grounds of detention are verbatim copy of the police dossier, as such, there is non-application of mind by the detaining authority; (vii) the detenu was already in custody when the order of detention was passed and no compelling reasons have been provided for the same.

03. Mr. Alla-Ud-Din Ganai, learned AAG has filed his counter affidavit and also produced the detention record.

04. It is submitted by him that the detenu was detained pursuant to order of detention No.19/DMA/PSA/DET/2022 dated 10.04.2022 passed by the District Magistrate, Anantnag, in accordance with the provisions of Public Safety Act. The order of detention was passed by the detaining authority after arriving at subjective satisfaction and after considering the relevant material as he has been found to be an OGW of banned terrorist organization LeT and is trying to strengthen the influence of outfit by giving every kind of support to the active militants. The detaining authority after carefully examining the dossier and perusing the material was satisfied that the detenu's activities were prejudicial to the security of the State and in the circumstances, it was necessary to detain the detenu under preventive detention.

05. Heard learned counsel for the parties and perused the record also.

06. All the relevant material relied upon by the Detaining Authority have been provided to the detenu in the language that he understands. The

detention of the detenu was ordered by District Magistrate, Anantnag, on 10.04.202, keeping in view his activities as he had developed contacts with various secessionist organizations to carry out activities of secessionism and terrorism, including in antinational activities. The detaining authority after considering the dossier submitted by the Senior Superintendent of Police also considered that the activities are highly prejudicial to the security of the State and passed the impugned order of detention. The detention of the detenu was approved within time and he was informed of his right to make a representation before the Government and detaining authority. All the material relied upon by the detaining authority while passing the order of detention was provided to the detenu. The detaining authority has complied with all the statutory requirements and constitutional guarantees as provided under the Constitution.

07. The contention of the detenu is that he had moved a representation which has not been considered till date. The order of the Advisory Board reveals that they have accorded consideration to the representations made on behalf of the detenu and given him personal hearing through video conference and they found that there is substance in the material relied upon by the Detaining Authority while passing the order of detention.

08. Personal liberty is one of the most precious rights guaranteed under the Constitution and a person cannot be deprived of his personal liberty except by procedure established by law. Article 22(5) of the Constitution provides for detention of person without formal charge, trial or sentence from a competent Court under the enactment of preventive detention law. The object of the same is to protect the society from activities

which would deprive a large number of people from their life and personal liberty.

09. It is well settled that the purpose of the preventive detention is detaining of a person and not to punish him for something he has done but to prevent him from doing a particular act which is prejudicial either to the security of the State or to the maintenance of the public order. In **Haradhan Saha v. State of West Bengal, (1975) 3 SCC 198**, Hon'ble the Supreme Court has held that there is no parallel between prosecution in a Court of law and a detention order under the Public Safety Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in the Act. The relevant part of the judgment is reproduced as under:-

> "The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The, basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent."

10. In **Khudiram Das V. State of West Bengal and others,** reported as **(1975) 2 SCR 832**, It was held that:-

> "……..The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof.……"

11. Similarly, in **Secretary to Government, Public (Law and order) and another vs. Nabila and another**, reported as **(2015) 12 SCC 127**, it has been held that one act may not be sufficient to form the requisite satisfaction for detaining him. Relevant portion of the judgment is as under:

> "Indisputably, the object of law of preventive detention is not punitive, but only preventive. In case of preventive detention no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability and there is no criminal conviction which can only be warranted by legal evidence…"

12. The detention order does not suffer from any legal infirmity and grounds of detention are definite, proximate and free from any ambiguity and the detenu was duly informed of what weighed with the detaining authority while passing the order of detention. The Detaining Authority after considering the material placed before it had arrived at the requisite satisfaction that the detenu 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, therefore, there is no infraction of constitutional and statutory rights of the detenu. The Detaining Authority has arrived at its subjective satisfaction after considering all the material.

13. It was lastly submitted that the detenu was already in custody in connection with FIR when the order of detention was passed and there were

no compelling reasons justifying the detention. The detenu no doubt was already in custody in another case but the detaining authority has shown awareness to the fact that detenu already in custody is likely to be released in near future and that after his release from custody he would indulge in prejudicial activities, therefore, necessary to detain him.

14. The decision of the Detaining Authority cannot be substituted by the Court while scrutinizing the detention order. Since preventive detention is a precautionary measure to protect the society from activities which may cause harm to their life and liberty. Preventive detention is a precautionary measure to protect the society from the activities that are likely to deprive a large number of people of their rights and protect them from damaging to their life and property.

15. In view of the aforesaid, none of the constitutional or statutory provisions available to the detenu have been violated, thus, there is no merit in this petition and the same is, accordingly, **dismissed**.

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

(Sindhu Sharma)
Judge

SRINAGAR
30.12.2023
Ram Murti/PS

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